

Request for Applications (RFA)

RFA 0181 - Source Water Buffer Program

New York State Department of Agriculture and Markets

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Glossary of Terms

Aquifer sinkhole contributing area	an area with a radius of 500 ft. surrounding a sinkhole.
Buffer Area	an area of the conservation easement that is comprised of Riparian Area or land that lies within a designated wellhead protection area, land surrounding an aquifer sinkhole, or a groundwater recharge wetland.
Community Water System	a public water system which serves at least five service connections used by year-round residents or regularly serves at least 25 year-round residents.
Easement Area	property to be encumbered by a conservation easement.
Farm Area	an area of the conservation easement within which Agricultural Uses as permitted by the Easement document may occur.
Grantee	the entity that will hold, enforce and defend the conservation easement.
Grantor	participating landowner that owns the property to be placed into a conservation easement.
Ground water source under the direct influence of surface water	any water beneath the surface of the ground that when tested, has physical characteristics that closely correlate with surface water chemistry; and/or well water that rises in temperature soon after precipitation events; and/or ground water that is found to contain microorganisms or debris typically found in surface water.
Inner Well Zone	an area immediately surrounding a well or well field of a public water supply that has been defined for the purpose of determining susceptibility of a well to contamination.
Non-Community Water System	a public water system that is not a community water system.
Non-Transient Non-Community Water System	a public water system that is not a community water system but is a subset of a noncommunity water system that regularly serves at least 25 of the same people, four hours or more per day, for four or more days per week, for 26 or more weeks per year.
Public Water System	a community, noncommunity, or non-transient noncommunity water system which provides water to the public for human consumption through pipes or other constructed conveyances, if such system has at least five service connections or regularly serves an average of at least 25 individuals daily at least 60 days of the year.
Third party enforcement right	a right granted in a conservation easement empowering an entity that is not the Grantee to enforce any of its provisions.
Transient Non-Community Water System	a noncommunity water system that does not regularly serve at least 25 of the same people over six months per year.
Wellhead Protection Area	the surface and subsurface area surrounding a well or well field, supplying a public water system through which contaminants are reasonably likely to move toward and reach a well or well field.

1. Introduction

1.1 Overview

This Request for Applications (RFA) applies to applications submitted for funding consideration from the Clean Water Infrastructure Act (CWA).

The New York State Soil and Water Conservation Committee (State Committee) invites Soil and Water Conservation Districts to submit applications for funding under the Source Water Buffer Program. Program funds are available for the purchase of conservation easements on agricultural lands that support, expand or enhance water quality protection of active public drinking water sources including but not limited to aquifers, watersheds, reservoirs, lakes, rivers, and streams. Program funds will also be available for the implementation of Riparian Buffer Systems within the conservation easement area that will provide further protection to water quality.

Availability of funding for this program was authorized in the 2017-18 Enacted Budget and has been re-appropriated in the 2018-19 Enacted Budget.

1.2 Goal of the Program

Led by the New York State Soil and Water Conservation Committee, in coordination with the Department of Agriculture and Markets, the goal of the Source Water Buffer Program is to protect active sources of public drinking water and support, expand or enhance water quality protection through the purchase of conservation easements on agricultural lands. Such projects shall preserve or establish buffers for surface or ground waters which serve as or are tributaries to public drinking water supplies.

1.3 Available Funding

Funding in the amount of \$5,000,000 will be available for awards under this Request for Applications.

1.4 Questions and Answers

Prospective applicants with questions concerning this RFA should present those questions to:

Bethany Bzduch
New York State Soil & Water Conservation Committee
10 B Airline Drive
Albany, NY 12235
(518) 457-3738 (phone)
(518) 457-3412 (fax)
Bethany.bzduch@agriculture.ny.gov

Applicants should note that all clarifications are to be resolved prior to the submission of an application. A list of questions about the RFA, answers to those questions as well as any addenda to the RFA, will be added to the Questions and Answers document posted to the Department web site, <https://www.agriculture.ny.gov/RFPS.html> and to Sharepoint along with the electronic version of this RFA and other program attachments. Questions and answers will be posted as questions are received.

Applicants are encouraged to frequently check Sharepoint and the Department website for updates. All questions and answers shall be incorporated into the RFA as a formal addendum.

2. ELIGIBILITY

2.1 Eligible Applicants

Applications for funding will be accepted from Soil and Water Conservation Districts, or a group of Districts acting jointly, who will be referred to as "Project Sponsors." Groups of Districts acting jointly should submit one application with one District assuming lead sponsor status. It will be the lead sponsor's responsibility to ensure project completion and necessary reports are accepted and filed with the New York State Soil and Water Conservation Committee.

The Project Sponsor(s) may, but are not required to, partner with other eligible entities for the purposes of holding the conservation easement or as a third party with right of enforcement. These entities are:

- Municipalities
- Not-for-Profit Conservation Organizations (Land Trusts)

The Project Sponsor(s) may apply for this opportunity on behalf of farm operations that are privately owned and operated¹. Educational institutions are not eligible to apply for funding through the Source Water Buffer Program.

2.2 Eligible Projects

The land that will be encumbered by the conservation easement must be owned by the participating farm(s). If there are multiple owners, each owner of the land to be encumbered by the conservation easement must be identified. Project Sponsors requesting State funding through this program must have completed, at a minimum, an AEM Tier I inventory and an AEM Tier II assessment on all participating farms. These farms may apply for ONE of the following conservation easement terms: 50-year term easement OR Perpetual easement.

Conservation easements can be established on:

- Cropland that has been used for crop production 3 of the last 5 years
- Riparian lands
- Pasturelands
- Agricultural woodlots

Land placed into a conservation easement must be:

- Directly adjacent to surface waters or ground water source under the direct influence of surface water designated as an active public drinking water sources;

¹ The definition of a farm in the Agriculture and Markets Law is: "Farm operation" means the land and on-farm buildings, equipment, manure processing and handling facilities, and practices which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise (AGM Article 25-AA § 301).

- Directly adjacent to tributaries that drain into surface waters used as an active public drinking water source;
- Wetland areas directly adjacent to surface waters designated as an active public drinking water source;
- Within an active public water system groundwater wellhead protection area designated by the NYS Department of Health;
- Within the contributing area directly adjacent to an aquifer sinkhole that supplies an active public water system

Additionally, the conservation easement area must adhere to the following considerations/requirements:

- a) Easements may encompass portions of parcels, an entire parcel, or multiple parcels. However, whole farm easements will not be allowed.
- b) The easement area adjacent to surface waters (streams, rivers, lakes, reservoirs, ground water source under the direct influence of surface water) must, at a minimum, meet the applicable NRCS NY standard size requirements for the buffer being established or encumbered. The width of the easement area must not exceed 1,000 feet.
- c) The easement area for groundwater wellhead protection area or aquifer sinkholes must be entirely within the 1,000-foot radius from the wellhead or sinkhole, and cannot exceed the 1,000-foot radius from the wellhead or sinkhole.
- d) The easement area must include a buffer area.
 - a. Buffer Area Restrictions include (see Appendix 1: Conservation Easement Template):
 - i. Agricultural use of the buffer area is prohibited.
 - ii. Recreational use of the buffer area is prohibited with the exception of an access to the source water for:
 1. fishing or hunting in or on the Source Water
 2. launch a kayak, canoe, or boat onto the Source Water for Recreational Use
 3. operate a snowmobile or similar motorized vehicle for Recreational Use only during the months of November through March
- e) The easement area may include a farm area, in addition to a designated buffer area.
 - a. Farm Area Restrictions include (see Appendix 1: Conservation Easement Template):
 - i. For groundwater wellhead protection areas or aquifer sinkholes, no farm area will be allowed within the inner well zone of the wellhead protection area or 500-foot radius from the sinkhole.
 - ii. The Farm Area cannot be more than 90% of the total easement area.
 - iii. To ensure farm viability, the Farm Area cannot encompass more than 50% of the total acreage operated by the farm.
 - iv. No annual cropping will be allowed within a Farm Area.
 - v. Allowable agricultural uses within a farm area are:
 1. Managed Grazing
 2. Pasturing
 3. Haying
 - b. Farm Area may intersect with the buffer area to allow for:
 - i. A constructed road or stream crossing for farm implements or livestock
 - ii. An access to the source water for:

1. the purpose of providing a source of drinking water to supply an off-stream watering system for livestock associated with an Agricultural Use of the Farm Area.
2. provide an access to the source of water for irrigation purposes

Conservation easements must protect and/or enhance water quality of the water source identified in the application. At a minimum, a buffer area (forested or herbaceous) must be established adjacent to and upland from the surface water resource. If the source water to be protected is a groundwater aquifer, a buffer area must be established surrounding the wellhead or sinkhole. Easements may also encumber previously established buffer areas. All best management practices, either pre-existing or proposed, must meet the New York State NRCS Standards and Specifications. For projects proposing to implement best management practice systems, all component practices must be implemented and the system must be properly certified after the conveyance of the conservation easement.

An AEM Tier 3 Plan that incorporates the conservation easement area and associated best management practices will need to be completed or updated prior to the conveyance of the conservation easement. The AEM Tier 3 plan can include a Tier 3A, a Tier 3B Comprehensive Nutrient Management Plan (CNMP), or a Tier 3C Whole Farm Plan (WFP). If the conservation easement includes a Farm Area, the AEM Tier 3 plan must include a Nutrient Management component.

2.3 Eligible Costs

Eligible project costs include:

- Purchase price to be offered for the development rights being acquired as determined by the Conservation Easement Cost Calculator (see below)
- Transactional costs
 - title reports;
 - title insurance (including associated continuation fees until such time that title insurance is purchased);
 - property surveys;
 - project partners' legal fees
 - baseline documentation reports
 - environmental site assessment (if deemed necessary)
 - recording fees
- Easement stewardship fee²
- Easement Defense Liability Insurance
- Project partners' staff time (personal and technical services)
- BMP Implementation Costs
- Architectural and/or engineering services
- Other direct expenses related to implementation (e.g., funding for erosion and sediment control plans, cultural resource impact determinations for ground disturbing BMPs).

² Based on annual costs as determined in a policy adopted by the Grantee's governing body.

2.4 Ineligible Costs

Ineligible project costs include:

- Landowner's cost for legal or financial advisors;
- State or local real estate transfer taxes
- Fees deposited to a legal defense fund

2.5 Match Requirements

The State will provide a maximum of 75% of the total eligible costs for the project. The State funded contribution in dollars or percentages cannot increase because of budget changes or variations. This program requires that a minimum 25% of the total eligible costs be contributed by the landowner, operator, and/or project sponsor. This contribution may be in the form of cash, or in-kind services which are calculated using an assigned cash value. An assigned cash value provided by the landowner or operator must be reasonable and is subject to adjustment by the department. If the Project Sponsor will be contributing to the 25% match, the contribution may be in the form of in-kind services and/or cash (non-state funds). Recommended or actual hourly rates (see pg. 11) may be used to determine the value of Project Sponsor in-kind services. Funds from the Source Water Buffer Program will be provided contingent upon the sponsor receiving necessary funds to provide the required match. A written commitment for other required funds or resources must be provided before the funding allocations will be finalized. Any cost overruns above the total project cost are the responsibility of the participating landowner experiencing the overrun.

2.6 Ineligible Match

Sponsor and landowner contributions and expenditures that were made or incurred prior to the contract start date or after contract completion, as designated by the Department of Agriculture and Markets (Department), may not be utilized as matching funds or reimbursed by the State.

2.7 Eligibility Criteria

Applications must meet ALL of the following criteria in order to be awarded funding. Applications that do not meet any one of these criteria will be rejected.

- The application form must be complete and all necessary attachments are included in the application packet.
- State cost share percentage cannot exceed 75% of the total project costs.
- Sponsor and/or Landowner cost share percentage are 25% or greater of the total project cost.
- Easement Stewardship Fee does not exceed 50% of the total project cost.
- All farms included in the application must own the land to be encumbered by the easement and have completed at least an AEM Tier 1 Inventory and AEM Tier 2 Assessment.
- Project has clearly demonstrated a connection to a designated drinking water source.
- Proposed easement area(s) meets all applicable size requirements identified in the RFA.
- Project will provide source water protection through pre-established riparian buffer/buffer area(s) or project proposes to implement riparian buffer/buffer area(s).
- If a Farm Area is included within the easement area, the farm area does not encompass more than 50% of the total acreage (owned and rented) operated by the participant.
- Proposed project timeline does not exceed the standard contract term of 5 years.

- Applicant clearly identifies participating agencies and project roles.

3. APPLICATION FORMAT, CONTENTS AND SUBMISSION

3.1 Submission Method and Timeline

Applications will be accepted on a continuous basis. The RFA will remain open for one year from the date of release. Awards will be made until such time as available funds are fully committed or the RFA is closed.

Applications for funding under the Source Water Buffer Program must be submitted through the **NYS SWCC Sharepoint site**. Once submitted, an e-mail must be sent to the Program Manager indicating that the proposal is ready for review. Mailed, delivered, faxed or e-mailed proposals will not be accepted unless specified by the Department. The Department reserves the right to request paper copies as necessary.

3.2 Application Format

Applicants **MUST** submit the following:

- completed project Application Form – The SWCD Manager must fill out and sign the checklist with each application submission
- a list of all farms to be addressed by the application with applicable information (Form SW-1);
- the completed budget form with cost share amounts and source of sponsor and landowner contributions noted, and designation of match as cash (C) or in-kind (IK) (Form SW-2);
- a list of all BMP System(s) and Component Practices for the farmer indicating the type and cost (Form SW-3);
- completed project personnel worksheet (Form SW-4);
- Plan of Work (Form SW -5);
- SWCD Resolution
- Potential Conflict of Interest Form
- Letter(s) of Commitment from the Employer(s) of all key personnel listed on the Key Personnel Worksheet (SW-4);
- Letter of Commitment from all participating landowners indicating amount of commitment and source (Cash or In Kind), a commitment of match for contingency funds, and landowner name printed and signed;
- Easement Stewardship Fee documentation and a copy of the adopted Easement Stewardship Policy;
- Completed Conservation Easement Cost Calculator for each landowner (*See Section 3.4 of the RFA*)
- 8½ x 11 map(s) of the watershed(s), depicting the boundary of the watershed, location of the impacted waterbody, location of farm(s) participating in the grant and names of townships within the watershed boundary.
- 8 ½ x 11 map that shows the proposed project area for each participating farm. The map must be in an appropriate scale and must include:
 - Aerial Image

- Parcel boundary
- Outline of conservation easement area
 - Outline Buffer Area
 - Outline Farm Area (if applicable)
- Water resource to be protected
- If implementing a Riparian Forest Buffer, Cultural Resources (SHPO) map that shows the location of the proposed project area.
- If a designated public drinking water source, a Source Water Assessment Protection map or similar map identifying the location of the easement.
- If a waterbody has an active TMDL/on 303d List, include the most recent 303D/TMDL report for the impacted waterbody.

After submission, applications will be reviewed to determine if all of eligibility requirements described in Section 2 of the Request for Applications have been met and therefore can be considered for funding.

Failure to provide any item(s) will constitute an incomplete proposal and the application will be rejected. The applications will be considered for funding in the order of the date on which the application was submitted to the Department.

3.3 Conservation Easement Cost Calculator

The purchase price offered to acquire the conservation easement shall be determined by completing the Conservation Easement Cost Calculator. This worksheet utilizes the assessed land only value, indexed to 100%, from the most current tax assessment to determine a base purchase price. The land value of the buffer area and the land value of the farm area will be calculated separately. The land value of the buffer area for a 50-year term easement will be 45% of the total land assessed value of the buffer area. The land value of the farm area (if applicable) for a 50-year term easement will be 30% of the total land assessed value of the buffer area. The land value of the buffer area for a perpetual easement will be 90% of the total land assessed value of the buffer area. The land value of the farm area (if applicable) for a perpetual easement will be 65% of the total land assessed value of the buffer area.

Projects may also be eligible to receive implementation incentive payments. These incentive payments will be based on easement location, buffer type and size, total easement area size, and documented water quality concern. The overall public benefit of the project will also be factored into the total incentive payment. The implementation incentive payment will be multiplied by three factors that take into account the impacted population, number of public water supplies, and significance of the source water. These multiplying factors will be determined by using the Source Water Buffer Program – Incentive Multiplier online map tool.

3.4 Source Water Buffer Program – Incentive Multiplier online map tool

To access the online map tool use the following link:

<http://nysagmkt.maps.arcgis.com/apps/MapSeries/index.html?appid=a604157774494c96831cdf0b8912b6ff>

- 1) Population Map: to determine the Population multiplier, click on the 1) Population tab in the menu bar. Zoom in to find your county and use the key to determine the multiplier value. Enter this value into the Conservation Easement Cost Calculator.
- 2) Public Water Supply Map: to determine the Public Water Supply multiplier, click on the 2) Public Water Supply tab in the menu bar. Zoom in to find your county and use the key to determine the multiplier value. Enter this value into the Conservation Easement Cost Calculator.
- 3) Source Water Significance:
 - 3A) If addressing an Aquifer Sinkhole, click on the 3A) Aquifer Sinkhole tab in the menu bar. Zoom in to find the location of the conservation easement and use the key to determine the multiplier value. In order to qualify the easement area must be entirely within the zone. Enter this value into the Conservation Easement Cost Calculator.
 - 3B) If addressing a Surface Water Resource, click on the 3B) Surface Water tab in the menu bar. Find the surface water body to be addressed by the conservation easement and use the key to determine the multiplier value. Enter this value into the Conservation Easement Cost Calculator.
 - 3C) If addressing a Groundwater Wellhead Protection Area, click on the 3C) Groundwater Wellhead tab in the menu bar. Zoom in to find the location of the conservation easement and use the key to determine the multiplier value. In order to qualify, the easement area must be entirely within the zone. If the easement is between two shaded zones, the incentive will receive the lesser of the two multipliers. Enter this value into the Conservation Easement Cost Calculator.

3.5 Proposed Budget

A Project Budget Form (SW-2) must be completed for each project submitted. This form should indicate State assistance payments requested by expenditure category, and the amount, type (cash or in-kind) and source (SWCD, landowner) of the Project Sponsor's and landowner's matching contribution.

The Easement Stewardship Fee requested from the State may not exceed 50% of the total project cost. The applicant will be required submit separate documentation detailing how the easement stewardship fee was determined.

Contingency funds will be available through the Source Water Buffer Program to cover cost overruns that may occur. Contingency funds will be allowed for the Conservation Easement line item and the BMP implementation line item of the Project Budget Form (SW-2). Conservation Easement contingency may only be used when additional acreage is added to the easement. The Department will not award additional funds for projects if costs exceed estimates.

3.6 Cultural Resource (SHPO) Map Instructions

For self-determination, please use the NYS Cultural Resource Information System website: <https://cris.parks.ny.gov>. Copy and paste the map into a Microsoft document (e.g., Word, Publisher, etc.) and include the following information:

- Source Water Buffer Program – Project Name
- Farm or Landowner Name
- BMP System Title

If the project is located in an archeological sensitive area, further review will be required if the project receives funding. Funds may be included in the project budget under Other Direct Expenses to cover the additional expenses within the funding cap. Instructions for submitting the project for review will be provided after project awards are made.

4. AWARDS

Applications will be reviewed as they are submitted. If all eligibility requirements are met, applications will be awarded in the order of submittal until all available funds have been expended or the RFA has closed. Awards will be made on a quarterly basis starting no later than April 2019 and ending no later than January 2020. If an application is rejected, the Project Sponsor will be notified. Selected applications must comply with all applicable federal, State, and local laws and rules and regulations for funding to be awarded. Evidence of such compliance may be required.

The State Committee reserves the right to request such additional information from sponsors as is necessary to allow the OPRHP to make a determination regarding the impact of a project.

5. CONSIDERATIONS

5.1 Contracts

Once an application has been awarded funding, the State Committee will notify the sponsor of the need to provide information necessary to complete the contract. Payments cannot be made until the contract is fully executed.

If the State Committee and the Department are unsuccessful in negotiating a contract which will achieve the deliverables in a manner consistent with the proposal as approved by the State Committee, the Source Water Buffer Program RFA, and any applicable laws or regulations, the Committee reserves the right to rescind its approval of the application for funding and instead award the funding to other eligible unfunded project applications.

The contract term will be five years. The contract term dates will vary based on the receipt of applications and on the date of project award. The project sponsor may request a different term, if necessary. Funding of proposals that extend over more than one State fiscal year will be subject to the re-appropriation of funds. For a complete listing of contract deliverables, please see Appendix 3 of the RFA.

5.2 Payments

Payment for invoices submitted by the **Contractor** shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The **Contractor** shall comply with the Comptroller of the State of New York's procedures to authorize electronic payments. **Contractor** acknowledges that it will not receive payment on any invoices submitted under this Agreement if it does not comply with the Comptroller of the State of New York's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

Please see Appendix 3 of the RFA for a complete breakdown of the payment structure for the Source Water Buffer Program.

5.3 Reporting Requirements

Department staff will monitor the progress of each funded project.

The Department reserves the right to modify the reporting requirements during the course of the project. An original comprehensive final report will be required within sixty (60) days following completion of the project. For all projects, the final report shall include a final budget report detailing expenditures; a Project Completion Report (reviewed and signed by Department staff); a description of the work completed and problems encountered, if any, and such other information as the Department may deem necessary.

Final reports for projects shall also include photographs of the work site before and after implementation (if applicable), Procurement Records, and a Farm Expenditure Summary.

The Department reserves the right to conduct a follow-up evaluation of funded projects in order to determine long-term impacts.

The Department and Comptroller's Office reserves the right to audit the Project Sponsor's books and records relating to the performance of the project during and up to six (6) years after the completion of the project.

5.4 Master Contract

New York State has developed a standard "Master Contract" containing standard clauses required in all State Contracts. The Master Contract will be executed for all projects awarded under the Source Water Buffer Program, and applicants are responsible for complying with the terms and conditions contained therein.

5.5 Other Considerations

A. Liability

The State will not be held liable for any costs incurred by any District for work performed in the preparation of and production of a proposal, or for any work performed prior to the formal execution of a contract.

B. Freedom of Information

All proposals submitted and all related contracts and reports may be subject to disclosure under the Freedom of Information Law.

C. Reservations

The Department reserves the right to:

- reject any or all applications received with respect to this RFA;

- withdraw the RFA at any time, at the Department's discretion;
- disqualify any applicant whose conduct and/or application fails to conform to the requirements of the RFA;
- request from an applicant additional information as deemed necessary to more fully evaluate its application;
- amend the program's specifications after their release, with appropriate written notice to all potential applicants;
- waive any requirements that are not material;
- waive or modify minor irregularities in proposals received after prior notification and concurrence of the applicant;
- seek clarifications and revisions of applications;
- select only certain portions of proposals for State funding;
- negotiate the terms of any agreement proposed by the applicant;
- negotiate the terms of the budget;
- eliminate mandatory, non-material specifications with which all applicants cannot comply;
- value of in-kind services must be reasonable and documented to the satisfaction of the Department, and such value and documentation are subject to adjustment by the Department;
- make an award under the RFA in whole or part; and
- make all final decisions with respect to the amount of State funding and the timing of payments to be provided to an applicant.

All eligible proposals submitted in response to this RFA will become the property of the Department.

Appendix

Appendix 1. SAMPLE Conservation Easement Template

New York State Soil and Water Conservation Committee
Model Source Water Buffer Program Conservation Easement

[Deed of] Conservation Easement

{Italics text in brackets is informational to the drafter; please delete when preparing first red-lined draft of this document}

{[Text in [brackets] is optional language for this Easement depending upon the project]; **please delete all unused optional text when preparing first red-lined draft of this document}**}

THIS CONSERVATION EASEMENT ("Easement") is granted this ____ day of _____ 20__, by _____ [and _____] (the "Grantor") to _____, a New York {[municipal **{OR}**] not-for-profit] corporation] **{OR}** [soil and water conservation district]} having an address of _____ [and to _____, a New York {[municipal **{OR}**] not-for-profit] corporation **{OR}** [soil and water conservation district]} having an address of _____. ***{If the project Grantee will be either the municipality or the not-for-profit or both}***

WHEREAS:

- A. Grantor is the owner of certain real property (the "Property") consisting of approximately ***{nearest whole number}*** ____ acres, in ***{specify number}*** ____ tax map parcel(s) located on _____ and _____ Roads in the Town of _____, _____ County, New York, more fully described in the legal survey description of the property ("Exhibit A") and shown on the Easement Map ("Exhibit B"), both attached hereto and as depicted on a survey of the Property to be filed with the _____ County Clerk simultaneously herewith.
- B. [Grantee is a New York not-for-profit conservation organization within the meaning of Article 49, Title 3 of the Environmental Conservation Law of the State of New York (together with any successor statute), is organized for, among other purposes, conserving real property, is a tax exempt and qualified organization within the meaning of Sections 501(c)(3), 509(a) and 170(b)(1)(A)(vi) of the Internal Revenue Code (the "Code"), and is a "qualified organization" to accept, purchase, and hold conservation easements under Section 170(h) of the Code and Treasury Regulation Section 1.170A-14(c). ***{use B. if Grantee is a land trust; use C. below if Grantee is a town or county; use D. below if Grantee is a soil and water conservation district; or, use any combination of B., C. and/or D., if applicable}***]
- C. [Grantee is a municipal corporation and has the authority pursuant to Article 49, Title 3 of the Environmental Conservation Law of New York State to acquire conservation easements. ***{use C. if Grantee is a town or county}***]
- D. [Grantee is a local Soil and Water Conservation District created by the _____ County Board of Supervisors and has the authority pursuant to Section 9 (4-a) of the Soil

and Water Conservation Districts Law to acquire conservation easements. *{use D. if Grantee is a soil & water conservation district}*]

- E. [Article 14, Section 2 of the New York State Constitution states: “The legislature may by general laws provide for ... such lands for the construction and maintenance of reservoirs for municipal water supply.... ... Unsanitary conditions shall not be created or continued by any such public works.” *{use E. if the Source Water is a reservoir}*]
- F. Article 14, Section 4 of the New York State Constitution states: “The policy of this state shall be to conserve and protect its natural resources The legislature, in implementing this policy, shall include adequate provision for the abatement of air and water pollution and of excessive and unnecessary noise, the protection of agricultural lands, wetlands and shorelines, and the development and regulation of water resources.”
- G. Section 49-0301 of the Environmental Conservation Law of New York State states: “The legislature hereby finds and declares that in order to implement the state policy of conserving, preserving and protecting its environmental assets and natural and man-made resources, the preservation of open spaces, the preservation, development and improvement of agricultural and forest lands, ..., is fundamental to the maintenance, enhancement and improvement of... balanced economic growth and the quality of life in all areas of the state.”
- H. Section 15-3303 (5) of the Environmental Conservation Law of New York State states: “Consistent with section eleven-b of the soil and water conservation districts law, the soil and water conservation committee in consultation with the commissioner of agriculture and markets is authorized to provide state assistance payments to county soil and water conservation districts, within amounts appropriated, for land acquisition projects for source water protection projects to support, expand or enhance drinking water quality protection, including but not limited to aquifers, watersheds, reservoirs, lakes, rivers and streams. Such committee shall give priority to projects which establish buffers from waters which serve as or are tributaries to drinking water supplies for such projects using state assistance pursuant to this section.”
- I. The Safe Drinking Water Act (“SDWA”) (42 U.S.C. §300f et seq.; 1974) was established to protect the quality of drinking water in the United States and the 1996 amendments to the SDWA outlined steps for conducting source water assessments for public water systems, including the delineation of source water protection areas and the identification of measures to prevent, reduce, or eliminate risks to that drinking water supply.
- J. [The Property is located within _____ County, which adopted a _____ Plan *{for other plan name}* in *{insert month year}*. The Plan recommends *{add appropriate text}*.³]

³ Local plan that identifies source water protection as a priority.

- K. [The Property is located within the Town of _____, which adopted an _____ Plan *{for other plan name}* in *{insert month year}*. The Plan recommends *{add appropriate text}*.⁴]
- L. The Property is located within the _____ watershed, which adopted, *{insert plan name}*, a watershed based management plan in *{insert month year}*. The Plan recommends *{add appropriate text}*.
- M. The Property is located within _____ County, which completed a Source Water Assessment through the NYS Department of Health Source Water Assessment Program in *{insert month year}*.
- N. The Property is located within the _____ watershed, which is a priority watershed in the AEM Strategic Plan adopted by _____ County Soil and Water Conservation District in *{insert month year}*.
- O. The Property also contains *{describe features and importance of the source water that will be protected by this Easement}*.
- P. The Property consists of a Buffer Area as defined in Section 4 (“Definitions”). The Property contains approximately _____ acres of [hydric soils] *{OR otherwise specify the type or quality of soils on the Property}* as defined by the U.S. Department of Agriculture Natural Resources Conservation Service.
- Q. Grantee determined that accepting this Easement on the Property will help to maintain and improve the quality of *{name of Source Water}* (a designated Source Water for the *{name of community whose drinking water is derived from said source}*), which will assist the *{aforementioned name of community}* to protect a source of its drinking water. Therefore, the Board of Directors of the Grantee approved the conservation of this Property, as reflected in the _____, 20__ minutes of the organization. Furthermore, the Property is located within a priority conservation area identified by the Grantee in its _____, adopted in *{insert month year}*. *{Grantee may insert this (or equivalent substitute) WHEREAS here}*
- R. Grantor has received independent legal and financial advice regarding this Easement to the extent that Grantor has deemed necessary. Grantor freely signs this Easement in order to accomplish its conservation purposes.

NOW, THEREFORE, in consideration of the foregoing, _____ Dollars (\$_____) *{specify a whole-dollar amount, which must equal the purchase price determined by the Conservation Easement Cost Calculator for this Easement transaction}* and the mutual covenants, terms, conditions and restrictions contained herein, the parties agree as follows:

1. Grant of Conservation Easement.

⁴ Local plan that identifies source water protection as a priority.

Grantor hereby grants and conveys to Grantee a conservation easement (the “Easement”), an immediately vested interest in real property defined by Article 49 of Title 3 of the ECL of the nature and character described herein, for the benefit of the general public, which Easement shall run with and bind the Property [in perpetuity] **{OR}** [for a period of fifty (50) years]. Grantor will neither perform, nor knowingly allow others to perform, any act on or affecting the Property that is inconsistent with the covenants contained herein. Grantor authorizes Grantee to enforce these covenants in the manner described below.

2. Purpose.

The Primary Purpose of this Easement is to protect the quality of the Source Water in proximity to this Property and to foster and sustain the growth of healthy Native Species of vegetation within the Buffer Area as each term is defined in Section 4 (“Definitions”).

The Secondary Purpose of this Easement is to increase the adaptability and resiliency of the farm operation to climate change; preserve, maintain, or create wildlife habitat; and preserve or maintain the scenic, open, historic, archaeological, or natural condition, character, significance or amenities of the Property.

3. Implementation.

This Easement shall be implemented by prohibiting or otherwise restricting land use activities on the Property in accordance with its provisions. The Property remains subject to all applicable local, state and federal laws and regulations.

4. Definitions.

Terms not defined in this Section shall have the customary dictionary meaning. As used in this Easement, each capitalized word or phrase listed herein shall be defined as follows:

[4(a). “**Agricultural Buildings**” shall be defined as those structures in which any Agricultural Use is conducted therein.]

[4(b). “**Agricultural Use**” shall be defined as those activities necessary to:

- (i.) produce “Crops, Livestock and Livestock Products”; or
- (ii.) be actively enrolled in any federal or state or local program whose intent is to temporarily suspend (for a specified period of one or more years or crop seasons) the production of Crops, Livestock and Livestock Products for the stipulated purpose of soil and water conservation, wildlife habitat, or similar conservation purpose; or
- (iii.) manage the Property or a portion thereof in a fallow or otherwise idled manner provided such management is described in a Conservation Plan.]

4(c). “**Best Management Practices**” shall be defined as a series of guidelines or minimum standards recommended by federal, state, or local resource management agencies for farming and forestry operations; for preventing and reducing pollution of water resources and other disturbances of soil, water, and vegetative resources; and for protecting wildlife habitats.

- 4(d).** “**Conservation Plan**” shall be defined as an Agricultural Environmental Management (AEM) Conservation Plan (Tier 3A, 3B, or 3C, provided such document [contains a manure and nutrient management planning component and] is prepared pursuant to the New York State Soil and Water Conservation Committee AEM core planning guidance document), or such equivalent document that has been prepared by the local Soil and Water Conservation District, or other qualified conservation professional acceptable to the Grantee, in cooperation with the Grantor.
- [4(e).** “**Crops, Livestock and Livestock Products**” shall be defined pursuant to Article 25-AA of the AML, or such successor law as enacted or amended. In the event that this definition or all of Article 25-AA (and all such successor laws) shall be repealed, then the definition existing at the time of repeal shall serve thereafter.]
- 4(f).** “**Grantee**” includes the original Grantee(s) and its successors and assigns. [The term “Lead Grantee” is the Grantee designated by mutual agreement between the Grantees to give and receive all notices and other communications to and from the Grantor as specifically indicated in this Easement and to pursue any legal action to enforce this Easement. The _____ shall be Lead Grantee unless the Grantors receive written notice of a change in such designation executed by both Grantees.] *{use these two sentences if there are two or more Grantees who want to designate a Lead Grantee for this Easement}*
- 4(g).** “**Grantor**” includes the original Grantor and his/her/its heirs, successors and assigns.
- [4(h).** “**Groundwater Recharge Wetland**” shall be defined as a wetland that receives precipitation and allows it to infiltrate an aquifer.]
- 4(i).** “**Impervious Surfaces**” shall be defined as structures or improvements that permanently cover soil resources. Impervious Surfaces do not include permeable surfaces such as gravel roads; structures whose principal purpose is to protect soil and water resources.
- 4(j).** “**Invasive Species**” shall be defined as animal and plant species that are non-native (or alien) to the ecosystem under consideration and whose introduction causes or is likely to cause economic or environmental harm or harm to human health. In cases of uncertainty, publications such as “New York State Prohibited and Regulated Invasive Plants” by the New York State Department of Environmental Conservation are to be used to identify Invasive Species.
- 4(k).** “**Native Species**” shall be defined as animal and plant species that are indigenous to the locality under consideration. In cases of uncertainty, publications such as “Native Flowers, grasses, shrubs, and trees” by the NYS State Department of

Environmental Conservation are to be used to establish whether or not a species is native.

- 4(l). **“Owner”** shall be defined as any individual or entity, including any heir, successor or assign, of any legal or equitable interest in all or any portion of the Property, and any party entitled to the possession or use of all or any part thereof.
- 4(m). **“Recreational Uses”** shall be defined as lawful personal or commercial activities including, but not limited to, hunting, fishing, cross-country skiing, camping, horseback riding and snowmobiling.
- 4(n). **“Renewable Energy”** shall be defined as energy derived from a fuel source that readily restores over short periods of time and typically does not diminish. Such fuel sources include the sun, wind, moving water, organic plant and waste material (e.g., biomass) and the earth’s heat (i.e., geothermal).
- 4(o). **“Residential Dwelling”** shall be defined as dwellings or structures, together with accessory improvements that comprise single-family, multi-family, apartments, “in-law” apartments, guest houses and any dwelling that serves as housing for any individual conducting Agricultural Uses.
- [4(p). **“Riparian Area”** shall be defined as land that occurs along watercourses and water bodies. Typical examples include flood plains and streambanks. Riparian Areas are distinctly different from surrounding lands because of unique soil and vegetation characteristics that are strongly influenced by the presence of water.]
- 4(q). **“Rural Enterprises”** shall be defined as any commercial activities other than an Agricultural Use or a harvest of timber or other forest products.
- [4(r). **“Sinkhole”** shall be defined as an area of ground where precipitation collects and drains directly to the subsurface.]
- 4(s). **“Source Water”** shall be defined as surface water (e.g., streams, rivers, reservoirs, or lakes) or ground water (i.e., an aquifer) that serves as sources of public drinking water supplies.
- 4(t). **“SWCD”** shall be defined as the _____ County Soil and Water Conservation District.
- 4(u). **“Telecommunications”** shall be defined as the transmission, receipt, or exchange of information through the use of technology involving the Property and any other location.
- 4(v). The following **“Use Areas”** are defined for the Easement:
[**“Farm Area”** shall be defined as an area of the Property, as depicted on Exhibit B, within which Agricultural Uses as permitted by this Easement may occur.]

“**Buffer Area**” shall be defined as an area of the Property, as depicted on Exhibit B, that is comprised of Riparian Area, or land that lies within a designated wellhead protection area, or land that surrounds a sinkhole or a groundwater recharge wetland.

4(w). “Viable Agricultural Land” shall be defined as land highly suitable for Agricultural Use.

[4(x). “Wellhead Protection Area” shall be defined as the surface and subsurface area surrounding a well or well field, supplying a public water system, through which contaminants are reasonable likely to move toward and reach as well or well field.]

5. Permitted Uses and Reserved Rights Retained by Grantor.

Grantor reserves all customary rights and privileges of ownership, including the right of exclusive use, possession and enjoyment of the Property, the rights to sell, lease, mortgage, and devise the Property. In addition, Grantor reserves other rights compatible with the Purpose set forth in Section 2 (“Purpose”) that are not specifically prohibited or limited by this Easement including:

5(a). [Right to Use Property for Agricultural Uses.

Grantor has the right to engage in Agricultural Use of the Property within the Farm Area as specified pursuant to Section 6(a) (“Prohibitions and Restrictions on Agricultural Uses”) of this Easement. Said Agricultural Uses shall be carried out consistent with the Conservation Plan. *{Must insert this subsection ONLY IF a “Farm Area” is a designated Use Area on Exhibit B.}*

5(b). Right to Use Property for Recreational Uses.

Grantor retains the right to use the Property for Recreational Uses unless prohibited or otherwise restricted pursuant to Section 6(b) (“Prohibitions and Restrictions on Recreational Uses”) of this Easement. Tree stands and blinds for hunting or nature study are allowed, provided that each is removed following each hunting season or observation period. Recreational Uses must be compatible with the Purpose of this Easement.

5(c). Fences.

Existing fences may be repaired, removed and replaced, and new fences may be built anywhere on the Property for purposes of reasonable and customary management of livestock and wildlife, safety and general management and to prevent trespassing on the Property.

5(d). Habitat Enhancements.

Without permission of Grantee, the Grantor may place birdhouses and bat houses on the Property. Subject to the Conservation Plan, Grantor may establish Native Species of vegetation on the Property without permission of Grantee. With permission of Grantee, the Grantor may also remove Invasive Species and place fish

passage, fish habitat improvement, and streambank stabilization structures on the Property.

5(e). Forest Management.

- a. Non-Commercial Forest Activities. With permission of Grantee, Grantor may harvest timber and other wood products for the exclusive use of the Grantee or Owner and manage forested areas for wildlife habitat and recreation, and remove Invasive Species or trees that are fallen, dead, diseased or invasive, so long as such activities are consistent with generally accepted forest Best Management Practices.
- b. Commercial Forest Activities. With permission from Grantee, Grantor may commercially harvest timber and other wood products, conduct timber stand improvements and construct, maintain, remove, and repair unpaved access roads and “staging areas,” those areas where logs are temporarily stored for transport necessary for such activities. All such activities shall be in accordance with generally-accepted forestry Best Management Practices. Such commercial timber harvests and timber stand improvements shall be carried out in accordance with a forest management plan and harvest plan prepared by a forester who is certified by the Society of American Foresters or such successor organization as is later created, a Cooperating Consulting Forester with the New York State Department of Environmental Conservation or a qualified forester approved by Grantee.

Grantor shall give Grantee, its successors or assigns, written notice not less than forty-five (45) days prior to the anticipated commencement of any commercial timber harvest or timber stand improvement. Such written notice shall include submission of the current forest management plan and harvest plan.

5(f). Maintenance and Improvement of Water Sources.

Grantor may use, maintain, establish, construct, and improve water sources, water courses and water bodies within the Property for the uses permitted by this Easement provided prior written permission has been granted by Grantee pursuant to Section 8 (“Permission of Grantee”). Grantor may alter the natural flow of water over the Property in order to improve drainage of agricultural soils, reduce soil erosion and/or flooding, provide irrigation for the Property or improve the agricultural or forest management potential of the Property, provided such alteration is consistent with the Conservation Plan, and is compatible with the Purpose of this Easement, and is carried out in accordance with applicable local, state and federal laws and regulations.

5(g). Water Rights.

Grantor may use any appurtenant water rights sufficient to maintain the productivity of any abutting Viable Agricultural Land owned or operated by Grantor in accordance with applicable local, state and federal laws and regulations. Grantor

shall not transfer, encumber, lease, sell or otherwise sever such water rights from title to the Property itself.

[5(h). Road Construction.

Grantor may construct, maintain and repair non-Impervious Surface roads, including a stream crossing in a specified location for farm implements or livestock, necessary to provide access to or to conduct Agricultural Uses consistent with the AEM Plan or other activities permitted by this Easement provided prior written permission has been granted by Grantee pursuant to Section 8 (“Permission of Grantee”). Roads constructed in the Farm Area shall be located in a manner that minimizes impacts to prime soils and soils of statewide importance. *{May insert this subsection ONLY IF a “Farm Area” is depicted on Exhibit B of this Easement.}*

5(i). Access to the Source Water.

Grantor may construct, maintain and repair a non-Impervious Surface access to the Source Water within the Buffer Area to:

- i. engage in fishing or hunting in or on any surface water (e.g., streams, rivers, reservoirs, or lakes), or
- ii. launch a kayak, canoe, or boat onto any surface water (e.g., streams, rivers, reservoirs, or lakes) for Recreational Use, or
- iii. operate a snowmobile or similar motorized vehicle for Recreational Use only during the months of November through March[, or
- iv. provide a source of drinking water to livestock associated with an Agricultural Use of the Farm Area *{May insert item iv ONLY IF a Farm Area is designated on Exhibit B.}*, or
- v. provide an access to the Source Water for irrigation purposes *{May insert item v ONLY IF an Agricultural Use adjoins the Buffer Area containing a Source Water}*].

5(j). Utility Services.

Notwithstanding utility services existing prior to the conveyance of this Easement, no wires, lines, pipes, cables, tanks, or other facilities providing electrical, gas, water, sewer, sanitary sewer, septic, communications, or other like services may be installed, maintained, repaired, removed, relocated and replaced on the Property. Any such existing Utility Service existing at the time of the conveyance of this Easement is depicted on Exhibit B of this Easement and further described in the Baseline Documentation Report pursuant to Section 20 (“Baseline Documentation”).

6. Prohibited and Restricted Uses.

The Property consists of ____ *{insert #}* Use Areas as further described in the Baseline Documentation Report (referenced in Section 20 herein) and depicted on the Easement Map attached hereto as Exhibit B: 1) [the Farm Area; and 2)] the Buffer Area. Grantor shall be prohibited or otherwise restricted in conducting activities on the Property as set forth below.

6(a). Prohibitions and Restrictions on Agricultural Uses.

The Agricultural Use (including any associated buildings) of the Buffer Area is prohibited, except as expressly associated with the Agricultural Use of:

- i. a road constructed pursuant to Section 5(h) (“Road Construction”), or
- ii. an access to Source Water pursuant to Section 5(i) (“Access to the Source Water”)

[Within the Farm Area, no annual cropping will be permitted. The Agricultural Use (including any associated buildings) of the Farm Area is limited to:

- i. managed grazing
- ii. pasturing
- iii. haying]

6(b). Prohibitions and Restrictions on Recreational Uses.

The Recreational Use of the Property is restricted or otherwise prohibited as set forth below.

Any Recreational Use that requires a permanent structure of any kind to conduct said use or requires land surface alteration of any kind prior to conduct said use shall be prohibited on the Property.

In addition, the following are expressly prohibited:

- i. golf courses or golf driving ranges on the Property;
- ii. campers or motorized recreational vehicles providing overnight accommodations within the Buffer Area[or Riparian Area];
- iii. use of any motorized vehicle within the Buffer Area[or Riparian Area] except for those being operated exclusively on –
 - (a) a road constructed pursuant to Section 5(h) (“Road Construction”),
 - or
 - (b) an access to the Source Water pursuant to Section 5(i) (“Access to the Source Water”).

6(c). Impervious Surfaces.

The construction or placement of Impervious Surfaces on the Property is prohibited.

6(d). Residential Dwellings.

Residential Dwellings on the Property are prohibited.

6(e). Rural Enterprises.

Rural Enterprises and associated structures on the Property are prohibited.

6(f). Renewable Energy and Telecommunications.

The construction or placement of any structures to undertake Renewable Energy generation or Telecommunications on the Property is prohibited.

6(g). Subdivision.

The Property is currently comprised of [portions of] *{Specify the number of parcels}* _____ [deed] *{OR}* [tax map] parcels owned by Grantor. Grantor shall maintain such parcels comprising the Property, and all interests therein, under unified ownership (whether joint or undivided), as though a single parcel.

The subdivision of the Property is prohibited.

Lot line adjustments, which do not create additional building lots, are permitted only with the prior written permission of the Grantee, which permission shall ensure that such lot line adjustments shall not result in a reduction in the size of the Property.

6(h). Mining and On-Site Extractive Activity.

6(h)(a). Topsoil, Sand and Gravel Extractive Activities.

The removal of topsoil, sand or gravel on or from the Property for any purpose is prohibited.

6(h)(b). Subsurface Minerals and Hydrocarbons.

Notwithstanding any facilities or activities that are duly authorized under the Federal Natural Gas Act (15 U.S.C. Sections 717-717w) pursuant to Section 49-0305(3)(b) of the Environmental Conservation Law of New York State, the exploration for, or development, transmission, storage and extraction of, minerals and hydrocarbons on or from the Property by any method are prohibited by this Easement.

6(i). Agricultural Waste, Dumping and Trash.

The storage, dumping, land filling, burial, application, injection, or accumulation of any kind of garbage, refuse, trash or debris, or old farm equipment on the Property is prohibited. Grantor shall not store, compost, apply or inject manure or agriculturally-related waste or other biodegradable material on the Property [, unless such lawful activity is carried out exclusively within the designated Farm Area and conducted in a manner consistent with the Conservation Plan].

7. Conservation Plan.

All Permitted Uses shall be conducted in a manner consistent with a Conservation Plan prepared by the local Soil and Water Conservation District or by a qualified conservation professional acceptable to the Grantee in cooperation with the Grantor. Further, all such uses and activities identified in the Conservation Plan shall be consistent with the Purpose of this Easement and shall be only those not otherwise specifically prohibited by this Easement. The Conservation Plan shall (i) include a natural resources assessment, (ii) identify appropriate performance standards (based upon Best Management Practices where available and appropriate), and (iii) include a multi-year description of planned and allowable activities to be conducted in accordance with the Conservation Plan. The Conservation Plan shall be updated periodically [and whenever the Agricultural Use of the Farm Area changes substantially]. Upon request, Grantor shall provide a copy of the most current Conservation Plan to Grantee.

8. Permission of Grantee.

When Grantor is required to obtain Grantee's permission for a proposed action pursuant to the Easement, such permission shall be requested in writing. Grantee shall grant permission when it determines that such action is compatible with the Purpose of this Easement. Such permission shall not be unreasonably withheld. Grantee shall respond with a decision in writing within forty-five (45) days of receipt of the Grantor's written request. If mutually agreed upon by Grantee and Grantor, this timeline may be reasonably extended.

9. Ongoing Responsibilities of Grantor and Grantee.

Other than as specified herein, this Easement is not intended to impose any legal or other responsibility on Grantee, or in any way to affect any obligations of Grantor as owner of the Property, including, but not limited to, the following:

9(a). Taxes.

Grantor shall be solely responsible for payment of all taxes and assessments levied against the Property.

9(b). Upkeep and Maintenance.

Grantor shall be solely responsible for the upkeep and maintenance of the Property, to the extent required by law and this Easement. Grantee shall have no obligation for the upkeep or maintenance of the Property.

9(c). Liability and Indemnification.

Grantor agrees to indemnify and hold Grantee and the State of New York harmless from any and all costs, claims or liability, including but not limited to reasonable attorneys fees arising from any personal injury, accidents, negligence or damage relating to the Property, or any claim thereof, unless due to the negligence of Grantee or its agents, in which case liability shall be apportioned accordingly.

10. Access.

Nothing contained in this Easement shall give or grant to the public a right to enter upon or to use the Property or any portion thereof where no such right existed in the public immediately prior to the execution of this Easement.

11. State as Intervenor and Mediator Regarding Interpretation of Selected Definitions and Terms and Selected Implementation of Provisions.

Consistent with the policy of this state as (i) contained in Section 4 of Article 14 of the New York State Constitution and (ii) demonstrated by the New York State share of the consideration paid for this Easement as authorized by Section 15-3303 (5) of the New York State Environmental Conservation Law, the New York State Soil and Water Conservation Committee shall perpetually retain the right to intervene on any of the matters listed below provided any such intervention or mediation shall also be specifically limited as set forth below:

- (i.) advise the Grantor and Grantee of the State's interpretation of the following specific terms and definitions contained in and as used throughout this Easement

-
- a. Agricultural Use,
 - b. Conservation Plan,
 - c. Crops, Livestock and Livestock Products, and
 - d. Viable Agricultural Land;
- (ii.) advise the Grantor and Grantee of the State’s interpretation of the Purpose of this Easement; and
- (iii.) advise the Grantor and Grantee of the State’s interpretation of the Grantee’s proposed or demonstrated administration of the provisions of this Easement.

Any such intervention by the Department shall be offered and intended to serve as non-binding advice to the Grantor and Grantee in an effort to avoid potential violations of this Easement that would have arisen from either party’s misinterpretation of any specific item noted above.

Furthermore, if a dispute arises between the Grantor and the Grantee concerning the consistency of any proposed use or activity with the Purpose(s) of this Easement or any of the specific provisions contained herein, and Grantor agrees not to proceed with the use or activity pending resolution of the dispute, either party may request a meeting between the parties and the New York State Soil and Water Conservation Committee for mediation. Within ten (10) days of such request, Grantor and Grantee shall schedule a meeting with the New York State Soil and Water Conservation Committee, which will recommend potential resolutions of the dispute.

Notwithstanding anything in Section 3 (“Implementation”), nothing in this clause shall [preempt or prohibit the Grantor or the Grantee from requesting mediation pursuant to Section 16 (“Dispute Resolution”) or to otherwise] diminish Grantee’s rights under Section 15 (“Enforcement”).

12. Extinguishment of Development Rights.

Except as otherwise reserved to the Grantor in this Easement, all development rights appurtenant to the Property are hereby released, terminated and extinguished, and may not be used on or transferred to any portion of the Property as it now or hereafter may be bounded or described, or to any other property adjacent or otherwise, or used for the purpose of calculating permissible lot yield of the Property or any other property.

13. Baseline Documentation.

By its execution of this Easement, Grantee acknowledges that the present uses of, and related improvements on, the Property are permitted by this Easement. In order to evidence the present condition of the Property so as to facilitate future monitoring and enforcement of this Easement, a Baseline Documentation Report (the “Report”), including relevant maps and photographs, describing such condition at the date hereof, has been prepared and subscribed by both parties, and a copy thereof has been delivered to Grantor and a copy will be kept on file with Grantee. The Report may be used by Grantee to establish that a change in the use or character of the Property has occurred, but its existence shall not preclude the use by Grantee of other evidence to establish the condition of the Property as of the date of this Easement.

14. Right of Inspection.

Grantee shall have the right to enter upon the Property with at least forty-eight (48) hours advance notice to Grantor for the purpose of inspecting for compliance with the terms of this Easement. At the request of Grantee, representatives of the local Soil and Water Conservation District may accompany the Grantee on the Property to enable the SWCD to evaluate whether the Grantor's land uses and associated activities are consistent with the current Conservation Plan for the Property. Such inspection shall be conducted between the hours of 9 a.m. and 7 p.m. on a weekday that is not a legal holiday recognized by the State of New York or at a date and time that is mutually agreeable to the Grantee and Grantor. In the instance of a violation or suspected violation of the terms of this Easement which has caused or threatens to cause irreparable harm to any of the resources this Easement is designed to protect, no such advance notice is required. Representatives of the New York State Soil and Water Conservation Committee shall have the same right of inspection.

15. Enforcement.

If, as a result of participating in an inspection of the Property with the Grantee, the local Soil and Water Conservation District determines that the Grantor's land uses or associated activities are not consistent with the Conservation Plan, the local SWCD shall provide written notification to the Grantee identifying each land use or associated activity that is not consistent with the current Conservation Plan.

If Grantee determines that a violation of this Easement has occurred, Grantee shall so notify Grantor, giving Grantor thirty (30) days to cure the violation. Notwithstanding the foregoing, where Grantee in Grantee's sole discretion determines that an ongoing or threatened violation could irreversibly diminish or impair the Purpose of this Easement, Grantee may bring an action to enjoin the violation.

Grantee shall also be entitled to seek the following remedies in the event of a violation: 1) money damages, including damages for the loss of the resources protected under the Purpose of this Easement; and 2) restoration of the Property to its condition existing prior to such violation.

Said remedies shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. In any case where a court finds that a violation has occurred, Grantor shall reimburse Grantee for all its expenses incurred in stopping and correcting the violation, including, but not limited to, reasonable attorneys' fees. The failure of Grantee to discover a violation or to take immediate legal action shall not bar Grantee from doing so at a later time. In any case where a court finds no violation has occurred, each party shall bear its own costs.

Nothing in this Easement relieves Grantor of any obligation with respect to the Property or restriction on the use of the Property imposed by law, and nothing in this Easement shall require Grantor to take any action to restore the condition of the Property from damage or change that could not be reasonably anticipated by Grantor or that is beyond Grantor's reasonable control and occurring without Grantor's fault or negligence, including but not limited to natural disasters such as earthquakes, hurricanes or floods or to political or social upheavals such as

wars or riots.

{Grantee may insert a provision here regarding Third Party Right of Enforcement, but NYS Soil and Water Conservation Committee shall not accept that role in any conservation easement.}

[16. Dispute Resolution.

If a dispute arises between the Grantor and the Grantee concerning the consistency of any proposed use or activity with the Purpose of this Easement or any of the specific provisions contained herein, and Grantor agrees not to proceed with the use or activity pending resolution of the dispute, either party may request a meeting between the parties or refer the dispute to mediation by written request. Within twenty (20) days of such request, Grantee shall schedule a meeting or the parties shall select a single trained and impartial mediator knowledgeable about source water protection [and agriculture *{Must insert ONLY IF a “Farm Area” is depicted on Exhibit B.}*] to recommend potential resolutions of the dispute. The actual total cost of the mediator and any reimbursable expenses of the mediator shall be divided equally between the Grantor and Grantee. For all other associated expenses (such as legal fees and witness costs), each party shall pay its own costs.

As an alternative to the mediation described above or as an initial step prior to initiating the mediation described above, either party may request mediation pursuant to Section 18 (“State as Intervenor and Mediator Regarding Interpretation of Selected Definitions and Implementation of Provisions”). However, any mediation conducted subject to Section 18 shall not preempt or prohibit the mediation allowed under this Section 23. Furthermore, nothing in this clause shall diminish Grantee’s rights under Section 22 (“Enforcement”).]

17. Transfer of Easement.

Both Grantees, acting together, or any sole remaining *{Retain underlined part in this sentence if this Easement has co-grantees; delete all if this Easement has a single Grantee}* Grantee which has acquired the rights of another Grantee, shall have the right to transfer this Easement to any remaining co-grantee or any private non-governmental organization or public agency that, at the time of transfer is a “public body” or a “not-for-profit conservation organization” as defined by Article 49 of the Environmental Conservation Law of New York State or a “qualified organization” under Section 170(h) of the Code or a soil and water conservation district board pursuant to Section 9 (4-a) of the Soil and Water Conservation Districts Law, provided the transferee expressly agrees to assume the responsibility imposed on Grantee by this Easement. If Grantee ceases to exist or qualify under Article 49 of the Environmental Conservation Law of New York State and Section 170(h) of the Code, a court of competent jurisdiction shall transfer this Easement to another qualified organization having similar purposes that agrees to assume the responsibilities imposed by this Easement. Grantor and the New York State Soil and Water Conservation Committee must be notified in writing in advance of any such transfer. The New York State Soil and Water Conservation Committee must approve the choice of any new non-governmental organization or public agency designated as “Grantee.”

18. Transfer of Property.

Any subsequent conveyance, including, without limitation, transfer, lease or mortgage of the Property, shall be subject to this Easement, and any deed or other instrument evidencing or effecting such conveyance shall contain language substantially as follows: "This {conveyance, lease, mortgage, easement, etc.} is subject to a Conservation Easement which runs with the land and which was granted to _____ by instrument dated _____, and recorded in the office of the Clerk of _____ County at Liber [Cartridge] _____ of Deeds at Page [Frame] _____." Grantor shall notify Grantee and the New York State Soil and Water Conservation Committee in writing at least thirty (30) days before conveying the Property, or any part thereof or interest therein, to any third party. The failure to notify Grantee or New York State Soil and Water Conservation Committee or to include said language in any deed or instrument shall not, however, affect the validity or applicability of this Easement to the Property or limit its enforceability in any way.

19. Amendment of Easement.

This Easement may be amended only with the written consent of Grantee and the then current Owner of the Property and with the approval of the New York State Soil and Water Conservation Committee. Any such amendment shall be compatible with the Purpose of this Easement and shall comply with the ECL or any regulations promulgated thereunder. Any such amendment to this Easement shall be duly recorded.

20. Extinguishment of Easement.

At the mutual request of Grantor, Grantee, and the New York State Soil and Water Conservation Committee, a court with jurisdiction may, if it determines that conditions surrounding the Property have changed so much that it becomes impossible to fulfill the Purpose of this Easement described in Section 2 ("Purpose"), extinguish or modify this Easement in accordance with applicable law.

Notwithstanding the foregoing, if condemnation by exercise of the power of eminent domain makes it impossible to continue use of all or such portion of the Property for the Purpose of this Easement as described in Section 2 ("Purpose") herein, the restrictions may be extinguished as to any such portion so condemned by judicial proceeding. Upon any subsequent sale, exchange or involuntary conversion (pursuant to this Section) by the Grantor, Grantee shall be entitled to a portion of the proceeds from any subsequent sale or other disposition of the Property, or title insurance proceeds, in accordance with Section 28 ("Proceeds") herein.

In the event that Grantor retains the Property subsequent to any such extinguishment or partial extinguishment, Grantee shall be entitled to receive from Grantor an amount equal to the fair market value of the Property or a portion of the Property as to which the extinguishment applies times the percentage determined under Section 21.

21. Proceeds.

The grant of this Easement gives rise to a property right, immediately vested in Grantee, which property right has a monetary value in the event of an extinguishment or partial extinguishment or proceeds from a sale or other disposition of the Property as contemplated in Section 27 ("Extinguishment of Easement"). For purposes of this Section 21, Grantor and Grantee

stipulate that as of the date of conveyance of this Easement, Grantee is vested with a real property interest in the Property, which is agreed to be a Proportionate Share in the fair market value of the Property. Grantee's Proportionate Share is sixty five percent (65%), and shall remain constant, subject only to reasonable adjustment to the extent permissible under Section 170(h) of the Code for any improvements which may hereafter be made on the Property.

With regard to the portion of such Proportionate Share equal to that paid using State grant funds, Grantee agrees to use such portion in a manner compatible with the Purpose of this Easement. Prior to such re-use, Grantee must provide written notification to the New York State Soil and Water Conservation Committee [and to the _____ County Soil and Water Conservation District *{Must insert ONLY IF said District is not the Grantee of this Easement}*].

22. Interpretation.

This Easement shall be interpreted under the laws of the State of New York, or federal law, as appropriate. This Easement shall be liberally construed to effect the Purpose of this Easement. If any provision in this Easement is found to be ambiguous, an interpretation consistent with the Purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

23. Recitals and Exhibits Incorporated Herein.

Any and all recitals in this Easement are agreed by the parties to be accurate, are incorporated into this Easement by this reference, and shall constitute integral terms and conditions of this Easement. Any and all exhibits and addenda attached to and referred to in this Easement are hereby incorporated into this Easement as if fully set out in their entirety herein.

24. Successors.

Every provision of this Easement that applies to Grantor or Grantee shall also apply to their respective agents, heirs, executors, administrators, assigns, and other successors in interest, and shall continue as a servitude running [in perpetuity] *{OR}* [for fifty years] with the Property.

25. Severability.

Invalidity of any of the covenants, terms or conditions of this Easement, or any part thereof, by court order or judgment shall in no way affect the validity of any of the other provisions hereof which shall remain in full force and effect.

26. Notices.

Any notice required or desired to be given under this Easement shall be in writing and shall be sent (i) by personal delivery, (ii) via registered or certified mail, return receipt requested, or (iii) via Federal Express or other private courier of national reputation providing written evidence of delivery. Notice shall be deemed given upon receipt in the case of personal delivery, and upon delivery by the U.S. Postal Service or private courier. All notices shall be properly addressed as follows: 1) if to Grantee, at the address set forth above; 2) if to Grantor, at the address set forth above; 3) if to any subsequent owner, at the address of the Property; or 4) if to New York State Soil and Water Conservation Committee, 10B Airline Drive, Albany, New York 12235. Any party can change the

address to which notices are to be sent to him, her or it by duly giving notice pursuant to this Section 33.

27. Title.

The Grantor covenants and represents that the Grantor is the sole owner and is seized of the Property in fee simple and has good right to grant and convey the aforesaid Easement; that the Property is free and clear of any and all mortgages not subordinated to this Easement, and that the Grantor shall have the use of and enjoyment of the benefits derived from and existing out of the aforesaid Easement.

28. Subsequent Liens on Property.

No provisions of this Easement should be construed as impairing the ability of Grantor to use this Property, or a portion thereof encompassing entire separately deeded parcels, as collateral for a subsequent borrowing. Any subsequent liens on the Property must be subordinate to this Easement.

29. Subsequent Encumbrances.

The grant of any easements or use restrictions is prohibited, except with the permission of Grantee. Any future encumbrances shall be consistent with the Purpose of this Easement.

30. Grantor's Environmental Warranty.

Grantor warrants that it has no actual knowledge of a release or threatened release of hazardous substances or wastes on the Property, as such substances and wastes are defined by applicable law, and hereby promises to hold harmless, defend, and indemnify Grantee and New York State Soil and Water Conservation Committee against and from, any and all loss, cost, claim (without regard to its merit), liability or expense (including reasonable attorneys' fees) arising from or with respect to any release of hazardous waste or violation of environmental laws.

If at any time after the effective date of this Easement there occurs a release in, on, or about the property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, Grantor agrees to take all steps that may be required under federal, state, or local law necessary to assure its containment and remediation, including any cleanup.

Nothing in this Easement shall be construed as giving rise to any right or ability in Grantee, or the New York State Soil and Water Conservation Committee to exercise physical or management control over the day-to-day operations of the Property, or any of Grantor's activities on the Property, or otherwise to become an operator or arranger with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA") or any corresponding state and local statute or ordinance.

31. Duration of Easement.

Except as expressly otherwise provided herein, this Easement shall be [of perpetual duration] **{OR}** [for a duration of fifty (50) years], and no merger of title, estate or interest shall be

deemed effected by any previous, contemporaneous, or subsequent deed, grant, or assignment of an interest or estate in the Property, or any portion thereof, to Grantee, it being the express intent of the parties that this Easement not be extinguished by, or merged into, any other interest or estate in the Property now or hereafter held by Grantee.

32. Entire Agreement.

This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings and agreements relating to the Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section 26 (“Amendment of Easement”).

33. Waiver.

No waiver by Grantee of any default, or breach hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default or breach hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence. No waiver shall be binding unless executed in writing by Grantee.

34. Binding Effect.

The provisions of this Easement shall run with the Property [in perpetuity] *{OR}* [for a duration of fifty (50) years] and shall bind and be enforceable against the Grantor and all future owners and any party entitled to possess or use the Property or any portion thereof while such party is the owner or entitled to possession or use thereof. Notwithstanding the foregoing, upon any transfer of title, the transferor shall, with respect to the Property transferred, cease being a Grantor or Owner with respect to such Property for purposes of this Easement and shall have no further responsibility, rights or liability hereunder for acts done or conditions arising thereafter on or with respect to such Property, but the transferor shall remain liable for earlier acts and conditions done or occurring during the period of his or her ownership or conduct.

35. Lien Law.

This conveyance is made subject to the trust fund provisions of Section Thirteen of the New York Lien Law.

36. Captions.

The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

IN WITNESS WHEREOF, Grantor and Grantee, intending to be legally bound hereby, have hereunto set their hands on the date first above written.

Grantor: _____
(Grantor's name)

Grantee:

By: _____

{IF a Third Party Right of Enforcement is inserted into this Easement, a signature block (and notary block) acknowledging acceptance of that role must be inserted here}

State of New York)
County of), ss:

On the ____ day of _____ in the year 20__ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual (s) whose name (s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Signature/office of individual taking acknowledgement

State of New York)
County of), ss:

On the ____ day of _____ in the year 20__ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual (s) whose name (s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Signature/office of individual taking acknowledgement

For the sole purpose of acknowledging acceptance of its role to determine consistency of Grantor land uses and associated activities with the Conservation Plan, which is required by this Easement:

_____ County Soil and Water Conservation District

By: _____
{Insert here the printed name and title of the individual signing immediately above}

Date: _____

State of New York)
County of), ss:

On the ____ day of _____ in the year 20__ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual (s) whose name (s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Signature/office of individual taking acknowledgement

Exhibit A
Legal Description of Property

Exhibit B
Easement Map

Appendix 2: Source Water Buffer Program Hourly Rate Recommendation

The following rates were acquired from SWCDs as a result of our inquiry as part of the 2017 annual reports submitted.

The new hourly rates which can be used by SWCDs, in lieu of providing justification for calculating their actual salary, benefit and overhead, to calculate total personnel services costs for the Source Water Buffer Program are as follows:

	<u>Hourly Rate</u>	<u>Overhead</u>	<u>Total</u>
Managerial	\$56	\$5	\$61
Senior Technical*	\$44	\$5	\$49
Technical	\$35	\$5	\$40
Secretarial	\$36	\$5	\$41
NRCS Area Engineer	\$70	\$5	\$75

*10 years of experience or more

In the above figures, the NRCS Area Engineer Rate and the \$5 per hour overhead cannot be paid with State funds but needs to be shown in the Sponsor column under Engineering and Overhead Expenses. The budget form provides a column for the \$5 per hour overhead figures. The remainder of the hourly rate figures for each category (i.e. Managerial - \$56, Senior Technical - \$44, Technical - \$35, Secretarial - \$36) can be requested for State funding as long as there is adequate match in the grant.

Districts may use their actual salary, benefit and overhead figures in lieu of the above set rates. In those cases, full documentation must be provided to obtain payment. In cases where interns, seasonal or part-time employees are used, actual hourly rates will have to be used and justified. Districts that employ a certified Professional Engineer may choose to use their actual hourly rates.

These rates, including overhead expenses, can also be used for local agency personnel (NRCS, CCE) as well as private sector consultants. These individuals will also have the option to use and fully justify their own actual rates. Overhead expenses cannot be used for actual rates.

Appendix 3: Source Water Buffer Program Contract Deliverables and Payment Structure

Timeframe	Deliverables	Performance Payment
	<p>After Contract Approval – Department notification to successful applicant of approval of funding agreement by New York State.</p>	<p>Initial Payment: -50% Advance of Transactional Costs (SW 2 – Line E) ○ Cannot be processed until Contract is executed</p>
<p>After Contract Approval to 18 months</p>	<p>Preliminary Approval of Project– Must submit following documents:</p> <ul style="list-style-type: none"> - Certification of Title Curatives <ul style="list-style-type: none"> (a) copies of any attachments referenced in the certification (b) a copy of title insurance commitment, including a legible copy of each document listed in its Schedule A (c) copies of all proposed curatives - Boundary survey of the easement area - DRAFT Conservation Easement (include appendices) revealing all modifications (Must use NYS easement template provided with the RFA) - Site Plan 	<p>Interim Payment # 1: -100% Advance of Easement Cost (SW 2 – Line H) -Remaining balance of Transactional Costs -Reimbursement of Any Staff time, if necessary (SW 2 – Line A, B, C)</p>
<p>18 months to 2 years</p>	<p>Project File Approval – Must submit following documents:</p> <ul style="list-style-type: none"> - Final DRAFT Conservation Easement (Must use NYS easement template provided with the RFA) - Copy of recorded conservation easement - Proof of Conservation Easement conveyance 	<p>Interim Payment #2: -65% BMP Implementation Payment -Reimbursement of Any Staff time, if necessary (SW 2 – Line A, B, C)</p>
<p>2 years – 5 years</p>	<p>Close Out – Must submit following documents:</p> <ul style="list-style-type: none"> - SW Forms - Budget Report - Executed Conservation Easement - Conservation Easement Closing Certification plus any attachments - Title insurance policy - (if applicable) Waiver of Preliminary/Final Notice of Intent - Farm Expenditure Summary - Procurement Form for BMPs - Photos 	<p>Final Payment: -Remaining BMP Implementation -Remaining Staff time (SW 2 – Line A, B, C) -100% Easement Stewardship Fee (SW 2 – Line J)</p>

Appendix 4: BMP Operations and Maintenance Guidelines

1. A BMP that is funded by the NYS Source Water Buffer Program must be maintained and properly operated for the conservation purposes for which the practice was approved. BMPs must, at a minimum, be maintained by the Landowner and/or Operator for the lifespan period in years set forth below.
2. In the event a Landowner and/or Operator modifies or ceases his/her enterprise and a BMP becomes idle but remains intact, the BMP should be considered to be maintained and the BMP life span shall include the idle period.
3. Under special circumstances such as financial or management difficulties, the SWCD Board of Directors may recommend that the Landowner and/or Operator be exempt from the requirement to maintain and operate the BMP(s).
4. Under the following conditions, these guidelines should not apply if the SWCD determines that:
 - The Landowner's and/or Operator's Conservation Plan no longer requires operation and maintenance of the BMP.
 - Failure to operate and maintain the BMP was because of conditions beyond the Landowner's and/or Operator's control or the Landowner involuntarily loses control of the land.
 - The BMP was discontinued to perform another BMP that provides comparable water quality benefits.
5. The following list of BMP life spans are for practices implemented under the New York State Source Water Buffer Program.

Riparian Buffer Systems (10)

For more information on BMPs and their associated life spans, please refer to the Agricultural Best Management Practice Systems Catalogue and the NRCS Electronics Field Office Technical Guide (E-FOTG).