

MEMORANDUM OF AGREEMENT
Between
THE CITY OF NEW YORK
By and Through
THE NEW YORK CITY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
And
THE COUNTY OF ULSTER
In Connection With
THE ASHOKAN RAIL TRAIL PROJECT

THIS MEMORANDUM OF AGREEMENT (“Agreement”) made the th 16 day of June, 2015, between the CITY OF NEW YORK (“CITY”), a municipal corporation of the State of New York, having an office and principal place of business at City Hall, New York, New York acting by and through its DEPARTMENT OF ENVIRONMENTAL PROTECTION (“DEP”), a municipal corporation, having its principal offices at 59-17 Junction Boulevard, Flushing, New York 11373, and the COUNTY OF ULSTER (“COUNTY”), a municipal corporation and a county of the State of New York, having its principal offices at 244 Fair Street, Kingston, New York 12401. For purposes of this Agreement, the City, DEP and the County shall each be referred to as a “Party” and shall be referred to collectively as the “Parties.”

WITNESSETH

WHEREAS, the City of New York operates a water supply system that provides high quality drinking water to over nine million people in New York State; and

WHEREAS, the City is the fee owner of certain water supply property including the Ashokan Reservoir and watershed lands adjacent to the Ashokan Reservoir (“Watershed Property”) located in Ulster County; and

WHEREAS, in an agreement dated June 15, 1911, the City granted to the Ulster and Delaware Railroad Company, a perpetual and exclusive easement to some portions of the Watershed Property, totaling approximately 11.5 miles along the rail corridor for “railroad purposes” (the “Ashokan Railroad Easement”);¹ and

WHEREAS, the County acquired approximately 38.6-miles of the Ulster & Delaware Railroad (“U&D Railroad”) between the City of Kingston and the Delaware County border at Highmount from The Penn Central Corporation and The Owasco River

¹ AGREEMENT Between THE ULSTER AND DELAWARE RAILROAD, COMPANY, and THE CITY OF NEW YORK, In the Matter of THE LOCATION OF THE TRACKS OF THE RAILROAD COMPANY AND THE DAMAGES TO IT GROWING OUT OF THE CONSTRUCTION BY THE CITY OF NEW YORK OF THE ASHOKAN RESERVOIR – Agreement dated June 15, 1911.

Railway Inc. by Quitclaim deed dated July 24, 1979 and, as such, is the current owner and successor in interest to the Ashokan Railroad Easement; and

WHEREAS, if freight rail use is infeasible, the County, as evidenced by the Ulster County Legislature's Resolution 275 dated August 19, 2014 that specified trail use only on the Ashokan Railroad Easement, seeks to develop, in an environmentally sensitive manner, the existing railroad corridor along the Ashokan Railroad Easement into a recreational trail; to be known as the Ashokan Rail Trail and displayed in Exhibit A annexed hereto; and

WHEREAS, the County has proposed to take steps to preserve the U&D Railroad corridor for future rail service and/or interim use as a non-motorized public recreational trail under the provisions of the National Trails System Act, 16 U.S.C. sec. 1247 (d) and implementing regulations at 49 C.F.R. §1152.29; and

WHEREAS, the City has agreed as a joint project to work cooperatively with the County and to provide, as specified herein, financial support and other assistance to develop the Ashokan Railroad Easement into the Ashokan Rail Trail, which will improve public access to the Watershed Property, expand recreational opportunities in the County, preserve the corridor for freight rail use, and increase economic development and tourism opportunities in the communities along the Ashokan Rail Trail; and

WHEREAS, the County will design the Ashokan Rail Trail, subject to DEP approval, obtain any required permits and approvals, undertake environmental review in coordination with the City, and construct the Ashokan Rail Trail consistent with the approved design; and

WHEREAS, the County and the City have agreed, at the County's request, to ensure that the Ashokan Rail Trail will be constructed, operated and maintained in a manner fully protective of the City's water supply and, to that end, upon DEP's approval of the completed design, the County will develop and operate the Ashokan Rail Trail under a Land Use Permit issued by the City pursuant to Title 15, Chapter 17 of the Rules of the City of New York and, consistent with the terms of this Agreement; and

WHEREAS, if and when the County obtains from the federal Surface Transportation Board ("STB") a Certificate (or Notice) of Interim Trail Use, or upon written request from the City or the County, the Parties shall modify the existing Ashokan Rail Easement or establish an alternative property interest to allow conditional trail use ("Modified Ashokan Rail Easement") to incorporate the terms of the Land Use Permit to ensure such land use conditions run with the land for so long as the trail use continues in accordance with the terms of the Modified Ashokan Rail Easement and the County acknowledges until such time as the Modified Ashokan Rail Easement is executed by the Parties, the terms of the Land Use Permit shall continue to govern use of the Ashokan Rail Trail.

NOW, THEREFORE, in consideration of the foregoing, the City and the County agree, consistent with the terms below, to cooperatively develop the Ashokan Railroad Easement into the Ashokan Rail Trail and allow the public use thereof. This Agreement shall apply to the easement as described and granted to the Ulster and Delaware Railroad Company by the City of New York in an agreement dated June 15, 1911 and recorded on April 18, 1913 in Liber 443 Page 58 in the Office of the Ulster County Clerk which was conveyed to the County by quitclaim deed, as recorded on August 10, 1979 in Liber 1414 Page 933 in the Office of the Ulster County Clerk, consisting of approximately 11.5 miles. The Parties mutually agree hereto as follows:

Section 1. City Obligations

A. The City, through DEP, shall contribute financial assistance to the County in an amount not to exceed Two Million, Five Hundred Thousand Dollars (\$2,500,000), which shall be administered by the County toward the planning, design and construction of the Ashokan Rail Trail in accordance with the terms and conditions set forth in this Agreement.

i. Within ninety (90) days of the City's registration of this Agreement, DEP shall make a payment to the County in the amount of One Million Dollars (\$1,000,000). The County may choose not to commence work on the Ashokan Rail Trail until such time as it receives the initial payment.

ii. Upon written request and following a showing by the County that it has paid out or obligated at least Fifty Percent (50%) of the initial payment of One Million Dollars (\$1,000,000). DEP shall make a further payment of Five Hundred Thousand Dollars (\$500,000).

iii. Upon written request and following a showing by the County that it has paid out or obligated at least Fifty percent (50%) of the \$1.5 Million (\$1,500,000), DEP shall make a payment in the additional amount of Two Hundred Fifty Thousand Dollars (\$250,000);

iv. DEP shall make three additional payments of Two Hundred Fifty Thousand Dollars (\$250,000) each consistent with the terms of this paragraph. Each payment shall be made upon written request and following a showing by the County that it has paid out or obligated at least Fifty percent (50%) of the previous \$250,000 payment.

v. The County shall deposit all funds received from DEP in an interest bearing account, not to be comingled with funds from other sources. Interest earned on any portion of the Two Million, Five Hundred Thousand Dollars (\$2,500,000) may be used by the County for any of the allowed purposes as set forth in and in accordance with this Agreement. Any funds received by the

County from DEP that are not expended, including unspent interest, for the purposes set forth in this Agreement, shall be returned to DEP within thirty (30) days of the completion of all activity and transactions related to this Agreement, or the termination of this Agreement.

vi. The Parties may modify timing of the above structured payments by mutual written agreement in response to changes in the cost, scope of work, and/or schedule for completion.

B. The City shall continue to support the County in obtaining, from the Catskill Watershed Corporation (CWC) Catskill Fund for the Future, an additional One Million Dollars (\$1,000,000) in grant funding available in the New York City Watershed as well as provide future support for additional CWC funding to cover any increases in construction costs directly attributable to the Rules and Regulations for the Protection From Contamination, Degradation and Pollution of the New York City Water Supply and Its Sources (“Watershed Regulations”), 15 Rules of the City of New York (RCNY) Chapter 18, 10 New York Codes, Rules and Regulations (NYCRR) Part 128, and not otherwise required by federal or State law; and

C. In addition to the funding set forth in this Section 1, paragraph A, upon the County’s satisfaction of 2G below, the City shall fund, design, construct, operate, and maintain public trailheads, with facilities, including, directional and interpretive signage, sanitary facilities, public parking, and other mutually agreed upon trail support amenities, at locations, mutually agreed upon by the Parties, on Watershed Property or adjacent properties. The City shall also, considering input from the County, provide additional entrance points for bicyclists and pedestrians along Watershed Property, which points do not require parking and related facilities, as long as these points are conducive to the security, operation and/or water quality of the Ashokan Reservoir.

D. The City, using its engineering judgment and operational experience, shall accommodate bicycle and pedestrian traffic, including consideration of a possible dedicated shared-used lane for walking and bicycling, when the City reconstructs the Ashokan Dividing Weir Bridge and the Route 28A Bridge in Boiceville, also known as the Five Arch Bridge.

E. The City shall work with the County to foster tourism, develop interpretive signage relating to the unique history of the Ashokan Reservoir, Catskill Park, and U&D Railroad and upon substantial completion of construction of the Ashokan Rail Trail, promote awareness and responsible use of the Ashokan Rail Trail.

F. The City shall be responsible for all costs associated with any relocation or reconstruction of the Ashokan Rail Trail resulting from DEP activities, including reconstruction of dikes, overpasses, bridges, culverts, roadways, or other DEP

facilities that require the temporary closure and/or rebuilding of portions of the Ashokan Rail Trail. During such construction activities, DEP shall, using its engineering judgment and operational experience, design and construct alternative Ashokan Rail Trail routes to avoid areas of construction, to the extent feasible, and will seek to minimize disruption to public access to the Ashokan Rail Trail. DEP shall obtain input from the County, on the location and design of any required alternate routes or trail closures. In the event that DEP determines, based upon its engineering judgment and operational experience, that an alternate route cannot be safely designed at a reasonable cost so as to not affect the use of the trail, portions of the trail may be closed temporarily and DEP may create temporary trailheads and trails to accommodate such closures.

G. The City, by means of a Land Use Permit, shall allow access to the Ashokan Railroad Easement by the County's employees, consultants and agents for the purpose of conducting necessary planning and engineering studies associated with the design and implementation of the Ashokan Rail Trail. In addition, the City, by means of a Land Use Permit or, consistent with paragraph 3D below, a Modified Ashokan Railroad Easement, shall allow the County's employees, consultants and agents any necessary access for construction, security, operation, and maintenance of the Ashokan Rail Trail as well as allow public access to the trailheads and Ashokan Rail Trail until the resumption of railroad operations and/or termination of the County's public trail use.

Section 2. County Obligations

- A. With the exception of the aforementioned trailheads, the County shall be fully responsible for all planning, design, and construction activities required for the Ashokan Rail Trail, including coordination of community input with DEP involvement. The County will be responsible for acquiring and expending any additional funding required for the planning, design, construction, operation and maintenance of the Ashokan Rail Trail beyond the amount of funding provided by the City pursuant to this Agreement. The County may hire any contractors, subcontractors and/or consultants necessary for the planning, design, and construction of the Ashokan Rail Trail and they shall have access to the Ashokan Railroad easement therefore.
- B. Upon completion of construction, the County, through its employees, agents, contractors, subcontractors, and/or consultants, shall be fully responsible for the operation and maintenance of the Ashokan Rail Trail excluding the trailheads, which the City shall construct, operate and maintain. The County, through its employees, agents, contractors, subcontractors, and/or consultants, shall construct, operate and maintain the Ashokan Rail Trail in a manner that does not endanger, injure or pollute, or otherwise negatively impact, any property or water supply of the City.

- C. The County shall consult and include DEP in the environmental review and planning process for the Ashokan Rail Trail, and prior to any construction, the final design of the Ashokan Rail Trail shall be subject to approval by DEP, which approval shall not be unreasonably withheld. The design shall also include necessary public safety measures including the use of barriers such as fencing or guardrails, use of materials which are not deemed impervious² under the Watershed Regulations for the trail surface unless otherwise mutually agreed upon, and signage identifying the Watershed Property as part of the City's public drinking water system and highlighting the City's and County's cooperation in developing the Ashokan Rail Trail. The County, through its employees, agents, contractors, subcontractors, and/or consultants, shall construct the Ashokan Rail Trail and related facilities in accordance with the DEP-approved design documents.
- D. The County shall act as lead agency for the State Environmental Quality Review Act ("SEQRA) and complete all necessary documents for the construction, operation and maintenance of the Ashokan Rail Trail. With the cooperation of the City and the DEP, the County shall include in its SEQRA review the design, construction, operation and maintenance of the trailheads as well as any other related improvements to be undertaken by DEP with respect to the Ashokan Rail Trail. If the County decides to conduct an environmental review of the Ashokan Rail Trail only, rather than of the entire U&D Railroad corridor, the County shall include, to the extent possible, an analysis of any potential cumulative impacts of the planned future trail development. If the County subsequently conducts an environmental review of additional areas of the U&D Railroad corridor in the New York City Watershed, the County shall afford DEP all the rights of an involved agency during the environmental review(s) of such proposed project(s).
- E. The County shall be responsible for obtaining all required federal, State and local permits and approvals for design, construction, operation and maintenance of the Ashokan Rail Trail, including compliance with the City's Watershed Regulations. DEP will work in good faith with the County to schedule a pre-application conference with respect to any required DEP permits or approvals and to expeditiously process and facilitate any required DEP permits or approvals for construction of the Ashokan Rail Trail.

² *"Impervious surface means an area which is either impervious to water or which substantially prevents the infiltration of water into the soil at that location. Impervious surfaces include, but are not limited to, paving, concrete, asphalt, rooftops, and other hard surfacing materials, and do not include dirt, crushed stone or gravel surfaces."* Rules and Regulations for the Protection From Contamination, Degradation and Pollution of the New York City Water Supply and Its Sources §18-16 Definitions (54).

- F. The County shall advise the City when it has received the Certificate (or Notice) of Interim Trail Use and confirm that no appeals, requests for stays, reconsideration or reopening or other actions that would delay the effective date of the Certificate (or Notice) have been filed. If any such appeal or other petition for stay, reconsideration, or reopening has been filed, the County shall advise the City when any such proceeding has been concluded and the effective date of the Certificate (or Notice) has occurred.
- G. Upon DEP's written approval of the completed design of the Ashokan Rail Trail, as well as all other necessary permits and approvals pursuant to federal, State, City and local laws, rules and regulations to construct, operate and maintain the Ashokan Rail Trail and associated structures, including but not limited to culverts and bridges, DEP will issue the County a Land Use Permit pursuant to Title 15, Chapter 17 of the Rules of the City of New York, including the terms and conditions specified in Exhibit B, attached hereto, granting the County permission to construct, operate and maintain the Ashokan Rail Trail, excluding the trailheads. Such terms shall not unreasonably interfere with the public's use of the Ashokan Rail Trail. The County shall and shall cause its employees, agents, contractors, subcontractors, and/or consultants, to shall comply with the terms of the Land Use Permit for so long as it is in effect.

Section 3. Railbanking or Abandonment of the U&D Railroad

- A. The Parties agree that their respective counsel shall continue to discuss the legal implications of and consult with each other on any potential action by the County in connection with federal Railbanking pursuant to 16 U.S.C. Sec. 1247 (d) of the National Trails System Act or other legal action to enable the Ashokan Rail Trail to be developed along the Ashokan Railroad Easement.
- B. In connection with the County's potential pursuit of an Abandonment or Railbanking submission to the STB, the County shall provide the City an opportunity to review and comment on any submission to the STB at least 30 days prior to its filing at the STB. The County shall work in good faith to incorporate the City's comments and concerns into its submission to the STB in connection with the Ashokan Railroad Easement and shall update the City on the progress of any submission. As long as Ulster County is in compliance with this Agreement, and any Land Use Permit and/or easement for the Ashokan Rail Trail that is in effect governing the County's use of the rail corridor through City property, the City agrees that it will not oppose in any manner the County's request for Abandonment or Railbanking at the STB. The City reserves its right to comment on such submission to ensure that any action by the STB is consistent with the purposes of this Agreement and in particular, the development and operation of the Ashokan Rail Trail in an environmentally sensitive manner.

- C. The City acknowledges that this Agreement in no way impinges on or diminishes Ulster County's right to allow a railroad operator or the County to seek a modified certificate of public convenience and necessity under STB rules in order to establish the feasibility of freight operations on the line. The County acknowledges that this Agreement in no way impinges or diminishes the City's rights with respect to ensuring that any future use of the rail corridor is conducted in an environmentally sensitive manner which includes, but is not limited to, asserting whatever legal rights it may have before the Surface Transportation Board to protect such interests.
- D. Upon the County obtaining a determination from the STB allowing interim trail use over the Ashokan Railroad Easement, and/or upon written request from the City or the County, the County and the City shall promptly execute a Modified Ashokan Rail Easement which will provide for the County's use of the Ashokan Railroad Easement for trail use. Such Modified Ashokan Rail Easement shall contain, but shall not be limited to, the conditions set forth in Exhibit B to ensure that the Ashokan Rail Trail is constructed, operated and maintained in an environmentally sensitive manner. Pending execution of such Modified Ashokan Rail Easement, the Land Use Permit shall continue to govern the operation of the Ashokan Rail Trail.
- E. Except as the parties consensually agree to undertake in the future as set forth herein, this agreement does not modify or extinguish in any manner whatsoever the Ashokan Railroad Easement as described in the Book of Deeds at Liber 443, Page 58 as filed in the Office of the Ulster County Clerk.

Section 4. Effective Date and Term

- A. This Agreement shall not take effect until it is executed by the Parties and registered by the City pursuant to Section 328 of the City Charter. The Effective Date of this Agreement shall be the date it is registered pursuant to Section 328.
- B. This Agreement shall terminate five (5) years after the Effective Date except that in the event that the County obtains a determination from the STB allowing interim trail use over the Ashokan Railroad Easement, or the City or the County has made a written request for the Parties to execute a Modified Ashokan Rail Easement, this Agreement shall extend until such time as the County has executed such Modified Ashokan Rail Easement. This Agreement may also be extended by mutual written consent of the Parties.
- C. This Agreement may be terminated by either DEP or the County upon one hundred and twenty (120) days written notice to the other Party. Upon receipt of such notice of termination, the County shall seek to minimize the expenditure of funds under this Agreement and shall not incur new costs to the extent practicable. In the event of such termination, the City agrees to reimburse or otherwise compensate the County, within sixty (60) days of termination, for all

reasonable costs and/or expenses, actual and/or obligated by the County for costs incurred through the date of such termination.

Section 5. Indemnification

The Parties shall mutually and reciprocally indemnify each other and their respective officers, employees, and agents, and save each other harmless from any liability, damage, claims, demands, costs or losses arising directly or indirectly out of their officers', employees', or agents' respective acts or omissions pursuant to this Agreement, provided however, that: (1) County's indemnification of City extends solely to County's administration of activities and transactions funded with DEP Funds; and (2) in no event or instance shall County have any liability, under any circumstance(s), for lawsuits, property damage, or any other injury suffered by trail users, property owners or anyone else as a result of, or in any way related to or caused, directly or indirectly, by City's acts, omissions, obligations and/or responsibilities related to this Agreement; and (3) in no event or instance shall the City have any liability, under any circumstance(s) for lawsuits, property damage, or any other injury suffered by trail users, property owners or anyone else as a result of, or in any way related to or caused, directly or indirectly, by County's acts, omissions, obligations and/or responsibilities related to this Agreement.

Section 6. Notices

Unless otherwise specified, all notices required or permitted for herein shall be in writing and sent by certified mail with postage prepaid, by hand, by over-night courier, or by facsimile confirmed by any of the previous methods, addressed to the Parties as shown below or at such other addresses as such Parties may designate in writing from time to time:

To DEP: New York City Department of Environmental Protection
71 Smith Avenue
Kingston, New York 12401
Attn: Ira Stern, Chief, Natural Resources Division
Fax: (845) 338-1296 Phone: (845) 340-7207

With a copy to: New York City Department of Environmental Protection
59-17 Junction Boulevard, 19th Floor
Flushing, New York 11373
Attn: General Counsel
Fax: (718) 595-6543 Phone: (718) 595-6555

To the County: Hon. Michael P. Hein
Ulster County Executive

P.O. Box 1800
Kingston, New York 12402-1800
Fax: (845) 334-5724 Phone: (845) 340-3800

With a copy to: Beatrice Havranek, Esq.
County Attorney
P.O. Box 1800
Kingston, New York 12402-1800
Fax: (845) 340-3691 Phone: (845) 340-3685

John Parete,
Chair, Ulster County Legislature
P.O. Box 1800
Kingston, New York 12402-1800
Fax: (845) 340-3900 Phone: (845) 340-3651

Section 7. Agreement is a Legally Binding Contract

The respective commitments of the Parties to this Agreement are in consideration of each other, thereby making this Agreement a legally binding contract enforceable by the County and the City in a court of competent jurisdiction.

Section 8. Employees

A. The County and the City agree that the County and its employees, agents, contractors, subcontractors, and/or consultants, are independent contractors and not employees of the City, DEP, or any department, agency, or unit of the City and further agree that neither the County nor its employees, agents, contractors, subcontractors, and/or consultants will hold themselves out as, nor claim to be, officers or employees of the City, or of any department, agency, or unit thereof.

B. Nothing in this Agreement shall impose any liability or duty on the City for the acts, omissions, liabilities, or obligations of the County, or any person, firm, company, agency, association, expert, consultant, independent contractor, specialist, trainee, employee, servant, or agent of the County, for the payment of taxes of any nature including but not limited to sales tax, unemployment insurance, worker's compensation, disability benefits, and Social Security, except as specifically stated in this Agreement, to any person, firm, or corporation.

C. Nothing in this Agreement shall impose any liability or duty on the County for the acts, omissions, liabilities, or obligations of the City, or any person, firm, company, agency, association, expert, consultant, independent contractor, specialist, trainee, employee, servant, or agent of the City, for the payment of taxes of any nature including but not limited to sales tax, unemployment insurance, worker's compensation, disability benefits, and Social

Security, except as specifically stated in this Agreement, to any person, firm, or corporation.

D. The City shall not be responsible, nor have any liability, for the County's design, construction, operating and maintenance of the Ashokan Rail Trail, except for the trailheads developed and maintained by the City.

E. The provisions of this Agreement shall not be deemed to create any right of action in favor of Third Parties, including any property owners, against the County or the City or their respective officers and employees.

Section 9. Force Majeure

The obligations set forth in this Agreement may be delayed if either Party cannot comply with the terms of this Agreement because of an act of God, war, strike, or other condition as to which conduct on the Ashokan Rail Trail of the Party or its agent was not the proximate cause; provided, however, that such Party notifies the other Party in writing within ten (10) business days of obtaining knowledge of any such condition and requests an appropriate extension of the relevant terms of this Agreement, and provided further that such Party will make its best efforts to provide for alternative arrangements to fulfill the obligation.

Section 10. Cooperation

The Parties acknowledge and agree that during the term of this Agreement they will promptly provide each other with all documentation, reports, and information that the other Party reasonably requests in order to fulfill its obligations under this Agreement. Nothing in this Agreement shall be deemed as consent by, or an obligation of either Party, to provide documents or information protected by or to waive the attorney-client privilege or the attorney-work product privilege.

Section 11. Compliance with Law

The Parties represent and warrant that all actions taken pursuant to the terms of this Agreement shall comply with any and all applicable federal, State, and local laws, rules, and regulations, including State and local procurement laws and regulations.

Section 12. Investigations

The County and the City agree to cooperate fully and faithfully with any investigation, audit, or inquiry relating to the subject matter of this Agreement conducted by a federal, New York State, County, or City governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit, or inquiry.

Depending on the facts and circumstances, any breach or violation of the foregoing may be deemed a breach or violation of a material provision of this Agreement.

Section 13. Counterparts

This Agreement may be executed in one or more counterpart(s), each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 14. Entire Agreement, Amendments, and Assignments

This Agreement contains the entire understanding between the Parties with respect to the subject matter herein and supersedes any prior agreements or understandings, either oral or written. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York. This Agreement may be amended only upon mutual written agreement signed by both Parties. This Agreement may not be assigned by either Party without the written consent of the other Party.

Section 15. Headings

The headings herein are for reference purposes only.

Section 16. Severability

If any provision of this Agreement or its application should be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of all other provisions and the application thereof shall not in any way be affected or impaired.

*****Signature Page Follows*****

CORPORATION COUNSEL CONTRACT APPROVAL

Agency DEP

E-PIN 82615T0008001

Contractor COUNTY OF ULSTER DEPT OF PUBLIC WORKS

Approved as to form

Certified as to legal authority


Electronically Signed By AMRITA BARTH

Date 06/04/2015 18:16

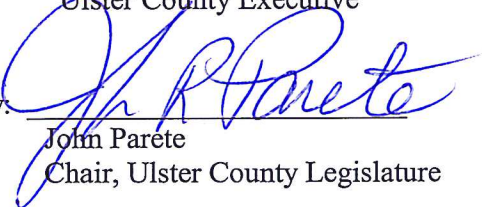
Acting Corporation Counsel

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the latest date written below.

COUNTY OF ULSTER

By: 
Michael P. Hein
Ulster County Executive

Date: June 11, 2015

By: 
John Parete
Chair, Ulster County Legislature

Date: June 10, 2015

**THE CITY OF NEW YORK, acting by and through
the New York City Department of Environmental Protection**

By: 
Mary F. Pazan
Assistant Commissioner

Date: 6/16/15

Approved as to form and
Certified as to Legal Authority:

Acting Corporation Counsel of the
City of New York

Date: _____


ACKNOWLEDGMENTS

STATE OF NEW YORK

SS:

COUNTY OF ULSTER

On the 11th day of June in the year 2015, before me, the undersigned, a Notary Public in and for said State, personally came **Michael P. Hein**, to me known, being by me duly sworn did depose and say that he is the **Ulster County Executive**, the individual described herein and who executed the foregoing instrument, and that he signed his name thereto as authorized by said municipal corporation.



Notary Public

MARK LONGTOE
Notary Public, State Of New York
Reg. No. 02LO6086350
Qualified In Ulster County
Commission Expires January 21, 20 19

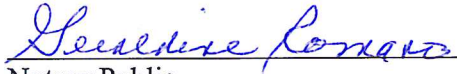
STATE OF NEW YORK

SS:

COUNTY OF ULSTER

On the 10th day of June in the year 2015, before me, the undersigned, a Notary Public in and for said State, personally came **John Parete**, to me known, being by me duly sworn did depose and say that he is the **Chairman of the Ulster County Legislature**, the individual described herein and who executed the foregoing instrument, and that he signed his name thereto as authorized by said municipal corporation.

GERALDINE ROMANO
Notary Public, State of New York
Qualified In Ulster County
Reg. No. 01RO4767409
My Commission Expires: 9/30/2018



Notary Public


STATE OF NEW YORK

SS:

COUNTY OF QUEENS

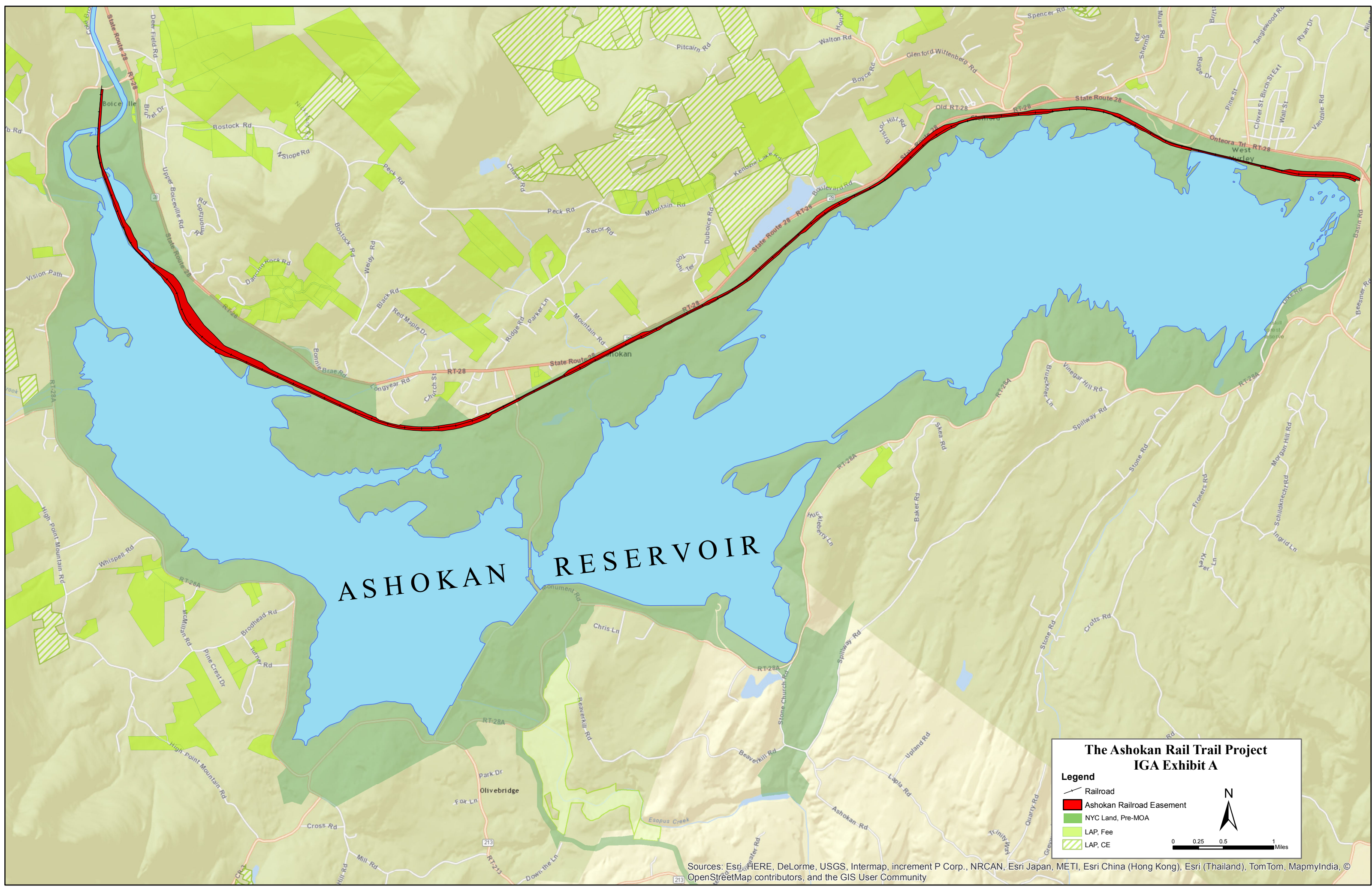
On the 16th day of June in the year 2015, before me, the undersigned, a Notary Public in and for said State, personally came **Mary F. Pazan**, to me known, being by me duly sworn did depose and say that she is the **Assistant Commissioner of the Department of Environmental Protection of the City of New York**, the individual described herein and who executed the foregoing instrument, and that she signed her name thereto as authorized by said municipal corporation.

NAOMI BURRUS
Notary Public, State of New York
No. 01BU6304146
Qualified In Queens County
Commission Expires May 27, 20 18



Notary Public






EXHIBIT A
(Map of the Ashokan Railroad Easement)




ASHOKAN RESERVOIR

The Ashokan Rail Trail Project
IGA Exhibit A

Legend

-  Railroad
-  Ashokan Railroad Easement
-  NYC Land, Pre-MOA
-  LAP, Fee
-  LAP, CE


 0 0.25 0.5 1 Miles

Sources: Esri, HERE, DeLorme, USGS, Intermap, increment P Corp., NRCAN, Esri Japan, METI, Esri China (Hong Kong), Esri (Thailand), TomTom, MapmyIndia, © OpenStreetMap contributors, and the GIS User Community

EXHIBIT B

SPECIAL CONDITIONS TO BE INCLUDED IN THE PERMIT for Construction, Operation and Maintenance of the ASHOKAN RAIL TRAIL

1. Process/Approvals.

- a) Construction of the Ashokan Rail Trail shall be subject to the conditions outlined in this Land Use Permit consistent with the approved design.
- b) Prior to allowing public access to the Ashokan Rail Trail, Ulster County shall submit to DEP, for its review and approval, an Operation and Maintenance Plan for the Ashokan Rail Trail.
- c) Prior to allowing public access to the Ashokan Rail Trail, Ulster County shall submit to DEP, for its review and approval, a Security Cooperative Agreement.
- d) Ulster County must obtain DEP approval of any proposed changes to the previously approved design, Operation and Maintenance Plan and/or Security Cooperative Agreement.
- e) In the event the County fails to comply with this Land Use Permit including, but not limited to, its duty to maintain and inspect the trail and monitor the trail and trailheads, the City will provide written notice to the County of such failure and provide the County thirty days to provide evidence of curing such non-compliance. Failure to timely cure may result in the City requiring the County to limit the use of any of the access areas or close it from public access until such defect is cured. The City further reserves its right to terminate the permit in accordance with Title 15, Chapter 17 of the Rules of the City of New York.
- f) Compliance with any and all legal requirements, including local, City, State and federal permits, and all expenses undertaken in connection with the construction, operation and maintenance of the Ashokan Rail Trail, excluding trailheads, shall be the responsibility of the County.
- g) The County's use of Watershed Property shall at all times be consistent with all laws and regulations including, but not limited to, the Public Health Law of the State of New York, and the Watershed Regulations, and shall not endanger, injure, or pollute any property or water supply of the City.

2. Trail Construction.

- a) Ulster County, through its employees, agents, contractors, subcontractors, and/or consultants, shall construct the Ashokan Rail Trail, including but not limited to the construction of bridges, culverts and other infrastructure, in accordance with the approved design. Such construction shall include, but not be limited to (i) materials other than those deemed impervious under the Rules and Regulations for the Protection From Contamination, Degradation and Pollution of the New York City Water Supply and Its Sources ("Watershed Regulations"), 15 Rules of the City of New York (RCNY) Chapter 18, 10 New York Codes, Rules and Regulations (NYCRR) Part 128, for the trail surface unless otherwise mutually agreed upon and (ii) the use of barriers such as fencing or guardrails as necessary, such as at causeways, to ensure the safety of the public.
- b) The County shall procure and post signage agreed to by the City consistent with DEP's Bureau of Water Supply Sign Manual along the trail displaying the rules of trail use, identifying the land as part of the City's drinking water supply system, and recognizing the City's and the County's partnership.
- c) The use of portions of the Ashokan Rail Trail shall not be open to the public until the County, through its employees, agents, contractors, subcontractors, and/or consultants, has completed the design and construction of said portion, and the County has submitted a written certification and documentary evidence that it has fully complied with the conditions of this Land Use Permit.

3. Trail Operation & Maintenance.

- a) With the exception of the trailheads, and in accordance with the approved Operations and Maintenance Plan, the County, through its employees, agents, contractors, subcontractors, and/or consultants, shall be responsible for the operation and maintenance of the Ashokan Rail Trail and associated facilities, including culverts, bridges, benches and interpretative and directional signage.
- b) The County will be responsible for promptly identifying and eliminating trail hazards such as potholes and hazard trees as necessary.
- c) The Ashokan Rail Trail and trailheads will be open to public use from dawn to dusk throughout the year; DEP will not require that public users of the Ashokan Rail Trail obtain DEP access permits for such use.
- d) Motorized vehicles will be prohibited on the Ashokan Rail Trail, with the exception of vehicles (i) for the disabled such as motorized wheelchairs, and vehicles to be used for security, emergency response, maintenance, and operation of the Ashokan Rail Trail and/or (ii) by DEP for the operation and maintenance of the water supply system.

- e) Allowed uses of the Ashokan Rail Trail include walking, running, bicycling, cross country skiing, and snowshoeing. Other non-motorized uses shall be approved by DEP. Dogs on leashes will be permissible, but horses will be prohibited.
- f) The Ashokan Rail Trail will be available for special public events, such as fundraising walks, for which the County must obtain prior approval from DEP.
- g) The County, through its employees, agents, contractors, subcontractors, and/or consultants, shall be responsible for all trash and litter removal along the Ashokan Rail Trail.
- h) It is recognized and accepted that forest management by DEP as well as public recreational uses, including hunting and fishing, currently allowed by DEP, will continue and are considered compatible adjacent land uses to the Ashokan Rail Trail.
- i) If at any time the County abandons this Land Use Permit, fails to comply with the terms of this Land Use Permit and/or abandons use of the Ashokan Rail Trail, the City shall be under no obligation to construct, maintain, or operate the trail for recreational use.

4. Trail Security

- a) In accordance with the approved Security Cooperative Agreement, the County and DEP shall share responsibility for safety and security along the Ashokan Rail Trail and at trailhead entrances.
- b) The County may assign its responsibility for maintenance and security to other parties with prior written approval from DEP; such approval shall not be unreasonably withheld.
- e) The City reserves the right to temporarily shut down access to the Ashokan Rail Trail, including trailheads and other access points for security and water supply purposes for such time as necessary to protect public health and safety. Such temporary shutdown shall be for the minimum time reasonably necessary to ensure the protection of the water supply and public health

5. Insurance & Indemnification.

- a) As long as this Land Use Permit is in effect or for as long as the County operates the Ashokan Rail Trail, whichever period is shorter, the County shall provide a Commercial General Liability policy insuring the uses on City property arising hereunder, naming the City entities as additional insureds as

follows: The City of New York, its officials and employees and the New York City Water Board, c/o NYCDEP, 59-17 Junction Boulevard, 19th Floor, Flushing, New York 11373, Attention: General Counsel.

- i) Commercial General Liability [CG00 01 (ed.11/88] or equivalent Combined Single Limit- Bodily Injury and Property Damage,
 - \$ 2,000,000 per occurrence
 - \$ 5,000,000 products/completed operations aggregate
 - \$ 5,000,000 general aggregate
 - \$ 75,000 claim maximum deductible.

- ii) The insurance policy shall protect the City and the New York City Water Board, its officials and employees against claims for property damage and/or bodily injury, which may arise from the use of City property as a rail trail. The insurance policy shall not contain exclusions or endorsements that are unacceptable to the City. The insurance coverages provided above shall apply unless the Parties mutually agree that greater coverage is necessary based upon the nature of the proposed use.

- b) The County and the City shall mutually and reciprocally indemnify each other and their respective officers, employees, and agents, and save each other harmless from any liability, damage, claims, demands, costs, or losses arising directly or indirectly out of their officers', employees', or agents' respective acts or omissions pursuant to this Permit.

6. Additional Conditions

- a) Consistent with Title 15, Chapter 17, DEP reserves the right to impose additional conditions as reasonably necessary based upon the design of the Ashokan Rail Trail and, to modify such terms in the future, as necessitated by operational experience. Such terms shall not unreasonably interfere with the public's use of the Ashokan Rail Trail.



**Environmental
Protection**

Emily Lloyd
Commissioner

Mary F. Pazan
Assistant Commissioner
Agency Chief Contracting Officer

59-17 Junction Boulevard
Flushing, N.Y. 11373

Tel. (718) 595-3925
Fax (718) 595-3278
mpazan@dep.nyc.gov

April 20, 2015

Via Email: cwhi@co.ulster.ny.us

County of Ulster
244 Fair Street, P.O. Box 1800
Kingston, New York 12402

ATTN: Chris White

**Notice of Award: CAT-459:
The Ashokan Rail Trail Project**

Dear Mr. White:

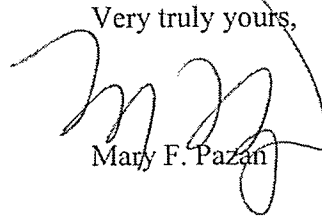
The Department of Environmental Protection (DEP) hereby awards to you a Contract for **The Ashokan Rail Trail Project**.

This award is based upon the approval of the Recommendation for Award by a Certificate of Procedural Requisites signed on April 17, 2015. The original contract amount shall not to exceed \$2,500,000.00.

Attached please find the Contract. Please print five (5) copies, sign, notarize and return all five copies along with proof of insurance as per Exhibit B to **NYC Department of Environmental Protection, 59-17 Junction Blvd., 17th Floor, Flushing, New York 11373, ATTN: Ms. Glorivee Roman.**

An Order to Commence Work Letter will follow this notice after the contract is registered with the Comptroller's Office of the City of New York, along with an executed copy of the contract.

Very truly yours,



Mary F. Pazan