

***NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF WATER SUPPLY***

A Plan for the New York City Flood Buyout Program

April 30, 2014

*Prepared in accordance with Section 4.2 of the Draft Revised 2007 Filtration
Avoidance Determination*



Prepared by: DEP, Bureau of Water Supply

1. Executive Summary

Floods in populated areas can cause sudden devastation to people and property, and can result in lingering impacts to water bodies and water supplies by mobilizing pollutants, debris, and silt into streams and downstream reservoirs. Ameliorating the impacts of past floods and reducing the threat posed by future storms will require investments and cooperation on the part of many individuals, organizations, and government entities. As part of the Watershed Protection Program, and particularly since 2011, New York City (the “City”) has invested substantial resources and partnered with local, State, and Federal bodies to develop programs in the West-of-Hudson watershed with the goal of providing resources to moderate and mitigate the impacts of floods on local communities and the City’s water supply. Among these initiatives are Flood Buyout Programs (“FBOs”), which over the last two decades have allowed for the acquisition of flood-damaged or flood-threatened properties, particularly properties with structures, from willing sellers by governmental entities, after which the structures are removed and the properties are restored or allowed to revert to a natural condition in order to mitigate the impacts of future floods. To date the City and several counties have joined to participate in two FBOs, the first to address the aftermath of the January 1996 floods and the second (still proceeding) to address the aftermath of Tropical Storms Irene and Lee in 2011. These two FBOs have been funded largely with FEMA monies channeled through the New York State Office of Emergency Management to the counties, with some financial and significant staff time contributions from the City and the partnering counties.

The Draft Revised 2007 FAD directs the City to develop its own entirely City-funded FBO (the “City FBO Program” or the “Program”), and to submit a Program plan by April 30, 2014. In accordance with the Draft Revised 2007 FAD¹, DEP submits the following Program plan, which outlines the proposed new Program, how the City will implement it, and the integral role of local communities in ensuring its success (the “Plan”). In brief, the Program will involve the following principles and parameters:

- **Investment:** Initially the City will allocate at least \$15 million to the City FBO Program; pursuant to the Draft Mid-term Revisions to the 2007 FAD those funds can be applied only to the Program, and other LAP funds may be allocated to the Program only if and when the \$15 million has been committed and/or spent;
- **Community buy-in:** The City will not pursue acquisition of any properties without local municipal support;
- **Community ownership:** the City will offer local municipalities the opportunity to own any properties acquired under the Program, but the City will accept ownership if there is no such

¹ The Revised 2007 Filtration Avoidance Determination has not been issued as of the date of this document. The City has committed to moving forward with this Flood Buyout Program in the expectation that the Revised FAD will include this Program element.

interest and if (in cases where the local municipality wishes to see active management of the property) management agreements with the municipality are in place;

- **Coordination:** In order to take advantage of future buyout funding from either FEMA or NY Rising, the City FBO Program will be designed to encourage participation in these programs if and when funding becomes available;
- **Fair Market Value (“FMV”):** In order to maximize landowner interest in the Program while staying true to the spirit of the FMV commitment in the 1997 Memorandum of Agreement as continued in the 2010 Water Supply Permit, the City FBO Program will employ FEMA’s appraisal policy (which can involve up to three appraisals) and will establish value by using the ‘current’ date while assuming the pre-flood condition of the property;
- **Project Identification:** Parcel eligibility and prioritization will be determined by either (1) a formal study (Local Flood Analysis, Stream Management Plan, etc.), through which key properties are identified that would facilitate flood mitigation efforts if structures were removed from them, or (2) a formal process that would establish criteria by which other properties – including those proposed by communities, DEP, or landowners themselves – can be assessed in regard to potential to reduce flood impacts and water quality benefits. These science-based vetting processes will establish the mechanisms by which funding and resources will be allocated to the most compelling properties;
- **Program Structure:** The City FBO Program will utilize the existing skill sets of City staff and staff of certain partners, stakeholders, and vendors to maximize Program effectiveness. Property identification will be a collaborative effort using the expertise of City and local Soil and Water District staff, with opportunity to review and comment offered to stakeholders, while towns will have authority to veto any projects within their jurisdiction prior to the ordering of an appraisal. Landowner solicitation will be coordinated at the local level through outreach that is managed by counties and/or towns, purchase contracts will be handled by City staff, and demolitions will be coordinated by a partner at the local level after closing;
- **Program Scope / Implementation:** It is recognized that this City FBO Program cannot and will not address all aspects of local flood hazard mitigation, but rather that the Program seeks solely to provide resources to acquire properties and remove structures – where willing sellers exist – that are projected to otherwise create significant off-site threats to water quality and/or flood levels. The Program will thus take a phased approach, beginning with the most compelling and efficient program areas and expanding as resources and opportunities allow. This approach allows flexibility to consider the many unknowns, including the number and scope of future flood events, FBO acceptance by towns and landowner interest, which will impact the scale and success of the City FBO Program; and
- **Protection:** Each property acquired under the Program will be protected by a conservation easement (“CE”) to be conveyed to the State by the new owner, whether that be the City or the town. The City expects that the model CE to be used when the City takes title will be similar or identical to the model CE currently conveyed to the State by LAP following its own acquisitions, and that where a local municipality takes title the CEs will include terms described in the Supplemental Agreement Among West of Hudson Stakeholders Concerning DEP’s Participation in Federal or State Flood Buy-Out Program, executed December 2013 (see Section 5H below).

2. Introduction

The City first engaged in acquisition of flood-damaged residential properties in 1998, after being asked to join in partnership with Delaware County, the State and FEMA as part of the federal Hazard Mitigation Grant Program. Under that effort, the City contributed roughly 25% of the overall acquisition costs to acquire 28 watershed properties in the Towns of Middletown (including the Villages of Margaretville and Fleischmanns) and Roxbury.

Following Tropical Storms Irene and Lee in August 2011, additional FEMA funds were allocated to a local buyout program and the City again agreed to participate by contributing approximately 25% of overall acquisition costs. Subsequently, the Draft Revision of the 2007 FAD, issued for public comment in August 2013, required the City to undertake several initiatives related to flood mitigation, including a \$15 million City-funded FBO. This Plan is submitted in accordance with those requirements.²

A. Stakeholder Input

Subsequent to issuance of the August 2013 draft of the Revised 2007 FAD, the City held two meetings in January and February of 2014 to discuss development of the City FBO Program with diverse stakeholders including local municipalities, environmental organizations, and regulatory agencies. The meetings resulted in a high level of support for the basic principles, policies and design of the Program in its proposed form herein. In addition, the City believes there is clarity among the stakeholders that the Program will focus on the most important and beneficial properties first, followed by consideration of lower priority properties once demonstrated success in the core areas is achieved.

B. Integration with Other Programs

There are several existing programs that have been considered in the design of this City FBO Program in order to maximize potential synergies and benefits while minimizing potential negative interactions, as outlined here:

- **DEP Stream Management Program (“SMP”):** This is an umbrella for many initiatives that will improve stream and floodplain function, several of which also support the City FBO Program. In particular, Stream Management Plans and Local Flood Analyses (LFAs), funded by DEP’s SMP will result in recommendations to secure properties that are considered necessary to develop flood hazard mitigation projects. The City FBO Program will be heavily guided by the results of these studies. DEP’s SMP will also be instrumental in helping to develop criteria for individual buyout projects. The SMP’s role in the City FBO Program is further developed in Sections 3 and 4.

² As noted above, the Revised 2007 FAD has not yet been issued in final form.

- **FEMA Flood Hazard Mitigation Programs:** Following a flood event, FEMA may declare a disaster zone and allocate funding for a FBO program to be funded by federal monies flowing through the NY State Office of Emergency Management to local applicants (usually the counties). It would be a poor use of scarce resources to design a new FBO program that competed – rather than coordinated – with FEMA for sellers, since this would forgo the opportunity to secure additional federal funding for buyouts. While the City will likely participate again (using core LAP funds) if a local partner invites such coordination to implement a FEMA FBO program, the City FBO Program will not pursue any new individual buyout projects during active FEMA funding “windows,” in order to encourage continued use of, and participation by all involved parties in, future FEMA Buyouts. However, properties that are deemed ineligible by FEMA will be eligible for consideration under the City FBO Program whether during a window or not.
- **New York Rising Community Reconstruction Program (NY Rising):** Similarly, if and when NY Rising (or other State) funds become available for acquisitions in the watershed, the City FBO Program will halt the pursuit of new individual buyout projects in order to encourage continued use of and participation by all involved parties in NY Rising Buyouts. As with the FEMA program described above, properties that are ineligible for acquisition under NY Rising will be eligible for consideration under the City FBO whether during a NY Rising window or not. As described in Section 3, NY Rising Community Reconstruction Programs in the watershed are expected to identify potential buyout projects with off-site flood mitigation benefits.
- **Flood Hazard Mitigation Implementation Program:** This program, to be run by the Catskill Watershed Corporation using City funds, involves funding a wide array of flood hazard mitigation programs, including relocation of anchor businesses and critical community infrastructure, floodplain restoration, infrastructure improvements. The City FBO Program will provide funding for buyouts that are necessary to implement these mitigation projects.

C. Basic Principles

Underlying the City’s FBO Program are several fundamental tenets, including that:

- Local engagement is required. This Program will be fundamentally driven by partnerships, and the City FBO Program will not operate where communities do not elect to participate. The process for communities to opt in or out of the City FBO has yet to be developed.
- Local governments are best positioned to interact with their constituents to ensure that local interests and perspectives are expressed and understood. Identification and selection of properties should be undertaken jointly by communities and the City, while direct solicitation of landowners should be spearheaded by the local community.
- For efficiency, and to make best use of the City’s resources, the City will manage the real estate transactions with procedures and staffing currently employed by LAP. The City has professional staff who have managed real property transactions for over twenty years, including involvement with several counties on FEMA FBO programs. Whether the City or a

town becomes the eventual owner, the same level of staff experience and standards for closing every property will be employed, making the process both efficient and fair to landowners across various towns and counties.

3. Project Identification and Selection

Properties to be acquired under the City FBO Program will typically be selected either through rigorous scientific analysis to determine flood mitigation potential in a defined study area (“Hydraulic Study Buyout Properties”), or through case-by-case review of properties that are proposed by communities, DEP, or landowners themselves for acquisition (“Individual Buyout Properties”). Sections 3A and 3B provide further details on the project selection process in these two broad categories. In both categories, the City is committed to a transparent, objectively-based process of evaluation and ranking, which will be conducted together with our partners in the watershed community. The phased implementation approach discussed above will be particularly important in the area of project selection, since properties will be proposed for acquisition over time as studies, landowner interest, potential future flood events, and other unforeseen circumstances unfold. Through this phased approach, the City and its partners will be able to identify high priority sites for buyout as they are proposed, while retaining project funding for future projects identified as flood programs are continually refined and evolve over coming years.

A. Hydraulic Study Buyout Properties

Largely as a result of the flood damage caused by Tropical Storms Irene and Lee in 2011, there are two distinct WOH flood hazard mitigation planning initiatives: Local Flood Analyses in specified communities, and studies funded by the NY Rising Program. These initiatives are intended to develop scientific analyses to identify projects capable of providing community (or off-site) flood hazard mitigation benefits. Although the methods specific to these programs vary, both involve common components:

- Development of a hydraulic model capable of quantifying the flood hazard mitigation benefits expected to accrue as a result of specific projects or a combination of projects such as bridge expansion, floodplain restoration, stream realignment, etc.; and
- A planning approach that includes community involvement to identify high priority projects with local support.

As potential flood hazard mitigation projects are identified through these planning processes, some will require land acquisition, and of those some will involve construction of flood-mitigation improvements. The City FBO Program will provide a mechanism to acquire these properties from willing sellers, reducing flood elevations and/or allowing FMP implementation to proceed on municipal-owned or City-owned land where such projects are deemed necessary and feasible. In most cases these acquisitions will involve improved residential or commercial properties, but vacant land may also be considered. It is expected that some properties deemed ineligible under FEMA FBO would be included in project areas identified by hydraulic studies.

Acquisition of these properties will be a high priority for the City FBO Program due to the rigorous nature of the analysis leading to a determination that off-site flood mitigation benefits would accrue. The specific initiatives involved are briefly summarized as follows:

i. Local Flood Analysis Studies

Under the Revised 2007 FAD, the DEP's Stream Management Program is providing funding to support several programs to support flood hazard mitigation, which are collectively known as Local Flood Hazard Mitigation Programs (LFHMPs). The goal of the LFHMPs is to identify flood hazards and to develop plans and implement projects to mitigate such hazards to benefit water quality and community protection. Local Flood Analyses (LFA) are focused scientific studies in selected population centers that will serve as a cornerstone of the overall flood hazard mitigation effort.

The first step in the LFA is to confirm that there is a significant flood hazard in the target area through engineering analysis. The second step is to use engineering analysis to develop a range of hazard mitigation alternatives. The consultant does this by considering known feasible solutions vetted through a series of public meetings to identify the most acceptable to the community. The primary focus of the analysis is to identify the potential for reducing flood elevations through channel and floodplain restoration as the first alternative to other hazard mitigation solutions which may include buyouts or relocations, and then to evaluate both the technical effectiveness and the cost/benefit effectiveness of each solution, comparing different solutions to each other for the most practical, sustainable outcome. Through a planning process involving local governmental officials, the City, technical consultants and the public, specific flood mitigation projects³ will be identified for prospective implementation. These projects may require funding from multiple sources in order to be implemented, and if so the City FBO Program would provide one important component of that funding stream in that it could secure the necessary land and hold it, for years if needed, until funding and/or other required properties are secured and the mitigation project can be implemented.

Each LFA will have a defined study area, based on Designated Areas selected as of 1997 (i.e. hamlets, villages and village extensions as defined in the MOA). As of April, 2014, LFAs were underway or planned in six communities (Prattsville, Windham, Phoenicia, Fleischmanns/Covesville, Walton and Lexington). Additional LFA study areas may be added in the future.

³ Examples of projects that might be pursued in order to mitigate hazards from future floods on acquired properties include removal and/or construction of abutments that support roads or bridges, wider bridge spans, installation or enlargement of culverts, re-grading of floodplain topography, and stream restoration.

ii. New York Rising Community Reconstruction Program

New York Rising is run by the NY State Office of Storm Recovery using federal funds provided to the State in response to flood damage sustained during Irene, Lee and Sandy. Participating communities each receive State-funded planning and technical assistance, as well as \$3 million toward the implementation of community-approved projects.

Under NY Rising, a Technical Advisory Committee composed of non-government stakeholders, members of the public, State government, and outside technical experts will engage in a collaborative planning effort to identify general strategies for community development and specific projects to further those strategies. Although many projects to be considered under NY Rising will not involve flood mitigation, hydraulic studies would be conducted to evaluate the subset of projects with a flood-mitigation component. Through the use of a hydraulic model, proposed projects would qualify for implementation funds based on cost-benefit analyses and applicability to the federal Housing and Urban Development (HUD) community block grant rules. At present, five watershed communities are undertaking studies funded through NY Rising (Shandaken / Hardenburgh, Margaretville, Prattsville, Ulster [Olive / Woodstock], and Windham).

The primary difference between NY Rising and LFA with respect to evaluating flood hazard mitigation projects is that in the case of LFAs, the hydraulic model is run first, and these first sets of projects are identified through the engineering analysis with the primary focus being the potential for reducing future flood extent, depths and velocities. Community-proposed projects are evaluated as well. Under NY Rising, individual projects are identified first by the Technical Advisory Committees, and those that garner the greatest community support are run through a hydraulic model to verify flood benefits.

As specific buyout projects are identified through the LFA and/or NY Rising Programs, local community representatives may propose them for inclusion in the City FBO Program. The methods to solicit landowner interest in these projects are described in Section 5.A of this Plan.

B. Individual Buyout Properties

While the community-based studies conducted under the LFA and NY Rising programs will be a source of potential buyout projects that have confirmed off-site flood mitigation benefits, buyout opportunities may also be identified outside of these formal study processes. Collectively termed “Individual Buyouts” these potential projects will arise by various means, including landowner inquiries, lists of flood-damaged properties (including properties deemed ineligible for a FEMA FBO), and/or properties proposed by local governmental, non-governmental organizations or DEP. While Individual Buyout properties might or might not provide off-site flood mitigation benefits, such buyouts would generally benefit long-term water quality by (1) removing potential sources of contamination that could enter the water supply as a result of damage from flood events, and (2) restoring floodway or floodplain functions by removing structures.

i. Individual Buyout Priorities

Properties proposed for Individual Buyouts can be generally grouped into three categories, presented in descending order of priority under the City FBO Program. It is expected that some properties deemed ineligible under FEMA FBO would be included in these categories:

- **Facilitation of Stream Project** – Certain buyout properties will be considered because they are within or adjacent to a stream management project being considered for funding under the SMP. In some cases the proposed buyout would be a necessary component of the stream project, and in other cases the buyout may reduce the cost or improve the efficacy of the stream project. Stream projects have a primary goal of creating off-site benefits, resulting in the protection and/or enhancement of water quality and/or the restoration of floodplain / floodway functions, so Individual Buyouts which facilitate stream projects will have a high priority for acquisition. Of the three categories of Individual Buyouts listed here, those associated with stream projects are expected to represent a relatively small percentage.
- **Erosion Threats** – Properties with verified erosion threats would comprise the second level of priority. These properties are at risk of catastrophic failure during storm events, when the entire contents of the structure and surrounding property can suddenly enter the stream channel, resulting in the transport of pollutants that impact water quality. In general, there are two distinct situations where erosion risks can occur: either (a) the structure is near the edge of a high eroding bank or terrace, or (b) the structure is on the floodplain inside the meander belt, and the topography indicates a high risk of imminent shift in stream alignment that could damage or destroy the structure. Of the three categories of Individual Buyouts listed here, those associated with erosion threats are expected to represent a moderate percentage.
- **Inundation Threats** – Properties with inundation risk will generally be those located in the floodway, 100- or 500-year floodplains that have sustained repeated damage from flood waters during storm events. Acquisition of such properties can prevent water quality impacts associated with the collapse of structures and transport of fuel, debris, and other pollutants into the stream network. Many properties in this category are expected to be parcels impacted by Tropical Storms Irene and Lee which did not participate in, or were deemed ineligible for the FEMA Buyout Program. Of the three categories of Individual Buyouts listed here, those associated with inundation threats are expected to represent a relatively large percentage. For this reason, highly-ranked inundation threat properties may comprise a significant component of overall requested buyouts under the City FBO Program despite being in a lower-priority category.

ii. Individual Buyout Evaluation Criteria

All Individual Buyout projects will go through a consistent data collection and evaluation process to enable the City and its partners to make informed, fair, and consistent decisions about which properties to advance. The specific criteria and requirements for such property evaluation are

expected to focus on benefits to water quality and potential to reduce flood impacts, and will be developed by DEP's SMP staff in consultation with interested stakeholders.

DEP plans to develop these criteria in consultation with interested stakeholders by October 30, 2014 (see Program Schedule, Section 7). Specific criteria are expected to include some or all of the following: simple technical calculations to evaluate site-specific conditions that can be easily conducted by SMP or SWCD staff; an evaluation of available GIS and modeling data; and if data exists, confirmation of a property's flood recurrence interval and predicted depth of inundation, and cost of demolition/restoration. In the case of properties at risk of collapse due to erosion, a simple cost-benefit analysis may be performed to evaluate the cost of a buyout in comparison to remediating or forestalling the erosion.

It is anticipated that applications for individual buyouts will be accepted by the City and its partners on a rolling basis, and that decisions to proceed will be made on a regularly-scheduled periodic basis (quarterly or otherwise).

4. Program Coordination with Local Government

As discussed in Section 2, local involvement on the municipal and county level will be critical to the success of the City FBO Program. This section addresses two important program components for which local and/or county involvement is needed: Local Concurrence and Coordination on FEMA FBO Programs. A third critical area of local efforts – solicitation – is addressed in Section 5.A.

A. Local Concurrence Requirement

Flood buyout acquisitions can be a significant issue for local government and the local community as a whole, due to their potential impact on population, tax bases, demand for public services, and the long-term viability of the community. Communities must play a central role in evaluating the positive and negative impacts of removal of structures from the floodplain, and considering the costs and benefits in regard to community concerns and the interests of individual property owners. For all of these reasons, the City FBO will only acquire properties with the concurrence of the immediate level of local government (Town or Village). The form of such concurrence will vary depending on the property category:

- **Hydraulic Study Buyout Properties** will be referred to the City FBO Program by the local government in the context of a formal community-based planning program (LFA or NY Rising). Properties recommended in this category will be deemed to have local governmental approval, since the community will have been involved in every step of such planning, and the City (in coordination with local or county assistance with solicitation) will pursue a buyout until and unless the local government withdraws such approval.
- For **Individual Buyout Properties**, the City FBO Program will not proceed to appraise specific properties in a town or village without a formal resolution of support by the applicable town or village board. That resolution would be on a Program-wide or case-by-case basis (within the town or village) at the discretion of the municipality, with the

understanding that the town or village would be informed by the City when specific properties are approved for appraisal.

Regardless of the category, the City will not move ahead with an appraisal if the local government informs the City that it objects to the proposed acquisition. Such consultation would occur during the pre-appraisal coordination with the local government regarding future ownership, as described in Section 5B below. Once an appraisal is ordered, the City and landowner would proceed through the appraisal, purchase offer, purchase contract (for those who accept offers), and closing process as willing participants as described in Section 5 and the 2010 Water Supply Permit. If a municipality opts out of the Program, work on properties whose appraisals were not yet ordered would be discontinued, while work on properties past the appraisal-order stage would continue on a natural course. This is only fair to landowners, and is also consistent with standard MOA and FAD requirements applicable to LAP procedures.

B. Coordination on FEMA Buyout Programs

The City has worked collaboratively with several watershed counties on buyouts under the FEMA Hazard Mitigation Grant Program (“HMGP” or “FEMA Buyouts”) associated with flood events in 1996 (Delaware County) and 2011 (Delaware, Greene and Ulster Counties). Under HMGP, FEMA funds are made available for buyouts in declared Federal Disaster Areas after large-scale flood events. In the past, the State of New York applied for buyout funds through the Division of Homeland Security & Emergency Services (the “applicant”) and interested counties applied to the State for buyout funds to implement the Program (the “sub-applicants”). Other key components of past City, State and Federal involvement in FEMA Buyouts are as follows:

- FEMA covers 75% of total project cost (hard costs, soft costs and demolition) and there is a 25% local match requirement;⁴
- New York City has agreed to take title to many of the buyout properties, and has contributed hard costs (for the land portion of the purchase price), soft costs and staff time for FEMA Buyouts within the watershed. In most cases these contributions have covered the full 25% local match;
- Under the 2011 FEMA Buyouts, the State is providing the full 25% match for many (but not all) of the properties, so the City’s financial contribution for those properties will be lower. However the City still provides significant project review and real property expertise to facilitate the Program, and accepts ownership of most of the properties acquired.
- The City has used capital funds from the existing LAP funds to pay these costs.

⁴ FEMA buyout program rules are developed following each disaster declaration and are event-specific. Past FEMA buyout programs have all been based on the 75%/25% cost split, but this may differ following future floods.

FEMA Buyouts provide a known and continuing mechanism to remove flood-damaged structures from the floodplain. Accordingly, leveraging FEMA funding is in the best interest of watershed stakeholders. To that end, the City will incorporate the following features into LAP and the City FBO to encourage continued use of and participation by all involved parties in FEMA Buyouts:

- When and if there are new FEMA Buyout windows, DEP will continue to participate along the lines of our involvement in the 1996 and 2011 programs, with funds to come from the core LAP program, not the City FBO Program;
- During FEMA Buyout windows, applications for Individual Buyout Properties would not be accepted, save for properties ineligible for the FEMA FBO. Individuals and communities will be encouraged to pursue FEMA buyouts, while the City FBO Program will continue to operate for both Individual Buyout Properties and Hydraulic Study Properties already at or past the appraisal stage, and will continue to accept proposals for Hydraulic Study Properties.

5. Program Administration and Contract Process

The City expects to contract with a partner agency or organization (potentially the Catskill Watershed Corporation) that will arrange for management of certain components of the City FBO Program by county or local government. These components are expected to include outreach (including publicity and landowner solicitation), coordination with local governments on issues surrounding eventual ownership and management of the properties, and demolition. The City will closely coordinate with these partners, and will compensate them for costs incurred in carrying out these services.

Following is a roughly chronological list of Program activities, detailing the tasks involved and the responsible party:

A. Outreach and Solicitation

The City's solicitation and outreach partner(s) will educate municipalities regarding elements of the Program, and will work with participating towns and villages to publicize the Program and generate landowner interest in areas recommended for acquisition by LFAs, NY Rising and/or other approved studies. Local outreach would also include responding to inquiries from interested property owners throughout the watershed.

With respect to Individual Buyout Properties, the partner(s) would seek to secure local municipality approval to proceed with acquisition of properties, particularly those not identified through an LFA but which do meet predetermined Program criteria. Together with its partner(s), the City will prioritize properties that obtain town approval, after which DEP will follow up with properties that meet criteria thresholds. We envision the selection process for such properties to be fairly open, with no strict deadlines for landowners to announce interest in the Program.

B. Management Planning

As landowners indicate a willingness to proceed to the appraisal stage (assuming local community approval), the City and the respective municipality will coordinate on eventual ownership, and management issues associated with the property or properties to be acquired. This coordination will include a thorough discussion of management issues associated with any proposed flood hazard mitigation projects, as well local governmental desire (if any) for active management for recreational or other uses. Where the municipality is seeking active management of a property, or where it has plans for flood hazard mitigation infrastructure, the City will urge the local government to take title to the property. If the local government declines to take title, the City will seek to develop a written Management Plan with a municipality whereby the town or village agrees to undertake ongoing management functions. Properties that the City takes title to will otherwise be managed as open space in a manner consistent with other land it acquires under the MOA. Furthermore, all proposed uses contemplated by the City or the municipality will need to conform to the conservation easements that must be conveyed to the State pursuant to the 2010 Water Supply Permit (and see Section 5H herein).

C. Appraisals and Fair Market Value

Once a property is referred to the City, DEP will explain to the landowner how the next phase of the Program works, and then begin the appraisal process. DEP will direct its appraiser to establish current fair market value (FMV) using the extraordinary assumption that there has been no prior flood damage to the improvements or property, thereby maximizing value to the owner. DEP will use the same appraisal process as FEMA in which at least one and up to three appraisals are used to determine FMV, depending on whether the landowner commissions their own appraisal⁵.

D. Incentives for Sellers

Although the City will not consider values above FMV, watershed stakeholders may consider whether additional funding could be secured to provide incentives that might increase the rate of accepted offers. Such externally-sourced funds could augment FMV and/or defray relocation costs, thereby encouraging owners of high priority properties to sell rather than remain in their flood-damaged and/or flood-prone improvement if a landowner is unwilling to sell for FMV.

E. Purchase Contracts

If a landowner accepts the City's offer, the City will seek to enter into a purchase contract with them. This contract would include the town, if it opts to take ownership of the property; in such cases the

⁵ Under the City FBO Program, the appraisal process will operate as follows: The City will procure an appraisal and make an offer based on that value to the landowner. The landowner may accept the City's offer, or procure a second appraisal at their own expense from a licensed NY State appraiser. If the value in that second appraisal is no more than 15 percent above the first appraisal value, then the purchase offer will be revised to the value of the second appraisal. If the second appraisal exceeds the first appraisal value by more than 15 percent, the City will order a third appraisal (at its own expense) from a different vendor than conducted the first appraisal. The three values will then be placed in order by value, and the purchase offer will be based on the value of the middle (or median) of the three appraisals.

closing would involve the City paying the landowner and the town accepting the deed. In either case, the purchase contract will be prepared by DEP. Once contracts are executed, DEP will commence all site services, including survey, title, and environmental site assessments. These services will be completed by independent service vendors under contract with DEP and will be paid for by the City. DEP will also undertake Local Consultation as outlined in the 2010 Water Supply Permit, and will coordinate with sellers to resolve any encroachments if necessary.

F. Environmental Site Assessment

The City will order a Phase I environmental site assessment report (ESA) for all properties to be acquired, and will also order a Pre-Demolition Assessment for all structures. As is the case in both DEP's Land Acquisition Program and the FEMA FBO, if the Phase I ESA identifies a recognized environmental condition on the property (excluding standard residential contaminants such as asbestos or lead-based paint), the landowner will be responsible for removal prior to closing at their cost. The Pre-Demolition Assessment will be used by the City to develop a Demolition and Cleanup Plan ("Demo Plan"), which will be reviewed and agreed to by the demolition vendor prior to closing. The Demo Plan will detail how demolition and site restoration will be conducted, including any and all requirements under federal, State and local law, and how to address septic tanks, septic fields, and wells.

G. Demolition

As with FEMA FBO Program, flood-damaged structures will be acquired by the City or local government and then demolished and removed after closing. The City expects to contract with a partner agency or organization (potentially the Catskill Watershed Corporation) to provide such post-closing demolition and site restoration services, which will be paid for by the City.

H. Stewardship

Land use activities performed on the property will be restricted by conservation easements ("CEs") that the new owner of the property (the City or the local government) will convey to the State as follows:

- If the City acquires a property that was identified by LFA or SMP as necessary for a flood mitigation project, and if there is agreement on funding and other necessary components for the project, and if all land necessary for the project has been acquired and is eligible for such use, the property may be used for construction of improvements intended to control water flow and/or erosion, and/or provide for increased floodplain connectivity as reviewed and approved by DEP. It is understood that even if such projects are implemented years after closing, towns were in favor of such project(s) at the time they approved the acquisition. The CE applied to these City-owned properties is expected to look similar or identical to the one currently employed by LAP in its fee-simple acquisitions (see Attachment A), possibly revised if deemed necessary to ensure that all flood control activities and improvements that can be envisioned will be allowed.
- If the City acquires a property not identified by LFA or SMP as necessary for a flood-mitigation project, the property will likely be managed by DEP as open space and allowed to naturally revegetate or otherwise as detailed in the Management Plan developed with and sanctioned by the local government prior to acquisition. Such Management Plans will need to

be consistent with the CE terms. The CE applied to these City-owned properties is expected to look similar or identical to the one currently employed by LAP in its fee-simple acquisitions (see Attachment A).

- If a municipality other than the City acquires a property, it would convey a conservation easement to the State and then manage the property under those restrictions, in accordance with local flood hazard mitigation goals. The CE applied to these non-City-owned properties will include the terms that have been agreed to among MOA parties as well as NRDC under the existing FEMA FBO, as described in (1) the *Supplemental Agreement Among West of Hudson Stakeholders Concerning DEP's Participation in Federal or State Flood Buy-Out Program*, executed December 2013, and (2) the *Supplemental Agreement Among the New York City Department of Environmental Protection, the Coalition of Watershed Towns, and the Natural Resources Defense Council Concerning DEP's Participation in Federal or State Flood Buy-Out Programs*, executed December 2013.

4. **Program Review**

As with any such complex endeavor, the City FBO Program would benefit from periodic review, evaluation, and opportunity for course correction. The City expects to perform such evaluation at a point when roughly a third of the \$15 million has been committed in order to ensure that remaining funds can be directed, or redirected, in the most efficient and effective manner possible. When approximately \$5 million has been committed – including costs related to all Program operations – the City will convene a meeting of key stakeholders to review and discuss (1) whether the Program is reaching its goals, and (2) whether remaining opportunities indicate that course correction(s) should be considered. The review will specifically consider budget issues and phased implementation in terms of whether there are particular types of properties that have not yet been addressed. The City will invite the following stakeholders to designate one representative each to join the panel:

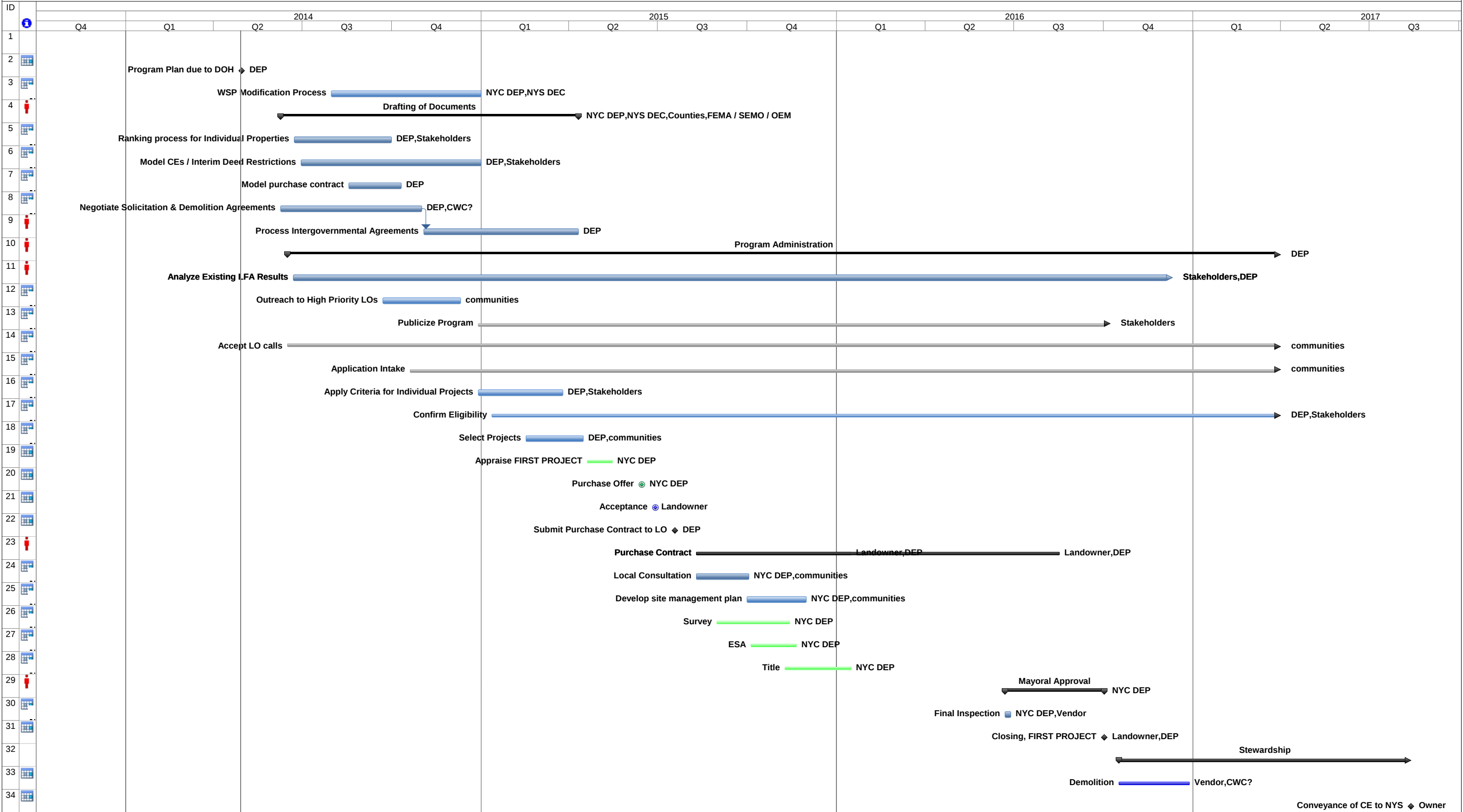
- Coalition of Watershed Towns
- Delaware County
- Greene County
- Schoharie County
- Ulster County
- Sullivan County
- NRDC
- Riverkeeper
- NYPIRG
- NYS DOH
- US EPA
- NYS DEC
- Catskill Watershed Corp.
- NY Department of State

5. **Projected Timeline**

A schedule of tasks and involved parties is outlined in Figure 1, which describes the steps and timing required to acquire the first property. The ‘Purchase Contract’ stage would be repeated (overlapping) thereafter for all active projects that would follow.

end text

Figure 1: Projected Timeline for Significant Milestones for the NYC Flood Buyout Program



Project: FAD FBO Program Schedule c
Date: Tue 4/29/14

Task		Summary		External Milestone		Inactive Summary		Manual Summary Rollup		Finish-only	
Split		Project Summary		Inactive Task		Manual Task		Manual Summary		Progress	
Milestone		External Tasks		Inactive Milestone		Duration-only		Start-only		Deadline	

Attachment A

Model Conservation Easement Conveyed to NYS DEC
By NYC DEP on Lands Acquired in Fee Simple

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

WHEREAS, the City of New York has been granted a Water Supply Permit from the New York State Department of Environmental Conservation, pursuant to the New York State Environmental Conservation Law, ECL § 15-1501 *et seq.*, authorizing the Commissioner of the New York City Department of Environmental Protection ("NYCDEP") to acquire, strictly from willing sellers, certain lands within the drainage basins of the Catskill, Delaware and Croton

1 portions of the New York City Watershed (the "Watershed") for the purposes of protecting the
2 City's water supply from degradation (DEC Permit No. 0-9999-00051/00001) (the "Watershed
3 Land Acquisition and Stewardship Program"); and

4 **WHEREAS**, the Watershed MOA and the Water Supply Permit provides that the
5 City will grant to the NYSDEC a conservation easement that shall run with the land on all land
6 acquired in fee under the City's Watershed Land Acquisition and Stewardship Program to ensure
7 that such land is held in perpetuity in an undeveloped state in order to protect the quality of the
8 New York City drinking water supply; and

9 **WHEREAS**, Paragraph 72 of the Watershed MOA provides that historic
10 recreational uses, including fishing, hiking, and hunting, will be allowed to continue on newly
11 acquired fee property, subject to rules and regulations adopted, or permits issued, by NYCDEP,
12 provided that they neither threaten public safety nor threaten to have an adverse impact on water
13 quality. The Parties to the Watershed MOA agree that the following recreational uses are more
14 likely to be allowed on City land, if appropriate, subject to rules and regulations adopted, or
15 permits issued, by NYCDEP: fishing (including fishing by boat) under regulation; hiking,
16 especially where parcels intersect State trails; snowshoeing; cross country skiing; bird watching;
17 educational programs, nature study and interpretation; and hunting (only in certain areas under
18 certain conditions). The following activities are not likely to be allowed on City property even if
19 the property was historically utilized for these purposes: boating (other than for permitted fishing
20 by boat); snowmobiling; camping; motorcycling; mountain bicycling; and horseback riding; and

21 **WHEREAS**, in view of the foregoing and pursuant to the provisions of the
22 aforementioned Article 49 of the Environmental Conservation Law, the signatories to the
23 Watershed MOA have determined it to be desirable and beneficial and have requested the City, for
24 itself and its successors and assigns, to grant a Conservation Easement (the "Easement") to the
25 Grantee in order to limit the further development of the Protected Property while permitting

compatible uses thereof;

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

1. **Purpose:** The purpose of the Easement is to ensure that the Protected Property is held in perpetuity in an undeveloped state in order to protect the Watershed and the New York City drinking water supply.

2. **Rights of Grantee.** To accomplish the purposes of this Easement, the Grantor grants to Grantee the following rights, pursuant to Paragraph 5 herein:

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

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

3. **Declaration of Restrictions.** The parties agree that, except as may be required in the course of any activity allowed by paragraph 4 herein ("Reserved Rights"), the following activities on or uses of the Protected Property are prohibited:

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

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

(c) dumping or storage of petroleum and its byproducts, leached

1 compounds, toxic substances, hazardous materials;

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

4 (e) the excavating, extraction, grading, or removal of soil, sand
5 and gravel, gas or oil;

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

8 (g) except in accordance with Article 49 of the ECL , the siting or
9 routing of any facilities required for the local gathering, transmission, or distribution of gas,
10 electricity, water, telephone, or cable television services on, over or under the Protected Property;

11 (h) the commercial, residential or industrial use of the Protected
12 Property;

13 (i) use of the property in such a manner that: (i) causes the
14 introduction of sediments, chemicals, microbiological pathogens, nutrients or other pollutants to
15 any watercourse or wetland on the Protected Property that may adversely effect the quality of such
16 watercourse or wetland: (ii) interferes with or disturbs open space, vegetated areas or steep slopes
17 on the Protected Property; or (iii) is otherwise inconsistent with the purposes of this Easement.

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

24 (a) The right to construct, maintain, operate, or remove any
25 buildings, structures, dams, gatehouses, aqueducts, pipes, pumps, monitoring stations, treatment

1 facilities, roadways or any other structures or facilities necessary or appropriate for the operation
2 and maintenance of the City's water supply system, and to take all other actions on the Protected
3 Property as may be necessary to ensure the safe and efficient operation of such system;

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

8 (c) The right to harvest, plant, chemically treat, or otherwise
9 manage trees and vegetation, and to build, maintain, and stabilize associated landings, enclosures
10 or other related improvements pursuant to such management activity in accordance with
11 NYSDEC's Statewide Guidelines for Forestry Best Management Practices ("DEC's Forestry
12 BMPs" as referenced in the *Silviculture Management Practices Catalogue for Nonpoint Source
13 Pollution Prevention and Water Quality Protection in New York State*, dated October, 1993) and
14 attached hereto, or any subsequent revisions thereto;

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

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

23 (f) The right to conduct mining of sand, stone, soil, and gravel on
24 the Protected Property for uses other than those described in paragraph (e) , provided it is
25 conducted in accordance with any and all NYSDEC applicable laws or regulations. In addition to

1 any necessary permits required, all new mining proposals must be approved by NYSDEC before
2 going into operation. Nothing contained in this Easement shall be construed to prohibit or restrict
3 NYSDEC jurisdiction over mining operations within the Watershed;

4 (g) The right, in accordance with the Watershed MOA and the
5 Water Supply Permit, to allow, prohibit, or otherwise control all manner of recreational use of the
6 Protected Property by the public, subject to rules and regulations adopted or permits issued by
7 NYCDEP, and to construct and/or maintain, as may be allowed by the City at its sole discretion,
8 trails, parking areas, boardwalks, boat racks, signs, markers, improvements to facilitate
9 accessibility for the disabled, and other like structures accessory to such recreational uses of the
10 Protected Property ; Paragraph 72 of the MOA provides that "historic recreational uses, including
11 fishing, hiking, and hunting, will be allowed to continue on newly acquired fee property, subject to
12 rules and regulations adopted, or permits issued, by NYCDEP, provided that they neither threaten
13 public safety nor threaten to have an adverse impact on water quality. The Parties to the
14 Watershed MOA agree that the following recreational uses are more likely to be allowed on City
15 land, if appropriate, subject to rules and regulations adopted, or permits issued, by NYCDEP:
16 fishing (including fishing by boat) under regulation; hiking, especially where parcels intersect State
17 trails; snowshoeing; cross country skiing; bird watching; educational programs, nature study and
18 interpretation; and hunting (only in certain areas under certain conditions). The following
19 activities are not likely to be allowed on City property even if the property was historically utilized
20 for these purposes: boating (other than for permitted fishing by boat); snowmobiling; camping;
21 motorcycling; mountain bicycling; and horseback riding."

22 (h) The right to grant, sell, mortgage, transfer, lease, or subdivide
23 the Protected Property or any part parcel or portion thereof in accordance with and subject to the
24 limitations set forth in paragraph 9 herein;

25 (i) The right to construct and maintain temporary buildings and

1 structures pertaining to the monitoring of weather, water, fire, vegetation, wildlife, and other biotic
2 or abiotic features and processes, and to construct and maintain other like improvements pursuant
3 to the conduct of scientific research, subject to the terms and conditions set forth in this Easement;

4 (j) The right to construct and maintain pervious roadways,
5 parking areas, landings and other such areas necessary to service any activities allowed by this
6 Easement, provided that such construction and maintenance is conducted in accordance with
7 NYSDEC's Forestry BMPs as they pertain to road construction and maintenance;

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

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

13 (m) Any and all other rights accruing from the Grantor's
14 ownership of the Protected Property not expressly prohibited pursuant to this Easement.

15 **5. Enforcement.**

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

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

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

7 (d) As used herein with reference to the Protected Property, the
8 term "stable condition" shall mean the approximate general, natural, and undeveloped condition of
9 the Protected Property as of the date of this Easement as indicated in the Baseline Documentation
10 pursuant to paragraph 8 herein, and giving due consideration to the following:

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

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

- 23 (i) removal of items and material not allowed by this
24 Easement;
- 25 (ii) closure, filling, grading and planting with appropriate

vegetative cover, of areas adversely affected by
activities not allowed by this Easement;

(iii) correction, through reasonably practicable measures,
of conditions which adversely affect drainage, flood
control, water conservation, fish or wildlife habitat,
erosion control or soil conservation.

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

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

(h) In the event that Grantee conducts regularly scheduled
inspections of the Protected Property, Grantee shall provide written notice to Grantor at least three
(3) days in advance whereupon Grantee shall have the right to accompany Grantee on such
inspections. Grantee shall prepare a report detailing its findings resulting from its such inspections
of the Protected Property and shall provide Grantor with a copy of said inspection reports within
thirty (30) days of the inspection:

(i) The Parties agree to cooperate in the enforcement of the terms
of this Easement. In the event that either party determines that legal proceedings are necessary
against some party other than Grantor or Grantee, or their successors, heirs, assigns, agents, or
employees, then either party may agree to join the other in such legal proceeding, provided that

1 nothing herein shall obligate Grantor or Grantee to expend any funds, other than for review and
2 execution of related papers.

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

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

14 **8. Baseline Documentation.** The parties agree that documentation
15 prepared by NYSDEC or its agent on ____ and bearing NYSDEC Map No. ____ and entitled
16 "Report of Physical Inspection" for the Protected Property (which may include photographs) dated
17 _____, as attached hereto, accurately depict and describe the condition of the Protected Property
18 as of the date of this Easement, and are referenced herein as "Baseline Documentation."

19 **9. Mortgage, Encumbrance, Transfer or Subdivision.** (a) Pursuant to
20 the Watershed MOA and Special Condition 21 of the Water Supply Permit, the Grantor may grant,
21 sell, convey, deed, subdivide, mortgage, lease, transfer or assign any part of the Protected Property
22 at its discretion and subject to the requirements of the New York City Charter, with 60 days written
23 notice prior to any such conveyance (including the names and addresses of any such grantee,
24 transferee, buyer, assignee, mortgagor or lessee) to Grantee, provided that any such deed mortgage,
25 assignment, or lease or any other instrument of conveyance specifically states that the interest

1 thereby conveyed is subject, without limitation, to the terms of this Easement and any amendments
2 hereto.

3 (b) Pursuant to the Watershed MOA and Special Conditions 21 of
4 the Water Supply Permit, the Grantor may not grant, sell, convey, deed, subdivide, mortgage,
5 lease, transfer or assign any part of the Protected Property to a tax-exempt entity unless the entity
6 enters into a written agreement acceptable to and with the tax assessing unit to make payments in
7 lieu of full real property taxes and *ad valorem* levies to each applicable taxing entity.

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

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

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

4 **11. Real Property Taxes.**

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

12 **12. Condemnation.** In the event that the Protected Property is taken in
13 whole or in part for any purpose pursuant to the Eminent Domain Procedure Law, then this
14 Easement will be extinguished only as to the portion of the Protected Property taken. The Grantee
15 shall not be entitled to any portion of the compensation paid for the taking.

16 **13. Extinguishment of Development Rights.** The Grantor agrees that
17 all development rights specifically restricted by this Easement are extinguished and may not be
18 transferred to any other land or used to calculate permissible density or lot yield for any other land
19 not restricted by this Easement.

20 **14. Covenants, Warrantes and Representations.** The City hereby
21 warrants, represents and covenants that as of the date of the Easement:

22 (a) the Protected Property is free from any mortgages or tax liens
23 of any kind or nature whatsoever;

24 (b) the City is seized of the premises in fee simple and has full
25 right and title to convey this Easement.

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

6 **16. Notices.** (a) All notices, requests, and/or approvals required by
7 this Easement shall be in writing and shall be delivered by registered mail to the following
8 addresses:

9 If to the Grantor:

10 NYC DEP
11 Director, Land Acquisition & Stewardship Program
12 71 Smith Avenue
13 Kingston, New York 12401

14 If to the Grantee:

15 New York State Department of Environmental Conservation
16 Director, Lands and Forests
17 50 Wolf Road
18 Albany, New York 12233

19 (b) In the event that approving party fails to respond within sixty
20 (60) days of receipt of such notice, its approval shall be deemed given.

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

23 **17. Miscellaneous.** (a) This Easement may not be modified, altered,
24 amended, or extinguished except:

- 25 (i) by written instrument signed and executed by both
26 parties hereto and recorded in the appropriate County
27 Clerk's Office; or
28 (ii) in accordance with the requirements of paragraph 9,

subparagraphs (c) and (d) of this Easement; or

(iii) in accordance with applicable provisions of Article 49
of the Environmental Conservation Law.

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

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

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

(e) The City's rights and obligations pursuant hereto shall terminate
upon any transfer, sale or conveyance of the Protected Property in fee simple to a third party.

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

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

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

The City of New York

By: _____

The State of New York

By: _____

APPROVED AS TO FORM AND CERTIFIED
AS TO LEGAL AUTHORITY

Acting Corporation Counsel of the
City of New York

1 STATE OF NEW YORK)

2 : SS:

3 COUNTY OF _____)

4 On this ____ day of _____, 200_, before me personally came

5 _____, to me known, who being duly sworn, did depose and say that (s)he
6 resides at _____, New York; that (s)he is the _____ of
7 the City of New York and that (s)he executed the foregoing on behalf of the City of New York,
8 pursuant to authority of law duly delegated.

9
10 _____
11 NOTARY PUBLIC
STATE OF NEW YORK

12 STATE OF NEW YORK)

13 : SS:

14 COUNTY OF ALBANY)

15 On this ____ day of _____, 200_, before me personally came

16 _____, to me known, who being duly sworn, did depose and say that (s)he
17 resides _____, New York; and is the _____ of the
18 New York State Department of Environmental Conservation, and that (s)he executed the foregoing
19 on behalf of the New York State Department of Environmental Conservation, pursuant to authority
20 of law duly delegated.

21
22 _____
23 NOTARY PUBLIC
STATE OF NEW YORK

4. Reserved Rights

(n) The right to construct, maintain and operate wind energy tower structures and communications tower structures on the Protected Property(ies) provided they are in conformance with any and all NYSDEC applicable laws and regulations. In addition to any necessary permits, all new uses covered under this paragraph must be approved by NYSDEC before being constructed unless such approval is waived by NYSDEC. Approvals granted by NYSDEC may include conditions which become binding upon the Grantor.