

**NEW YORK CITY WATERSHED MEMORANDUM OF AGREEMENT**  
**January 21, 1997**  
**TABLE OF CONTENTS**

**ARTICLE I DEFINITIONS**

**ARTICLE II NYC WATERSHED LAND ACQUISITION PROGRAM**

- 54. Overview.
- 55. Prior Permit Application Discontinued.
- 56. New Permit Application.
- 57. Processing of New Permit Application.
- 58. Permit Issuance.
- 59. Limitation on Eminent Domain.
- 60. Willing Buyer/Willing Seller; Solicitation.
- 61. Fair Market Value.
- 62. Duration and Schedule.
- 63. Natural Features Criteria: Catskill and Delaware Watershed.
- 64. Catskill and Delaware Watershed Acquisition Goals.
- 65. Catskill and Delaware Watershed Acquisition Milestones.
- 66. Land Acquisition Criteria: Croton Watershed.
- 67. Vacant Property West of Hudson.
- 68. Designation of Non-Acquirable Land West of Hudson.
- 69. Vacant Property East of Hudson.
- 70. Designation of Non-Acquirable Land East of Hudson.
- 71. Local Consultation.
- 72. Recreational Uses: Newly Acquired Property.
- 73. Recreational Uses: Currently Owned City Property.
- 74. City Financial Commitments for Land Acquisition
- 75. Land Acquisition Segregated Account.
- 76. The State's Croton Land Acquisition Program.
- 77. Watershed Agricultural Easements Program Overview.

78. Watershed Agricultural Easements Program.
79. Real Property Taxes: Newly Acquired in Fee Under the City's Land Acquisition Program.
80. Real Property Taxes: Watershed Conservation Easements.
81. Limitation on Transfers to Tax Exempt Entities.
82. Land Held in Perpetuity for Watershed Protection
83. Conservation Easements Held in Perpetuity for Watershed Protection
84. Acquisition Reports.
85. Permit Conditions.
86. Funding of Permit Programs in City Budget.

### **ARTICLE III NYC WATERSHED REGULATIONS**

87. Submission of Watershed Regulations.
88. NYSDOH Approval
89. City CAPA Promulgation.
90. NYSDOH SAPA Promulgation.
91. Non-material Revisions.
92. Waiver of Rights Regarding Approval and Promulgation.
93. Septic System Delegation.
94. Stormwater Project Review Committees
95. Review of Proposed Croton Plan.
96. Review of Modified Croton Plan.

## **ARTICLE IV NYC WATERSHED PROTECTION AND PARTNERSHIP COUNCIL AND OTHER PARTNERSHIP COMMITTEES**

97. Watershed Protection and Partnership Council. Intent.
98. Watershed Protection and Partnership Council. Structure.
99. Watershed Protection and Partnership Council. Committees.
100. Watershed Protection and Partnership Council. Membership.
101. Watershed Protection and Partnership Council. Functions.
102. Watershed Protection and Partnership Council. Terms of Office.
103. Watershed Protection and Partnership Council. Committees and Subcommittees. Meetings.
104. Watershed Protection and Partnership Council. Executive Committee. Membership.
105. Watershed Protection and Partnership Council. Executive Committee. Functions.
106. Watershed Protection and Partnership Council. Executive Committee. Terms of Office.
107. Watershed Protection and Partnership Council. Executive Committee. Review of Objections.
108. Watershed Protection and Partnership Council. East of Hudson Advisory Committee. Membership.
109. Watershed Protection and Partnership Council. East of Hudson Advisory Committee. Functions.
110. Watershed Protection and Partnership Council. East of Hudson Advisory Committee. Terms of Office.
111. Watershed Protection and Partnership Council. Technical Advisory Committee. Membership.
112. Watershed Protection and Partnership Council. Technical Advisory Committee. Functions.
113. Watershed Protection and Partnership Council. Technical Advisory Committee. Terms of Office.
114. Watershed Protection and Partnership Council. Technical Advisory Committee. Meetings; Quorum; Quorum for Approvals.
115. Watershed Protection and Partnership Council. East of Hudson Sporting Advisory Committee. Membership.

116. Watershed Protection and Partnership Council. East of Hudson Sporting Advisory Committee. Functions.

117. Catskill Watershed Corporation. Creation and Membership.

118. Catskill Watershed Corporation. Functions.

## **ARTICLE V NYC WATERSHED PROTECTION AND PARTNERSHIP PROGRAMS**

119. Overview.

120. Catskill Watershed Corporation. Funding.

121. SPDES Upgrades.

122. New Sewage Treatment Infrastructure Facilities for Towns, Villages and Hamlets.

123. Sewer Extensions.

124. Septic System Rehabilitations and Replacements.

125. Stormwater Retrofits.

126. Sand and Salt Storage Facilities.

127. Stream Corridor Protection.

128. West of Hudson Future Stormwater Controls.

129. Alternate Design Septic Systems.

130. Forestry Management Program.

131. Public Education.

132. Dunraven Causeway Bridge Reconstruction.

133. Schoharie Roads and Bridges.

134. West of Hudson Economic Development Study.

135. Catskill Fund for the Future.

136. Tax Consulting Fund.

137. Funding of the Watershed Protection and Partnership Council.

138. Watershed Planning in the Croton System.

139. Sewage Diversion Feasibility Studies.

140. East of Hudson Water Quality Investment Program.

141. Upgrades to Existing WWTPs to Comply with Watershed Regulations.
142. Future Operation and Maintenance Costs at Public WWTPs for Equipment Installed or Methods of Operation Instituted Between July 1, 1991 and November 2, 1995.
143. Upgrades to Future Public WWTPs Required by the Watershed Regulations.
144. Phosphorus Controls in Cannonsville.
145. Future Stormwater Controls Paid for by the City: Single-family Houses, Small Businesses, Low-income Housing.
146. Payment of Costs and Expenses Associated with Review of City's Watershed Protection Program.
147. Good Neighbor Payments.
148. Local Consultation on Land Acquisition Program.
149. Certain Funds Intended to Benefit Signatories Only.
150. General Provisions Applicable to all Watershed Partnership and Protection Programs.
151. Compliance With State Law.
152. State Partnership Programs.
153. Utility Crossings.
154. Letter of Credit.
155. Invalidation of the Watershed Regulations.
156. Invalidation of the Water Supply Permit.
157. Invalidation of Both the Watershed Regulations and the Water Supply Permit.
158. Liquidated Damages for Late Payment Under a Valid and Enforceable Program Contract.

#### **ARTICLE VI MISCELLANEOUS PROVISIONS**

159. New Filtration Avoidance Determination.
160. Primacy Agency.
161. Lead Agency Determination.
162. Total Maximum Daily Loads
163. NYSDEC Review of SPDES Permits in Watershed
164. Enhanced Monitoring.

165. Phosphorus Pilot Program.
166. Home Heating Oil Tank Insurance.
167. Legislative Proposals.
168. Pesticide and Fertilizer Technical Working Group.
169. Galley Study.
170. Septic System Siting Study.
171. Assignment of Rights Between Coalition and CW Corporation.
172. Coalition of Watershed Towns v. City of New York.
173. City of New York v. State Department of Health.
174. Inclusion of City's Obligations in City's Annual Budget.
175. Water Rates.
176. Waiver of Future Challenges.
177. Mediation of Future Disputes.
178. Enforcement Discretion Regarding Violations Related to Failure of Agreed-upon Funding.
179. State and City Review of Performance Under This Agreement.
180. Complete Agreement.
181. Agreement is a Legally Binding Contract.
182. Citizen Suits.
183. Notices.
184. Additional Parties.
185. Authorization to Execute.

### **Attachments**

- A. List of Municipalities which are Parties
- B. List of Environmental Organizations which are Parties
- C. Map of Catskill and Delaware Water Supply and Watershed
- D. Map of Croton Water Supply and Watershed
- E. Member Counties, Towns and Villages of Coalition of Watershed Towns

F. List of West of Hudson Communities

G. List of East of Hudson Communities

H. Land Acquisition Schedule

I. Catskill and Delaware Watershed Priorities

J. Croton Watershed Priority Areas

K. Cannonsville Reservoir Priority 1A Boundaries

L. Pepacton Reservoir Priority 1A Boundaries

M. Neversink Reservoir Priority 1A Boundaries

N. Rondout Reservoir Priority 1A Boundaries

O. Ashokan Reservoir Priority 1A Boundaries

P. West Branch Reservoir Priority 1A Boundaries

Q. Kensico Reservoir Priority 1A Boundaries

R. West of Hudson Hamlets Eligible for Land Acquisition Exemptions

S. West of Hudson Villages Eligible for Land Acquisition Exemptions

T. Defined West of Hudson Roads Eligible for Land Acquisition Exemptions

U. Proposed State Legislation

V. Draft Water Supply Permit

W. Proposed Watershed Rules and Regulations

X. Model Payments in Lieu of Taxes Agreement (PILOTS)

Y. Inter-Municipal Agreement for Sewage Diversion Study

Y-1 Putnam County - Diversion Feasibility Study

Y-2 Westchester County - Diversion Feasibility Study

Z. Land Acquisition Solicitation Protocol

AA. Map of Schoarie Substitute Roads and Bridges

BB. Memorandum of Understanding regarding Delegation of Septic System Review to  
Local County Departments of Health

BB-1 Westchester County Department of Health

BB-2 Putman County Department of Health

BB-3 Ulster County Department of Health

CC. Articles of Incorporation and By-Laws of the Catskill Watershed Corporation

DD. Catskill Watershed Corporation-Environmental Facilities Corporation Agreement

EE. Inter-Municipal Agreement for Watershed Planning in the Croton System

EE-1 Putnam County - Croton Watershed Planning

EE-2 Westchester County - Croton Watershed Planning

FF. Catskill Watershed Corporation-City Agreement for Watershed Partnership and Protection Programs

FF-1 Spetic System Rehabilitation and Replacement

FF-2 Sand and Salt Storage

FF-3 West of Hudson Future Stormwater Controls

FF-4 Alternate Design Septic Systems

FF-5 Local Consultation on Land Acquisition

FF-6 Public Education

FF-7 West of Hudson Economic Development Study

FF-8 Tax Consulting Fund

FF-9 Stormwater Retrofits

FF-10 Catskill Watershed Corporation Operating Funds

GG. East of Hudson-City Inter-Municipal Agreement (EOH Funds, Costs, Good Neighbor Local Consultation)

GG-1 Westchester County - EOH Water Quality Funds

GG-2 Westchester County - Good Neighbor Payments

GG-3 Westchester County - Local Consultation

GG-4 Westchester County - Costs and Expenses

GG-5 Putnam County - EOH Water Quality Funds

GG-6 Putnam County - Good Neighbor Payments

GG-7 Putnam County - Local Consultation

GG-8 Putnam County - Costs and Expenses



HH. City-Environmental Facilities Corporation - Owner/Operator Agreement regarding  
Regulatory Upgrades

II. Environmental Facilities Corporation-Owner/Operator Agreement regarding  
Regulatory Upgrades

JJ. List of Good Neighbor Payments

KK. Carmel Regulatory Upgrades Inter-Municipal Agreement

LL. Draft Filtration Avoidance Determination

MM. Total Maximum Daily Loads Phase I Methodology

NN. Enhanced Monitoring Study Scope of Work

OO. Galley Study Protocol

PP. New York State Department of Health Draft Supplemental Declaratory Ruling

QQ. Draft Letter of Credit

RR. Draft New York State Department of Health Approval of Regulations

SS. New Sewage Treatment Infrastructure Facilities for Towns, Villages and Hamlets

TT. City-Coalition of Watershed Towns Agreements

TT-1 Costs and Expenses

TT-2 Good Neighbor Payments

UU. September 1993 New York State Department of Health Declaratory Ruling

VV. Funding of the Watershed Protection and Partnership Council

WW. Model Agreement for the Operation and Maintenance of Regulatory Upgrades

XX. Notice Addresses

## **NEW YORK CITY WATERSHED MEMORANDUM OF AGREEMENT**

MEMORANDUM OF AGREEMENT, dated as of January 21, 1997, agreed to and executed by and among the following parties (collectively, the "Parties" and individually a "Party"):

The City of New York, a municipal corporation with its principal office at City Hall, New York, New York 10007 (the "City");

The State of New York, with its principal office at The Capitol, Albany, New York 12224 (the "State");

The United States Environmental Protection Agency, an executive agency of the United States, organized and existing under the laws of the United States, with its principal office at 401 M Street, S.W., Washington, D.C. 20460 ("USEPA");

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

The Catskill Watershed Corporation, an independent locally-based and locally administered not-for-profit corporation, organized and existing under section 1411 of the New York State Not-For-Profit Corporation Law and having its principal office in Margaretville, New York ("CW Corporation")

The County of Putnam, New York, a municipal corporation with its principal office at 40 Gleneida Avenue, Carmel, New York 10512 ("Putnam County");

The County of Westchester, New York, a municipal corporation with its principal office at the Michaelian Office Building, 148 Martine Avenue, White Plains, New York 10601 ("Westchester County");

Each of the counties, towns and villages identified in Attachment A appended hereto and made a part hereof, constituting municipal corporations and having their principal offices at the respective addresses shown for each in Attachment XX (collectively, the "Municipal Parties" and individually a "Municipal Party"); and

Each of the environmental organizations identified in Attachment B appended hereto and made a part hereof, constituting not-for-profit corporations and having their principal offices at the respective addresses shown for each in Attachment XX (collectively, the "Environmental Parties" and individually an "Environmental Party").

WITNESSETH:

1. WHEREAS, the Parties, being the State of New York, the City of New York, the Coalition of Watershed Towns (whose membership is set forth in Attachment E), the CW Corporation, the United States Environmental Protection Agency, Westchester County, Putnam County, the Municipal Parties, and the Environmental Parties recognize that an adequate supply of clean and healthful drinking water is vital to the health and social and economic well being of the People of the State of New York; and

2. WHEREAS, it is the intention of the Parties to assure the continued adequate supply of exceptional quality drinking water for the eight million residents of the City of New York and the one million New York State residents outside the City who depend upon the New York City drinking water supply system; and

3. WHEREAS, the New York City water supply system is a monumental hydraulic and civil engineering achievement, consisting of an interconnected series of reservoirs, controlled lakes, and several hundred miles of underground tunnels and aqueducts that collect and transport approximately 1.5 billion gallons of water daily to a customer distribution system containing thousands of miles of water mains; and

4. WHEREAS, the primary sources of water for the New York City water supply system originate in portions of the Catskill Mountain Region and the Hudson River Valley, commonly referred to as the watershed of the New York City water supply and its sources (the "Watershed"), which span over 1,900 square miles and portions of eight counties, sixty towns, and twelve villages; and

5. WHEREAS, the Parties agree that the New York City water supply is an extremely valuable natural resource that must be protected in a comprehensive manner; and

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

7. WHEREAS, after extensive negotiations the Parties now enter into legally enforceable commitments, as set forth in this Agreement, on issues related to the Watershed protection program, including the Watershed rules and regulations, the land acquisition program, and Watershed partnership initiatives; and

8. WHEREAS, the Parties agree that the City land acquisition program, as described below in Article II, is a purely voluntary program which provides the opportunity to the Watershed communities to review parcels and to provide comments to the City on

potential acquisitions, and that Towns and Villages may exempt areas of their communities from purchase under the City's land acquisition program; and

9. WHEREAS, the Parties agree that the City's land acquisition program, the City's Watershed Regulations, and the other programs and conditions contained in this Agreement, when implemented in conjunction with one another, would allow existing development to continue and future growth to occur in a manner that is consistent with the existing community character and planning goals of each of the Watershed communities; and that the City's land acquisition goals insure that the availability of developable land in the Watershed will remain sufficient to accommodate projected growth without anticipated adverse effects on water quality and without substantially changing future population patterns in the Watershed communities; and

10. WHEREAS, the City is currently under a stipulation with the New York State Department of Health which requires the City to design and construct a filtration facility for the Croton System; and

11. WHEREAS, the City has applied for and received an interim filtration avoidance determination from USEPA which declares that the source waters of the Catskill and Delaware Watershed may continue to be used as a public drinking water supply without filtration provided that the City implement measures to assure the continued protection of water quality and the objective criteria of the Surface Water Treatment Rule continue to be met; and

12. WHEREAS, the Parties have agreed to act in good faith and to take all necessary and appropriate actions, in cooperation with one another, to effect the purposes of this Agreement.

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

## **ARTICLE I DEFINITIONS**

The following terms, as used in this Agreement, shall have the meaning set forth below:

13. "CAPA" means the City Administrative Procedure Act, chapter 45 of the New York City Charter.

14. "Catskill and Delaware System" means the Ashokan, Cannonsville, Kensico, Neversink, Pepacton, Rondout, Schoharie, and West Branch/Boyd's Corner Reservoirs, and the tunnels, dams and aqueducts which are part of and connect the above listed reservoirs.

15. "Catskill and Delaware Watershed" means the drainage basins of the Catskill and Delaware System. A map of this watershed is set forth in Attachment C.

16. "City" means the City of New York, a municipal corporation with its principal office at City Hall, New York, New York 10007.

17. "Coalition of Watershed Towns" or "Coalition" means the inter-municipal body composed of the municipalities located wholly or partially within that portion of the New York City Watershed that lies west of the Hudson River, which have duly entered into a cooperative agreement, pursuant to §119-o of the New York General Municipal Law, having its principal office at Delhi, New York. A list of the members of the Coalition is set forth in Attachment E.

18. "Croton System" means the Amawalk, Bog Brook, Cross River, Croton Falls, Diverting, East Branch, Middle Branch, Muscoot, New Croton, and Titicus Reservoirs; Kirk Lake, Lake Gleneida and Lake Gilead ("controlled lakes"); and the tunnels, dams and aqueducts which are part of and connect the above listed reservoirs and controlled lakes.

19. "Croton Watershed" means the drainage basins of the Croton System. A map of this watershed is set forth in Attachment D.

20. "December 1993 Filtration Avoidance Determination" or "December 1993 FAD" means the written determination of the United States Environmental Protection Agency, dated December 30, 1993 and signed by Acting Region II Administrator William J. Muszynski, entitled Surface Water Treatment Rule Determination New York City's Catskill and Delaware Water Supplies, declaring that the source waters of the Catskill and Delaware Watershed could continue to be used as a public drinking water supply without filtration provided that the City implement measures to assure the continued protection of water quality and the objective criteria of the Surface Water Treatment Rule continue to be met.

21. "Drainage Basin" means, for the purpose of defining the boundaries of the drainage basin of each reservoir or controlled lake, the area of land that drains surface water into, or into tributaries of, a reservoir or controlled lake of the Catskill and Delaware or Croton Systems.

22. "East of Hudson" or "EOH" means the drainage basins of the specific reservoirs and controlled lakes of the New York City Watershed located east of the Hudson River in the New York counties of Dutchess, Putnam, and Westchester.

23. "East of Hudson Communities" or "EOH Communities" means the municipal corporations (as defined by § 66(2) of the New York General Construction Law, but not including school districts) which are located wholly or partially within the EOH portion of the Watershed. The EOH Communities are set forth below in Attachment G.

24. "ECL" means the New York Environmental Conservation Law.
25. "Effective Date of Agreement" shall be January 21, 1997.
26. "Environmental Parties" means the not-for-profit corporations listed in Attachment B.
27. "GOL" means the New York General Obligations Law.
28. "Governor" means the Governor of the State of New York.
29. "Hamlet" or "Hamlets" means the population centers listed in Attachment R with the boundaries to be established by the Towns pursuant to the procedure set forth in paragraph 68 of this Agreement.
30. "Mayor" means the Mayor of the City of New York.
31. "NYCDEP" means the New York City Department of Environmental Protection, a mayoral agency of the City of New York organized and existing pursuant to the New York City Charter.
32. "NYCDOH" means the New York City Department of Health, a mayoral agency of the City of New York organized and existing pursuant to the New York City Charter.
33. "NYSDEC" means the New York State Department of Environmental Conservation, an executive agency of the State of New York organized and existing pursuant to the New York Environmental Conservation Law.
34. "NYSDOH" means the New York State Department of Health, an executive agency of the State of New York organized and existing pursuant to the New York Public Health Law.
35. "NYSEFC" means the New York State Environmental Facilities Corporation, a public benefit corporation organized pursuant to New York Public Authorities Law § 1280 et seq.
36. "PHL" means the New York Public Health Law.
37. "Primacy Agency" means the United States Environmental Protection Agency or the New York State Department of Health, whichever has primary enforcement responsibility for implementation of the federal Surface Water Treatment Rule (40 CFR § 141.70 et seq.) pursuant to §1413 of the federal Safe Drinking Water Act (42 U.S.C. § 300g-2).
38. "RPTL" means the New York State Real Property Tax Law.

39. "SAPA" means the New York State Administrative Procedure Act and regulations promulgated pursuant thereto (9 NYCRR Part 260).

40. "SEQR" means the New York State Environmental Quality Review Act (ECL Article 8) and regulations promulgated pursuant thereto (6 NYCRR Part 617).

41. "Total Maximum Daily Loads" or "TMDLs" means the sum of the wasteload allocations for point sources plus the load allocations for nonpoint sources plus a margin of safety to account for uncertainties in the development process. (From the USEPA guidance document, "Guidance for Water Quality Based Decisions; The TMDL Process - April 1991.")

42. "Uninhabitable Dwelling" means a dwelling which is deteriorated to the extent that: either the cost of rehabilitation which would prevent the continued deterioration of primary components will exceed sixty percent (60%) of the fair market value of the structure, or rehabilitation will not prevent the continued deterioration of primary components of the dwelling which will result in unsafe living conditions; and it has not been occupied for one year immediately prior to the signing of an option. The fair market value of the existing dwelling shall be as established by the City's appraisal. As used herein, the term "primary components of a dwelling" shall include: foundations, exterior wall framing, rafters, roof decks, roof coverings, porches, floor joists, sills, headers, electrical systems, heating systems, plumbing systems and septic systems.

43. "UPA" means the Uniform Procedures Act (ECL Article 70) and the regulations promulgated pursuant thereto (6 NYCRR Part 621).

44. "USEPA" means the United States Environmental Protection Agency, an executive agency of the United States, organized and existing under the laws of the United States, with its principal office at 401 M Street, S.W., Washington, D.C. 20460.

45. "Watershed" or "New York City Watershed" means the drainage basins of the Catskill and Delaware and Croton Systems. Maps of the Watershed are set forth in Attachments C and D.

46. "Watershed Agricultural Council" or "WAC" means the Watershed Agricultural Council for the New York City Watershed, Inc., a not-for-profit organization with its principal place of business at NYS Route 10, Walton, New York 13856.

47. "Watershed Agricultural Easement" means a Watershed Conservation Easement, as defined below in paragraph 48, on real property in active agricultural production or designated for future agricultural production. Such easements shall allow agricultural production.

48. "Watershed Conservation Easement" means an easement, covenant, restriction or other interest in real property, created under and subject to the provisions of Article 49 of the New York Environmental Conservation Law, which limits or restricts development,

management or use of such real property for the purpose of maintaining the open space or natural condition or character of the real property in a manner consistent with the protection of water quality generally and the New York City drinking water supply specifically.

49. "Watershed Regulations" means the watershed rules and regulations applicable to the New York City Watershed which were submitted by New York City Department of Environmental Protection to the New York State Department of Health for approval pursuant to Public Health Law Section 1100 consistent with this Agreement and which are appended hereto as Attachment W.

50. "Water Supply System" means the system of reservoirs, controlled lakes, structures and facilities such as dams, tunnels, and aqueducts which collect source water for the New York City drinking water supply and transport it to the City of New York.

51. "West of Hudson" or "WOH" means the drainage basins of the specific reservoirs of the New York City Watershed located west of the Hudson River in the New York counties of Greene, Delaware, Ulster, Schoharie, and Sullivan.

52. "West of Hudson Communities" or "WOH Communities" means the municipal corporations (as defined by § 66(2) of the New York General Construction Law, but not including school districts) which are located wholly or partially within the WOH portion of the Watershed. The WOH communities are set forth below in Attachment F.

53. "WWTP" means wastewater treatment plant.



# **NEW YORK CITY WATERSHED MEMORANDUM OF AGREEMENT**

**January 21, 1997**

## **ARTICLE II NYC WATERSHED LAND ACQUISITION PROGRAM**

54. Overview.

55. Prior Permit Application Discontinued.

56. New Permit Application.

57. Processing of New Permit Application.

58. Permit Issuance.

59. Limitation on Eminent Domain.

60. Willing Buyer/Willing Seller; Solicitation.

61. Fair Market Value.

62. Duration and Schedule.

63. Natural Features Criteria: Catskill and Delaware Watershed.

64. Catskill and Delaware Watershed Acquisition Goals.

65. Catskill and Delaware Watershed Acquisition Milestones.

66. Land Acquisition Criteria: Croton Watershed.

67. Vacant Property West of Hudson.

68. Designation of Non-Acquirable Land West of Hudson.

69. Vacant Property East of Hudson.

70. Designation of Non-Acquirable Land East of Hudson.

71. Local Consultation.

72. Recreational Uses: Newly Acquired Property.

73. Recreational Uses: Currently Owned City Property.

74. City Financial Commitments for Land Acquisition
  75. Land Acquisition Segregated Account.
  76. The State's Croton Land Acquisition Program.
  77. Watershed Agricultural Easements Program Overview.
  78. Watershed Agricultural Easements Program.
  79. Real Property Taxes: Newly Acquired in Fee Under the City's Land Acquisition Program.
  80. Real Property Taxes: Watershed Conservation Easements.
  81. Limitation on Transfers to Tax Exempt Entities.
  82. Land Held in Perpetuity for Watershed Protection
  83. Conservation Easements Held in Perpetuity for Watershed Protection
  84. Acquisition Reports.
  85. Permit Conditions.
  86. Funding of Permit Programs in City Budget.
- 

## ARTICLE II NYC WATERSHED LAND ACQUISITION PROGRAM

54. Overview. This Article sets forth the elements of the New York City land acquisition program in the Watershed that will be implemented by the City. The program defined by these elements satisfies federal and New York State filtration avoidance criteria applicable to the Catskill and Delaware System. It also provides needed additional protection to the Croton System. Unless a different meaning is clearly intended by a particular provision of this Article, the term "land" (especially used in the term "land acquisition") includes fee title in real property and/or Watershed Conservation Easements on real property.

55. Prior Permit Application Discontinued. The City has withdrawn its application for a water supply permit, which was the subject of the administrative adjudicatory proceeding entitled In the Matter of the Application of New York City Department of Environmental Protection, NYSDEC Project No. 3-9903-00023/00001-9; WSA No. 9010.

56. New Permit Application. NYCDEP has submitted an application to NYSDEC for a water supply permit for the City land acquisition program set forth in this Article to acquire land in the Catskill and Delaware Watershed and in the Croton Watershed for watershed protection purposes and in furtherance of the programs set forth in the December 1993 Filtration Avoidance Determination and the new Filtration Avoidance Determination referred to in paragraph 159.

57. Processing of New Permit Application. Consistent with SEQR and the UPA, NYSDEC determined that the NYCDEP application is complete and has issued a draft water supply permit which is appended hereto as Attachment V. The comment period on the application remained open until December 6, 1996.

58. Permit Issuance. The Parties, other than NYSDEC, consent to and agree not to oppose the issuance of a final water supply permit for a land acquisition program that is consistent with this Agreement and the draft water supply permit appended hereto as Attachment V. Should entities other than the Parties request or commence administrative or civil legal proceedings, the Parties agree to support the issuance of the water supply permit by NYSDEC that is consistent with this Agreement and the draft water supply permit appended hereto as Attachment V. Should entities other than the Parties request or commence administrative or civil legal proceedings, the Parties also agree to support one another's application for full party status to support the issuance of the water supply permit by NYSDEC that is consistent with this Agreement and the draft water supply permit appended hereto as Attachment V. Such support does not require any Party to become a party to any proceeding.

59. Limitation on Eminent Domain. The City will not acquire fee title or Watershed Conservation Easements through eminent domain for purposes of the land acquisition program set forth in this Article and the water supply permit issued pursuant to paragraph 58. Nothing in this Agreement shall act as a waiver of any rights any Party may have to challenge an application by the City for a water supply permit allowing the exercise of the City's power of eminent domain. Moreover, nothing herein shall relieve the City from obtaining any necessary permits or approvals from the State of New York or complying with SEQR prior to exercising any power of eminent domain in the future.

60. Willing Buyer/Willing Seller; Solicitation. Under the City's land acquisition program, the City will acquire fee title to, or Watershed Conservation Easements on, real property in the Watershed through a willing buyer/willing seller process only. Before beginning to solicit acquisitions in a Town or Village, the City shall notify the chief elected official of the Town or Village and appropriate county that the City is commencing solicitation. At the request of a Town or Village, the City shall make a presentation describing the process the City intends to use to solicit acquisitions. West of Hudson, the City may make a joint presentation to groups of up to three Towns and/or Villages. With the consent of the involved Towns or Villages, the City may also make a joint presentation to groups of more than three Towns and/or Villages West of Hudson, or to any number of Towns and/or Villages East of Hudson. Such presentation shall also include an indication of what land is eligible for acquisition in such Town or Village (including a map of the

Town or Village reflecting the priority areas and applicable Natural Features Criteria) and the estimated acreage that the City expects to acquire. The City may solicit landowners directly except that in areas where acquisition in fee by the City has been restricted pursuant to paragraphs 68 and 70, the City may only solicit acquisition of Watershed Conservation Easements. Further, public meetings may also be held with the consent of the chief elected official of the Town or Village. The City may also receive, and act upon, unsolicited inquiries from landowners at any time.

61. Fair Market Value. The purchase price shall reflect fair market value, as determined by an independent appraisal obtained at the direction of the City and performed by an independent, certified New York State appraiser, except that the City may acquire property at less than the fair market value at a public auction or at a directly negotiated sale from a bank, other financial institution, or taxing authority in the context of a mortgage foreclosure, tax foreclosure, or legal judgment. In determining the fair market value, the City's independent appraisers will consider information from a second appraisal, provided by the owner and made at the owner's or a third party's expense, provided the second appraisal is made by a certified New York State appraiser and was completed no earlier than one year prior to the date of the City's appraisal or the later of six (6) months after the owner received the City's appraisal or six (6) months from the Effective Date of this Agreement. Upon request, the City may extend the time period for completion of a second appraisal.

62. Duration and Schedule. The water supply permit for the City's land acquisition program shall be valid for ten (10) years and shall be renewable for an additional five (5) years upon written request from the City to NYSDEC with notice to the individual members of the Executive Committee. Additional requests for extensions may be made through an application for permit modification as provided by NYSDEC regulations. The Parties retain their full legal rights with respect to such additional requests by the City. The permit will provide that the City may acquire any parcel of land, in fee or by Watershed Conservation Easement, that is eligible for acquisition. The schedule the City currently intends to follow in carrying out its land acquisition program is set forth in Attachment H for informational purposes. The City may modify the schedule without the approval of any Party other than the Primacy Agency. The City will, however, notify all Parties of any proposed changes to the schedule. The City will solicit acquisitions drainage basin by drainage basin, commencing with the priority basins in the Catskill and Delaware Watershed in 1997, including Kensico, West Branch/Boyd's Corner, Rondout and Ashokan; and the priority basins in the Croton Watershed in 1998, including New Croton, Cross River and Croton Falls. The City may, at any time, respond to direct inquiries from property owners anywhere in the Watershed.

63. Natural Features Criteria: Catskill and Delaware Watershed.

(a) The Catskill and Delaware Watershed has been divided into Priority Areas 1A, 1B, 2, 3, and 4 by the City; 1A being the highest priority. The Catskill and Delaware Watershed priority areas are as follows: 1A (sub-basins within 60-day travel time to distribution that are near intakes), 1B (sub-basins within 60-day travel time to distribution that are not

near intakes), 2 (sub-basins within terminal reservoir basins that are not within priority areas 1A and 1B), 3 (sub-basins with identified water quality problems that are not in priority areas 1A, 1B, and 2), and 4 (all remaining sub-basins in non-terminal reservoir basins). A map of the boundaries of Priority Areas 1 (1A and 1B combined), 2, 3, and 4 is set forth in Attachment I. The boundaries of Priority Area 1A in the Cannonsville, Pepacton, Neversink, Rondout, Ashokan, West Branch, and Kensico Reservoir basins are provided in Attachments K-Q.

(b) To be eligible for acquisition, land must satisfy the following criteria ("Natural Features Criteria"):

(i) Parcels in Priority Area 1A must be at least one acre in size;

(ii) Parcels in Priority Area 1B must be at least five acres in size;

(iii) Parcels in Priority Areas 2, 3, and 4 must be at least ten acres in size and must:

(A) Be at least partially located within 1,000 feet of a reservoir; or

(B) Be at least partially located within the 100-year flood plain; or

(C) Be at least partially located within 300 feet of a watercourse, as defined in the Watershed Regulations; or

(D) Contain in whole or in part a federal jurisdiction wetland greater than five (5) acres or a NYSDEC mapped wetland; or

(E) Contain ground slopes greater than fifteen percent (15%).

(c) In any priority area, adjoining parcels, including City-owned parcels, may be aggregated to meet any minimum size requirements. Notwithstanding the above, the City may acquire parcels of any size in the West Branch/Boyd's Corner and Kensico Reservoir drainage basins. Any West of Hudson Town or Village may waive the acreage requirement in priority areas 1B, 2, 3 or 4 pursuant to the procedures set forth in paragraph 68. The foregoing Natural Features Criteria shall not apply to any parcels which are part of an Acquisition and Relocation Program administered pursuant to the Hazard Mitigation Grant Program of the Federal Disaster Assistance Act.

64. Catskill and Delaware Watershed Acquisition Goals. In the Catskill and Delaware Watershed, the 1997 Filtration Avoidance Determination issued as described in paragraph 159 ("1997 FAD") will not require the City to spend at least Two Hundred One Million Dollars (\$201,000,000) to acquire at least 80,000 acres of land. Instead, the 1997 FAD will require the City to solicit, consistent with paragraph 60 above, owners of 61,750 acres of eligible land in Priority Areas 1A and 1B; 42,300 acres of eligible land in Priority Area 2; 96,000 acres of eligible land in Priority Area 3; and 155,000 acres of eligible land in Priority Area 4 for a total of 355,050 acres of eligible land. Consistent

with the conditions set forth in the protocol appended hereto as Attachment Z, the 1997 Filtration Avoidance Determination will also require that upon receipt of a positive response from a landowner to a solicitation from the City and after a field visit by the City, the City, except under certain limited situations, shall proceed through the specified series of steps, set forth in Attachment Z, to acquire an interest in such parcel if the landowner so desires.

65. Catskill and Delaware Watershed Acquisition Milestones. The 1997 FAD will require the City to annually solicit owners of the following acres of eligible land: 56,609 acres within the first year after a water supply permit is issued by NYSDEC; 51,266 acres within the second year after a water supply permit is issued by NYSDEC; 42,733 acres within the third year after a water supply permit is issued by NYSDEC; 52,846 acres within the fourth year after a water supply permit is issued by NYSDEC; 55,265 acres within the fifth year after a water supply permit is issued by NYSDEC; 48,531 acres within the sixth year after a water supply permit is issued by NYSDEC; 0 acres within the seventh year after a water supply permit is issued by NYSDEC; 47,800 acres within the eighth year after a water supply permit is issued by NYSDEC; and 0 acres within the ninth and tenth years after a water supply permit is issued by NYSDEC. Acreage will be further specified by approximation of priority acreage in each reservoir basin.

66. Land Acquisition Criteria: Croton Watershed. The Croton Watershed has been divided into Priority Areas A, B, and C; A being the highest priority. The Croton Watershed priority areas are as follows: A (New Croton, Croton Falls, and Cross River Reservoirs); B (Muscoot and portions of Amawalk and Titicus Reservoirs within 60-day travel time to distribution); C (remaining reservoir basins and sub-basins beyond 60-day travel time to distribution). A map of the boundaries of these Priority Areas is set forth in Attachment J. The City will prioritize its acquisition of lands in the Croton Watershed considering the priority of the basin in which the parcel is located, in conjunction with the natural features of the parcel that could impact water quality.

67. Vacant Property West of Hudson. Except with respect to the acquisition of a Watershed Conservation Easement or acquisition of any parcel acquired through an Acquisition and Relocation Program administered pursuant to the Hazard Mitigation Grant Program of the Federal Disaster Assistance Act, property West of Hudson may not be acquired by the City unless there are no structures other than uninhabitable dwellings or accessory structures. If the City is interested in a parcel that contains a habitable dwelling, the parcel must be subdivided so that the City only takes title to the portion of the parcel without the habitable dwelling. The subdivided parcel containing the habitable dwelling must include an adequate area for a septic field, reserve area and well. The local government will provide for subdivision review in the most expeditious time frame consistent with State and local law. If a parcel acquired in fee contains a structure other than a habitable dwelling, then during the 120 day local review period set forth in paragraph 71, the local government may direct the City to demolish such structure within one (1) year of taking title to the property.

68. Designation of Non-Acquirable Land West of Hudson. The Parties recognize that any land acquisition program designed to protect water quality should provide reasonable opportunities for growth in and around existing population centers and that local communities have an interest in policies that affect local land use. To preserve community character and to accommodate these and other important local concerns, any West of Hudson Town or Village may take the following actions:

(a) By resolution adopted within 105 days of the Effective Date of this Agreement, West of Hudson Towns and Villages may exercise their option under the water supply permit to designate parcels to be excluded from acquisition in fee by the City, but not acquisition of Watershed Conservation Easements, in the following manner:

(i) Defined hamlets and villages. A list of hamlets and villages, and a listing of the maximum acreage which may be excluded from acquisition in such hamlets, are set forth in Attachments R and S. A Town shall delineate the boundaries of an existing hamlet by designating contiguous whole tax map parcels reasonably reflective of the existing population concentrations, up to the acreage identified and set forth in Attachment R and may exclude such hamlet from acquisition in fee. A Town may designate less than whole tax map parcels in delineating the boundaries of a hamlet to the extent necessary to reflect existing population concentrations, provided the Town demonstrates that, in light of the acreage limitations in Attachment R, limiting the designation to whole tax parcels will result in a designation which excludes existing population concentrations. A Village may exclude all the land in the Village from acquisition in fee.

(ii) Each Town may also designate up to fifty (50) acres in priority areas 1B, 2, 3, or 4 as a commercial or industrial area where acquisition in fee is prohibited. The designation shall be by whole tax map parcels.

(iii) A Town may also designate tax map parcels which are located within one-quarter mile of a village abutting defined road corridors to be excluded from acquisition in fee by the City. Attachment T lists the eligible road corridors.

(b) By resolution adopted within 105 days of the Effective Date of this Agreement, a Town or Village may choose to waive the acreage requirement for Priority Areas 1B, 2, 3 and 4 throughout the Town or Village or only for those parcels located, at least partially, in a 100-year flood plain.

(c) A decision by a Town or Village, pursuant to subparagraphs (a) and (b), shall remain binding on the Town or Village until the end of the City's land acquisition program under the water supply permit unless:

(i) Between January 1 and June 30, 2001, a Town or Village reassesses its earlier decision under subparagraphs (a) and (b) and adopts a resolution rescinding or exercising its rights under subparagraph (a) and (b); and/or

(ii) Between January 1, and June 30, 2006 a Town or Village reassesses its earlier decision(s) under subparagraphs (a), (b) and (c)(i) and adopts a resolution rescinding or exercising its rights under subparagraph (a) and (b).

69. Vacant Property East of Hudson. Except with respect to the acquisition of a Watershed Conservation Easement, property East of Hudson may not be acquired by the City unless the property is uninhabited at the time the City acquires title. If the City is interested in a parcel that contains a structure that would be inhabited at the time the City acquires title, the parcel must be subdivided so that the City only takes title to the portion of the parcel without the inhabited structure.

70. Designation of Non-Acquirable Land East of Hudson. East of Hudson, property zoned commercial or industrial as of the date of the City's solicitation will be excluded from the City's acquisition program, except that the City may acquire up to five percent (5%) of the total acreage of such property within any town or village unless a Town or Village in Westchester County agrees, by resolution, to a higher percentage in such Town or Village.

71. Local Consultation. Prior to acquiring any land under the land acquisition program or Watershed Conservation Easements, other than Watershed Agricultural Easements, the City will consult with the Town or Village in which the parcel is located. The consultation will ensure that the City is aware of and considers the Town's or Village's interests and that the terms of the land acquisition program agreed to by the Parties are complied with. The City will identify for the Town or Village, and for the appropriate County if the parcels are located EOH, and for NYSDEC, the land or Watershed Conservation Easements the City seeks to acquire, any structures which may be located on the property, the City's determination of whether structures are uninhabitable or accessory, any proposed recreational uses, and any proposed fencing and signing. The City will diligently attempt to group together parcels for review by the Town or Village and to minimize the number of times it submits parcels for review, and will submit such parcels for review no more frequently than on a monthly basis. At or prior to the first submission of parcels for review in an individual Town or Village, the City shall comply with the presentation requirement in paragraph 60. The Town or Village will have 120 days to: a) review and assess the information contained in the City's submission; b) conduct public review where so desired by the Town or Village; and c) submit comments to the City. The Town or Village review may include consistency with the Natural Features Criteria; consistency with local land use laws, plans and policies; the City's designation of any structure on the property as uninhabitable or an accessory structure; the City's proposed fencing and signing, if any; and proposed recreational uses. In the event of a mortgage foreclosure, tax foreclosure or judgment sale, the City may submit a parcel for review to a Town or Village without obtaining an option or contract to purchase, and the Town or Village will use its best efforts to complete its review expeditiously in order to allow the City to submit a bid to acquire such parcel in a timely manner. The City will respond to local government comments within thirty (30) days. After responding to the local government's comments, the City may proceed immediately to acquire any parcel, provided, however, that disputes over whether a particular parcel



meets the Natural Features Criteria or whether a structure is an uninhabitable dwelling or accessory structure will be submitted to NYSDEC and will be resolved by NYSDEC within thirty (30) days. NYSDEC's decision shall be a final decision for purposes of Article 78 of the Civil Practice Law and Rules. The City will provide funds for technical consultants and in-house municipal staff to review the information provided by the City pursuant to the terms and conditions set forth in paragraph 148 of Article V.

72. Recreational Uses: Newly Acquired Property. The City will consult with NYSDEC, USEPA (for the Catskill and Delaware Watershed), the appropriate local governments, and the appropriate regional Sporting Advisory Subcommittee (as defined below) during the 120-day review period specified in paragraph 71, regarding the recreational uses the City deems appropriate on newly acquired fee property. Whatever recreational use by the public the City determines to permit on a given parcel, the City is not obligated to provide, construct, or maintain any facilities for the public. By virtue of executing this Agreement or by allowing recreational use of its property, the City does not assume any liability for the recreational use by the public of its land beyond that provided in GOL Section 9-103. Historic recreational uses, including fishing, hiking, and hunting, will be allowed to continue on newly acquired fee property, subject to rules and regulations adopted, or permits issued, by NYCDEP, provided that they neither threaten public safety nor threaten to have an adverse impact on water quality. The Parties agree that the following recreational uses are more likely to be allowed on City land, if appropriate, subject to rules and regulations adopted, or permits issued, by NYCDEP: fishing (including fishing by boat) under regulation; hiking, especially where parcels intersect State trails; snowshoeing; cross country skiing; bird watching; educational programs, nature study and interpretation; and hunting (only in certain areas under certain conditions). The following activities are not likely to be allowed on City property even if the property was historically utilized for these purposes: boating (other than for permitted fishing by boat); snowmobiling; camping; motorcycling; mountain bicycling; and horseback riding.

73. Recreational Uses: Currently Owned City Property. In consultation with NYSDEC, USEPA (for the Catskill and Delaware Watershed), the appropriate local governments, and the appropriate regional Sporting Advisory Subcommittee, the City will also undertake a comprehensive review of existing and potential recreational uses on currently owned City property. The City will submit a preliminary report, within two years of the Effective Date of this Agreement, to the Watershed Protection and Partnership Council established pursuant to Article IV of this Agreement regarding recreational uses on currently owned and newly acquired City property.

74. City Financial Commitments for Land Acquisition.

(a) The 1997 FAD will require the City to commit the sum of Two Hundred, Fifty Million Dollars (\$250,000,000) for acquisition of land in the Catskill and Delaware Watershed under the land acquisition program contemplated by this Agreement; up to Ten Million Dollars (\$10,000,000) of that sum may be used by the City to acquire Watershed Agricultural Easements on farms that have a Whole Farm Plan approved by

WAC. After five (5) years, the City, USEPA and NYSDOH will confer on the sufficiency of the Two Hundred Fifty Million Dollars (\$250,000,000) in light of the land acquisition program's progress. If the Primacy Agency determines it is necessary, the City will at that time commit up to an additional \$50 million for the Catskill and Delaware land acquisition program (any additional monies committed to such program pursuant to this sentence shall be referred to as "Supplemental Land Funds").

(b) The City commits to spend Ten Million Dollars (\$10,000,000) to acquire fee title to, or Watershed Conservation Easements on, real property in the Croton Watershed within ten years of the Effective Date of this Agreement consistent with the acquisition schedule appended hereto as Attachment H. The City agrees to spend at least ninety percent (90%) of the Ten Million Dollars (\$10,000,000) on acquisition in Westchester and Putnam Counties. The City agrees that it will seek to acquire similar amounts of land in both Westchester and Putnam Counties in the Croton system to the extent that such a result is practical and consistent with the Criteria set forth in paragraph 66.

#### 75. Land Acquisition Segregated Account.

(a) The 1997 FAD will require the City to maintain a segregated account for purposes of the land acquisition program in the Catskill and Delaware Watershed contemplated by this Agreement.

(b) The 1997 FAD shall require that the City deposit or cause to be deposited, into the segregated account, its Two Hundred Fifty Million Dollar (\$250,000,000) funding commitment for such program (as referred to in paragraph 74), in the following manner:

(i) By not later than the date the Interim Filtration Avoidance Determination is issued as described in paragraph 159 of this Agreement (the "Interim FAD"), the sum of Eighty-Eight Million Dollars (\$88,000,000) shall be deposited into the segregated account.

(ii) The balance of the \$250,000,000 commitment shall be deposited into the segregated account as follows: During the period between the issuance of the Interim FAD and December 31, 2001, the City, USEPA, and NYSDOH shall jointly review the sufficiency of funds in the segregated account at least bi-annually. Such review shall be based on the progress of the land acquisition program to date and the projected level of acquisitions over the next two-year period. If the Primacy Agency determines that additional funds are needed to ensure appropriate funding for the land acquisition program over the following two years, the City shall promptly deposit such additional funds into the segregated account.

(iii) If, as of December 31, 2001, the sum of all deposits theretofore made by the City pursuant to clauses (i) and (ii) above is less than \$250,000,000, the City shall immediately deposit the difference into the segregated account.

(iv) Any Supplemental Land Funds determined to be necessary by the Primacy Agency, pursuant to paragraph 74, shall be deposited into the segregated account in such amounts,

and at such times, as shall be decided upon by the Primacy Agency pursuant to, and in accordance with, a bi-annual review process as described in clause (ii) above.

(c) Anything in this Agreement to the contrary notwithstanding, in no event shall the City be required to deposit, in aggregate, funds into the segregated account in excess of \$300,000,000.

(d) All interest earned on funds deposited in the segregated account shall belong to the City, and the City shall not be required to spend any portion of such interest on the land acquisition program in the Catskill and Delaware Watershed contemplated by this Agreement. The City may use such interest for any lawful purpose that it, in its sole discretion, deems appropriate.

(e) The City may remove or cause to be removed funds from the segregated account only to pay for costs of the land acquisition program. The foregoing notwithstanding, if at any time the proceeds of tax-exempt bonds are deposited in the account, and bond counsel to the issuer of such bonds determines that federal or state tax laws, rules, or regulations require that such proceeds be expended within a certain time period in order to preserve the tax-exempt status of such bonds, the City may take such actions as it reasonably determines to be necessary or appropriate in order to preserve such tax-exempt status. Such actions include expenditure of such proceeds for eligible purposes, other than the land acquisition program, in order to ensure that all such proceeds are properly expended within such time period. In this situation, the City shall promptly replace all funds taken from the segregated account for other purposes.

76. The State's Croton Land Acquisition Program. The State commits to spend Seven Million Five Hundred Thousand Dollars (\$7,500,000) to acquire fee title to, or Watershed Conservation Easements on, real property in the Croton Watershed beginning in State fiscal year 1998-99 and concluding no later than calendar year 2006. The State, in consultation with the City, will identify parcels or Watershed Conservation Easements for State acquisition. Parcels shall be acquired pursuant to this paragraph only upon the mutual agreement of the State and City, and the State and City shall not unreasonably withhold such agreement. Upon acquisition by the State, the real property or Watershed Conservation Easement shall be promptly transferred by the State to the City consistent with the requirements of this Article and the draft legislation appended hereto as Attachment U. The City will be responsible for paying real property taxes or PILOTs, in accordance with the provisions of paragraphs 79 and 80, on said lands or Watershed Conservation Easements as set forth in this Agreement. The State's land acquisition under this program, and the City's participation therein, shall conform to the requirements of this Article applicable to the City's land acquisition program. The real property or Watershed Conservation Easements acquired by the State and transferred to the City shall be held in perpetuity for the protection of the Croton Watershed and the New York City drinking water supply, in accordance with the provisions of paragraphs 82 and 83.

77. Watershed Agricultural Easements Program Overview. A program to acquire Watershed Agricultural Easements would further the protection of sensitive lands based

on water quality criteria, provide added economic incentive to farmers for pollution prevention linked to Whole Farm Plans, and assist the inter-generational transfer of farm lands and operations. To be successful, a City funded Watershed Agricultural Easements program must be carried out in partnership with the WAC. The WAC will be responsible for landowner outreach and contact, identifying and implementing management practices linked to the Watershed Agricultural Easements and administering, monitoring and enforcing the terms of such easements. The WAC will work closely with NYCDEP on these tasks, as well as working with individual farmers and NYCDEP in the survey, appraisal and closing processes.

#### 78. Watershed Agricultural Easements Program.

(a) As specified in paragraph 74, the City may spend up to Ten Million Dollars (\$10,000,000) of the Two Hundred Fifty Million Dollars (\$250,000,000) committed to the Catskill and Delaware land acquisition program on a program for acquiring Watershed Agricultural Easements.

(b) If the City undertakes the program identified in subparagraph (a), the City will provide funding for the acquisition of Watershed Agricultural Easements and for Watershed Conservation Easements on non-agricultural lands under common ownership with farms from property owners who have Whole Farm Plans approved by WAC. The Watershed Conservation Easements will be acquired at fair market value as determined by an independent appraisal ordered by the City and performed by an independent, certified New York State appraiser. In determining fair market value, the City's independent appraisers will consider information from a second appraisal, provided by the property owner and made at the owner's or a third party's expense, provided the second appraisal is made by a certified New York State appraiser and was completed no earlier than one year prior to the date of the City's appraisal or no later than the later of six (6) months after the owner has received the City's appraisal or six (6) months after the Effective Date of this Agreement. Upon request, the City may extend the time period for completion of a second appraisal.

(c) The City and the WAC will jointly determine:

(i) Procedures and standards for appraising the fair market value of the proposed Watershed Agricultural Easement; and

(ii) The appropriate terms and conditions of the Watershed Agricultural Easements and Watershed Conservation Easements on non-agricultural lands under common ownership with farms owned by property owners who have Whole Farm Plans approved by WAC.

(d) The WAC, in consultation with NYCDEP, will be responsible for property owner contact and outreach for the Watershed Agricultural Program and the identification and implementation of management practices designed to enhance pollution prevention.

(e) The easements may be held either by WAC or by the City together with WAC. If held by WAC, the City shall have third party enforcement rights. In either case, the WAC shall have primary responsibility for administering, monitoring and enforcing the terms of the easements. The City and WAC shall reach an agreement on how WAC shall administer, monitor, and enforce the easements and under what circumstances the City would be allowed to step in and perform such functions, such as WAC's failure to enforce the terms of the easements. In the event WAC is dissolved, declared insolvent, or otherwise ceases to do business on an ongoing basis, all such easements shall revert to, and be enforceable by, the City. The City and WAC may agree to engage another third party, to which all such easements and enforcement responsibilities shall revert prior to reversion to the City, in the event WAC is dissolved, declared insolvent, or otherwise ceases to do business on an ongoing basis.

(f) Watershed Agricultural Easements on land qualifying for and receiving an agricultural assessment pursuant to Article 25AA of the Agriculture and Markets Law shall be exempt from real property taxation, consistent with the legislation appended hereto as Attachment U. Watershed Agricultural Easements on lands which do not receive an agricultural assessment pursuant to Article 25AA of the Agriculture and Markets Law shall be subject to real property taxation for all purposes, consistent with the legislation appended hereto as Attachment U.

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

(a) An assessing unit (applicable County, Town or Village), shall initially assess each parcel acquired pursuant to the land acquisition program set forth in this Agreement at the uniform percentage of value applied to other parcels in the assessing unit. The City will not challenge the initial assessed value of such parcel provided the initial assessed value for such parcel does not exceed the fair market value of the parcel multiplied by the latest state equalization rate or a special equalization rate for that assessing unit. For purposes of this paragraph, fair market value equals the parcel's appraised value as finally determined by the City's independent appraiser.

(b) The City will not challenge future assessments on any parcel acquired pursuant to the land acquisition program set forth in this Agreement provided that in any Town both of the following two conditions are met: (1) the rate of increase of the total assessed value of all parcels purchased by the City under the land acquisition program, as measured from the assessment roll in any year over the assessment roll of the preceding year, except in cases of county-wide or town-wide revaluations or updates as provided in paragraph (e) below, is not greater than the equivalent rate of increase in total assessed value of all non-City-owned parcels classified as forest or vacant; and (2) the ratio of the total assessed value of all parcels purchased by the City under the land acquisition program in the Town to the total assessed value of all taxable parcels in the Town does not increase from the prior year. With respect to each parcel purchased by the City, the agreement set forth in this paragraph shall last for twenty (20) years from the date of purchase.

(c) The City will not seek to have any parcels acquired pursuant to this land acquisition program consolidated for purposes of the City reducing taxes.

(d) The City shall retain its right as a property owner to challenge in court, or otherwise, assessments of parcels purchased under the land acquisition program if the provisions of paragraphs (a) and (b) are not satisfied. In any such challenge, the City will not seek to have the assessed value of the parcel reduced below the highest value which would result in the assessed value of the parcel satisfying the limitation set forth in paragraph (a) or in the total assessed value of all parcels purchased by the City under the land acquisition program in the Town satisfying the limitations set forth in paragraph (b) above.

(e) Except as provided in paragraph (c), the City retains all legal rights held by property owners with respect to any Town-wide or County-wide revaluation or update (as those terms are defined in Section 102, subdivisions (12-a) and (22) of the RPTL) currently being undertaken or which may be undertaken in the future.

#### 80. Real Property Taxes: Watershed Conservation Easements.

(a) The Parties agree to support State legislation, in the form of Attachment U, requiring City-held Watershed Conservation Easements to be taxed and authorizing transfer of State lands to the City. If the water supply permit issued pursuant to paragraph 58 and attached in draft as Attachment V is renewed or extended beyond December 31, 2016, the Parties agree to support legislation extending the term of the conservation easement legislation to be consistent with any extension of the water supply permit.

(b) The City will not acquire Watershed Conservation Easements in any given Town or Village prior to the passage of such proposed State legislation unless the City enters into an agreement to make payments in lieu of taxes ("PILOTs") with such Towns or Villages in the manner set forth in the model PILOT agreement appended to this Agreement as Attachment X which agreement shall be submitted to the applicable Villages and Towns by the City together with a letter noting the requirements of this paragraph. The Villages and Towns that are Parties to this Agreement agree to execute a PILOT agreement, appended hereto as Attachment X, with the City. If a Village or Town does not execute the PILOT agreement within ninety (90) days of submission of a signed PILOT agreement by the City, the City may acquire Watershed Conservation Easements in such Village or Town notwithstanding the absence of an executed PILOT agreement. The local consultation process set forth in paragraph 71 may run concurrently with the ninety day period for signing of the PILOT agreement, but the City may not close on a Watershed Conservation Easement prior to either the Town or Village signing the PILOT agreement or the expiration of the ninety days. A PILOT agreement executed by the City shall remain a valid contract offer as long as the City owns said easement, provided that State legislation for the taxation of such Watershed Conservation Easements is not effective. If a Town or Village executes the PILOT agreement after the ninety day period, then the City shall make PILOTs only from the effective date of the PILOT agreement, and shall not be liable for PILOTs under such agreement prior to the effective date of such agreement. In addition, the City shall not acquire any Watershed Conservation

Easements if the PILOT agreement for said Town or Village is determined to be unenforceable by any court of competent jurisdiction and if there is no State legislation providing for the taxation of Watershed Conservation Easements pursuant to paragraph 167.

(c) The City will provide to the respective Towns and Villages, as part of the local consultation process, and to the respective sellers, a generic description in plain language of the real property tax consequences to a seller arising from the City's purchase of a Watershed Conservation Easement.

81. Limitation on Transfers to Tax Exempt Entities. The City will not transfer land it acquires pursuant to this land acquisition program to a tax exempt entity unless the entity enters into a written agreement acceptable to and with the assessing unit to make payments in lieu of full real property tax and ad valorem levies to each applicable taxing entity. Consent of the assessing unit to entering into such an agreement shall not be unreasonably withheld.

82. Land Held in Perpetuity for Watershed Protection. The City will grant to NYSDEC a conservation easement that shall run with the land on all land acquired in fee under the land acquisition program to ensure that such land is held in perpetuity in an undeveloped state in order to protect the Watershed and the New York City drinking water supply. Such easement shall also provide that the Primacy Agency shall have enforcement rights or be specified as a third-party beneficiary with a right to enforce the easement. With respect to lands in Priority Areas 3, 4 or C, such easements will provide that, with the prior agreement of USEPA and NYSDOH, the City may sell such lands free of the easement restriction, in order to purchase already identified replacement lands located in a higher Priority Area. If so, the replacement lands thus acquired will similarly be subject to conservation easements. The City will not use the granting of conservation easements to reduce property tax liability on the property it acquires. In order to acquire any replacement lands during the term of the land acquisition program, the City shall comply with all of the requirements of this Article. Prior to acquiring any replacement lands after the expiration date of the land acquisition program, the City shall obtain all necessary permits and comply with SEQRA.

83. Conservation Easements Held in Perpetuity for Watershed Protection.

(a) Watershed Conservation Easements, including Watershed Agricultural Easements, acquired by or on behalf of the City under the land acquisition program set forth in this Agreement, shall be held in perpetuity in order to protect the Watershed and the New York City drinking water supply.

(b) The New York State Attorney General shall be granted full third party enforcement rights over all such Watershed Conservation Easements, including Watershed Agricultural Easements, subject to the following provisions:

(i) The City may not materially amend the express terms of the Watershed Conservation Easement without the approval of the Attorney General.

(ii) The Attorney General may bring an action to enforce a Watershed Conservation Easement in a court of competent jurisdiction provided that:

(A) Such action shall only be brought in the case of a material breach of the easement; and

(B) Before commencing such an action, the Attorney General must first notify the City and the landowner of the parcel encumbered by the Easement and give the City sixty (60) days to take appropriate action, including commencing an enforcement action; and

(C) If the City is diligently prosecuting an enforcement action, in either an administrative or judicial proceeding, the Attorney General shall not have a right to prosecute an action for the same breach of the easement.

(iii) The Attorney General shall not be given the right to inspect any property burdened by a Watershed Conservation Easement.

(c) The City shall inspect any property burdened by a Watershed Conservation Easement at least twice each year. Such inspections may include aerial inspections. The City shall provide the Attorney General with reports of all inspections.

#### 84. Acquisition Reports.

(a) The City will submit copies of its acquisition reports which are submitted to the Primacy Agency, pursuant to the Interim and 1997 FADs, to NYSDEC, and to the Watershed Protection and Partnership Council. Such reports will include the following information for all parcels and easements acquired during the reporting period: address; description of the property, including any easement; county and town where property is located; tax map number; acreage; closing date; and map of property. The acquisition report shall also contain cumulative totals of acreage solicited and acreage acquired identified by Town and Priority Area. The Watershed Protection and Partnership Council shall review such reports and may make recommendations on the adequacy of the land acquisition program to the Primacy Agency. The Council may not recommend that the City increase its financial commitment to the land acquisition program, without the City's consent.

(b) The State will submit annual progress reports on its Croton land acquisition program within thirty (30) days of the end of each State fiscal year to the Watershed Protection and Partnership Council. Such reports will contain the following information for all parcels and easements acquired during the previous fiscal year: address; description of the property, including any easement; county and town where property is located; tax map number; acreage; closing date; and map of property. The acquisition report shall also contain cumulative totals of acreage acquired identified by Town and Priority Area and



money spent. The Watershed Protection and Partnership Council shall review such reports and may make recommendations on the adequacy of the land acquisition program to the State.

#### 85. Permit Conditions.

(a) In order, in part, to provide additional security for the agreements set forth in Article V, the water supply permit for the land acquisition program issued pursuant to paragraph 58 shall be conditioned on the City executing and maintaining valid and enforceable program contracts which include the terms and conditions required by Article V of this Agreement for the following programs: Catskill Watershed Corporation Funding (paragraph 120); SPDES Upgrades (paragraph 121); New Sewage Treatment Infrastructure Facilities (paragraph 122); Septic System Rehabilitations and Replacements (paragraph 124); Stormwater Retrofits (paragraph 125); Sand and Salt Storage Facilities (paragraph 126); WOH Future Stormwater Controls (paragraph 128); Alternate Design Septic Systems (paragraph 129); Public Education (paragraph 131); WOH Economic Development Study (paragraph 134); Catskill Fund for the Future (paragraph 135); Tax Consulting Fund (paragraph 136); Funding of the Watershed Protection and Partnership Council (paragraph 137); Watershed Planning in the Croton System (paragraph 138); Sewage Diversion Feasibility Studies (paragraph 139); EOH Water Quality Investment Program (paragraph 140); Upgrades to Existing WWTPs (paragraph 141); Phosphorus Controls in Cannonsville (paragraph 144); Payment of Costs and Expenses (paragraph 146); Good Neighbor Payments (paragraph 147); and Local Consultation on Land Acquisition (paragraph 148). For purposes of this paragraph, a Valid and Enforceable Program Contract shall mean a contract (i) for which the City has appropriated sufficient funds to allow it to make payments as they become due and owing; (ii) which has been registered pursuant to section 328 of the City Charter; and (iii) which remains in full force and effect and enforceable under applicable law during the term required by this Agreement ("Valid and Enforceable Program Contract"). A failure by the City to comply with the permit condition requiring a Valid and Enforceable Program Contract for a program shall not be a violation of the permit if (i) the City continues to make timely payments for the program in accordance with the terms of this Agreement and the applicable program contract or (ii) the City has properly terminated the contract pursuant to the terms thereof and the City complies with its obligation to continue to fund or complete the subject program. For purposes of this paragraph, a payment to be made by the City shall not be considered made to the extent such payments are required to be refunded to the City.

(b) The water supply permit shall provide that, except where payment under a program is suspended pursuant to paragraphs 155, 156, or 157 below, the City shall not acquire title to land or Watershed Conservation Easements on land (hereinafter referred to as "Restrictions") as described below in subparagraphs (i), (ii) and (iii) if (1) the City has not appropriated funds for one or more of the programs listed below and thereafter the City fails to make a payment that would otherwise be due and owing under a contract for such unappropriated program and (2) the City has not cured the failure to make such payment within 30 days of the date the payment was due and owing. For purposes of this

subparagraph only, a failure to make a payment shall be deemed cured if the City makes such payment, with interest at 9% compounded annually from the date such payment was due and owing.

(i) The programs for which such failure to make payment and to timely cure late payment shall lead to Restrictions to the water supply permit with respect to acquisitions West of Hudson under this subparagraph are: Catskill Watershed Corporation Funding, but only for City fiscal year 1997 (paragraph 120); SPDES Upgrades (paragraph 121); New Sewage Treatment Infrastructure Facilities (paragraph 122); Septic System Rehabilitations and Replacements (paragraph 124); Stormwater Retrofits (paragraph 125); Sand and Salt Storage Facilities (paragraph 126); WOH Future Stormwater Controls (paragraph 128); Alternate Design Septic Systems (paragraph 129); Public Education, but only for City fiscal year 1997 (paragraph 131); WOH Economic Development Study, but only for City fiscal year 1997 (paragraph 134); Catskill Fund for the Future, but only for City fiscal year 1997 (paragraph 135); Tax Consulting Fund, but only for City fiscal year 1997 (paragraph 136); and Phosphorus Controls in Cannonsville (paragraph 144).

(ii) The programs for which such failure to make payment and to timely cure late payment shall lead to Restrictions to the water supply permit with respect to acquisitions East of Hudson under this subparagraph are: Watershed Planning in the Croton System, but only for City fiscal year 1997 (paragraph 138); Sewage Diversion Feasibility Studies (paragraph 139); and EOH Water Quality Investment Program (paragraph 140).

(iii) The programs for which such failure to make payment and to timely cure late payment shall lead to Restrictions to the water supply permit for the entire watershed under this subparagraph are: Funding of the Watershed Protection and Partnership Council, but only for City fiscal year 1997 (paragraph 137); Upgrades to Existing WWTPs (paragraph 141); Payment of Costs and Expenses (paragraph 146); Good Neighbor Payments (paragraph 147); and Local Consultation on Land Acquisition (paragraph 148).

(c) The water supply permit shall provide that, except where payment under a program is suspended pursuant to paragraphs 155, 156 or 157 below, and except as provided in subparagraph (b) above, the City shall not acquire title to land or Watershed Conservation Easements on land (hereinafter referred to as "Restrictions") as described below in subparagraphs (i), (ii) and (iii) if (1) for one or more of the programs listed below, the City does not have a Valid and Enforceable Program Contract during the term required by this Agreement and thereafter the City fails to make a payment that would otherwise be due and owing under such invalid or unenforceable contract and (2) the City has not cured the failure to make such payment within eight (8) months of the date the payment would otherwise have been due and owing. The eight (8) month period is intended to provide the City with time to attempt to resolve the matter which caused the program contract to become invalid and unenforceable without interruption to the land acquisition program. For purposes of this subparagraph only, a failure to make a payment shall be

deemed cured if the City makes such payment, with interest at 6.5% compounded annually from the date such payment was due and owing.

(i) The programs for which such failure to make payment or to timely cure late payment shall lead to Restrictions to the water supply permit with respect to acquisitions West of Hudson under this subparagraph are: Catskill Watershed Corporation Funding (paragraph 120); SPDES Upgrades (paragraph 121); New Sewage Treatment Infrastructure Facilities (paragraph 122); Septic System Rehabilitations and Replacements (paragraph 124); Stormwater Retrofits (paragraph 125); Sand and Salt Storage Facilities (paragraph 126); WOH Future Stormwater Controls (paragraph 128); Alternate Design Septic Systems (paragraph 129); Public Education (paragraph 131); WOH Economic Development Study (paragraph 134); Catskill Fund for the Future (paragraph 135); Tax Consulting Fund (paragraph 136) and Phosphorus Controls in Cannonsville (paragraph 144).

(ii) The programs for which such failure to make payment and to timely cure late payment shall lead to Restrictions to the water supply permit with respect to acquisitions East of Hudson under this subparagraph are: Watershed Planning in the Croton System (paragraph 138); Sewage Diversion Feasibility Studies (paragraph 139); and EOH Water Quality Investment Program (paragraph 140).

(iii) The programs for which such failure to make payment and to timely cure late payment shall lead to Restrictions to the water supply permit with respect to acquisitions for the entire watershed under this subparagraph are: Funding of the Watershed Protection and Partnership Council (paragraph 137); Upgrades to Existing WWTPs (paragraph 141); Payment of Costs and Expenses (paragraph 146); Good Neighbor Payments (paragraph 147); and Local Consultation on Land Acquisition (paragraph 148).

(d) If the water supply permit is Restricted under this paragraph 85, the City shall not acquire title to land or Watershed Conservation Easements on land under the permit until, with respect to the program for which the failure to pay led to the Restrictions, the City has made all missed payments which the City failed to pay and which would otherwise be due and owing except that the City failed to maintain a Valid and Enforceable Program Contract, as provided in subparagraphs (b) and (c), as well as interest on such missed payments at the rate set forth in subparagraphs (b) or (c), whichever is applicable.

(e) The following process shall govern Restrictions on the City's acquisition of an interest in land or Watershed Conservation Easements on land pursuant to the water supply permit under this paragraph 85.

(i) The City shall notify in writing NYSDEC, the individual members of the Executive Committee, and the CW Corporation as soon as practicable of the commencement of any litigation seeking to invalidate one or more program contracts or this Agreement. The purpose of the notice is to provide the Parties at the earliest possible point in the litigation an opportunity to discuss such dispute. Additionally, the City will keep such Parties advised of the status of the litigation.

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

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

(f) Notwithstanding any provision in this Agreement to the contrary, the City agrees herein to comply with its obligations under the conditions of the water supply permit identified in subparagraphs (b) and (c) above and during the term of such permit and any renewal thereof, to refrain from seeking a modification to the permit which would authorize the City to acquire title to land or Watershed Conservation Easements on land while the conditions set forth in subparagraph (b) and (c) are met.

86. Funding of Permit Programs in City Budget. During the term of the water supply permit, the City shall notify NYSDEC and the Executive Committee each City fiscal year as to whether the City budget for that fiscal year includes sufficient funding to allow the City to meet its financial obligations for the programs listed in paragraph 85 for such

fiscal year. The City will provide such notification within 30 days of the beginning of the fiscal year. Failure to provide such notice shall not be grounds for suspending the permit.

## NEW YORK CITY WATERSHED MEMORANDUM OF AGREEMENT

January 21, 1997

### ARTICLE III NYC WATERSHED REGULATIONS

87. Submission of Watershed Regulations.
88. NYSDOH Approval
89. City CAPA Promulgation.
90. NYSDOH SAPA Promulgation.
91. Non-material Revisions.
92. Waiver of Rights Regarding Approval and Promulgation.
93. Septic System Delegation.
94. Stormwater Project Review Committees
95. Review of Proposed Croton Plan.
96. Review of Modified Croton Plan.

---

### ARTICLE III NYC WATERSHED REGULATIONS

87. Submission of Watershed Regulations. NYCDEP has submitted to NYSDOH, pursuant to Section 1100 of the PHL, the proposed Watershed Regulations which were negotiated and agreed to by the Parties and are attached hereto as Attachment W, together with all the necessary SEQR documentation to enable NYSDOH to approve such Regulations pursuant to the Public Health Law. NYSDOH has issued a SEQR Findings Statement with respect to the proposed Watershed Regulations.

88. NYSDOH Approval. Within two (2) business days of the Effective Date of this Agreement, NYSDOH will approve the proposed Watershed Regulations pursuant to Section 1100 of the PHL, as set forth in and in accordance with Attachment RR. Such approval shall provide that the City's failure to comply with the terms and conditions of the approval shall not constitute grounds for reversal of the approval. However, NYSDOH may enforce compliance with such terms and conditions. NYSDOH's approval of the Watershed Regulations shall provide that the approval will be effective only after:

(a) The City has registered fully executed program contracts pursuant to section 328 of the City Charter which include the terms and conditions required by Article V of this Agreement for the following programs: Catskill Watershed Corporation Funding (paragraph 120); SPDES Upgrades (paragraph 121); New Sewage Treatment Infrastructure Facilities (paragraph 122); Septic System Rehabilitations and Replacements (paragraph 124); Stormwater Retrofits (paragraph 125); Sand and Salt Storage Facilities (paragraph 126); WOH Future Stormwater Controls (paragraph 128); Alternate Design Septic Systems (paragraph 129); Public Education (paragraph 131); WOH Economic Development Study (paragraph 134); Catskill Fund for the Future (paragraph 135); Tax Consulting Fund (paragraph 136); Funding of the Watershed Protection and Partnership Council (paragraph 137); Watershed Planning in the Croton System (paragraph 138); Sewage Diversion Feasibility Studies (paragraph 139); EOH Water Quality Investment Program (paragraph 140); Upgrades to Existing WWTPs (paragraph 141); Payment of Costs and Expenses (paragraph 146); Good Neighbor Payments (paragraph 147); and Local Consultation on Land Acquisition (paragraph 148); and

(b) The City has paid in full the first payment due and owing for each of the following programs under this Agreement and the program contract for such program: Catskill Watershed Corporation Funding (paragraph 120); Septic System Rehabilitations and Replacements (paragraph 124); WOH Future Stormwater Controls (paragraph 128); Alternative Design Septic Systems (paragraph 129); Catskill Fund for the Future (paragraph 135); Tax Consulting Fund (paragraph 136); Funding of the Watershed Protection and Partnership Council (paragraph 137); EOH Water Quality Investment Program (paragraph 140); Payment of Costs and Expenses (paragraph 146) (but only in the amount for which an invoice is submitted in form and substance acceptable to the City within fifteen days of the Effective Date); and Good Neighbor Payments (paragraph 147). The City shall notify NYSDOH after it has made such first full payments. Within two business days of receiving notice from the City, NYSDOH shall notify the other Parties by mail or fax that the City has made such full payment and, if applicable, that Watershed Regulations have become effective. In the case of the EOH Water Quality Investment Program (paragraph 140) the term first payment shall mean the entire amount to be funded under such program. In the case of the Good Neighbor Payments (paragraph 147), the term first payment shall mean the entire amount to be funded under such program except for any amounts payable to Dutchess County municipalities or to EOH Municipal Parties pursuant to paragraph 147(d).

89. City CAPA Promulgation. Once NYSDOH approves the Watershed Regulations, NYCDEP will complete its CAPA process by publishing the Watershed Regulations in the City Record, in accordance with CAPA, and will comply with the requirements of the Public Health Law by publishing the Watershed Regulations in newspapers with a distribution in the Watershed counties. After the Watershed Regulations are duly approved by NYSDOH and promulgated by the City pursuant to CAPA and the PHL, and after the City registers contracts and makes first payments and notifies NYSDOH of such payments as specified in paragraph 88, the Regulations will be effective and enforceable throughout the Watershed. While the Parties agree that these Regulations will become

effective after the City complies with Section 1100 of the PHL, completes the CAPA process and after the City registers contracts and makes first payments as specified in paragraph 88, they reserve their rights to assert otherwise with respect to future rulemakings under CAPA or SAPA.

#### 90. NYSDOH SAPA Promulgation.

(a) No later than sixty (60) days after the Effective Date of this Agreement, NYCDEP will submit to NYSDOH all necessary SAPA documentation to enable NYSDOH to file and publish a Notice of Proposed Rulemaking with respect to the proposed Watershed Regulations. Within ninety (90) days of the Effective Date of this Agreement, NYSDOH shall file with the New York Secretary of State a Notice of Proposed Rulemaking with respect to such Regulations pursuant to § 202 of SAPA, proceed to schedule a hearing date or dates which will be set forth in the Notice of Proposed Rulemaking, and thereafter promulgate, provided that the City has complied with the conditions for approval set forth in paragraph 88, in accordance with SAPA and Section 1100 of the PHL, the Watershed Regulations to replace the current Part 128 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York, provided however, that if NYSDOH, in consultation with the City, determines that completion of the SAPA rulemaking process for the Watershed Regulations will, or is likely to, result in there being no enforceable regulations adopted under section 1100 of the Public Health Law for the Watershed, it shall suspend the SAPA rulemaking process. The SAPA rulemaking process will remain suspended until NYSDOH, in consultation with the City, determines that completion of the SAPA rulemaking process for the Watershed Regulations is not likely to result in there being no enforceable regulations adopted under section 1100 of the Public Health Law for the Watershed or until NYSDOH and the City otherwise agree that the SAPA process should be re-instituted.

(b) If, upon the close of the SAPA public comment period, NYSDOH determines that it is necessary to revise the Watershed Regulations previously approved by NYSDOH, it shall, within 30 days of the close of the public comment period, convene a meeting of the City, the State, USEPA, the Coalition, Putnam County, Westchester County and the Environmental Parties to review the proposed revisions. Such Parties thereupon agree that they will, in good faith, seek to resolve any dispute over such change, consistent with the purposes of this Agreement, within such thirty (30) day period, or within an extended period agreed upon by all such Parties.

(i) If all such revisions are non-material (as defined in paragraph 91), the City shall promptly commence and complete an administrative proceeding under CAPA to incorporate the revisions into the Watershed Regulations as promulgated by the City under CAPA. The NYSDOH shall simultaneously complete its promulgation of the Watershed Regulations as State law under SAPA in the shortest timeframe permitted by SAPA.

(ii) If, however, any revision proposed by the NYSDOH is material, the City may choose either to repromulgate the Watershed Regulations under CAPA incorporating the



NYSDOH's revisions, or, alternatively, to leave the Watershed Regulations in place as promulgated by the City under CAPA. If the City chooses to leave the Watershed Regulations in place, the Parties agree that the Watershed Regulations promulgated by the City under CAPA shall remain in full force and effect and shall be enforceable in the Watershed. Notwithstanding any other provision of this Agreement, each of the Parties reserves the right to seek judicial review of any material change made under this subparagraph (b) in the Watershed Regulations as promulgated by NYSDOH pursuant to SAPA or by the City pursuant to CAPA.

91. Non-material Revisions. As used in paragraph 90, a "non-material" revision to the Watershed Regulations approved by NYSDOH shall mean a revision which:

(a) Corrects any typographical or similar error; or

(b) Clarifies an ambiguity without changing the substance of, or reducing or increasing the level of protection afforded to the Watershed by, the provision of the Watershed Regulations in question; or

(c) Is necessary in order to comply with the requirements of SAPA, provided that the revision does not change the substance of, or reduce or increase the level of protection afforded to the Watershed by, the provision of the Watershed Regulations in question.

92. Waiver of Rights Regarding Approval and Promulgation. Except as provided in paragraph 176(c), the Parties hereby waive their respective rights to all administrative and legal proceedings concerning NYSDOH approval and NYSDOH and NYCDEP promulgation of the Watershed Regulations as set forth in Attachment W or with such revisions as are agreed to by the Parties. Should entities other than the Parties request or commence administrative or legal proceedings, the Parties agree to actively support the approval and promulgation by the NYSDOH and NYCDEP of the Regulations which are set forth in Attachment W or with such revisions that are agreed to by the Parties.

93. Septic System Delegation.

(a) At the option of the relevant County Health Department, the City shall enter into separate agreements pursuant to Subchapter G of the Watershed Regulations with Putnam County Health Department, Ulster County Health Department, and Westchester County Health Department to delegate to such County Health Department administration of Section 18-38 of the Watershed Regulations with respect to the review and approval of certain new subsurface sewage treatment systems proposed for the portion of the Watershed within the respective County, in accordance with the terms and conditions set forth in the proposed delegation agreement executed concurrently with this Agreement and appended hereto as Attachment BB. At the option of Schoharie County, the City shall also enter into an agreement pursuant to Subchapter G of the Watershed Regulations with the Schoharie County Health Department to delegate to the Schoharie County Health Department administration of section 18-38 of the Watershed Regulations under terms and conditions similar to those contained in the proposed delegation agreements

appended as Attachment BB. The City shall reimburse each County Health Department for its incremental costs and expenses in administering the delegated program beyond the activities required by County or NYSDOH regulations and standards pursuant to the terms agreed to in the delegation agreement. If any of the other Counties in the Watershed has or establishes a County Health Department with a NYSDOH certified program to review and approve subsurface sewage treatment systems, or contracts with an existing County Health Department with such a program, such County Health Department may apply to NYCDEP for delegation of NYCDEP's authority to review and approve new subsurface sewage treatment systems in that portion of the Watershed that is within the County. NYCDEP shall consider such application in accordance with Subchapter G of the Watershed Regulations and the above-referenced agreements giving due consideration to the relative experience of each applicant agency in reviewing and approving subsurface sewage treatment systems.

(b) In case of disagreement between NYCDEP and a County Health Department regarding the review and approval of a subsurface sewage treatment system undergoing joint review and approval pursuant to a delegation agreement, NYSDOH or NYSDEC, whichever has jurisdiction over the subsurface sewage treatment system, shall act as mediator as provided in such agreement. As mediator, NYSDOH or NYSDEC, as the case may be, shall attempt to resolve any technical or interpretive disputes between NYCDEP and the County Health Department within 15 days of submission of the dispute to NYSDOH or NYSDEC. In the event that a mutually acceptable resolution cannot be reached within 15 days, both NYCDEP and the County Health Department retain their independent review and approval authority.

#### 94. Stormwater Project Review Committees.

(a) The City will establish review committees to assist in the implementation of subdivisions 18-39(b), (c) and (d) of the Watershed Regulations (the "Stormwater Project Review Committees"). The Stormwater Project Review Committees shall function in accordance with subdivision 18-39(d) of the Watershed Regulation and this paragraph.

(b) Within 15 days after the Effective Date of this Agreement, NYCDEP, NYSDEC, each County Health Department or, if there is no County Health Department, the County Soil Conservation District, and each Town shall each designate, by name or title, by written notice to the other members of the committee their respective representatives to the Stormwater Project Review Committee for each Town in the Watershed. If the Town does not designate a representative within 15 days, the County Planning Department may designate a representative. However, a Town may at any time designate a representative to replace one designated by the County Planning Department. Representatives may be changed at any time by written notice to the members of the appropriate Stormwater Project Review Committee at least 15 days prior to the change.

95. Review of Proposed Croton Plan. If NYCDEP and the Counties and municipalities participating in the development of a Comprehensive Croton System Water Quality Protection Plan ("Croton Plan") pursuant to Section 18-82 of the Watershed Regulations

do not reach an agreement on the Croton Plan, then participating Counties and municipalities may refer the proposed Croton Plan to the East of Hudson Advisory Committee of the Watershed Protection and Partnership Council created pursuant to paragraph 108 below. The EOH Advisory Committee may then refer the proposed Croton Plan to the Executive Committee of the Partnership Council as provided for in paragraph 105(e) below. NYCDEP shall agree to the Croton Plan recommended by the Executive Committee, provided that the Executive Committee may not recommend that the City agree to a Croton Plan that imposes additional financial obligations on the City without the City's consent. For purposes of SEQR, NYCDEP's determination on the Croton Plan, not the Executive Committee's recommendation to NYCDEP, shall be considered a final decision.

96. Review of Modified Croton Plan. If any County or municipality which has agreed to the Croton Plan proposes to modify the Plan and if NYCDEP determines that the Croton Plan, as modified and taken as a whole, does not meet the overall goals of the Croton Plan as required by Section 18-82 of the Watershed Regulations, then the participating Counties or municipalities may refer the modified Croton Plan to the East of Hudson Advisory Committee. The EOH Advisory Committee may then refer the modified Croton Plan to the Executive Committee of the Partnership Council as provided for in paragraph 105(e) below. NYCDEP shall agree to any modifications to the Croton Plan recommended by the Executive Committee, provided that the Executive Committee may not recommend that the City agree to a Croton Plan that imposes additional financial obligations on the City without the City's consent. For purposes of SEQR, NYCDEP's determination on the Croton Plan, not the Executive Committee's recommendation to NYCDEP, shall be considered a final decision.

## **NEW YORK CITY WATERSHED MEMORANDUM OF AGREEMENT**

**January 21, 1997**

### **ARTICLE IV NYC WATERSHED PROTECTION AND PARTNERSHIP COUNCIL AND OTHER PARTNERSHIP COMMITTEES**

97. Watershed Protection and Partnership Council. Intent.
98. Watershed Protection and Partnership Council. Structure.
99. Watershed Protection and Partnership Council. Committees.
100. Watershed Protection and Partnership Council. Membership.
101. Watershed Protection and Partnership Council. Functions.
102. Watershed Protection and Partnership Council. Terms of Office.
103. Watershed Protection and Partnership Council. Committees and Subcommittees. Meetings.
104. Watershed Protection and Partnership Council. Executive Committee. Membership.
105. Watershed Protection and Partnership Council. Executive Committee. Functions.
106. Watershed Protection and Partnership Council. Executive Committee. Terms of Office.
107. Watershed Protection and Partnership Council. Executive Committee. Review of Objections.
108. Watershed Protection and Partnership Council. East of Hudson Advisory Committee. Membership.
109. Watershed Protection and Partnership Council. East of Hudson Advisory Committee. Functions.
110. Watershed Protection and Partnership Council. East of Hudson Advisory Committee. Terms of Office.
111. Watershed Protection and Partnership Council. Technical Advisory Committee. Membership.

112. Watershed Protection and Partnership Council. Technical Advisory Committee. Functions.

113. Watershed Protection and Partnership Council. Technical Advisory Committee. Terms of Office.

114. Watershed Protection and Partnership Council. Technical Advisory Committee. Meetings; Quorum; Quorum for Approvals.

115. Watershed Protection and Partnership Council. East of Hudson Sporting Advisory Committee. Membership.

116. Watershed Protection and Partnership Council. East of Hudson Sporting Advisory Committee. Functions.

117. Catskill Watershed Corporation. Creation and Membership.

118. Catskill Watershed Corporation. Functions.

---

#### ARTICLE IV NYC WATERSHED PROTECTION AND PARTNERSHIP COUNCIL AND OTHER PARTNERSHIP COMMITTEES

97. Watershed Protection and Partnership Council. Intent. The Parties agree to create a Watershed Protection and Partnership Council ("Council" or "WPPC") to aid in the protection of drinking water quality and the economic vitality of the Watershed communities. The Council will represent a broad-based diverse group of interests that share the common goal of protecting and enhancing the environmental integrity of the Watershed and the social and economic vitality of the Watershed communities.

98. Watershed Protection and Partnership Council. Structure. In fulfillment of the intent of the Parties, there is hereby created a Watershed Protection and Partnership Council. The Council shall consist of twenty-seven (27) members: sixteen (16) members constituting an Executive Committee and eleven (11) additional members as set forth in paragraph 100. The Parties agree that, although not public bodies as defined by section 102 of the Open Meetings Law, the Council, the Executive Committee, the East of Hudson Advisory Committee, the Technical Advisory Committee and the East of Hudson Sporting Advisory Committee shall conduct meetings consistent with sections 103, 104, 105 and 106 of the New York State Open Meetings Law. The Parties further agree that section 87 of the New York State Freedom of Information Law (entitled "access to agency records") is applicable to records kept by the Council, the Executive Committee, the East of Hudson Advisory Committee, the Technical Advisory Committee and the East of Hudson Sporting Advisory Committee.

99. Watershed Protection and Partnership Council. Committees. There is hereby created: an East of Hudson Advisory Committee consisting of eleven (11) members; a Technical Advisory Committee consisting of fourteen (14) members; and an East of Hudson Sporting Advisory Committee consisting of ten (10) members, each of which shall report to the Executive Committee. Additionally, at the request of any member of the Executive Committee, the CW Corporation, established pursuant to paragraph 117, may convene a subcommittee of appropriate constitution and duration to respond to the Executive Committee member's request. Any subcommittee formed by the CW Corporation, at the request of the Executive Committee or pursuant to paragraph 118(e), shall include representatives of the City, State, USEPA, Environmental Parties, and business community. The balance of the CW Corporation subcommittee membership shall be made up of five (5) WOH Community members. Additionally, any Executive Committee member may attend a subcommittee meeting convened by CW Corporation under this paragraph.

100. Watershed Protection and Partnership Council. Membership.

(a) The Council shall consist of twenty-seven (27) members, as follows:

(i) An Executive Committee of sixteen members (16) whose membership is set forth in paragraph 104 below;

(ii) One (1) additional member appointed by the Mayor to represent the business community of the City;

(iii) Four (4) additional ex-officio members: the Commissioners of the New York State Department of Agriculture & Markets, New York State Department of Economic Development, the New York State Secretary of State, and the President of the New York City Economic Development Corporation;

(iv) One (1) member appointed by the temporary president of the New York State Senate;

(v) One (1) member appointed by the speaker of the New York State Assembly;

(vi) One (1) member appointed by the speaker of the New York City Council;

(vii) One (1) additional member appointed by the Westchester County Executive to represent the residents of Westchester County that are consumers of the New York City water supply;

(viii) One (1) member appointed by the Dutchess County Executive; and

(ix) One (1) additional member appointed by the Environmental Parties to represent the environmental community.

(b) Each ex-officio member may designate an employee to act on the member's behalf.

(c) The members or their representatives, except those who serve ex-officio or are employees of the state or federal government or New York City, will be reimbursed for actual and necessary expenses incurred in the performance of their duties.

(d) Each voting member will have one full vote.

(e) The Chairperson of the Council shall be chosen by a majority vote of the Council.

101. Watershed Protection and Partnership Council. Functions. The Council will have the power to:

(a) Serve as a forum for the exchange of views, concerns, ideas, information, and recommendations relating to Watershed protection and environmentally responsible economic development. Such recommendations shall be given due consideration by the organization receiving such recommendations but shall not be binding upon such organization;

(b) Periodically review and assess efforts undertaken by governments and private parties to protect the Watershed; and

(c) Solicit input from governmental agencies, private organizations, or persons with an interest in the Watershed and the New York City drinking water supply.

102. Watershed Protection and Partnership Council. Terms of Office. The Council members shall have the following terms of office:

(a) The terms of office for the Executive Committee members as established in subparagraph 106 below.

(b) The member first appointed by the Mayor to represent the business community shall serve a term of two (2) years.

(c) The member first appointed by the temporary president of the New York State Senate shall serve a term of three (3) years.

(d) The member first appointed by the speaker of the New York State Assembly shall serve a term of two (2) years.

(e) The member first appointed by the speaker of the New York City Council shall serve a term of four (4) years.

(f) The member first appointed by the Environmental Parties shall serve a term of two (2) years.

(g) Upon expiration of the terms of the members first appointed pursuant to subparagraphs (b) through (f), all other appointments shall be for a period of four (4) years.

(h) All other members, including ex-officio members, of the Council shall be appointed for an indefinite term at the will of the appointing authority.

(i) Each member appointed to the Council shall hold office for the term for which he or she was appointed and until his or her successor is appointed and taken office in his or her stead or until he or she shall resign or be removed in the manner provided by law.

(j) In the event of a vacancy of the office of any member, such vacancy shall be filled for the balance of the unexpired term, if applicable, in the same manner as the original appointment.

#### 103. Watershed Protection and Partnership Council. Committees and Subcommittees. Meetings.

(a) The Council and each of its committees and subcommittees shall meet at least annually, keep a record of all its proceedings, and determine the rules of its own procedure.

(b) Special meetings of the Council and any of its committees and subcommittees may be called by the Chairperson of the respective Council, committee or subcommittee upon his or her own initiative and must be called by him or her upon receipt by him or her of a written request thereof signed by one-third of the voting members of the respective Council, committee or subcommittee. Except as provided below, at least seven (7) days prior to each special meeting, the Chairperson of such Council, committee or subcommittee shall provide written notice to each member of the Council, committee or subcommittee of the time, place, and purpose of such meeting. At least two (2) days prior to each special meeting, the Chairperson of the Executive Committee shall provide written notice to each member of the Executive Committee of the time, place, and purpose of such meeting.

(c) Two-thirds of the voting members of the Council, committees, or subcommittees shall constitute a quorum for the transaction of any business, at both regular and special meetings.

(d) Each recommendation or decision made by the Council, committee or subcommittee shall be effected by the affirmative vote of a majority of the voting members of such Council, committee, or subcommittee.

#### 104. Watershed Protection and Partnership Council. Executive Committee. Membership.

(a) There is hereby established within the Council an Executive Committee that shall consist of sixteen (16) members, as follows:



(i) Two (2) members appointed by the Governor: one (1) of whom will be an employee of the Governor's Office; and one (1) to represent the business community interests of the West of Hudson Watershed and the East of Hudson Watershed;

(ii) Two (2) members appointed by the Mayor: one (1) of whom will be a City employee to represent the Mayor's Office; and one (1) to represent the rate paying consumers of the City drinking water supply;

(iii) Three (3) members chosen by the WOH members appointed to the CW Corporation pursuant to paragraph 117(c) to represent the WOH Watershed Communities. No more than one of such members shall be chosen from any one county in the West of Hudson Watershed;

(iv) One (1) member appointed by the Westchester County Executive to represent the EOH Watershed Communities located in Westchester County;

(v) One (1) member appointed by the Putnam County Executive, subject to confirmation by the Putnam County Legislature, to represent the EOH Watershed Communities located in Putnam County;

(vi) One (1) member appointed by the Environmental Parties to represent the environmental community;

(vii) Four (4) ex-officio members: the Commissioners of NYSDEC, NYSDOH, NYCDEP, and NYCDOH; and

(viii) Two (2) ex-officio, non-voting members: the USEPA Region II Administrator and the chairperson of WAC.

(b) Each ex-officio member may designate an employee to act on the member's behalf.

(c) The members or their representatives, except those who serve ex-officio or are employees of the state or federal government or New York City, will be reimbursed for actual and necessary expenses incurred in the performance of their duties.

(d) Each voting member will have one full vote.

(e) The Chairperson of the Executive Committee shall be chosen by a majority vote of the Executive Committee.

105. Watershed Protection and Partnership Council. Executive Committee. Functions. The Executive Committee of the Council will have the power to:

(a) Serve as a forum where disputes between the Parties may be referred and resolved;

(b) Establish committees and subcommittees and oversee the recommendations, receive reports, and supervise the work of its committees and subcommittees and establish procedures for public notice and opportunity for public participation in respect to the activities of such committees and subcommittees;

(c) Commence a review, on the fifth anniversary of the Effective Date of this Agreement, of: the implementation of the Watershed Regulations as set forth in Attachment W; the Watershed land acquisition program as set forth in Article II; any comprehensive water quality monitoring programs in the Watershed; and any Watershed Protection and Partnership Programs set forth in Article V. The Executive Committee shall solicit input from the public. Within six (6) months of commencing the review, the Executive Committee shall vote to recommend to the City, State, and Primacy Agency whether such Watershed protection plans and programs should be modified. With respect to any recommendations made concerning a modification to any of the Watershed Protection and Partnership Programs set forth in Article V, the Executive Committee shall not recommend that the City or State increase its funding commitment to such program. However, the Executive Committee may consider recommending a re-apportionment of the funding to a particular Watershed Protection and Partnership Program provided that such re-apportionment does not increase the overall funding commitment of the City or State. The Executive Committee can consider any federal funding available for such Watershed protection plans and programs in the development of its recommendations. The City, State, and Primacy Agency shall give due consideration to such recommendations.

(d) Commence a review, at least two (2) months prior to the fifth anniversary of the effective date of the Watershed Regulations, of the effectiveness of the pilot off-set program for WWTPs in phosphorus restricted basins set forth in Sections 18-82(g) and 18-83(a) of the Watershed Regulations. Within two (2) months of commencing the review the Executive Committee shall make a recommendation to NYSDOH and the City regarding the continued regulation of such WWTPs. Within two (2) months of receiving the Executive Committee's recommendation, NYSDOH and the City shall either agree and both commence any appropriate rulemaking processes to adopt the recommendation or inform the Executive Committee in writing of the basis of a decision not to commence a rulemaking. In the event NYCDEP determines that there is insufficient data to determine whether the offsets sought in the pilot programs have been achieved, or if no WWTPs are constructed in a phosphorus restricted basin during the five (5) year pilot program, the City shall extend the pilot program for up to five (5) more years. Nothing herein shall limit the rulemaking authority of NYSDOH or the City.

(e) Upon referral by the East of Hudson Advisory Committee, the Executive Committee shall recommend to NYCDEP that NYCDEP either agree or not agree to a Croton Plan, or a modified Croton Plan, pursuant to Section 18-82 of the Watershed Regulations. The Executive Committee shall review the draft Croton Plan prepared in accordance with Section 18-82(d)(1) of the Watershed Rules and Regulations, and shall consider any recommendations from the East of Hudson Advisory Committee, as well as written and oral arguments and comments, from NYCDEP, NYSDOH and the Counties and

municipalities that participated in the draft Croton Plan's development. The Executive Committee may modify the draft Croton Plan, but only with the written consent of the City and the County and municipalities that participated in the Plan's development. The Executive Committee, by a majority vote shall recommend that NYCDEP either agree to the draft Croton Plan or not agree to the draft Croton Plan. The Executive Committee shall notify NYCDEP, in writing, of its decision. The Executive Committee shall issue its decision within one hundred twenty (120) days of the EOH Advisory Committee's referral of the dispute to the Executive Committee pursuant to paragraph 109(e) of this Agreement, provided that such time may be extended with the written consent of the City, the County and the municipalities that participated in the Plan's development. The Executive Committee may not recommend that the City agree to a Croton Plan that imposes additional financial obligations on the City without the City's consent.

(f) Upon referral by Westchester County or Putnam County and the City, the Executive Committee shall provide binding arbitration to resolve any disagreement between the City and Westchester County or Putnam County concerning the selection of qualified consultants pursuant to paragraph 139 (Sewage Diversion Feasibility Study). The Executive Committee may only arbitrate the specific issue of whether the consultant(s) in dispute are qualified to perform the scope of work. The term "qualified" or "not qualified" shall have the same meaning as set forth in paragraph 139. The Executive Committee shall consider any written and oral arguments and comments from the applicable County and the City. The Executive Committee shall issue its decision within thirty (30) days of referral of the dispute to the Executive Committee, provided that such time may be extended with the written consent of the City and applicable County. If the Executive Committee determines the consultant(s) are qualified, it shall issue a decision that the consultant(s) remain on the pre-qualification list. If the Executive Committee determines that the consultant(s) are not qualified, it may only issue a decision that the consultant(s) be removed from the list.

(g) Periodically review and assess efforts undertaken by governments and private parties to protect the Watershed;

(h) Review proposed policy, procedures and guidance manuals prepared and/or adopted by the City for the administration of the Watershed Regulations.

(i) Develop and submit an annual report to the Governor, Mayor, New York State Legislature, New York City Council, and the public summarizing the Watershed protection efforts undertaken the previous year by federal, state, and local governments and private parties to protect the Watershed and promote economic vitality of the Watershed communities;

(j) By October 1, 1999, commence a review of the Parties' compliance with the terms of this Agreement, including the implementation of the Watershed Regulations as set forth in Attachment W, the Watershed Land Acquisition Program as set forth in Article II, and any Watershed Protection and Partnership Programs set forth in Article V. Such review

shall include opportunities for public review and comment. A final report shall be made available to the public by March 1, 2000.

(k) To the extent authorized by law, make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions outlined hereto;

(l) Upon receipt of a written objection of any eligible Party, make a recommendation, consistent with paragraph 107;

(m) Exercise and perform such other powers and duties as deemed necessary to fulfill the functions of the Executive Committee ;

(n) Coordinate with State, City, and federal agencies regarding Watershed protection efforts;

(o) Appoint an executive director, officers, agents, and employees and prescribe their duties and qualifications and fix their compensation;

(p) If the East of Hudson Water Quality Investment Program is subject to prior approval of the Executive Committee as provided for in paragraphs 155(c) or 157(c) of this Agreement, review and approve preliminary decisions pursuant to subparagraph 107(l) of this Agreement;

(q) Adopt, amend, and repeal by-laws or procedures as deemed necessary to carry out its responsibilities;

(r) Where provided for in an agreement between the City and the CW Corporation, Putnam County, Westchester County, or EFC entered into pursuant to Article V, upon referral by the CW Corporation, Putnam County, Westchester County or other governmental entity, the Executive Committee may make a recommendation within fifteen (15) days after receipt of the referral whether a proposed contractor or subcontractor has a satisfactory record of business integrity as defined in such agreement;

(s) Require and consider a technical report from the Technical Advisory Committee prior to making a recommendation regarding the adequacy of programs to protect water quality; and

(t) Whenever a Party to this Agreement believes that another Party to this Agreement has acted in bad faith with respect to any of the terms of this Agreement, such Party may send a written notice to the Executive Committee setting forth the basis for such belief. The Executive Committee shall review such notice, along with any additional information submitted to the Executive Committee, and may make a recommendation regarding the actions in question.

106. Watershed Protection and Partnership Council. Executive Committee. Terms of Office. The Executive Committee members shall have the following terms of office:

(a) The first member appointed by the Governor to represent the business community shall be appointed for a term of three (3) years.

(b) The first member appointed by the Mayor to represent the consumers of the City drinking water supply shall be appointed for a term of two (2) years.

(c) Of the three (3) members first chosen by the WOH Parties, one (1) shall serve a term of two (2) years, one (1) shall serve a term of three (3) years, and one (1) shall serve a term of four (4) years.

(d) The one (1) member first appointed by the Westchester County Executive shall serve a term of four (4) years.

(e) The one (1) member first appointed by the Putnam County Executive shall serve a term of two (2) years.

(f) Upon expiration of the terms of the members first appointed pursuant to subparagraphs (a) through (e), all other appointments shall be for a period of four (4) years from the appointment date.

(g) All other members, including ex-officio members, of the Executive Committee shall be appointed for an indefinite term at the will of the appointing authority.

(h) Each member appointed to the Executive Committee shall hold office for the term for which he or she was appointed and until his or her successor is appointed and has taken office in his or her stead or until he or she shall resign or be removed in the manner provided by law.

(i) In the event of a vacancy of the office of any member, such vacancy shall be filled for the balance of the unexpired term, if applicable, in the same manner as the original appointment.

107. Watershed Protection and Partnership Council. Executive Committee. Review of Objections.

(a) Within five (5) days of making a preliminary decision regarding the funding and implementation of a project proposed pursuant to the parameters of a particular Watershed Protection and Partnership Program, as specified in Article V ("Project"), the CW Corporation, Westchester County, Putnam County, or the City (individually referred to as "decisionmaker") must notify by regular mail all Parties (concurrent with the execution of an affidavit of service), except as provided in subparagraphs (b) - (d), of its preliminary decision regarding such Project. The preliminary decisions that are subject to notification and review hereunder for any particular Project are defined in the Watershed Protection and Partnership Programs as set forth in Article V. The decisionmaker may not expend funds provided pursuant to this Agreement to fund a proposed project which is

subject to the right of objection under this Agreement until it has complied with the provisions of this paragraph.

(b) For a Project proposed by the CW Corporation, all Parties, except the Municipal Parties located East of Hudson, shall receive notification and have the right to raise an objection, pursuant to subparagraph (a), to the CW Corporation's preliminary decision.

(c) For a Project proposed by Westchester County or Putnam County, all Parties, except the Municipal Parties located West of Hudson, shall receive notification and have the right to raise an objection, pursuant to subparagraph (a), to the County's preliminary decision.

(d) For a Project proposed by the City, all Parties, except the Municipal Parties located East of Hudson shall receive notification and have the right to raise an objection, pursuant to subparagraph (a), to the City's preliminary decision for Projects proposed to be undertaken West of Hudson; and all Parties, except the Municipal Parties located West of Hudson shall receive notification and have the right to raise an objection, pursuant to subparagraph (a), to the City's preliminary decision for Projects proposed to be undertaken East of Hudson.

(e) For any Project proposed, the Project sponsor shall create and maintain, for the duration of the project, a repository of information regarding the Project. Such repository shall be in reasonable proximity to the area affected by the proposed Project and shall contain all documents necessary for a fair public assessment of the Project.

(f) Within fifteen (15) days of the decisionmaker's mailing of the notification of its preliminary decision, any Party entitled to object shall have the right to object to such preliminary decision or petition the decisionmaker for an additional fifteen (15) day period to raise an objection. The decisionmaker, in its discretion, may extend the fifteen (15) day period as necessary to provide the Party entitled to object with sufficient information and time to raise an objection. Such objection shall be in writing setting forth the grounds for such objection and shall be sent, by regular mail (concurrent with the execution of an affidavit of service), to the Executive Committee, decision maker, Project sponsor, and all Parties entitled to object. The objection must be based upon only the following:

(i) The proposed Project is not consistent with the parameters of the particular Watershed Protection and Partnership Program from which such Project is proposed to be funded, as specified in Article V; or

(ii) The actions of the decisionmaker do not comply with Sections 73 or 74 of the Public Officers Law, Article 18 of the General Municipal Law, Article 200 of the Penal Law, or any other applicable local, state, or federal ethical standards;

(iii) The Project sponsor has failed to disclose a personal or financial relationship with a decisionmaker or decisionmakers, or knowingly falsified information given to the decisionmaker relating to the proposed Project; or

(iv) The proposed Project would cause significant adverse impacts to water quality which could otherwise be avoided by reasonably practicable mitigation measures.

(g) Within thirty (30) days of its receipt of a written objection, the Executive Committee shall convene, consider the objection raised, and issue a written recommendation to the decisionmaker, all Parties entitled to object and the Project sponsor.

(h) In the event the Executive Committee does not issue a recommendation within thirty (30) days, the decisionmaker may proceed to expend funds provided pursuant to this Agreement on the proposed Project.

(i) If the Executive Committee issues a recommendation within thirty (30) days, the decisionmaker must consider the Executive Committee's recommendation and provide a final written response to the Executive Committee, all Parties entitled to object, and the Project sponsor within thirty (30) days of receipt of the Executive Committee's recommendation. If the decisionmaker's written response is inconsistent with the Executive Committee's recommendation, the decisionmaker's written response must include a comprehensive discussion of the grounds for rejecting the Executive Committee's recommendation. The decisionmaker's written response shall include a determination of whether or not to proceed to expend funds provided pursuant to this Agreement on such Project.

(j) The time periods contained in this paragraph can be modified upon the written consent of the Executive Committee, decisionmaker, and Project sponsor.

(k) A Party may lose its right to raise objections to future proposed Projects in the event the Executive Committee determines such Party has repeatedly misused such right by raising frivolous objections to proposed Projects. The Executive Committee shall notify the Party of such determination in writing by certified mail.

(l) If, and for so long as, the East of Hudson Water Quality Investment Program is subject to the prior approval of the Executive Committee as provided for in paragraphs 155(c) or 157(c) of this Agreement, Putnam County and Westchester County shall notify the Executive Committee of each County's respective preliminary decisions to use funds from the EOH Water Quality Fund to fund a project to the extent approval is required pursuant to subparagraph 155(c) or 157(c) of this Agreement. The Executive Committee shall review and approve the project based upon the criteria set forth in subparagraph (f) of this paragraph and upon compliance by the Eligible Projects with the substantive provisions of the Watershed Regulations, notwithstanding their unenforceability. The Executive Committee shall notify Putnam County and Westchester County, as applicable, in writing whether the Executive Committee approves or disapproves a preliminary decision within thirty (30) days of the County mailing the notification for such decision

to the Executive Committee. In the event the Executive Committee disapproves a preliminary decision, it shall provide written notification and an explanation of the basis for its decision.

108. Watershed Protection and Partnership Council. East of Hudson Advisory Committee. Membership.

(a) There is hereby established an East of Hudson Advisory Committee ("EOH Committee") that shall report to the Executive Committee and shall consist of eleven (11) members, as follows:

(i) One (1) member appointed by the Governor;

(ii) One (1) member appointed by the Mayor;

(iii) Two (2) members appointed by the Putnam County Executive, subject to confirmation by the Putnam County Legislature;

(iv) Two (2) members appointed by the Westchester County Executive;

(v) One (1) member appointed by the Dutchess County Executive;

(vi) One (1) member appointed by the Environmental Parties to represent the environmental community;

(vii) Three (3) ex-officio, non-voting members: the Commissioners of NYSDEC, NYSDOH, and NYCDEP.

(b) The Chairperson of the EOH Committee shall be chosen by a majority vote of the EOH Committee.

(c) The members or their representatives, except those who serve ex-officio or employees of the state or federal government or New York City, will be reimbursed for actual and necessary expenses incurred in the performance of their duties.

109. Watershed Protection and Partnership Council. East of Hudson Advisory Committee. Functions. The EOH Committee shall have the power to:

(a) Make recommendations to the Executive Committee on issues that affect water quality, community character, and economic concerns of the East of Hudson Watershed;

(b) Solicit information from governments and private parties on matters affecting water quality, including water quality data, project information, and proposed laws and regulations;



(c) Investigate, review, and advise the Executive Committee on issues that are referred to the EOH Committee by the Executive Committee or on issues that the EOH Committee deems appropriate;

(d) Make recommendations and decisions regarding these duties and responsibilities. Each recommendation or decision shall be made by the affirmative vote of a majority of the members of the EOH Committee.

(e) Upon referral by a County and/or municipality participating in the development of a Croton Plan pursuant to Section 18-82 of the Watershed Regulations, the EOH Committee shall review the draft Croton Plan and use its best efforts to have the parties reach an agreement on a Croton Plan or a modified Croton Plan. If the EOH Committee is unable to resolve the dispute, the EOH Committee shall refer the dispute to the Executive Committee. The EOH Committee may then make recommendations to the Executive Committee on the draft Croton Plan, provided that the EOH Committee may not recommend that the City agree to a Croton Plan that imposes additional financial obligations on the City without the City's consent.

110. Watershed Protection and Partnership Council. East of Hudson Advisory Committee. Terms of Office. The EOH Committee members shall have the following terms of office:

(a) All of the Committee members appointed by the Governor, the Mayor, the EOH Parties and the Environmental Parties shall be appointed for a term of two (2) years;

(b) All other members, including ex-officio members, of the EOH Committee shall be appointed for an indefinite term at the will of the appointing authority.

(c) Each member appointed to the EOH Committee shall hold office for the term for which he or she was appointed and until his or her successor is appointed and has taken office in his or her stead or until he or she shall resign or be removed in the manner provided by law.

(d) In the event of a vacancy of the office of any member, such vacancy shall be filled for the balance of the unexpired term, if applicable, in the same manner as the original appointment.

111. Watershed Protection and Partnership Council. Technical Advisory Committee. Membership.

(a) There is hereby established a Technical Advisory Committee ("TAC") that shall report to the Executive Committee and shall consist of fourteen (14) members, as follows:

(i) One (1) member appointed by the Governor;

(ii) One (1) member appointed by the Mayor to represent City consumers of the City's water supply;

(iii) Three (3) members to represent the WOH Communities chosen by the WOH Members appointed to the CW Corporation;

(iv) One (1) member appointed by the Putnam County Executive, subject to confirmation by the Putnam County Legislature;

(v) One (1) member appointed by the Westchester County Executive;

(vi) One (1) member appointed by the Dutchess County Executive;

(vii) One (1) member chosen by the Environmental Parties;

(viii) Four (4) members will be ex-officio members: the Commissioners of NYSDEC, NYSDOH, NYCDOH, and NYCDEP; and

(ix) One (1) ex-officio, non-voting member: the USEPA Region II Administrator.

(b) The Chairperson of the TAC shall be chosen by a majority vote of the TAC.

(c) All members of the TAC shall have the appropriate scientific or technical expertise to enable the TAC to fulfill its purposes.

(d) The members or their representatives, except those who serve ex-officio or employees of the state or federal government or New York City, will be reimbursed for actual and necessary expenses incurred in the performance of their duties.

112. Watershed Protection and Partnership Council. Technical Advisory Committee. Functions. The TAC will have the power to:

(a) Advise the Council and its committees on scientific and technological developments in the field of water pollution control and water supply protection;

(b) Recommend research needs within the Watershed;

(c) Review scientific and technical proposals, studies, and reports;

(d) Aid in the definition of water quality problems and their causes;

(e) Establish any necessary subcommittees to analyze specific issues;

(f) Alert the Council and its committees to emerging environmental and water quality problems within the Watershed; and

(g) Make recommendations and decisions regarding these duties and responsibilities. Each recommendation or decision shall be made by the affirmative vote of a majority of the members of the TAC.

113. Watershed Protection and Partnership Council. Technical Advisory Committee. Terms of Office. The TAC members shall have the following terms of office:

(a) The member first appointed by the Governor shall be appointed for a term of three (3) years.

(b) The member first appointed by the Mayor shall be appointed for a term of two (2) years.

(c) The member first appointed by the Putnam County Executive shall serve a term of two (2) years.

(d) The member first appointed by the Westchester County Executive shall serve a term of three (3) years.

(e) The member first appointed by the Dutchess County Executive shall serve a term of four years.

(f) Of the three (3) members first to be chosen by the WOH Parties, one (1) shall serve a term of two (2) years, one (1) shall serve a term of three (3) years, and one (1) shall serve a term of four (4) years.

(g) The first member appointed by the Environmental Parties shall be appointed for a term of two (2) years.

(h) Upon expiration of the term of the members first appointed pursuant to subparagraphs (a) through (g), all other appointments shall be for a term of four years from the appointment date.

(i) All other members, including the ex-officio members, of the TAC shall be appointed for an indefinite term at the will of the appointing authority.

(j) Each member appointed to the TAC shall hold office for the term for which he or she was appointed and until his or her successor is appointed and has taken office in his or her stead or until he or she shall resign or be removed in the manner provided by law.

(k) In the event of a vacancy of the office of any member, such vacancy shall be filled for the balance of the unexpired term, if applicable, in the same manner as the original appointment.

114. Watershed Protection and Partnership Council. Technical Advisory Committee. Meetings; Quorum; Quorum for Approvals. The TAC shall meet at least quarterly, keep a record of all its proceedings, and determine the rules of its own procedure.

115. Watershed Protection and Partnership Council. East of Hudson Sporting Advisory Committee. Membership.

(a) There is hereby established an East of Hudson Sporting Advisory Committee that shall report to the Council and shall consist of members as follows:

(i) One (1) member appointed by the Putnam County Executive, subject to confirmation by the Putnam County Legislature to represent the EOH Communities located in Putnam County;

(ii) One (1) member appointed by the Westchester County Executive to represent the EOH Communities located in Westchester County;

(iii) Three (3) members to represent organized hunting, sporting, recreational or fishing groups: one (1) of which shall be appointed by the Putnam County Executive, subject to confirmation by the Putnam County Legislature; one (1) of which shall be appointed by the Westchester County Executive; and one (1) of which shall be appointed by the Dutchess County Executive; and

(iv) One (1) member to represent the environmental community chosen by the Environmental Parties;

(v) Three (3) ex-officio members: the Commissioners of NYSDEC, NYSDOH, and NYCDEP;

(vi) Two (2) ex-officio, non-voting members: the Commissioner of the New York State Office of Parks Recreation and Historic Preservation; and the USEPA Region II Administrator.

(b) Each ex-officio member may designate an employee to act on the member's behalf.

(c) Each voting member shall have one full vote.

(d) The Chairperson of the EOH Sporting Advisory Committee shall be chosen by a majority vote of the Committee.

(e) The EOH Sporting Advisory Committee shall meet as needed to fulfill its purposes, but shall meet at least annually.

116. Watershed Protection and Partnership Council. East of Hudson Sporting Advisory Committee. Functions.

(a) The Sporting Advisory Subcommittee will have the power to:

(i) Consult with the City, NYSDEC, NYSDOH, USEPA, and local governments, pursuant to Article II, on proposed recreational uses of property acquired by the City or State pursuant to the land acquisition program set forth in Article II;

(ii) Consult with the City, NYSDEC, NYSDOH, USEPA, and local governments, pursuant to Article II, on the review of existing and potential recreational uses on currently owned City property; and

(iii) Inform the Executive Committee and Council as to its findings and recommendations.

117. Catskill Watershed Corporation. Creation and Membership.

(a) The Parties agree that in order to establish a working partnership between the City and the WOH Communities, and to carry out the purposes of this Agreement, an independent locally-based and locally administered not-for-profit corporation, organized under Section 1411 of the Not For Profit Corporation Law, the Catskill Watershed Corporation shall be established, to manage certain Watershed Partnership and Protection Programs more fully described in Article V and for such other purposes as are described herein. The Articles of Incorporation and by-laws for the CW Corporation are appended hereto as Attachment CC and may be amended as provided for therein in a manner consistent with this Agreement.

(b) The CW Corporation shall be a Type C Corporation organized under New York Not for Profit Corporation Law, composed of the following members:

(i) Twelve (12) members representing the WOH Communities as follows: Delaware County 6; Greene County 2; Ulster County 2; Schoharie County 1; and Sullivan County 1.

(ii) Two members appointed by the Governor: one (1) of whom shall be a full-time resident of a Town partially or wholly located in the West of Hudson Watershed and shall be chosen from a listing of three (3) possible representatives submitted to the Governor by the Environmental Parties for consideration; and

(iii) One (1) member who shall be a City employee appointed by the Mayor.

(c) The WOH Community members shall be chosen and serve as follows:

(i) Each member must be an elected public officer who resides within a town which is located wholly or in part in the Watershed. No town shall be the residence of more than one member;

(ii) A member who ceases to be an elected public official shall complete his or her unexpired term. A vacancy shall occur when a member: (A) dies; (B) resigns; (C) becomes incapacitated for a period greater than six months; (D) relocates his or her residence to a town which already has a member in residence; or (E) is removed for cause as provided in the by-laws of the CW Corporation;

(iii) A member shall hold over in office after his or her term expires until a member is elected to fill the new term;

(iv) The classes of the Directors and manner of selection shall be as provided in the by-laws of the CW Corporation.

(d) All actions undertaken by the CW Corporation shall be by an affirmative vote of at least ten (10) members.

(e) CW Corporation members appointed by the Mayor and Governor will not participate in any discussion or vote on any decision regarding litigation involving the City or State.

(f) Except for any subcommittee on the Tax Consulting Fund set forth in paragraph 136 of this Agreement, the member of the CW Corporation appointed by the Mayor shall be appointed to every subcommittee formed by the CW Corporation.

118. Catskill Watershed Corporation. Functions.

(a) The CW Corporation shall have the following corporate purposes:

(i) To administer those Watershed Partnership and Protection Programs specified in Article V and subject to the terms thereof;

(ii) To make decisions regarding the funding and implementation of those Watershed Protection and Partnership Programs administered by it, as specified in Article V and subject to the terms thereof;

(iii) To exercise and perform such other powers and duties as deemed necessary to fulfill its purposes and functions; and

(iv) To convene committees and subcommittees.

(b) The CW Corporation shall have the following corporate powers:

(i) To have a corporate seal and to adopt by-laws;

(ii) To enter into agreements and contracts, and to buy, sell, lease, convey, exchange or otherwise deal in property (whether real, personal, or mixed) as necessary to further its corporate purposes;

(iii) To sue and be sued;

(iv) To elect, retain, and compensate officers, employees and agents; and

(v) To exercise such other legal powers as may be exercised by a not-for-profit corporation formed under Section 1411 of the Not-For-Profit Corporation Law.

(c) The by-laws of the CW Corporation shall include provisions that it is bound by and subject to the New York State Open Meetings Law (Public Officers Law Article 7) and the New York State Freedom of Information Law (Public Officers Law Article 6).

(d) Without limiting the generality of the foregoing, the CW Corporation shall be specifically authorized to administer or manage the Watershed Partnership and Protection Programs identified in Article V as being administered or managed by the CW Corporation.

(e) Within six (6) months of the Effective Date of this Agreement, the CW Corporation shall form a Sporting Advisory Committee to consult on recreational uses on the City's existing land and land acquired under the Land Acquisition Program set forth in Article II. The subcommittee members shall be selected by the CW Corporation and will include, at a minimum, one or more members to represent organized hunting, sporting, recreational and fishing interests.

# **NEW YORK CITY WATERSHED MEMORANDUM OF AGREEMENT**

**January 21, 1997**

## **ARTICLE VI MISCELLANEOUS PROVISIONS**

- 159. New Filtration Avoidance Determination.
- 160. Primacy Agency.
- 161. Lead Agency Determination.
- 162. Total Maximum Daily Loads
- 163. NYSDEC Review of SPDES Permits in Watershed
- 164. Enhanced Monitoring.
- 165. Phosphorus Pilot Program.
- 166. Home Heating Oil Tank Insurance.
- 167. Legislative Proposals.
- 168. Pesticide and Fertilizer Technical Working Group.
- 169. Galley Study.
- 170. Septic System Siting Study.
- 171. Assignment of Rights Between Coalition and CW Corporation.
- 172. Coalition of Watershed Towns v. City of New York.
- 173. City of New York v. State Department of Health.
- 174. Inclusion of City's Obligations in City's Annual Budget.
- 175. Water Rates.
- 176. Waiver of Future Challenges.
- 177. Mediation of Future Disputes.



# **NEW YORK CITY WATERSHED MEMORANDUM OF AGREEMENT**

**January 21, 1997**

## **ARTICLE V NYC WATERSHED PROTECTION AND PARTNERSHIP PROGRAMS**

119. Overview.
120. Catskill Watershed Corporation. Funding.
121. SPDES Upgrades.
122. New Sewage Treatment Infrastructure Facilities for Towns, Villages and Hamlets.
123. Sewer Extensions.
124. Septic System Rehabilitations and Replacements.
125. Stormwater Retrofits.
126. Sand and Salt Storage Facilities.
127. Stream Corridor Protection.
128. West of Hudson Future Stormwater Controls.
129. Alternate Design Septic Systems.
130. Forestry Management Program.
131. Public Education.
132. Dunraven Causeway Bridge Reconstruction.
133. Schoharie Roads and Bridges.
134. West of Hudson Economic Development Study.
135. Catskill Fund for the Future.
136. Tax Consulting Fund.
137. Funding of the Watershed Protection and Partnership Council.

138. Watershed Planning in the Croton System.
139. Sewage Diversion Feasibility Studies.
140. East of Hudson Water Quality Investment Program.
141. Upgrades to Existing WWTPs to Comply with Watershed Regulations.
142. Future Operation and Maintenance Costs at Public WWTPs for Equipment Installed or Methods of Operation Instituted Between July 1, 1991 and November 2, 1995.
143. Upgrades to Future Public WWTPs Required by the Watershed Regulations.
144. Phosphorus Controls in Cannonsville.
145. Future Stormwater Controls Paid for by the City: Single-family Houses, Small Businesses, Low-income Housing.
146. Payment of Costs and Expenses Associated with Review of City's Watershed Protection Program.
147. Good Neighbor Payments.
148. Local Consultation on Land Acquisition Program.
149. Certain Funds Intended to Benefit Signatories Only.
150. General Provisions Applicable to all Watershed Partnership and Protection Programs.
151. Compliance With State Law.
152. State Partnership Programs.
153. Utility Crossings.
154. Letter of Credit.
155. Invalidation of the Watershed Regulations.
156. Invalidation of the Water Supply Permit.
157. Invalidation of Both the Watershed Regulations and the Water Supply Permit.
158. Liquidated Damages for Late Payment Under a Valid and Enforceable Program Contract.

---

## ARTICLE V NYC WATERSHED PROTECTION AND PARTNERSHIP PROGRAMS

119. Overview. This Article sets forth the obligations and mechanisms for payment of funds for the purpose of establishing programs which the Parties agree are necessary in order to maintain and enhance water quality in the Watershed and the economic and social character of the Watershed communities (these programs which are set forth in paragraphs 120 through 158, are collectively referred to as the "Watershed Protection and Partnership Programs"). The Parties agree that such programs will be established, funded and administered as provided in this Article V. The City will enter into agreements with the recipients of funds for the programs to be funded by the City which contain the terms and conditions specified in this Article V (these agreements are also referred to as "program contracts"). Notwithstanding any provision in any other Article of this Agreement, the requirements of this Article V shall represent the sole criteria for determining the scope and parameters of an eligible project hereunder.

### 120. Catskill Watershed Corporation. Funding.

(a) The City shall provide Three Million, Five Hundred Thousand Dollars (\$3,500,000) to the CW Corporation to fund the operating expenses of the CW Corporation. On the Effective Date of this Agreement the City shall enter into a written agreement pursuant to Attachment FF with the CW Corporation to pay such amount as follows:

(i) Seven Hundred Fifty Thousand Dollars (\$750,000) within 90 days of the date of execution of such agreement;

(ii) One Million Dollars (\$1,000,000) on or before the first anniversary of the Effective Date of this Agreement;

(iii) One Million Dollars (\$1,000,000) on or before the second anniversary of the Effective Date of this Agreement; and

(iv) Seven Hundred Fifty Thousand Dollars (\$750,000) on or before the third anniversary of the Effective Date of this Agreement.

(b) The CW Corporation may, in its discretion, use operating funds to make grants to the Council or State to assist in payment of Council operating expenses.

### 121. SPDES Upgrades.

(a) The City shall provide up to Five Million Dollars (\$5,000,000) ("SPDES Upgrade Funds") for a program to assist existing WWTPs, public or private, located West of Hudson to rehabilitate, replace or upgrade equipment that is unreliable, failing or nearing the end of its useful life and is necessary to the treatment process, where such measures are not required solely by the Watershed Regulations, and where such upgrades will

allow the WWTPs to reliably meet the conditions of their respective State Pollutant Discharge Elimination System ("SPDES") permits.

(b) SPDES Upgrade Funds shall be used solely to rehabilitate, replace or upgrade equipment that is unreliable, failing or nearing the end of its useful life and is necessary to the treatment process, where such measures are not required solely by the Watershed Regulations and will facilitate the WWTP reliably meeting the conditions of its respective SPDES permit. SPDES Upgrade Funds may only be used to pay for work commenced after November 2, 1995, including the costs to design, purchase, construct or install the equipment needed to complete the upgrade.

(c) Except for the use of funds dedicated to Infiltration and Inflow projects, WWTPs owned by municipalities or school districts shall be given first priority for the use of SPDES Upgrade Funds. NYCDEP, in consultation with the appropriate municipalities and school districts, shall allocate SPDES Upgrade Funds to such projects. For WWTPs other than those owned by municipalities, school districts or the State, NYCDEP, in consultation with the CW Corporation, shall select the upgrade projects to be funded and allocate an amount of SPDES Upgrade Funds to each such project. In allocating the SPDES Upgrade Funds, NYCDEP shall consider the following criteria: whether a WWTP is currently meeting its SPDES permit and, if not, the severity of its noncompliance; the severity of any water quality problems that may be prevented by the upgrade; and the availability of other resources to pay for such upgrade.

(d) The City shall enter into an agreement with EFC appended hereto as Attachment HH to administer and disburse SPDES Upgrade Funds except for funds dedicated for Infiltration and Inflow projects. Such agreement shall contain the following terms and conditions:

(i) EFC shall serve as program manager for the purpose of monitoring construction of the upgrades, except Infiltration and Inflow projects, and disbursing SPDES Upgrade Funds to pay for the costs of the upgrades. EFC shall develop program standards in consultation with NYCDEP.

(ii) EFC shall enter into a written agreement with each WWTP owner receiving SPDES Upgrade Funds, in form and substance acceptable to the City consistent with the terms of the model agreement appended hereto as Attachment II (with such changes only as shall be approved by the City, EFC, and the other contracting party).

(iii) EFC shall use its best efforts to cause all upgrades financed with SPDES Upgrade Funds to be completed within five (5) years from the effective date of the Watershed Regulations consistent with the Regulatory Upgrades set forth in paragraph 141.

(iv) The City agrees to pay EFC the necessary funds for the design, permitting, construction, and installation of the SPDES Upgrades, together with EFC's administrative fees, in accordance with the budget procedures set forth and described in the City-EFC agreement appended hereto as Attachment HH, which procedures are

incorporated herein by reference (with any changes to such procedures as are allowed pursuant to the terms of the agreement).

(e) Four Hundred Thousand Dollars (\$400,000) of the SPDES Upgrade Funds shall be initially dedicated to fund new work to correct Infiltration and Inflow problems. Decisions on the initial allocation will be made by the CW Corporation and the City. For Infiltration and Inflow projects, the City shall enter into written agreements for such projects directly with the owner of a WWTP allocated such SPDES Upgrade Funds under this paragraph. Such agreement shall: identify the project to be constructed and the amount of SPDES Upgrade Funds allocated for the project; commit the owner to initiating and completing construction in accordance with a defined project schedule; and provide for the disbursement of SPDES Upgrade Funds as work progresses (based on actual costs incurred).

(f) Any of the Four Million Six Hundred Thousand Dollars (\$4,600,000) in SPDES Upgrade Funds not initially dedicated to correct Infiltration and Inflow problems which remain unspent after other SPDES upgrades may also be used for WWTP purposes as agreed upon by the City and CW Corporation.

(g) Anything herein to the contrary notwithstanding, the City's agreement to provide up to \$5,000,000 in SPDES Upgrade Funds, pursuant to this paragraph, does not constitute, and shall not be deemed to constitute, an agreement or admission on the part of the City that it is liable for the payment of any costs incurred by the owner or operator of a WWTP in the Watershed in order to comply with the SPDES permit governing such WWTP.

## 122. New Sewage Treatment Infrastructure Facilities for Towns, Villages and Hamlets.

(a) The City shall provide up to Seventy Five Million Dollars (\$75,000,000) ("New Infrastructure Funds") for a program to construct and install WWTPs or community septic systems together with related sewerage collection systems, or to create and fund septic districts, in villages and hamlets in West of Hudson where the Villages or appropriate Towns are Parties and that may be experiencing water quality problems due to failing septic systems in close proximity to streams and other watercourses or where such failures are likely to occur in the future. Such villages and hamlets (collectively, the "Identified Communities" and individually an "Identified Community") are set forth below. Identified Communities are not eligible to receive New Infrastructure Funds unless the Village or, in the case of a Hamlet, the relevant Town, is a Party to this Agreement. Such program shall be established and administered in accordance with this paragraph.

(b) New Infrastructure Funds may be used to construct new WWTPs or community septic systems, including related sewerage collection systems, or to create and fund septic districts, in the following Identified Communities. The Identified Communities are listed in order of their priority for the allocation of the New Infrastructure Funds. In addition, the maximum permitted flow (gallons per day) that each WWTP or community septic

may be designed to accommodate under this program, if such a solution is ultimately implemented, is listed next to each Identified Community. Upon agreement of the City and an Identified Community, the maximum permitted flow may be adjusted to equal the existing flow within the agreed-upon service area plus ten percent (10%).

1. Hunter, Hunter (Greene) - 200,000 gpd
2. Fleischmanns, Middletown (Delaware) - 80,000 gpd
3. Windham / Hensonville, Windham (Greene) - 143,000 gpd
4. Andes, Andes (Delaware) - 58,000 gpd
5. Roxbury, Roxbury (Delaware) - 68,000 gpd
6. Phoenicia, Shandaken (Ulster) - 94,000 gpd
7. Prattsville, Prattsville (Greene) - 60,000 gpd

(c) New Infrastructure Funds may be used to construct community septics, including related sewerage collection systems, or to create and fund septic districts, in the following Identified Communities. If community septic systems or septic districts are not practicable due to site conditions, and there is a demonstrable water quality problem due to failing septic systems, the City, in consultation with the CW Corporation and the Identified Community, may elect to fund a WWTP in one or more of the following Identified Communities. Funding for these Identified Communities is a lower priority than for those communities listed in subparagraph (b) of this paragraph. The Identified Communities are listed in order of their priority within this subparagraph. In addition, the maximum permitted flow (gallons per day) that each community septic or WWTP may be designed to accommodate under this program, if such a solution is ultimately implemented, is listed next to each Identified Community. Upon agreement of the City and an Identified Community, the maximum permitted flow may be adjusted to equal the existing flow within the agreed-upon service area plus ten percent (10%).

1. Bloomville, Kortright/Stamford (Delaware) - 40,000 gpd
2. Boiceville, Olive (Ulster) - 48,000 gpd
3. Hamden, Hamden (Delaware) - 31,000 gpd
4. Delancey, Hamden (Delaware) - 29,000 gpd
5. Bovina Center, Bovina (Delaware) - 37,000 gpd
6. Ashland, Ashland (Greene) - 31,000 gpd

7. Haines Falls, Hunter (Greene) - 58,000 gpd (portion of Haines Falls w/in watershed)
8. Trout Creek, Tomkins (Delaware) - 17,000 gpd
9. Lexington, Lexington (Greene) - 32,000 gpd
10. S. Kortright, Kortright/Stamford ( Delaware) - 17,000 gpd
11. Shandaken, Shandaken (Ulster) - 36,000 gpd
12. West Conesville, Conesville (Schoharie) - 15,000 gpd
13. Claryville, Denning/Neversink (Ulster & Sullivan) - 16,000 gpd
14. Halcottsville, Middletown (Delaware) - 19,000 gpd
15. New Kingston, Middletown (Delaware) - 13,000 gpd

(d) Identified Communities are not required to accept New Infrastructure Funds nor are they required by this Agreement, in the absence of accepting New Infrastructure Funds, to build new WWTPs or community septs, or to create septic districts. If an Identified Community is interested in participating in the program the Community must notify NYCDEP, in writing, of its interest no later than July 1, 1997.

(e) NYCDEP, in consultation with the CW Corporation and the relevant Identified Community, shall expeditiously determine the appropriate project for each Identified Community, estimate the cost of such project and allocate an amount of New Infrastructure Funds for the construction of the project to be undertaken in each Identified Community. The selection of a project shall take into account the priority given the Identified Community in the order of the listing of the Identified Communities in subparagraphs (b) and (c) above. NYCDEP and CW Corporation together may also take into account other relevant factors such as the availability of other resources to pay for such project. An Identified Community shall not be required to fund any aspect of a project. New Infrastructure Funds may be applied solely towards projects in some but not all of the Identified Communities, based on the aforementioned criteria.

(f) To the extent practical, any WWTP constructed with New Infrastructure Funds shall discharge subsurface. The Parties recognize that this requirement is a material condition of receiving New Infrastructure Funds pursuant to this paragraph. As a result, each Party, including without limitation NYSDEC, NYCDEP and each Identified Community, hereby stipulates that for a new WWTP under this paragraph, the requirement to discharge subsurface, if practical, shall be a condition to the issuance of any SPDES permit under ECL Article 17, as if it were set forth as such in 6 NYCRR Part 752. Each Party hereby further stipulates that compliance with such subsurface discharge requirement shall constitute a significant permitting condition as that term is defined in 6 NYCRR § 624.4(c)(3), so that such requirement shall constitute an adjudicable issue in

any NYSDEC hearing on such permit application provided that the objecting party satisfies all other applicable requirements of NYCRR § 624.4(c). For purposes of this subparagraph, subsurface discharge shall be deemed impractical if there is insufficient land area or inadequate soil available for subsurface discharge within reasonable proximity of the proposed WWTP.

(g) Any agreement reached between the Village of Fleischmanns and NYCDEP regarding funding for a new WWTP in the Village of Fleischmanns, except for any amount expended in connection with the settlement of the action entitled Town of Middletown v. City of New York (N.D.N.Y. 1994) shall be credited against the City's obligation to provide New Infrastructure Funds.

(h) New Infrastructure Funds shall be used solely for the following purposes: paying the costs of studying, designing, permitting, constructing and installing a new WWTP or community septic system in an Identified Community, together with a related sewerage collection system; adopting a sewer use ordinance; establishing a sewer district; paying all related costs such as the acquisition of interests in land; creating and funding septic districts which provide initially for the rehabilitation or replacement or upgrade of failing septic or substandard systems, as well as the pump-outs and inspections necessary to determine whether those septic systems are failing. After the septic systems within the septic district have been so rehabilitated or replaced, the district shall provide for regular and ongoing pump-outs of the septic systems within the district; the repair, upgrade, and/or replacement of septic systems found to be failing within the district; and reasonable administrative costs.

(i) The City agrees to accept for disposal at its WWTPs in the WOH Watershed at no charge and at a time and at such intervals acceptable to NYCDEP septic waste generated from a septic program conducted by a septic district pursuant to subparagraph (m), subject to the following terms and conditions:

(i) The WWTP has adequate capacity to handle such waste;

(ii) The WWTP is permitted to accept such waste;

(iii) The design of the WWTP allows for the practical acceptance of septic waste by truck; and

(iv) The acceptance of waste will not cause or contribute to an upset of the treatment processes or violation of the plant's SPDES permit.

(j) The City shall enter into an agreement with EFC appended hereto as Attachment SS to administer and disburse New Infrastructure Funds which have been allocated for new WWTPs or community septic systems. Such agreement shall include the following terms and conditions:



(i) As directed by NYCDEP, EFC shall disburse specific amounts of New Infrastructure Funds to each project.

(ii) EFC shall enter into a written agreement with each Identified Community receiving New Infrastructure Funds, in form and substance acceptable to NYCDEP: identifying the project to be constructed and the amount of New Infrastructure Funds allocated for the project; committing the Identified Community to complete a study of the potential project, and if the project is then agreed upon, initiating and completing the project in accordance with a defined project schedule; and providing for disbursement of New Infrastructure Funds as work progresses, based on actual costs incurred.

(iii) The City agrees to pay EFC the necessary funds for the design, permitting, construction, and installation of the new sewage treatment infrastructure projects, together with EFC's administrative fees, in accordance with the budget procedures set forth, in the City-EFC agreement appended hereto as Attachment SS which procedures are incorporated herein by reference (with any changes to such procedures as are allowed pursuant to the terms of the agreement).

(k) The Town or Village in which any new WWTP or community septic is constructed with New Infrastructure Funds shall own the new facility and be responsible for the operation and maintenance of the new facility. The City will enter into written agreements with such Towns and Villages to provide additional funds to pay, over and above New Infrastructure Funds, for the continuing operation and maintenance costs for any new WWTP or community septic system over and above the initial annual costs per household of One Hundred Dollars (\$100). Starting the third year of this program, the amount of annual operation and maintenance costs to be paid by households served by a new WWTP or community septic system shall be adjusted annually to reflect the rate of inflation or deflation. The rate of adjustment shall be based on a rolling three-year average of the previous three years' Consumer Price Index or its successor. The CW Corporation may disburse funds from the Catskill Fund for the Future to Identified Communities with new facilities under this program to reduce the operation and maintenance costs for new WWTPs or community septic systems to per-household costs of less than One Hundred Dollars (\$100) for low income households.

(l) Prior to receiving any New Infrastructure Funds for the construction of a WWTP or community septic system, the relevant Identified Community shall take the following action:

(i) Together with NYCDEP technical staff, establish a sewer district specifically delineating the area(s) to be served by the sewerage collection system, and provide NYCDEP with a copy of the map or plan defining the boundaries of such area(s);

(ii) Adopt and maintain (and provide NYCDEP with a copy of) a sewer use ordinance, governing the use of the underlying sewerage collection system, that is at least as stringent as the model sewer use ordinance then in use by NYSDEC to determine

eligibility of a project for financing under the New York State Revolving Loan Fund Program; and

(iii) Adopt and maintain a comprehensive plan, subdivision regulations, and appropriate land use laws and ordinances assuring that future growth within such area(s) can be adequately serviced by, and will not exceed the capacity of, the sewerage collection system and the WWTP to which it is connected. Nothing herein shall be construed as precluding a municipality from amending its comprehensive plan, subdivision regulations, appropriate land use laws and ordinances or adjusting its sewerage needs accordingly, provided that such amendments are consistent with the requirements of this subparagraph.

(m) The City shall enter into the agreement with the CW Corporation appended hereto as Attachment SS to administer and disburse New Infrastructure Funds allocated for the creation of septic districts in the following manner:

(i) The CW Corporation shall serve as program manager for the formation of septic districts and shall disburse specific amounts of New Infrastructure Funds to each Identified Community for the funding of such districts. The CW Corporation shall develop program standards in consultation with NYCDEP and the Identified Communities where septic districts shall be formed.

(ii) The CW Corporation shall enter into a written agreement with each Identified Community, in form and substance acceptable to NYCDEP: identifying and delineating the septic district to be created and the amount of New Infrastructure Funds allocated for the district; committing the Identified Community to create and continue the district in accordance with a defined schedule; and providing for disbursement of New Infrastructure Funds consistent with the terms of subparagraph (n) below.

(n) The New Infrastructure Funds allocated for the creation of septic districts shall be disbursed in two stages in the following manner.

(i) For the creation of septic districts and for the initial round of rehabilitations, replacements, and/or upgrades, the City shall pay the CW Corporation as work progresses, in accordance with the budget procedures set forth in Attachment SS which procedures are incorporated herein by reference (with any changes to such procedures as are agreed to by the City and the CW Corporation).

(ii) For the regular and ongoing pump-outs of the septic systems within the district and the continued repair, upgrade, and/or replacement of septic systems found to be failing or substandard within the district, the payment of New Infrastructure Funds is to be made consistent with Attachment SS and in the following manner. The amount of money expended during the creation of the district and the initial round of rehabilitations, replacements, and upgrades shall be subtracted from the total amount of New Infrastructure Funds allocated to the septic district. The remaining amount of allocated New Infrastructure Funds shall then be transferred to the CW Corporation to capitalize an

account to be used to fund the continued operations of the septic district ("Septic District Fund"). The Septic District Fund shall be used solely to fund the activities of the septic districts created pursuant to this Agreement.

(o) The Identified Communities shall be responsible for obtaining all necessary permits and approvals under State, federal, and local laws, including the Watershed Regulations. The Parties agree not to oppose the permitting and construction of facilities constructed with New Infrastructure Funds provided that the permits comply with the Watershed Regulations, NYSDEC permitting requirements, and this Agreement.

(p) The Parties agree not to challenge a determination by the City, the Identified Community and CW Corporation to fund a WWTP or community septic system in (i) a particular Identified Community, and (ii) at a capacity consistent with the capacity specifications and other provisions of this paragraph. Except for the issues noted above in this subparagraph, nothing herein shall limit the right of any party to enforce the compliance of any proposed WWTP with applicable law.

### 123. Sewer Extensions.

(a) The City shall provide up to Ten Million Dollars (\$10,000,000) ("Sewer Extension Funds") for a program to construct extensions to sewerage collection systems serving City-owned WWTPs in West of Hudson. Such program shall be established and administered in accordance with this paragraph.

(b) Sewer Extension Funds shall be used solely to pay the costs of designing, constructing and installing extensions to sewerage systems serving City-owned WWTPs located in West of Hudson. The area to be served by such extensions shall be limited to those areas where sewerage is necessary to alleviate existing water quality problems and reduce reliance on failing or soon-to-be failing septic systems.

(c) Sewer Extension Funds shall be administered and disbursed as follows:

(i) NYCDEP shall serve as program manager for the purposes of prioritizing the construction of such extensions, allocating specific amounts of Sewer Extension Funds to each project, overseeing the construction of such extensions and disbursing Sewer Extension Funds to pay for the costs of design, construction and installation. Construction budgets may include funds for lateral connections based on the ability of the homeowner to pay for such connection.

(ii) Within two years of the Effective Date of this Agreement, NYCDEP, in consultation with the CW Corporation and the affected municipalities, shall select projects and allocate specific amounts of Sewer Extension Funds for the extensions to be constructed based on the priority of the water quality problems to be addressed and preliminary construction budgets prepared by NYCDEP.

(iii) Prior to the City disbursing any Sewer Extension Funds for the construction of a sewer extension, the relevant local government (Town or Village) must take the following actions, to the extent not already taken:

(A) Together with NYCDEP technical staff, specifically delineate the area(s) to be served by the sewerage collection system, including the extension to be constructed, and provide NYCDEP with a copy of the map or plan defining the boundaries of such area(s);

(B) Adopt and maintain (and provide NYCDEP with a copy of) a sewer use ordinance, governing the use of the underlying sewerage collection system, that is at least as stringent as the model sewer use ordinance then in use by NYSDEC to determine eligibility of a project for financing under the New York State Revolving Loan Fund Program; and

(C) Adopt and maintain a comprehensive plan, subdivision regulations and appropriate land use laws and ordinances assuring that future growth within such area(s) can be adequately serviced by, and will not exceed the capacity of, the sewerage collection system and the WWTP to which it is connected. Nothing herein shall be construed as precluding a municipality from amending its comprehensive plan, subdivision regulations, appropriate land use laws and ordinances or adjusting its sewerage needs accordingly, provided that such amendments are consistent with the requirements of this subparagraph.

(d) Sewer Extension Funds will be disbursed by the City as work progresses, based on actual costs incurred.

(e) Once constructed, sewer extensions funded in whole or in part with Sewer Extension Funds shall constitute the property of the City, except that the City shall not take title to, or in any way be responsible for, any house connections or laterals that are made to such extensions. Before any property is allowed to connect to any such extension, the City shall be entitled to receive (if it so requests) a permanent easement from the owner(s) of such property, granting the City access to the property for the purpose of operating and maintaining the underlying sewerage collection system, at no cost to the City but otherwise on such reasonable terms and conditions as are customary for utility easements in New York State.

(f) NYCDEP's preliminary decision to enter into a contract for the design of a project under subparagraph (c)(ii) above shall be subject to the right of objection specified in paragraph 107(d). Subparagraph (b) of this paragraph shall constitute the parameters of this program for purposes of review under subparagraph 107(f)(i).

#### 124. Septic System Rehabilitations and Replacements.

(a) The City shall provide Thirteen Million Six Hundred Thousand Dollars (\$13,600,000) ("Septic Program Funds") for a program to rehabilitate septic systems serving single family or two family residences in West of Hudson that are failing or reasonably likely to

fail in the near future, to replace or upgrade substandard underground sewage treatment systems that do not meet current State and local standards serving single family or two family residences, and to inspect and pump out such septic systems and inspect such sewage treatment systems to determine whether rehabilitation or replacement is appropriate. Such program shall be established and administered in accordance with this paragraph.

(b) Septic Program Funds shall be used solely to pay the following costs:

(i) Inspection, including data collection, of existing septic systems serving single family or two family residences in West of Hudson to determine whether the system is failing or reasonably likely to fail in the near future and, if so, whether rehabilitation or replacement is appropriate;

(ii) One-time pump-outs of such septic systems;

(iii) Replacement or upgrading of existing substandard underground sewage treatment systems in West of Hudson that do not meet current State and local standards (e.g., cesspools or septic pits) serving single or two family residences ("Substandard Systems") and that are either failing or likely to fail. To the extent practicable, the new or upgraded septic system will be designed in accordance with the standards set forth in the Watershed Regulations; and

(iv) The reasonable administrative costs of this program.

(c) For purposes of this paragraph, residence shall mean a building, including a mixed residential/commercial use building, that has no more than two residential units and is served by a subsurface sewage treatment system with a design flow of less than 1000 gallons per day.

(d) The City shall enter into an agreement with the CW Corporation pursuant to Attachment FF-1 to administer and disburse the Septic Program Funds. Such agreement shall include the following terms and conditions:

(i) The CW Corporation shall serve as program manager for the purposes of: selecting and prioritizing areas for septic rehabilitation and replacement; allocating specific amounts of Septic Program Funds based on such prioritization; and disbursing Septic Program Funds to pay for the costs of pump-outs, inspections, rehabilitation, replacements and/or upgrades. NYCDEP technical staff may accompany the contractor during the performance of the pump-outs and inspections of systems. The CW Corporation shall develop program standards, priorities for implementation, and implementation milestones in consultation with NYCDEP and local health units within six months of the CW Corporation's receipt of the first payment from the City pursuant to subparagraph (v).

(ii) The CW Corporation, in consultation with NYCDEP technical staff and the local health units, shall select and prioritize areas for septic rehabilitation, replacement, and/or upgrade based on: evidence of failures or other water quality problems; the anticipated construction of new WWTPs, community septics, or extensions to sewerage collection systems which will result in existing septic or underground sewage treatment systems being taken "off line", thereby reducing the necessity of immediate inspections, rehabilitation, replacements and/or upgrades; and the location of the area within the Watershed, including the reservoir basin and the proximity to intake. The CW Corporation, in consultation with NYCDEP technical staff and the local health units, shall allocate Septic Program Funds to perform rehabilitations and replacements, as well as incidental pump-outs and inspections, in accordance with its prioritization.

(iii) The CW Corporation shall make commitments to spend the principal amount of the Septic Program Funds within five years of the CW Corporation's receipt of the first payment from the City pursuant to subparagraph (v).

(iv) The CW Corporation will require qualified contractors (which may include County departments of health) to conduct the rehabilitation and replacement or upgrade of failing septic systems or substandard systems, as well as the incidental pump-outs and inspections. Selection of contractors (other than municipal or other governmental entities such as County departments of health) will be based on a competitive process satisfactory to the City.

(v) The City shall pay Septic Program Funds to the CW Corporation over five (5) years in 60 monthly payments of Two Hundred Twenty Six Thousand Six Hundred Sixty Six and 66/100 Dollars (\$226,666.66), with the first payment due 90 days after the date of execution of the agreement between the City and CW Corporation, the second payment due on the first day of the month falling more than 15 days after the first payment, and the remaining payments due the first day of each succeeding month, all in accordance with the invoice procedures set forth in the City-CW Corporation agreement appended hereto as Attachment FF-1 which procedures are incorporated herein by reference (with any changes to such procedures as agreed to between The CW Corporation and the City).

(vi) The CW Corporation shall provide the City with a report on each septic system pumped out and inspected and each substandard system inspected, indicating the property address, the location of the system on site, the type of system, the estimated age of the system, and the rehabilitation, replacement or upgrade (if any) proposed to be made to such system.

(e) The City intends to provide the Septic Program Funds from the proceeds of tax-exempt revenue bonds issued by the New York City Municipal Water Finance Authority. Therefore, the principal amount of Septic Program Funds may be used only to pay the costs specified in subparagraph (b) incurred after the Effective Date of this Agreement. In addition, if Septic Program Funds are used to pay principal, premium or interest on bonds or other obligations issued to fund septic system rehabilitations or replacements, the principal amount of such Funds may be used only to pay the principal, premium or

interest on bonds or other obligations issued after the Effective Date of this Agreement, and, with respect to payment of interest on bonds or other obligations, only for interest owed before, during, and for one (1) year after completion of construction.

(f) Although it is intended that the CW Corporation will prioritize areas for septic rehabilitation or replacement, if the owner of an existing septic system serving a single family or two family residence receives a Notice of Violation from NYCDEP with respect to his/her septic system, NYCDEP will provide such owner with a notice informing him/her of the existence of the program contemplated in this paragraph, and advising him/her to contact the CW Corporation for further information. If such owner makes application to the CW Corporation for pump-out, inspection and/or rehabilitation, his/her application shall be considered a priority application for purposes of the program.

(g) If the owner of an existing septic system serving a single family or two family residence rehabilitated or replaced his/her septic system or Substandard System after November 2, 1995, but before the program contemplated in this paragraph is scheduled to reach his/her area, such owner shall nonetheless be entitled to apply to the program for reimbursement of the reasonable costs of such rehabilitation or replacement, provided such owner agrees to have his/her system pumped out and inspected, if requested by NYCDEP, to verify the rehabilitation or replacement and to provide NYCDEP with information of the type specified in subparagraph (d)(vi) above with respect to such system.

(h) The City agrees to accept for disposal at its wastewater treatment plants in the WOH Watershed at no charge and at a time and at such intervals acceptable to NYCDEP septic waste generated from the Septic System Rehabilitations and Replacements Program subject to the following terms and conditions:

(i) The wastewater treatment plant has adequate capacity to handle such waste;

(ii) The wastewater treatment plant is permitted to accept such waste;

(iii) The design of the wastewater treatment plant allows for the practical acceptance of septic waste by truck; and

(iv) The acceptance of waste will not cause or contribute to an upset of the treatment processes or violation of the plant's SPDES permit.

(i) The CW Corporation's preliminary decision to enter into a contract under subparagraph (d)(iv) above shall be subject to the right of objection specified in paragraph 107(b). Subparagraph (b) of this paragraph shall constitute the parameters of this program for purposes of review under subparagraph 107(f)(i).

125. Stormwater Retrofits.

(a) The City shall provide up to Seven Million Six Hundred Twenty Five Thousand Dollars (\$7,625,000) ("Stormwater Retrofit Funds") for a program to design, permit, construct, implement, and maintain stormwater best management practices ("Stormwater BMPs") to address existing stormwater runoff in concentrated areas of impervious surfaces in West of Hudson to the extent such BMPs are necessary to correct or reduce existing erosion and/or pollutant loading. Such program shall be established and administered in accordance with this paragraph.

(b) Stormwater Retrofit Funds shall be used solely to pay the costs of designing, permitting, constructing, implementing, and maintaining Stormwater BMPs to address existing stormwater runoff in areas with a concentration of impervious surfaces to the extent such BMPs are necessary to correct or reduce existing erosion and/or pollutant loading and the reasonable administrative costs of the program.

(c) The City shall enter into an agreement with the CW Corporation pursuant to Attachment FF to administer and disburse the Stormwater Retrofit Funds. Such agreement shall include the following terms and conditions:

(i) The CW Corporation shall serve as program manager for the purpose of: overseeing the actual construction and implementation of such Stormwater BMPs; and disbursing Stormwater Retrofit Funds to pay for the costs of design, permitting, construction, implementation and maintenance. The CW Corporation shall develop program standards jointly with NYCDEP and in consultation with local planning and code enforcement personnel.

(ii) Within six months of the CW Corporation's receipt of the first payment of Stormwater Retrofit Funds from the City, the CW Corporation, jointly with NYCDEP, shall complete the method for prioritizing sites which receive runoff from concentrations of impervious surfaces for installation of Stormwater BMPs. (iii) The CW Corporation, jointly with NYCDEP technical staff, shall select and prioritize sites in consultation with local planning and code enforcement personnel. NYCDEP and the CW Corporation shall have the projects designed, and allocate amounts of Stormwater Retrofit Funds to each selected project, based on the severity of water quality problems associated with run-off from the sites, the extent of erosion problems currently existing at the sites and the amount and the type of pollutant loadings from sites.

(iii) The CW Corporation will require qualified contractors to physically design, construct and implement the Stormwater BMPs paid for by the Stormwater Retrofit Funds. Selection of contractors (other than municipal or governmental entities such as Soil and Water Conservation Districts) will be based on a competitive process satisfactory to the City.

(iv) Stormwater Retrofit Funds shall be disbursed in accordance with the procedures set forth in the City-CW Corporation agreement appended hereto as Attachment FF-9 which procedures are incorporated herein by reference (with any changes to such procedures as are allowed pursuant to the terms of the agreement).



(d) The CW Corporation's preliminary decision to enter into a contract under subparagraph (c)(iii), above, shall be subject to the right of objection specified in paragraph 107(b). Subparagraph (b) of this paragraph shall constitute the parameters of this program for purposes of review under subparagraph 107(f)(i).

#### 126. Sand and Salt Storage Facilities.

(a) The City shall provide up to Ten Million Two Hundred Fifty Thousand Dollars (\$10,250,000) ("Sand and Salt Funds") for a program to improve the storage of sand, salt and other road de-icing materials in West of Hudson so as to better protect water quality and to assist local governments in complying with the Watershed Regulations. Such program shall be established and administered in accordance with this paragraph.

(b) Sand and Salt Funds shall be used solely to pay the following costs:

(i) Designing, constructing, and installing upgrades to existing municipal sand, salt and other road de-icing material storage facilities in West of Hudson where such facilities do not comply with the Watershed Regulations and such upgrades are needed to protect water quality.

(ii) Designing, constructing and installing new municipal sand, salt and other road de-icing material storage facilities in West of Hudson where such facilities do not exist and are needed to protect water quality.

(iii) Designing, constructing and installing new or upgraded municipal sand, salt and other road de-icing material storage facilities outside West of Hudson in towns which are within West of Hudson where such facilities are designed to serve significant areas within West of Hudson and where municipal sand, salt and other road de-icing material storage facilities do not currently exist or are uncovered and where new or upgraded facilities are needed to protect the quality of the City water supply.

(iv) Reimbursement of local governments which commenced construction of new or upgraded sand, salt and other road de-icing material storage facilities after November 2, 1995 provided that, except for the date on which construction began, such facilities would otherwise be eligible for inclusion in the Sand and Salt Program under subparagraphs (i) or (ii) above and provided such facilities both comply with section 18-45 of the Watershed Regulations and are consistent with the program standards developed by the CW Corporation.

(v) The design, construction and installation of a sand, salt and/or other road de-icing material storage facility inside West of Hudson to replace a facility outside West of Hudson shall not be eligible for inclusion in the Sand and Salt Storage Program.

(c) NYCDEP shall enter into a written agreement with the CW Corporation, pursuant to Attachment FF-2, providing for the administration and disbursement of Sand and Salt Funds. Such agreement shall include the following terms and conditions:

(i) The CW Corporation shall serve as program manager for the purposes of selecting and prioritizing sites for upgraded or new Storage Facilities, allocating specific amounts of Sand and Salt Funds to each project, overseeing the actual construction and installation of Storage Facilities, and disbursing Sand and Salt Funds to pay for the costs of design, construction and installation. The CW Corporation shall develop program standards and implementation milestones in consultation with NYCDEP.

(ii) Within six months of the CW Corporation's receipt of the first payment of funds for operating expenses from the City pursuant to paragraph 120 of this Agreement, the CW Corporation, in consultation with NYCDEP technical staff and local public works personnel, shall select and prioritize sites for the construction and installation of upgraded or new Storage Facilities, considering water quality problems and needs. In selecting sites, the CW Corporation and NYCDEP shall use their best efforts to maximize combined storage capacity for groups of neighboring communities and to employ a common utilitarian design. To ensure that projects are actually completed, CW Corporation may not enter into a written agreement for a Storage Facility unless it is clear that a sufficient amount of Sand and Salt Funds, or an alternative source of funding, is available to ensure that the project will be completed. When allocating Funds the CW Corporation shall include a contingency factor in each project budget estimate. Lower priority projects may be delayed until actual costs of initial projects are determined and to ensure that unanticipated costs which may arise in the completion of higher priority projects are adequately funded.

(iii) Once sites are selected and prioritized, the CW Corporation shall enter into written agreements with the local government (County, town or village, as the case may be) responsible for the site: identifying the project to be constructed and the amount of Sand and Salt Funds allocated to such project; committing the local government to initiate and complete construction of the project in accordance with a defined project schedule; and providing for disbursement of Sand and Salt Funds as work progresses, based on actual costs incurred. The local government shall specifically agree to hold title to the upgraded or new Storage Facility, and to be responsible for the proper operation and maintenance of the Storage Facility once completed.

(iv) The City shall pay the CW Corporation Sand and Salt Funds in accordance with the procedures set forth in the City-CW Corporation agreement appended hereto as Attachment FF-2 which procedures are incorporated herein by reference (with any changes to such procedures as are allowed pursuant to the terms of the agreement).

(d) All Storage Facilities funded in whole or in part by Sand and Salt Funds shall be constructed and installed in accordance with plans and specifications approved by NYCDEP in compliance with the Watershed Regulations and any applicable State standards. In addition, new storage facilities funded under this program shall not be sited within three hundred feet (300') of a reservoir or reservoir stem or within one hundred feet (100') of a watercourse or wetland as those terms are defined in the Watershed Regulations. The rehabilitation or expansion of an existing facility shall not, to the extent

practicable, be sited within three hundred feet (300') of a reservoir or reservoir stem or within one hundred feet (100') of a watercourse or wetland.

(e) The CW Corporation's preliminary decision to enter into a contract under subparagraph (c)(iii), above, shall be subject to the right of objection specified in paragraph 107(b). Subparagraph (b) of this paragraph shall constitute the parameters of this program for purposes of review under subparagraph 107(f)(i).

#### 127. Stream Corridor Protection.

(a) The City shall provide up to Three Million Dollars (\$3,000,000) ("Stream Corridor Funds") for a program of stream corridor protection in the West of Hudson.

(b) Stream Corridor Funds shall be used solely to: pay the costs of designing, constructing and implementing stream corridor protection projects in West of Hudson such as streambank stabilizations and fish habitat improvements.

(c) The City shall administer and disburse the Stream Corridor Funds consistent with the following terms and conditions:

(i) For the Three Million Dollars (\$3,000,000) in Stream Corridor Funds provided by the City pursuant to this paragraph, NYCDEP, in consultation with the Coalition and municipalities, shall select and design the projects and allocate amounts of such Stream Corridor Funds to each selected project. Projects will be selected and prioritized within six (6) months of the Effective Date of this Agreement.

(ii) The City may enter into agreements with municipal governments on a project-by-project basis.

(iii) All stream corridor protection projects funded in whole or in part with Stream Corridor Funds shall be constructed and installed in accordance with plans and specifications approved by NYCDEP.

(d) The CW Corporation shall administer and disburse any Stream Corridor Funds transferred pursuant to paragraphs 128(e) and 129(f) consistent with the terms and conditions of this paragraph, except that the CW Corporation shall select and design the projects and allocate amounts of such Stream Corridor Funds to each selected project jointly with the City and in consultation with municipalities. The CW Corporation may also retain qualified contractors (which may include Town or County departments of public works) to physically design, construct and implement the selected projects contemplated in this paragraph. If the CW Corporation retains a qualified contractor, the selection of contractors (other than municipal or other governmental entities such as Soil and Water Conservation Districts) will be based on a competitive process satisfactory to the City but no more restrictive than the procedures set forth in the section of General Municipal Law Section 103 that would apply if the CW Corporation were a municipality.

(e) The City's preliminary decision to implement a selected project under subparagraph (c)(i), above, shall be subject to the right of objection specified in paragraph 107(d). The joint preliminary decision by CW Corporation and the City to implement a selected project under subparagraph (d), above, shall be subject to the right of objection specified in paragraph 107(d). Subparagraph (b) of this paragraph shall constitute the parameters of this program for purposes of review under subparagraph 107(f)(i).

#### 128. West of Hudson Future Stormwater Controls.

(a) The City shall provide Thirty One Million Seven Hundred Thousand Dollars (\$31,700,000) ("New Stormwater Funds") for a program to design, construct, implement, and maintain new stormwater measures pursuant to stormwater pollution prevention plans required by Section 18-39(b)(3) of the Watershed Regulations and individual residential stormwater plans required by Section 18-39(e) of the Watershed Regulations and not otherwise required by federal and/or State law with respect to projects West of Hudson constructed after the effective date of the Watershed Regulations promulgated pursuant to CAPA ("Eligible Stormwater Projects"). For purposes of the New Stormwater Funds, any action required by a TMDL developed by NYSDEC solely for phosphorus control shall not constitute a requirement of federal or State law. Such program shall be established and administered in accordance with this paragraph.

(b) Except as set forth in subparagraphs (d) and (e) below, New Stormwater Funds shall be used solely to pay for the costs of designing, constructing, permitting, implementing and maintaining new stormwater measures pursuant to SPPPs or individual residential stormwater plans and not otherwise required by federal and/or State law, and the reasonable administrative costs of this program.

(c) The City shall enter into an agreement with the CW Corporation pursuant to Attachment FF-3 to administer and disburse New Stormwater Funds. Such agreement shall include the following terms and conditions:

(i) The CW Corporation shall serve as program manager for allocating specific amounts of New Stormwater Funds to SPPPs not otherwise required by federal and/or State law. The CW Corporation shall also disburse New Stormwater Funds to pay for reasonable and proper costs for designing, permitting, constructing, implementing, and maintaining Eligible Stormwater Projects. The CW Corporation shall develop program standards in consultation with NYCDEP.

(ii) The CW Corporation shall require a qualified contractor to design, construct, implement, and maintain an Eligible Stormwater Project paid for with New Stormwater Funds. If the CW Corporation retains a qualified contractor, the selection of contractors (other than municipal or other governmental entities such as Soil and Water Conservation Districts) will be based on a competitive process satisfactory to the City.

(iii) The City shall pay New Stormwater Funds to the CW Corporation over 10 years in 120 monthly payments of Two Hundred Sixty Four Thousand One Hundred Sixty-Six

and 67/100 Dollars (\$264,166.67), with the first payment due 90 days after the date of execution of the agreement between the City and CW Corporation, the second payment due on the first day of the month falling more than 15 days after the first payment, and the remaining payments due the first day of each succeeding month, all in accordance with the invoice procedures set forth in the City-CW Corporation agreement appended hereto as Attachment FF-3 which procedures are incorporated herein by reference (with any changes to such procedures as are allowed pursuant to the terms of the agreement).

(d) The City intends to provide the New Stormwater Funds from the proceeds of tax-exempt revenue bonds issued by the New York City Municipal Water Finance Authority. Therefore, use of New Stormwater Funds is subject to the following additional conditions and restrictions:

(i) The principal amount of New Stormwater Funds may be used only to pay the costs of designing, constructing, permitting, and implementing Eligible Stormwater Projects incurred after the Effective Date of this Agreement. In addition, if New Stormwater Funds are used to pay principal, premium, or interest on bonds or other obligations issued to fund Eligible Stormwater Projects, the principal amount of such Funds may be used only to pay the principal, premium, or interest on bonds or other obligations issued after the Effective Date of this Agreement, and, with respect to payment of interest on bonds or other obligations, only interest accrued before, during, and for one (1) year after completion of construction, and reasonable administrative costs of this program incurred after the Effective Date of this Agreement.

(ii) The principal amount of New Stormwater Funds may not be used to pay any operation or maintenance costs or to pay principal, premium, or interest on bonds or other obligations the proceeds of which are used to pay operation and maintenance costs.

(iii) Earnings on New Stormwater Funds may be used to pay for operation and maintenance costs directly related to or resulting from an Eligible Stormwater Project.

(e) The CW Corporation may disburse no more than Thirty One Million Seven Hundred Thousand Dollars (\$31,700,000) in total, including both principal and earnings, of the New Stormwater Funds to pay costs of Eligible Stormwater Projects. The CW Corporation shall transfer an amount at least equal to all earnings on New Stormwater Funds to one or more of the following: New Infrastructure Funds, but solely for use in creating and funding septic districts or in constructing community septic systems, as specified in paragraph 122; Septic Program Funds, as specified in paragraph 124; Stormwater Retrofit Funds, as specified in paragraph 125; and Stream Corridor Funds, as specified in paragraph 127. The CW Corporation shall transfer money from the New Stormwater Funds as follows:

(i) The CW Corporation may transfer any amount of New Stormwater Funds to any of the four other Funds listed in subparagraph (e) at any time and may take such funds to be transferred from either the principal amount of the New Stormwater Funds or the earnings on New Stormwater Funds.

(ii) At any time, if the amount of New Stormwater Funds, including both principal and earnings, held by the CW Corporation exceeds Twenty Million Dollars (\$20,000,000), the CW Corporation shall transfer an amount equal to future earnings on New Stormwater Funds after that date to one or more of the four other Funds listed in subparagraph (e), as such earnings are credited to the CW Corporation. The CW Corporation shall continue such transfers for so long as the amount of New Stormwater Funds, including both principal and earnings, held by the CW Corporation exceeds \$20 million.

(iii) When the CW Corporation has disbursed more than Eleven Million Seven Hundred Thousand Dollars (\$11,700,000) in New Stormwater Funds to pay the Costs of Eligible Stormwater Projects, so that the amount of New Stormwater Funds which may be spent on Eligible Stormwater Projects in the future is less than \$20 million, the trigger for requiring transfers under subparagraph (e)(ii) shall be the remaining balance of New Stormwater Funds which may be spent on Eligible Stormwater Projects. In that case, if at any time the amount of New Stormwater Funds, including both principal and earnings, held by the CW Corporation exceeds the amount of New Stormwater Funds which may be spent on Eligible Stormwater Projects in the future, the CW Corporation shall transfer an amount equal to future earnings on New Stormwater Funds after that date to one or more of the four other Funds listed in subparagraph (e), as such earnings are credited to the CW Corporation. The CW Corporation shall continue such transfers for so long as the amount of New Stormwater Funds, including both principal and earnings, held by the CW Corporation exceeds the amount of New Stormwater Funds which may be spent on Eligible Stormwater Projects in the future.

(iv) When a total of \$31.7 million, including both principal and earnings, of New Stormwater Funds has been disbursed to pay the Costs of Eligible Stormwater Projects, the CW Corporation shall transfer all remaining New Stormwater Funds to one or more of the other four Funds listed in subparagraph (e).

(v) Any funds transferred pursuant to this subparagraph (e) shall be used as if they were originally part of the Funds receiving the transfer, except that funds transferred from the principal amount of the New Stormwater Funds shall not be used to pay any operation or maintenance costs or to create or fund septic districts, except to pay the costs of an initial septic rehabilitation and replacement program pursuant to subparagraph 122 (n)(i), or such other capital costs as the City and CW Corporation mutually agree upon. Funds transferred from the earnings on New Stormwater Funds may be used to pay operation and maintenance costs where operation and maintenance are permitted uses of the Funds receiving the transfer.

(vi) The CW Corporation shall give written notice to the City at least 10 days before the transfer of any funds pursuant to this subparagraph (e).

(vii) "The Costs of Eligible Stormwater Projects," as used in subparagraph (e), shall not include the costs incurred by the CW Corporation in the administration of the New Stormwater Funds.

(viii) Any transfer of funds to New Infrastructure Funds, Septic Program Funds, Stormwater Retrofit Funds or Stream Corridor Funds shall not relieve or reduce the City's obligation to pay each respective Fund.

(f) Except as specified in subparagraphs (d) and (e), earnings on New Stormwater Funds may be used in the same manner and shall be subject to the same conditions as New Stormwater Funds.

(g) The CW Corporation's preliminary decision to select a contractor or award funds pursuant to subparagraph (c)(ii), above, shall be subject to the right of objection specified in paragraph 107(b). Subparagraph (b) of this paragraph shall constitute the parameters of this program for purposes of review under subparagraph 107(f)(i).

#### 129. Alternate Design Septic Systems.

(a) The City shall provide Three Million Dollars (\$3,000,000) ("Alternate Septic Funds") to allow for the design, construction and installation of alternate design septic systems in West of Hudson.

(b) Except as set forth in subparagraphs (e) and (f) below, the Alternate Septic Funds shall be used solely to pay for the design, construction and installation costs of fill material and/or pumping apparatus in connection with the installation of alternate design septic systems in West of Hudson, where required solely to comply with the requirements of the Watershed Regulations on subsurface sewage treatment systems, and reasonable administrative costs.

(c) As used herein, the term "alternate design septic system" shall mean a septic system which, because of site conditions, requires either or both of the following solely to comply with the Watershed Regulations: the importation and deposit of fill material so as to provide a quantity and quality of soil beyond that which NYSDOH requires to meet State or local regulations but which NYCDEP or its delegatee requires, and/or the installation of apparatus to pump septic effluent upgrade to an absorption field or area where such pumping is recommended or required by NYCDEP or its delegatee and not otherwise required by State or local regulations.

(d) The City shall enter into an agreement with the CW Corporation pursuant to Attachment FF-4 to administer and disburse the Alternate Septic Funds. Such agreement shall include the following terms and conditions:

(i) The CW Corporation shall serve as program manager for the purposes of allocating and disbursing Alternate Septic Funds to pay for eligible costs under the program contemplated in this paragraph. The CW Corporation shall develop program standards in consultation with NYCDEP.

(ii) When NYCDEP or its delegee grants an approval pursuant to the Watershed Regulations for a subsurface sewage treatment system located West of Hudson,

NYCDEP will notify the applicant that it may be eligible for Alternate Septic Funds. NYCDEP will also notify the CW Corporation of any project or projects requiring alternate design septic systems.

(iii) The City shall pay Alternate Septic Funds to the CW Corporation over 10 years in 120 monthly payments of Twenty-five Thousand Dollars (\$25,000), with the first payment due 90 days after the date of execution of the agreement between the City and CW Corporation, the second payment due on the first day of the month falling more than 15 days after the first payment, and the remaining payments due the first day of each succeeding month, all in accordance with the invoice procedures set forth in the City-CW Corporation agreement appended hereto as Attachment FF-4 which procedures are incorporated herein by reference (with any changes to such procedures as are allowed pursuant to the terms of the agreement).

(e) The City intends to provide the Alternate Septic Funds from the proceeds of tax-exempt revenue bonds issued by the New York City Municipal Water Finance Authority. Therefore, use of Alternate Septic Funds is subject to the following additional conditions and restrictions:

(i) The principal amount of Alternate Septic Funds may be used only to pay costs specified in subparagraph (b) incurred after the Effective Date of this Agreement. In addition, if Alternate Septic Funds are used to pay principal, premium, or interest on bonds or other obligations issued to fund alternate design septic systems, the principal amount of such Funds may be used only to pay the principal, premium, or interest on bonds or other obligations issued after the Effective Date of this Agreement, and, with respect to payment of interest on bonds or other obligations, only for interest accrued before, during, and for one (1) year after completion of construction.

(ii) The principal amount of Alternate Septic Funds may not be used to pay any operation or maintenance costs or to pay principal, premium, or interest on bonds or other obligations the proceeds of which are used to pay operation and maintenance costs.

(iii) Earnings on Alternate Septic Funds may be used to pay operation and maintenance costs directly related to or resulting from the fill and/or pumping apparatus of an alternate design septic system.

(f) The CW Corporation may disburse no more than Three Million Dollars (\$3,000,000) in total, including both principal and earnings, of the Alternate Septic Funds to pay Costs of Alternate Design Septic Systems. The CW Corporation shall transfer an amount at least equal to all earnings on Alternate Septic Funds to one or more of the following: New Infrastructure Funds, but solely for use in creating and funding septic districts or in constructing community septic systems, as specified in paragraph 122; Septic Program Funds, as specified in paragraph 124; Stormwater Retrofit Funds, as specified in paragraph 125; and Stream Corridor Funds, as specified in paragraph 127. The CW Corporation shall transfer money from the Alternate Septic Funds as follows:



(i) The CW Corporation may transfer any amount of Alternate Septic Funds to any of the four other Funds listed in subparagraph (f) at any time and may take such funds to be transferred from either the principal amount of the Alternate Septic Funds or the earnings on Alternate Septic Funds.

(ii) At any time, if the amount of Alternate Septic Funds, including both principal and earnings, held by the CW Corporation exceeds One Million Five Hundred Thousand Dollars (\$1,500,000), the CW Corporation shall transfer an amount equal to future earnings on Alternate Septic Funds after that date to one or more of the four other Funds listed in subparagraph (f), as such earnings are credited to the CW Corporation. The CW Corporation shall continue such transfers for so long as the amount of Alternate Septic Funds, including both principal and earnings, held by the CW Corporation exceeds \$1.5 million.

(iii) When the CW Corporation has disbursed more than One Million Five Hundred Thousand Dollars (\$1,500,000) in Alternate Septic Funds to pay the Costs of Alternate Design Septic Systems, so that the amount of Alternate Septic Funds which may be spent on alternate design septic systems in the future is less than \$1.5 million, the trigger for requiring transfers under subparagraph (f)(ii) shall be the remaining balance of Alternate Septic Funds which may be spent on alternate design septic systems in the future rather than \$1.5 million. In that case, if at any time the amount of Alternate Septic Funds, including both principal and earnings, held by the CW Corporation exceeds the amount of Alternate Septic Funds which may be spent on alternate design septic systems in the future, the CW Corporation shall transfer an amount equal to future earnings on Alternate Septic Funds after that date to one or more of the four other Funds listed in subparagraph (f), as such earnings are credited to the CW Corporation. The CW Corporation shall continue such transfers for so long as the amount of Alternate Septic Funds, including both principal and earnings, held by the CW Corporation exceeds the amount of Alternate Septic Funds which may be spent on alternate design septic systems in the future.

(iv) When a total of \$3 million, including both principal and earnings, of Alternate Septic Funds has been disbursed to pay the Costs of Alternate Design Septic Systems, the CW Corporation shall transfer all remaining Alternate Septic Funds to one or more of the other four Funds listed in subparagraph (f).

(v) Any funds transferred pursuant to this subparagraph (f) shall be used as if they were originally part of the Funds receiving the transfer, except that funds transferred from the principal amount of the Alternate Septic Funds shall not be used to pay any operation or maintenance costs or to create or fund septic districts, except to pay the costs of an initial septic rehabilitation and replacement program pursuant to subparagraph 122(n)(i), or such other capital costs as the City and CW Corporation mutually agree upon. Funds transferred from the earnings on Alternate Septic Funds may be used to pay operation and maintenance costs where operation and maintenance are permitted uses of the Funds receiving the transfer.

(vi) The CW Corporation shall give written notice to the City at least 10 days before the transfer of any funds pursuant to this subparagraph (f).

(vii) The "Costs of Alternative Design Septic Systems" as used in subparagraph (f) herein, shall not include the cost incurred by the CW Corporation in the administration of the Alternative Septic Funds.

(viii) Any transfer of funds to the New Infrastructure Fund, Septic Program Funds, Stormwater Retrofit Fund or Stream Corridor Fund shall not relieve or reduce the City's obligation to pay each respective Fund.

(g) Except as specified in subparagraphs (e) and (f), earnings on Alternate Septic Funds may be used in the same manner and shall be subject to the same conditions as Alternate Septic Funds.

(h) The CW Corporation's preliminary decision to disburse funds for specific systems as set forth in subparagraph (d)(i), above, shall be subject to the right of objection specified in paragraph 107(b). Subparagraph (b) of this paragraph shall constitute the parameters of this program for purposes of review under subparagraph 107(f)(i).

### 130. Forestry Management Program.

(a) The City shall provide up to Five Hundred Thousand Dollars (\$500,000) ("Forestry Funds") for a forestry management program in West of Hudson. Such program shall be established and administered in accordance with this paragraph.

(b) Forestry Funds shall be used solely to fund programs and projects intended to promote forestry practices in West of Hudson that protect the City's water supply against run-off and other pollution.

(c) The City shall enter into an agreement with the Watershed Agricultural Council ("WAC") to administer and disburse Forestry Funds for approved programs and projects. Such agreement shall include the following terms and conditions:

(i) WAC shall serve as program manager for the purpose of selecting forestry programs and projects to fund with Forestry Funds, overseeing the actual implementation of programs and projects, and disbursing Forestry Funds to pay for such programs and projects.

(ii) The existing Watershed Forest Ad Hoc Task Force (the "Task Force"), WAC and NYCDEP will develop recommendations for appropriate programs and projects, together with an itemized program/project budget.

(iii) Upon agreement by the Task Force, WAC and NYCDEP to fund an eligible forestry program or project, the City shall pay Forestry Funds to the WAC to fund the program or project, in the amount requested (or such lesser amount as shall be agreed upon).

(iv) WAC will retain qualified contractors to implement approved programs and projects. Selection of contractors (other than municipal or other governmental entities) will be based on a competitive process satisfactory to the City and complying with any applicable City procurement laws or regulations.

### 131. Public Education.

(a) The City shall provide Two Million Dollars (\$2,000,000) ("Education Funds") for a program of public education in West of Hudson on the nature and importance of the City's water supply system, and the critical role of Watershed residents as stewards of water quality. Such program shall be established and administered in accordance with this paragraph. Up to \$1 million of Education Funds may be used to pay the costs of establishing and maintaining exhibits on the City's water supply and the New York City Watershed at a Catskill regional museum. Any exhibits funded pursuant to this subparagraph shall be historically accurate and shall manifest a fair and balanced view of the subject matter examined. If the funds set aside for exhibits are not utilized within five years of the Effective Date of this Agreement, said funds may be expended in any manner provided for in the following subparagraphs.

(b) Education Funds shall be used solely to pay for the costs of public education programs and projects intended to increase awareness, including educating students within both the City and the Watershed, of the history of the Watershed and the City's water supply system, the importance of the Watershed to the City and the critical role of the Watershed communities, the ecology of the Watershed, the diversity and importance of aquatic life in the Watershed, and/or the importance of, and means of preserving, stream water quality in the Watershed, and reasonable administrative costs. Education Funds under this paragraph shall not be used to pay for capital costs of constructing stationary facilities or acquiring land.

(c) The City shall enter into an agreement with the CW Corporation pursuant to Attachment FF-6 to administer and disburse the Education Funds. Such agreement shall include the following terms and conditions:

(i) The CW Corporation shall serve as program manager for the purposes of recommending programs and projects for funding, submitting recommendations to the City, and disbursing Funds received to service providers.

(ii) The CW Corporation shall form an advisory group of educators and educational institutions, including educators and institutions located in the City, for the purpose of recommending appropriate programs and projects for funding under this paragraph.

(iii) While recommended projects may include curriculum development, they are intended in all cases to supplement and expand upon existing school curricula and programs. Recommended projects may not include projects that merely replace or restore existing curricula or programs that have been the subject of reduced public funding.

(iv) Recommended programs and projects, together with an itemized budget for each such program and project, shall be forwarded to the City for approval. City approval shall not be unreasonably withheld or delayed. Upon approval, the City shall pay Education Funds over to the CW Corporation to fund a recommended program or project, in accordance with the procedures set forth in the City-CW Corporation agreement appended hereto as Attachment FF-6 which procedures are incorporated herein by reference (with any changes to such procedures as are allowed pursuant to the terms of the agreement).

(v) The CW Corporation shall enter into written agreements with qualified service providers to implement the selected programs and projects. Selection of service providers (other than municipal or other governmental entities such as County departments of public works) will be based on a competitive process satisfactory to the City and will comply with any applicable City procurement laws or regulations.

### 132. Dunraven Causeway Bridge Reconstruction.

(a) The City shall reconstruct and rehabilitate the Dunraven Causeway Bridge, connecting New York State Route 28 with City Substitute Road 10. Construction shall commence within two (2) years of the Effective Date of this Agreement and any contracts for the construction will go to bid before November 1997.

(b) The Dunraven Causeway Bridge will be reconstructed to a live load standard of either HS 15 or HS 20 at the discretion of the City. The City also agrees to maintain the Dunraven Bridge in good operating condition, normal wear and tear excepted, so that it complies with the foregoing standard chosen by the City.

(c) The reconstruction and ongoing maintenance of the Dunraven Bridge shall be performed under the direction and control of appropriate technical staff of the City. The City will undertake these projects utilizing its own forces, or those of a contractor or contractors selected by the City.

### 133. Schoharie Roads and Bridges.

(a) The City shall resurface the following substitute roads, and replace two bridges located within the road segments, resulting from the creation of the Schoharie Reservoir, along the approximate distances indicated (the "Schoharie Roads and Bridges"): N.Y.S. Route 990V (2.72 miles); Greene County Road No. 7 (1.98 miles); Delaware County Road No. 53 (1.12 miles); Schoharie County Road No. 39 (1.59 miles); Gilboa Town Road (2.89 miles); and Roxbury Town Road (1.6 miles), in accordance with the map appended hereto as Attachment AA.

(b) Upon completion of the resurfacing, the City agrees to maintain the Schoharie Roads and Bridges, along the distances indicated, in good operating condition, normal wear and tear excepted. The bridge on N.Y.S. Route 990V and the bridge on Schoharie Road No. 39 will be replaced in accordance with NYSDOT Standard specifications for Highway

Bridges. These bridges are to be replaced to a live load standard of HS 25. The City agrees to maintain such bridges and the structural integrity and load-bearing capacity of the bridges as replaced.

(c) The resurfacing and the ongoing maintenance work shall be performed under the direction and control of appropriate technical staff of the City. The City will undertake this project utilizing its own forces, or those of a contractor or contractors selected by the City. The City shall enter into a contract for all or a portion of this work within six (6) months of the Effective Date of this Agreement. Design of the Schoharie Bridges under this paragraph shall commence by the Effective Date of this Agreement and reconstruction of such bridges shall commence on May 1998 and be completed in an expeditious manner.

(d) By agreeing to assume such responsibility from and after the Effective Date hereof, the City does not admit that it had any obligation or liability for the maintenance of any portion of the Schoharie Roads and Bridges prior to such date, or that it has any liability for any loss or damage sustained by any person arising out of the use of the Schoharie Roads or Bridges.

#### 134. West of Hudson Economic Development Study.

(a) The City shall provide up to Five Hundred Thousand Dollars (\$500,000) to fund a current comprehensive study (the "Study") of community and economic development goals and opportunities for the West of Hudson Watershed and its sub-regional areas which will assist the WOH communities to achieve their economic, social and environmental goals which are consistent with the City's water quality objectives and the Watershed Regulations, and reasonable administrative costs.

(b) The City shall enter into an agreement with the CW Corporation to oversee the Study. Such agreement shall include the following terms and conditions:

(i) The CW Corporation shall serve as program manager for the purposes of conducting the Study and disbursing the funds to pay the consultant(s).

(ii) The CW Corporation, utilizing a consultant or consultants qualified to conduct economic development studies and analyses, will investigate and produce a written report which shall include the following:

(A) A baseline of economic information on the region, in part through the use of existing economic studies and plans;

(B) The preparation of a "Community Assessment" which outlines the strengths and weaknesses of the business base within the Watershed, and of forces from within and outside the region that account, in part, for current economic and business conditions;

(C) An evaluation of the specific opportunities, consistent with the City's water quality objectives and the Watershed Regulations, which would build a stronger base for regional employment by major economic sector or subject area (e.g., manufacturing, services, tourism, agriculture, forestry, main street, etc.), with particular attention placed on the retention and expansion of existing businesses within the Watershed which are consistent with the City's water quality objectives and the Watershed Regulations;

(D) An evaluation of opportunities for increased economic development in areas immediately outside the Watershed that could provide economic benefits within the Watershed;

(E) An "Action Plan" that capitalizes on the area's strengths and recommends specific activities to address area weaknesses, as well as marketing strategies to better promote the region; and

(F) Proposals for institutional arrangements that would strengthen the capacity of counties and communities within the Watershed to engage in economic and community development.

(iii) The CW Corporation shall prepare a "Draft Preliminary Report" which includes the elements listed in subsections (A), (B), (C) and (D) above. Such Draft Preliminary Report shall be submitted to the WPPC and for public comment. After the review and consideration of comments received, the CW Corporation shall prepare a "Draft Final Report" which includes report elements (E) and (F) listed above. The Draft Final Report shall be submitted for public comment and to the WPPC for final review. The CW Corporation shall give due consideration to public comments received and prepare a final report that includes elements (A) through (F) above.

(iv) The City shall pay to the CW Corporation up to \$500,000 to pay for the fees and expenses of the selected consultant(s) and CW Corporation's reasonable administrative costs in conducting the Study, in accordance with the procedures set forth in the City-CW Corporation agreement appended hereto as Attachment FF-7 which procedures are incorporated herein by reference (with any changes to such procedures as are allowed pursuant to the terms of the agreement).

(v) The City shall be given reasonable advance notice of each meeting with staff of the selected consultant(s) and may attend if it so chooses. The City shall receive copies of all questionnaires, surveys, draft reports and other materials prepared by the consultant(s) in anticipation of their final report. The WPPC and the City shall be provided with a copy of the consultant's draft final report and shall be given at least 30 days to submit comments. The consultant(s) shall consider the WPPC's and the City's comments in preparing the final report and shall provide copies of the final report to the CW Corporation, the WPPC, and the City.

135. Catskill Fund for the Future.

(a) The City shall provide Fifty-Nine Million Seven Hundred Forty-Five Thousand Two hundred Forty-One and 65/100 Dollars (\$59,745,241.65) ("Economic Development Funds"), as set forth in subparagraph (e)(ii), to establish a program supporting responsible, environmentally sensitive economic development projects in the West of Hudson Communities. Such program shall be established and administered in accordance with this paragraph.

(b) The Economic Development Funds shall be used to capitalize a fund known as the Catskill Fund for the Future (the "Catskill Fund"), which shall be used to make loans and grants to Qualified Economic Development Projects (as defined below), or to capitalize other Watershed Partnership and Protection Programs as set forth in subparagraph (d) below, as provided for in this paragraph, and reasonable administrative costs.

(c) As used in this paragraph, the term "Qualified Economic Development Projects" shall mean economic development studies, grants and loans for projects which encourage environmentally sound development and which encourage the goals of Watershed protection and job growth in the Watershed communities located West of Hudson.

(d) The CW Corporation may at any time, but is not required to, include the following programs set forth in this Agreement as Qualified Economic Development Projects for the purposes of using the Economic Development Funds to fund the programs: SPDES Upgrades, paragraph 121; New Sewage Treatment Infrastructure Facilities for Towns, Villages and Hamlets, paragraph 122; Septic System Rehabilitations and Replacements, paragraph 124; Stormwater Retrofits, paragraph 125; and Sand and Salt Storage Facilities, paragraph 126. Any use of Economic Development Funds for any of these programs shall not relieve the City of any obligation it has to fund the specific programs.

(e) The City shall enter into an agreement with the CW Corporation and EFC, as set forth in Attachment DD, providing for the administration and disbursement of the Economic Development Funds and EFC's role as agent, including acting as an escrow agent as provided in subparagraphs 155(d) and 157(d) of this Agreement, for the CW Corporation. Such agreement shall contain the following terms and conditions:

(i) EFC shall establish the Catskill Fund, which shall be an account or fund separate and apart from all other accounts or funds held by EFC and used solely for the purposes described in this paragraph.

(ii) The City shall pay Fifty-Nine Million Seven Hundred Forty-Five Thousand Two Hundred Forty-One and 65/100 Dollars (\$59,745,241.65) in Economic Development Funds to EFC, for deposit in the Catskill Fund, over six years as follows. For the first year of payments, the City shall make three monthly payments of One Million, Six Hundred Sixty-Six Thousand, Six Hundred Sixty-Six and 67/100 Dollars (\$1,666,666.67). For the second year of payments, beginning on March 1, 1998, the City shall make monthly payments of Four Hundred Sixteen Thousand Six Hundred Sixty-Six and 67/100 Dollars (\$416,666.67). For the last four years of payments, beginning on March 1, 1999, the City shall make monthly payments of One Million, Thirty-Six

Thousand Three Hundred Fifty-Nine and 20/100 Dollars (\$1,036,359.20). The City shall make the first payment within ninety (90) days of the full execution of this Agreement; the second payment by the first day of June 1997, and the third payment by the first day of July 1997. For the second through sixth years of payments, the City shall make twelve monthly payments per year by the first day of each succeeding month commencing March 1, 1998 and proceeding on the first day of each month thereafter. Payments shall be made in accordance with the invoice procedures set forth in the agreement appended hereto as Attachment DD which procedures are incorporated herein by reference (with any changes to such procedures as are allowed pursuant to the terms of the agreement)

(iii) Money deposited into the Catskill Fund shall be used to fund loans or grants and reasonable administrative costs for Qualified Economic Development Projects and reasonable administrative costs to administer the Catskill Fund. No more than 20% of the Economic Development Funds may be used for grants in any given year.

(iv) CW Corporation, in consultation with EFC and the City, shall set appropriate terms for all loans made from the Catskill Fund to support Qualified Economic Development Projects, including setting any requirements for equity contributions, interest rates, loan terms, and loan documentation. All grants or loans made from the Catskill Fund shall require, as a condition of the grant or loan, that if the Watershed Regulations promulgated pursuant to paragraphs 89 and 90 become unenforceable and until new watershed regulations regulating the same activity are promulgated or the Watershed Regulations otherwise become enforceable, the borrower or grantee shall comply with the substantive requirements and DEP notification and approval provisions of the Watershed Regulations, notwithstanding their unenforceability, with respect to the project receiving funding from the Catskill Fund, and that the City shall have the right to enforce such provisions as to such project, including in the event the Watershed Regulations are voided or determined to be unenforceable. The grant or loan agreement shall give the City the right to enforce this requirement. In addition, in reviewing and making a determination, the City shall comply with, and implement its review and approval in accordance with the procedures of the Watershed Regulations. The substantive standards applicable to such review shall be the Watershed Regulations as if they were in full force and effect.

(v) All grants or loans made from the Catskill Fund to support Qualified Economic Development Projects shall be evidenced by a written agreement, in a form prescribed by EFC but substantially similar to like instruments evidencing economic development grants or loans made by governmental entities such as the Empire Development Corporation. The grant or loan agreement shall specify when and how the grant or loan is to be disbursed, and shall specify the purpose of the grant or loan. The recipient shall affirmatively covenant to use the grant or loan for such purpose and no other purpose, and to comply with all applicable provisions of the Watershed Regulations.

(vi) When the CW Corporation has issued its final decision to fund a Qualified Economic Development Project, it will submit the proposal to EFC for implementation. EFC shall proceed to close and disburse the loan and/or grant in accordance with any applicable



law, the provisions of EFC's enabling statute, and customary lending practices utilized by EFC. Complete copies of all loan and/or grant documentation shall be furnished to the CW Corporation.

(f) The CW Corporation shall review all proposals for Qualified Projects utilizing Economic Development Funds, shall make the preliminary decision to disburse funds and issue the final decision after the provisions of paragraph 107 have been met.

(g) At least once every five years the Council shall review and assess the activities and status of the Catskill Fund, with particular emphasis on whether the Catskill Fund has served its intended purpose and has encouraged responsible, environmentally sensitive economic development compatible with protection of the City's water supply.

(h) The CW Corporation's decision to fund a Qualified Economic Development Project pursuant to subparagraph (f) above shall be subject to the right of objection specified in paragraph 107(b). Subparagraph (c) of this paragraph shall constitute the parameters of this program for purposes of review under subparagraph 107(f)(i).

#### 136. Tax Consulting Fund.

(a) The City shall provide Three Million Dollars (\$3,000,000) ("Tax Consulting Funds") to the CW Corporation to pay the fees and expenses of professional consultants and/or attorneys retained by counties, towns or villages in West of Hudson to review, analyze and/or assist in the administration of real property taxes paid by the City on City-owned lands. The Tax Consulting Fund also may be used for the reasonable administrative costs of this program.

(b) The City shall enter into a written agreement with the CW Corporation pursuant to Attachment FF-8 providing for the following:

(i) Payment of such Funds by the City in two equal installments of One Million Five Hundred Thousand Dollars (\$1,500,000) 90 days after the date of execution of the agreement between the City and CW Corporation and on September 15, 1997. Both payments shall be made in accordance with the invoice procedures set forth in the City-CW Corporation agreement appended hereto as Attachment FF-8 which procedures are incorporated herein by reference (with any changes to such procedures as are allowed pursuant to the terms of the agreement); and

(ii) An agreement on the part of the CW Corporation to provide the City with a written certification, within two months after the end of each City fiscal year (starting with the fiscal year July 1, 1996 - June 30, 1997), indicating the persons to whom it has disbursed Tax Consulting Funds during such year, the total amount disbursed to each such person during such year, and a general description of the services provided to the CW Corporation or its grantee by each such person during such year. Nothing in this clause (ii) shall obligate the CW Corporation or its grantee to provide any information which is privileged or is attorney work product.

(c) The CW Corporation representatives named by the Governor and the Mayor shall not participate in or vote on any decisions to disburse monies from this fund.

#### 137. Funding of the Watershed Protection and Partnership Council.

(a) The City shall provide One Million Seventy-Five Thousand Dollars (\$1,075,000) and the State will provide at least Four Hundred Twenty-Five Thousand Dollars (\$425,000), consistent with paragraph 152, to fund the WPPC ("Operating Funds"). The State will establish the Partnership Council and its committees and subcommittees. The City shall enter into an agreement with the State to pay Operating Funds as follows:

(i) Five Hundred Thousand Dollars (\$500,000) within 90 days after the date of execution of the agreement between the City and the State;

(ii) Five Hundred Thousand Dollars (\$500,000) on February 1, 1998; and

(iii) Seventy-Five Thousand Dollars (\$75,000) on February 1, 1999.

(b) The Operating Funds shall be applied solely to pay for the operational costs and expenses of the Council, the Executive Committee or the other committees and subcommittees established pursuant to Article IV as determined by the Executive Committee, including salaries of employees, office equipment, office expenses, space rent, telephone and postage, consulting and professional fees, and similar costs and expenses. The Executive Committee shall provide the City with a written quarterly report, to be delivered within 30 days of the end of each quarter, accounting for the receipt and expenditure of all Operating Funds during the previous quarter.

(c) The Executive Committee shall actively solicit federal and State grant funds, private contributions, and other sources of financing to supplement the Operating Funds being provided hereunder. Additionally, the Council or the State may apply to the CW Corporation, from time to time, for grants to assist with payment of the operating expenses of the Council.

#### 138. Watershed Planning in the Croton System.

(a) The City, Westchester County and Putnam County agree that a cooperative comprehensive approach through basin-wide planning could serve to: identify significant sources of pollution to the Croton Watershed; recommend measures to be taken by the City, Counties and Croton Watershed Municipalities to improve water quality in, and prevent degradation of, the Croton Watershed; and recommend measures to protect the character and special needs of Croton Watershed communities. Should either or both Westchester and Putnam Counties request that such a planning effort be undertaken in that County in accordance with Section 18-82 of the Watershed Regulations, the City agrees to provide up to One Million Dollars (\$1,000,000) to each County making such a request (the "Croton Planning Funds"), regardless of whether the City or the County has the lead role in preparing the plan, to pay for costs and expenses incurred by Westchester

and Putnam Counties in developing the Croton Plan pursuant to Section 18-82 of the Watershed Regulations. Such monies shall be payable as follows:

(b) The City will pay the Croton Planning Funds to Westchester County and/or Putnam County in accordance with and subject to the payment procedures of the written agreement between the City and each such County entered into pursuant to subparagraph (d) below, the terms of which are incorporated herein by reference (with any changes to such procedures as are agreed to by the City and applicable County).

(c) Croton Planning Funds shall be used solely to pay for the following costs and expenses:

(i) Costs and expenses of consultants and other professionals retained to assist such Counties in developing the Plan in accordance with Section 18-82 of the Watershed Regulations;

(ii) Costs and expenses of in-house County staff related solely to developing the Plan in accordance with Section 18-82 of the Watershed Regulations;

(iii) To the extent individual towns and villages in either County which are Parties to this Agreement elect to participate in the preparation of such Plan, costs and expenses of consultants and other professionals retained by such towns and villages, or costs and expenses of in-house municipal staff, related solely to developing the Plan in accordance with Section 18-82 of the Watershed Regulations; and

(iv) Costs of a preliminary assessment of the potential uses of the diversion credit program established by Section 18-82(e)(4)(1) of the Watershed Regulations, including but not limited to any impact on basin water quality.

(d) The City shall enter into separate written agreements with Westchester County and Putnam County governing payment and use of Croton Planning Funds, each in the respective form set out in Attachment EE, immediately upon execution of this Agreement.

### 139. Sewage Diversion Feasibility Studies.

(a) Pursuant to separate Inter-Municipal Agreements ("IMAs") between the City and Westchester County and the City and Putnam County, each in the respective forms set forth in Attachment Y as provided in this paragraph, each County will conduct a technical feasibility study (the "Feasibility Study") intended to determine whether it is practically and financially feasible for the subject County to construct a Sewage Diversion Project or Projects such that sewage currently discharged in the Croton Watershed will be discharged outside of the New York City Watershed. Pursuant to the terms of its IMA, each County shall select an independent consultant or consultants to conduct the Feasibility Study, covering the scope of work appended to the IMA as set out in Attachment Y. Nothing in this Agreement shall obligate the County to expend its own

funds to conduct the Feasibility Study or to undertake a Sewage Diversion Project as a result of the Feasibility Study.

(b) Pursuant to the terms of the IMA, the City shall pay Westchester County and Putnam County the full and total costs and expenses of conducting such study, including professional consultants retained by the Counties to conduct such study and the County's costs up to a maximum of Four Hundred Fifty Thousand Dollars (\$450,000), in the aggregate, for Westchester County and up to a maximum of Three Hundred Fifty Thousand Dollars (\$350,000), in the aggregate, for Putnam County ("Aggregate Total"), in accordance with and subject to the payment procedures of the written agreements between the City and each such County entered into pursuant to subparagraph (f) below, which procedures are incorporated herein by reference (with any changes to such procedures as are agreed to by the City and applicable County). To the extent that proposals from consultants selected by either County exceed the Aggregate Total for that County, minus the expenses reasonably anticipated by such County, the County shall notify the City prior to entering into any contracts with such consultants. Within thirty days of receiving such notice, the City shall either (i) authorize the County to proceed and engage the selected consultants, whereupon the Aggregate Total shall be adjusted to pay for the total cost of such consultants and the total County costs as defined below and as set forth in the County's notice, or (ii) direct the County to revise the Scope of Work so that the work therein can be accomplished for not more than the Aggregate Total, and submit such revisions to NYCDEP for review. If NYCDEP approves such revisions to the Scope of Work, the County shall solicit new proposals or negotiate a revised consultant cost based on the revised Scope of Work. In proposing any such revisions, the County shall endeavor, to the extent feasible, to preserve the essential elements of the Scope of Work so that the resulting study fulfills its intended purpose. Total costs incurred by the County over the term of the contract, shall not exceed twenty percent (20%) of the Aggregate Total. For purposes of this paragraph, a County's costs shall include any appropriate costs incurred by a Town or Village which the County agrees to reimburse, provided that the total costs incurred by the County and its Towns and Villages shall not exceed twenty percent (20%) of the Aggregate Total established above.

(c) Each County shall submit to the City a pre-qualification list of one or more proposed consultants for the selection of its consultant, which list shall be subject to approval by the City in accordance with the following procedure. The City may reject, in writing, any consultant solely on the grounds that the consultant is not qualified. "Not qualified" shall mean (i) the consultant's qualifications and experience do not demonstrate the capability to fully perform the Study and timely deliver a work product as required by the IMA, or (ii) the consultant has been debarred from receiving contracts from the City under Section 7-08 of the Rules of the Procurement Policy Board of the City, or is the subject of a pending debarment proceeding by the City, or the City has knowledge of grounds that would entitle the City to debar the consultant under Section 7-08(a) of such Rules. The City shall provide written notice of the reasons for rejection within thirty (30) days of submission of the prequalification list. If the City and the County cannot agree on such list within one year after the County first proposes such list, the County and the City shall submit such issue to the Executive Committee for binding arbitration pursuant to

subparagraph 105(f). Notwithstanding any of the provisions of this paragraph, the County shall comply with its County Charter, County Procurement Policy and all applicable laws, regulations and policies for selecting and entering into contracts with the consultant(s) for the type of work provided for herein.

(d) Upon completion of the Feasibility Study, the results will be presented to the EOH Committee at a public information session. The results of the Feasibility Study will be incorporated into a final report which will be made publicly available.

(e) For purposes of this Agreement, "Sewage Diversion Project" shall mean a project whereby sewage effluent currently being discharged to waters within the Croton Watershed will be permanently diverted to a discharge outside the New York City Watershed or a WWTP discharging outside the New York City Watershed, or where sewerage collection systems may be utilized for the hook-up to a WWTP discharging outside the Watershed of currently existing septic systems that are failing or likely to fail. A Sewage Diversion Project may include the acquisition of interests in land, design, environmental assessment, planning, permitting, acquisition, financing and construction of pipelines, pumping stations and other apparatus designed to convey sewage or effluent from one or more WWTPs or other sources discharging within the Watershed to a discharge outside the Watershed or a WWTP discharging outside of the Watershed, and the acquisition of land or easements, design and construction of additional machinery, equipment and appurtenances necessary to treat the diverted sewage at the receiving WWTP outside the Watershed.

(f) The City shall enter into a separate IMA with each County governing the conduct of the Feasibility Study and payment by the City of the costs and expenses of such Study pursuant and subject to subparagraph (b) above, immediately upon execution of this Agreement, in the form set forth in Attachment Y.

#### 140. East of Hudson Water Quality Investment Program.

(a) The City shall provide Sixty Eight Million Dollars (\$68,000,000) ("EOH Water Quality Funds") to support a program of water quality investments in East of Hudson. Such program shall be established and administered in accordance with this paragraph.

(b) EOH Water Quality Funds and earnings thereon may be used solely to pay the costs of designing, planning, environmental assessment, permitting, acquisition, financing, constructing, and installing (for purposes of this paragraph only, referred to as "Costs") the following projects constructed after the Effective Date of this Agreement ("Eligible Projects"), subject to additional allowed costs as set forth in subparagraph (c), and subject to the conditions and restrictions set forth in subparagraph (d):

(i) A Sewage Diversion Project or Projects as defined in paragraph 139;

(ii) Water quality measures identified in a Croton System Water Quality Protection Plan pursuant to Section 18-82(c) of the Watershed Regulations, provided that such measures

constitute "water projects" as defined in Section 1045-b of the New York State Public Authorities Law;

(iii) Rehabilitation or replacement of subsurface sewage treatment systems ("SSTSs") that are failing or likely to fail soon or are in areas which exhibit concentrations of failing or soon-to-be-failing septic systems, including pump-outs and inspections of such SSTSs to determine whether rehabilitation or replacement is appropriate;

(iv) Community septic systems and related infrastructure, in areas of existing development, to address existing or anticipated water quality problems;

(v) Stormwater Best Management Practices ("BMPs") at existing concentrated areas of impervious surfaces to the extent such BMPs are necessary to correct or reduce existing erosion and/or pollutant loadings;

(vi) New or upgraded Sand and Salt Storage Facilities so as to enable local governments to comply with the Watershed Regulations;

(vii) Sewerage collection systems or extensions to sewerage collection systems to the extent necessary to serve areas with concentrations of failing or soon to be failing SSTSs constructed on inappropriate sites from a water quality perspective (e.g., undersized lots in lakefront communities adjacent to lakes or reservoirs) or to combine sewage flows currently treated at two or more WWTPs and expansions of existing WWTPs or construction of new WWTPs necessary to accommodate the additional flow resulting from such sewerage;

(viii) Stream bank stabilization and protection measures to the extent such measures are necessary to correct or reduce existing erosion, sedimentation or pollutant loading into streams and other watercourses; and/or

(ix) Any other purpose approved by NYCDEP. NYCDEP shall base its decision whether to approve such purpose on whether the proposed use of EOH Water Quality Funds is designed to protect and improve water quality in the Watershed and is consistent with the terms and conditions of this paragraph.

(x) For purposes of this paragraph only, the term "Costs" shall also include 1) administrative costs and expenses reasonably allocable to the designing, planning, environmental assessment, permitting, acquisition, financing, constructing and installing of any Eligible Project, and 2) Costs incurred prior to the Effective Date of this Agreement for Eligible Projects for which construction has commenced after such Effective Date.

(c) Notwithstanding (b) above, earnings on EOH Water Quality Funds, but not the principal amount of EOH Water Quality Funds, may also be used for the following purposes:

(i) To pay the costs of septic system pump-outs, and to create and fund septic maintenance districts which could provide for the repair, replacement or regular and ongoing pump-out of septic systems within the district;

(ii) To implement any measures identified in a Croton System Water Quality Protection Plan pursuant to Section 18-82(c)(2) of the Watershed Regulations;

(iii) To pay operation and maintenance costs directly related to or resulting from a project which may be funded with EOH Water Quality Funds or earnings on such Funds;

(iv) To develop a Croton System Water Quality Protection Plan pursuant to Section 18-82 of the Watershed Regulations or a Local Stormwater Watershed Protection Plan pursuant to Section 18-81 of the Watershed Regulations or to pay any cost of implementing or complying with such plans not otherwise allowed pursuant to subparagraph (b)(ii) of this paragraph;

(v) To pay the costs of any other measure designed to alleviate a water quality problem in the EOH Watershed existing on the Effective Date of this Agreement;

(vi) To pay all costs related to the administration of the EOH Water Quality Fund and earnings on such Funds; and/or

(vii) Any other purpose approved by NYCDEP. NYCDEP shall base its decision whether to approve such purpose on whether the proposed use of earnings on EOH Water Quality Funds is designed to protect and improve water quality in the Watershed and is consistent with the terms and conditions of this paragraph.

(d) Without limiting the City's obligation pursuant to subparagraph (a) to provide \$68,000,000.00, each County's use of EOH Water Quality Funds is subject to the following conditions and restrictions:

(i) The principal amount of EOH Water Quality Funds may be used only to pay Costs of an Eligible Project for which construction was commenced after the Effective Date of this Agreement. In addition, if EOH Water Quality Funds are used to pay principal, premium or interest on bonds or other obligations issued to fund an Eligible Project, the principal amount of such Funds may be used only to pay principal, premium or interest on bonds or other obligations issued after the Effective Date of this Agreement.

(ii) With respect to interest on bonds or other obligations issued to fund an Eligible Project and otherwise qualifying under clause (i) above, the principal amount of EOH Water Quality Funds may only be used to pay or subsidize interest on such bonds prior to, during, and for a reasonable time after construction of such Eligible Project. If, and for so long as, the legislation set forth in paragraph 167(iii) is enacted into law in the form set forth in Attachment U, the restriction in the previous sentence shall no longer apply. Earnings on EOH Water Quality Funds may be used to pay or subsidize any interest on such bonds or other obligations.

(iii) The principal amount of EOH Water Quality Funds may not be used to pay any operation or maintenance costs.

(e) Subject to the restrictions of this paragraph, the City specifically agrees that each County may use the EOH Water Quality Funds and earnings on such funds for the following purposes:

(i) To make grants to public and private entities to fund Eligible Projects;

(ii) To pay principal, premium and interest, establish reserves, or subsidize interest on bonds issued to fund Eligible Projects; and

(iii) To make revolving loans to public and private entities to fund Eligible Projects.

(f) The EOH Water Quality Funds shall be distributed as follows: to Westchester County \$38 million; and to Putnam County, \$30 million. The City shall pay these amounts to the Counties, in full, within ninety (90) days of execution of the agreement specified in subparagraph (i).

(g) Except as specified above, earnings on EOH Water Quality Funds may be used in the same manner, and shall be subject to the same conditions as EOH Water Quality Funds.

(h) Each County agrees that it will apply no more than 10% of its share of EOH Water Quality Funds, including earnings on such Funds, to Eligible Projects (other than a Sewage Diversion Project) until the County submits a final report on the Feasibility Study conducted pursuant to paragraph 139 to NYCDEP unless:

(i) NYCDEP and the County are unable to agree to the selection of a consultant or Scope of Work pursuant to paragraph 139 (Sewage Diversion Feasibility Studies), within one year after the County first proposes a consultant or pre-qualification list. In such event, the restriction in this subparagraph (h) on the use of EOH Water Quality Funds shall no longer apply and the County shall immediately have full use of 100% of its EOH Water Quality Funds and earnings thereon in accordance with all provisions of this paragraph, exclusive of subparagraph (h); or

(ii) Two years have elapsed since the date the County first proposed a consultant to the City. In such event, the restriction in this subparagraph (h) on the use of EOH Water Quality Funds shall no longer apply and the County shall immediately have full use of 100% of its EOH Water Quality Funds and earnings thereon in accordance with all provisions of this paragraph, exclusive of subparagraph (h).

(i) Immediately upon the execution of this Agreement, the City shall enter into separate agreements with Westchester County and Putnam County, in the respective forms set forth in Attachment GG, providing for the administration and disbursement of the EOH Water Quality Funds. Each such agreement shall include the following terms and conditions:



(i) The City shall pay each County's share of the EOH Water Quality Funds to the County within ninety (90) days of the date of execution of such agreement.

(ii) The City and each County agree that EOH Water Quality Funds shall be used solely for the purposes set forth in subparagraph (b) above and as set forth in this paragraph.

(j) Each County will notify applicable Parties of its preliminary decision to use funds from the EOH Water Quality Funds and earnings thereon consistent with paragraph 107(a). When a County notifies such eligible Parties of its preliminary decision to use EOH Water Quality Funds to fund a Sewage Diversion Project, such notification shall include:

(i) Identification of the geographic boundaries of the area to be served by the diversion;

(ii) Description of, and limitations on, the volume and wastewater characteristics of the intended diverted flow;

(iii) Establishment of limits on future connections and service area extensions to the diversion system;

(iv) Evaluation of the existing service area collection system to identify any overflows, broken lines or any other condition that could result in the release of intended flow prior to diversion;

(v) Identification of the approval process for any future connections to the diversion system;

(vi) Identification of the route and size of pipes within the diversion system; and

(vii) Identification of the ultimate treatment and disposal locations and processes.

(k) Putnam County's or Westchester County's preliminary decision to use funds from the EOH Water Quality Funds and earnings thereon shall be subject to the right of objection specified in paragraph 107(c). Subparagraph (b) under this paragraph shall constitute the parameters of this program for purposes of review under paragraph 107(f)(i). If any of the conditions of a Sewage Diversion Project, as set forth in paragraph 140(j)(i)-(vii), substantially change from those initially identified by Putnam or Westchester County pursuant to this paragraph, such County shall notify the appropriate Parties of such change consistent with paragraph 107(c).

(l) Anything herein to the contrary notwithstanding, in the event that either Westchester County or Putnam County completes a Sewage Diversion Project which results in sewage effluent from a WWTP discharging into the Croton Watershed being permanently diverted to a WWTP discharging outside the New York City Watershed, thereby relieving the City of its obligation to pay for certain Regulatory Upgrades (as defined in paragraph 141 of this Agreement), the City shall add additional monies to the EOH Water

Quality Funds allocated to such County in an amount equal to the costs of designing, constructing and installing the upgrades for which the City is no longer obligated to pay. Within 90 days of receipt by the City of a written notice from such County certifying that the County intends to divert a WWTP, the City and affected County, in consultation with EFC, will determine the amount of such costs for the Regulatory Upgrades that the City is no longer obligated to spend due to such Sewage Diversion Project based upon the specific circumstances of the WWTP and such costs actually incurred for similar WWTPs. The City shall pay such amount to the County in which the diverted WWTP was located within 60 days of receipt by the City of a written notice from such County certifying that such Sewage Diversion Project has been completed and is operational.

(m) The City acknowledges that Westchester County and Putnam County and their municipalities may issue general obligation bonds to finance the costs of Eligible Projects in reliance on the City's representation that use of EOH Water Quality Funds to pay debt service, establish reserves or subsidize interest on such bonds, in compliance with the conditions and restrictions set out in this paragraph, would not conflict with any provision of State law applicable to bonds of the New York City Municipal Water Finance Authority (the "NYCMWFA") or cause interest on such bonds to become includible in gross income of the holders thereof for federal income tax purposes. In the event that

(i) Westchester County or Putnam County or their municipalities have issued bonds to finance the cost of Eligible Projects within the terms of subparagraph (b), (c) and (d) of paragraph 140; and

(ii) Any payments made by the City to Westchester County or Putnam County under this Agreement are revoked or invalidated subsequent to the date hereof resulting in either (A) the refunding to the City or any other entity of the EOH Water Quality Funds then held by Westchester County or Putnam County or (B) the restriction of the use of EOH Water Quality Funds to pay debt service on bonds issued by Westchester County or Putnam County or their municipalities to finance the cost of Eligible Projects (other than the restrictions imposed by this paragraph 140), then in the case of (ii)(A), above, the City agrees to immediately reimburse the applicable County for any EOH Water Quality Funds lost by such County, or, in the case of (ii)(B), above, the City agrees to replace such moneys with moneys which may be used to pay debt service on such County or municipal bonds, and the applicable County or municipality will at such time return to the City the moneys which have been determined ineligible to pay such debt service.

(n) If (i) the City provides any portion of the EOH Water Quality Funds to either Westchester County or Putnam County from the proceeds of revenue bonds issued by the NYCMWFA; and (ii) an action before a court or before or by an administrative agency is commenced in which it is alleged (A) that such bonds are invalid or otherwise have been improperly issued or sold or the proceeds thereof improperly applied, or (B) if such bonds were issued on a tax-exempt basis, that interest on such bonds is includible in the gross income of the owners thereof or is subject to the alternative minimum tax under the Internal Revenue Code of 1986, as amended; then the City shall indemnify, defend and hold harmless such County and its municipalities from any loss, cost or expense arising

out of such action. The foregoing indemnification shall not apply to any loss, cost or expense of the County or its municipalities caused by a violation of this Agreement by the County or its municipalities.

(o) All or a portion of the additional conditions and restrictions set out in subparagraphs 140(d)(i), (ii) and (iii) and the restrictions on use of principal set out in subparagraph 140(c) shall no longer apply to the use of EOH Water Quality Funds, (i) if the City agrees, or (ii) if at any time Westchester County or Putnam County delivers to the City an unqualified bond opinion, in form and substance satisfactory to the City, from a nationally recognized bond counsel acceptable to the City in its sole and absolute discretion, to the effect that such conditions and restrictions or portion thereof are no longer necessary to ensure that (i) such Funds are used for purposes for which NYCMWFA may lawfully issue bonds under State law, and (ii) interest on the bonds issued by NYCMWFA to provide such Funds will not be includible in the gross income of the holders thereof for federal income tax purposes or be subject to the alternative minimum tax under the Internal Revenue Code of 1986, as amended.

(p) Anything herein to the contrary notwithstanding, the provisions of subparagraphs (d), (e), (m), (n) and (o) of this paragraph may be amended by written agreement executed by the City, Westchester County and Putnam County, without the consent of the other Parties.

#### 141. Upgrades to Existing WWTPs to Comply with Watershed Regulations.

(a) Subject to, and in accordance with, the terms and conditions of this paragraph, the City agrees to pay for the costs of designing, permitting, constructing and installing all Regulatory Upgrades (as hereinafter defined) required by WWTPs (both public and private) in operation or permitted and under construction as of November 2, 1995 ("Existing WWTPs") in both West of Hudson and East of Hudson. As used in this paragraph only, the term "Regulatory Upgrades" shall mean equipment and methods of operation which are required solely by the Watershed Regulations and not because of any provision of federal or State law, regulation or enforceable standard otherwise applicable to a WWTP and/or equipment and methods of operation which are listed in subparagraph (c) below.

(b) The City further agrees to pay the annual costs of operating and maintaining such Regulatory Upgrades consistent with the terms set forth in the model agreement appended hereto as Attachment WW.

(c) Without in any way limiting the obligations of the City pursuant to subparagraph (a) above, if an Existing WWTP in West of Hudson or East of Hudson does not currently have machinery and equipment necessary to comply with the following requirements, the City specifically agrees to pay for the costs of designing, constructing, permitting and installing such machinery and equipment at such WWTP and the annual cost of operating and maintaining such machinery. For purposes of subparagraph (d) below, the following constitute Regulatory Upgrades:

(i) Phosphorus removal;

(ii) Sand filtration;

(iii) Disinfection;

(iv) Microfiltration or an equivalent technology (a decision whether a treatment technology is equivalent to microfiltration will be made by USEPA and the City for the Catskill and Delaware System for so long as the Catskill and Delaware System is operated under a filtration avoidance determination. With respect to the Catskill and Delaware System and the Croton System, nothing herein affects any authority NYSDOH may have under State law or regulation to approve an equivalent treatment technology);

(v) Standby power;

(vi) Power alarm;

(vii) Automatic start-up capability;

(viii) Disinfection back-up;

(ix) Disinfection back-up automatic start-up capability

(x) Back-up sand filtration;

(xi) Recording flow meters; and

(xii) Alarm telemetering.

(d) The City shall enter into an agreement appended hereto as Attachment HH with EFC to establish a program for paying the following costs with respect to all Existing WWTPs: the costs of designing, permitting, constructing and installing the Regulatory Upgrades required at the WWTPs. Such agreement shall include the following terms and conditions:

(i) Based on preliminary plans, designs, and estimates submitted by each WWTP owner, NYCDEP shall determine the Regulatory Upgrades and estimate the cost of such Upgrades required at each such Existing WWTP and the priority for the scheduling of the Upgrades. EFC shall serve as program manager and shall determine, together with the owner of each such existing WWTP, a construction budget and schedule for completing the required Regulatory Upgrades. EFC will monitor the construction of the Upgrades, and disburse funds provided by the City to pay for the costs of designing, constructing, permitting and installing such Upgrades.

(ii) EFC, in consultation with NYCDEP technical staff, shall negotiate and enter into an agreement with the owner of each such existing WWTP, in form and substance

acceptable to NYCDEP and consistent with the model agreement appended hereto as Attachment II: requiring the WWTP owner to plan, design, and estimate the cost of the Regulatory Upgrades needed at such WWTP subject to the approval of NYCDEP; committing the owner to initiating and completing construction in accordance with a schedule to be agreed upon; and providing for disbursement of City funds to pay for the costs of such Upgrades as work progresses (based on actual costs incurred); and providing for disbursement of City funds to pay for the cost of maintenance and operation of such upgrades (based on actual costs incurred) and assigning such obligation to the City. EFC shall not be responsible for monitoring or disbursing Funds for the ongoing operation and maintenance of the Regulatory Upgrades. The agreement will also logically coordinate such Upgrades with any upgrades being undertaken by the owner to achieve compliance with the WWTP's SPDES permit.

(iii) EFC shall use its best efforts to cause all Regulatory Upgrades to be completed within the time period allowed by the Watershed Regulations promulgated pursuant to CAPA. EFC shall use its best efforts to negotiate upgrade schedules with all WWTPs in a manner to allow the timely completion of the upgrades in compliance with the Watershed Regulations. For WWTPs EOH which may be potential subjects of a Sewage Diversion Project, an extension of time to complete the Upgrade may be granted by NYCDEP pursuant to the Watershed Regulations. EFC shall take such extension into account in negotiating an Upgrade schedule with an EOH WWTP owner.

(iv) The City agrees to pay EFC the necessary funds for the design, permitting, construction, and installation of the Regulatory Upgrades, together with EFC's administrative fees, in accordance with the budget procedures set forth in the City-EFC agreement appended hereto as Attachment HH which procedures are incorporated herein by reference (with any changes to such procedures as are allowed pursuant to the terms of the agreement).

(e) Anything herein to the contrary notwithstanding, the City's agreement to pay for the costs identified in subparagraph (c) above does not constitute, and shall not be deemed to constitute, an agreement or admission on the part of the City that it is liable for the payment of such costs under the Public Health Law, including specifically Section 1104, or under provision of any other law, with respect to any WWTP which may in the future be constructed in West of Hudson or East of Hudson.

(f) Anything herein to the contrary notwithstanding, if either Westchester County or Putnam County or both construct or cause to be constructed a Sewage Diversion Project which eliminates the need to install certain Regulatory Upgrades at a WWTP which has been diverted, neither the City nor EFC shall be obligated to pay any monies to the owner or operator of the diverted WWTP on account of such Upgrades. The City shall instead, pursuant to paragraph 140(l) above, pay to either Westchester County or Putnam County (as the case may be) monies in an amount equal to the costs of designing, constructing and installing such Regulatory Upgrades which the City is no longer obligated to pay, as additions to the EOH Water Quality Funds allocated to such County.

(g) In order to coordinate the upgrading of Carmel SD #2 and SD #4 WWTPs to the standards set forth in the Watershed Regulations with other work planned and needed at such WWTPs, anything herein to the contrary notwithstanding, the City agrees to reimburse the Town of Carmel Nine Hundred Seventeen Thousand, Three Hundred Twenty-Three and 07/100 Dollars (\$917,323.07) for the costs of designing, permitting, constructing, and installing Regulatory Upgrades required at SD #2 and SD #4 and otherwise eligible under paragraph 141 of this Agreement, provided such costs have been incurred in connection with a project for which construction commenced after January 1, 1993. The City shall enter into an agreement with the Town of Carmel to pay for such costs in a form and substance appended hereto as Attachment KK. Such agreement shall provide for the payment of such costs within forty-five (45) days of submission of appropriate invoices, supporting documentation, and proof of payment, but in no event sooner than ninety (90) days after the execution of such agreement.

142. Future Operation and Maintenance Costs at Public WWTPs for Equipment Installed or Methods of Operation Instituted Between July 1, 1991 and November 2, 1995.

(a) The City shall pay, in accordance with its obligations under Section 1104(1) of the Public Health Law as interpreted in the Declaratory Ruling issued by NYSDOH on September 27, 1993, the incremental future annual costs of operating and maintaining equipment installed or methods of operation required solely because of the City Watershed Rules and Regulations and not because of any provision of State or federal law, regulations, or enforceable standards at any public WWTP between July 1, 1991 and November 2, 1995 ("Past Regulatory Upgrades").

(b) The City shall enter into an agreement with the owner of any public WWTP eligible to receive funding pursuant to this paragraph, specifying the Past Regulatory Upgrades and providing for the disbursement of City funds to pay for the reasonable and proper future costs of operating and maintaining such Past Regulatory Upgrades based on actual costs incurred and upon submission of appropriate invoices and supporting documentation. The City shall pay such reasonably anticipated costs on a quarterly basis by the first day of the quarter based on a budget submitted to the City at least forty-five (45) days before the beginning of such quarter.

(c) The City's agreement to pay for the future annual operation and maintenance costs of Past Regulatory Upgrades does not constitute, and shall not be deemed to constitute an agreement or admission on the part of the City that it is otherwise liable for the payment of past costs under the Public Health Law, including specifically Section 1104, or under provision of any other law.

143. Upgrades to Future Public WWTPs Required by the Watershed Regulations.

(a) The City shall pay the incremental costs, including annual operation and maintenance costs, incurred by new or expanded public WWTPs constructed in either West of Hudson or East of Hudson after the effective date of the Watershed Regulations promulgated pursuant to CAPA in accordance with the requirements of Section 1104(1) of the Public

Health Law, the Declaratory Ruling issued on September 27, 1993 by NYSDOH concerning the meaning of Section 1104(1) of the Public Health Law appended hereto as Attachment UU, and the Supplemental Declaratory Ruling to be issued as set forth below (referred to as "Future Regulatory Upgrades").

(b) All payments pursuant to this paragraph will be made by the City directly to the applicant receiving an approval for a new or expanded public WWTP requiring Future Regulatory Upgrades. The City shall pay such reasonably anticipated costs on a quarterly basis by the first day of the quarter based on a budget submitted to the City at least forty-five (45) days before the beginning of such quarter.

(i) When NYCDEP receives an application for approval pursuant to the Watershed Regulations for a new or expanded public WWTP, NYCDEP will notify the applicant of the applicant's potential eligibility for funds under this paragraph. When NYCDEP approves any such application, NYCDEP will identify the Future Regulatory Upgrades needed at the WWTP and notify the applicant that it is entitled to have the City pay the costs of such upgrades.

(ii) The City shall enter into a direct agreement with the owner of such WWTP, specifying the required Future Regulatory Upgrades, establishing a construction budget for completing such Upgrades; committing the owner to initiating and completing construction in accordance with such budget; and providing for disbursement of City funds to pay for the reasonable and proper costs of such upgrades, including operation and maintenance costs, as work progresses based on actual costs incurred and upon submission of appropriate invoices and supporting documentation.

144. Phosphorus Controls in Cannonsville. The City agrees to pay the costs, including operation and maintenance costs, of phosphorus controls at new public WWTPs or expansions of existing public WWTPs constructed in the drainage basin of the Cannonsville Reservoir where such controls are required solely by either NYSDEC TMDLs or the Watershed Regulations. Whenever NYCDEP receives an application for approval to construct a new public WWTP or expand an existing public WWTP in the drainage basin of the Cannonsville Reservoir, NYCDEP shall inform the applicant of the availability of funding of phosphorus controls under this subparagraph. If NYCDEP approves the application, the owner of such WWTP shall identify in writing for NYCDEP the phosphorus controls at the new or expanded WWTP which are required solely as a result of either NYSDEC TMDLs or the Watershed Regulations, together with the estimated costs, including construction, operation and maintenance costs, of such controls. Upon verification by NYCDEP that such phosphorus controls are required solely as a result of either the NYSDEC TMDLs or the Watershed Regulations, the City and the owner of the WWTP shall enter into an agreement providing for the City to pay the costs of such controls, including operation and maintenance costs, as such costs are incurred by the owner, upon submission of bills, invoices and other documentation to NYCDEP.

145. Future Stormwater Controls Paid for by the City: Single-family Houses, Small Businesses, Low-income Housing.

(a) The City shall pay the incremental costs of stormwater measures required by the Watershed Regulations and that are not otherwise required by State and/or federal law, regulation, or enforceable standard for the following:

(i) West of Hudson, the City will pay the entire costs of designing and implementing stormwater pollution prevention measures pursuant to individual residential stormwater permits required by Section 18-39(e)(1) of the Watershed Regulations for new individual residences constructed within the limiting distances set forth in Section 18-39(a)(2)(i) where lot constraints prevent the construction of the home outside the limiting distances. East of Hudson, the City will pay 50% of the costs of designing and implementing stormwater pollution prevention measures pursuant to individual residential stormwater permits required by Section 18-39(e)(i) of the Watershed Regulations for new single-family homes constructed within the limiting distances set forth in Section 18-39(a)(2)(i) of the Watershed Regulations where lot constraints prevent the construction of the home outside the limiting distances.

(ii) The City will pay 50% of the incremental costs of designing and implementing stormwater pollution prevention plans required by Section 18-39(b) of the Watershed Regulations and not otherwise required by State or federal law, for all small businesses. Small businesses for the purposes of this paragraph are any businesses which are resident in New York State, independently owned and operated, and employ one hundred or less individuals.

(iii) The City will pay 100% of the incremental costs of designing and implementing stormwater pollution prevention plans required by Section 18-39(b) of the Watershed Regulations, and not otherwise required by State or federal law, for those facilities funded through publicly-subsidized low-income housing programs.

(b) All payments pursuant to this paragraph will be made by the City directly to an eligible applicant receiving an approval for a stormwater pollution prevention plan or stormwater pollution prevention measures pursuant to individual residential stormwater permits required pursuant to the Watershed Regulations.

(i) NYCDEP will notify applicants of their potential eligibility for funds under this paragraph, with an application for such funding. NYCDEP will also include notification of potential eligibility for funding under this paragraph with any approval granted for a stormwater pollution prevention plan.

(ii) The City will pay reasonable and proper costs for work completed in designing, implementing, and maintaining stormwater measures pursuant to stormwater pollution prevention plans and individual residential stormwater permits under this paragraph within 90 days of submission of appropriate invoices and back-up material.



146. Payment of Costs and Expenses Associated with Review of City's Watershed Protection Program.

(a) The City shall pay up to the following sums to the Parties indicated below, as reimbursement for actual, reasonable costs and expenses incurred by such Parties in reviewing and responding to the City's requests for filtration avoidance and resulting Watershed Protection Program from inception up through 90 days after the Effective Date of this Agreement; reviewing and commenting on the City's proposed Watershed land acquisition program (including prior versions and the Declaration of No Potential Significant Adverse Environmental Impacts associated with such program); reviewing and commenting on the Watershed Regulations (including prior drafts and the Environmental Impact Statement associated with such Regulations); and negotiating, reviewing and finalizing the terms of this Agreement:

(i) One Million Five Hundred Thirty-Five Thousand Dollars (\$1,535,000) to the Coalition;

(ii) Seven Hundred Fifty Thousand Dollars (\$750,000) to Putnam County; and

(iii) Three Hundred Thousand Dollars (\$300,000) to Westchester County.

The Coalition, Westchester County and Putnam County may include as part of the costs and expenses to be reimbursed under this paragraph the actual, reasonable costs and expenses incurred by Municipal Parties of the types referred to in this paragraph.

(b) Immediately upon the Effective Date of this Agreement, the City shall enter into separate written agreements in the form set forth in Attachment GG with each of the Coalition, Putnam County and Westchester County providing for the following:

(i) The other contracting party will provide the City with copies of invoices, statements or other appropriate back-up documentation providing reasonable details of costs and expenses intended to be paid for or reimbursed out of the funds provided by the City pursuant to this paragraph.

(ii) The City shall pay the other contracting party the amount to be reimbursed to that party by the later of 90 days after the date of execution of the agreement referred to in subparagraph (b) or within sixty (60) days of receipt by the City of the documents to be submitted under subparagraph (b)(i), in accordance with the procedures set forth in Attachments TT-1, GG-4 and GG-8, which procedures are herein incorporated by reference.

(c) Notwithstanding the provisions of this paragraph, the City shall not reimburse any costs or expenses incurred by the Coalition, Putnam County, Westchester County, or a Municipal Party for any litigation by or against the City or any agency of the City

(d) Other than the agreement contained in subparagraph (a) above to pay certain specified sums to certain specified Parties, nothing contained herein shall constitute, or be deemed to constitute, an agreement on the part of the City that it is liable to pay, or that it will pay, any amount to any Party as reimbursement for any costs and expenses of the types referred to in subparagraph (a) above.

#### 147. Good Neighbor Payments.

(a) The City shall make payments ("Good Neighbor Payments") as set forth in Attachment JJ to the Parties indicated to help establish a better working partnership with communities in the Watershed in order to protect water quality.

(b) Immediately upon execution of this Agreement, the City shall enter into separate agreements in the form set forth in Attachment GG-2 with Westchester County, GG-6 with Putnam County, and TT-2 with the Coalition. The Coalition, Putnam County, and Westchester County shall disburse the Good Neighbor Payments received from the City to their respective municipalities in the amounts set forth in Attachment JJ in accordance with this paragraph and the agreements with the City. In addition, the City shall enter into separate agreements with each Dutchess County Municipal Party within ninety (90) days of the date such municipality signs this Agreement. Such agreements shall contain the following terms and conditions:

(i) The City shall make all required Good Neighbor Payments 90 days after the date of execution of the agreement between the City and the Party receiving the Good Neighbor Payments from the City in accordance with the procedures set forth in the agreement between the City and such Party, which procedures are incorporated herein by reference (with any changes to such procedures as are allowed pursuant to the terms of the agreement);

(ii) At least thirty (30) days before expending money received as a Good Neighbor Payment, or interest accrued thereon, the municipality shall send the City (in duplicate) a statement of intent to spend the money identifying the project, the amount to be expended and a brief description of how the money will be spent. Upon receipt, the City will send a copy of the statement of intent to spend to a representative of Environmental Parties.

(iii) The Party will use any Good Neighbor Payments received solely to pay for the capital costs of designing, constructing and installing public works or public improvements, or purchasing public equipment, except for automobiles for six or less passengers, that will benefit the public at large. Village and Town Parties may install such public works or improvements or use such public equipment anywhere within the geographic limits of their municipality, whether inside or outside the Watershed, as long as they are for the benefit of the public at large and can reasonably be expected to be used by, or for the benefit of, Watershed residents. County Parties shall install such public works or improvements or use such public equipment only within that portion of the County lying within the Watershed.

(c) Each party receiving a payment shall submit an annual written accounting together with appropriate back-up documentation to the City, by not later than each July 15th (commencing with July 15, 1997 and continuing until all Good Neighbor Payments received by such Party have been expended), itemizing the expenditure of all Good Neighbor Payments by such Party during the previous fiscal year, including a description of the public works or public improvements funded through such expenditures.

(d) Any municipality which is not a Party to this Agreement shall not receive Good Neighbor Payments and any payments allocated to such municipality shall be retained by the City. Notwithstanding the foregoing, if one or more municipalities in Dutchess County which are eligible to receive Good Neighbor Payments are not Parties to this Agreement, the Good Neighbor Payments allocated to such municipalities, up to an aggregate total of Three Hundred Thousand Dollars (\$300,000), shall be divided among the EOH Municipal Parties based on the percentage of the EOH Watershed that lies within each such Municipal Party's Boundaries.

#### 148. Local Consultation on Land Acquisition Program.

(a) The City agrees to provide funds ("Local Consultation Funds"), up to the following amounts, to assist Towns and Villages in the Watershed to review and comment on submissions provided by the City pursuant to paragraphs 60 and 71 of this Agreement, identifying lands or Watershed Conservation Easements which the City seeks to acquire under its land acquisition program:

(i) Up to Twenty Thousand Dollars (\$20,000) for each Town and Village in the Catskill and Delaware Watershed where the City indicates, pursuant to paragraphs 60 and 71, that it seeks to acquire lands or Watershed Conservation Easements;

(ii) Up to Ten Thousand Dollars (\$10,000) for each Town and Village in the Croton Watershed and not in the Catskill and Delaware Watershed where the City indicates, pursuant to paragraphs 60 and 71, that it seeks to acquire lands or Watershed Conservation Easements;

(b) Local Consultation Funds shall be used solely to pay for the costs and expenses of consultants (including CW Corporation) or costs and expenses of in-house municipal staff engaged in (i) reviewing information provided by the City pursuant to paragraphs 60 and 71, and assisting the Town or Village in assessing such information and providing any comments to the City; and (ii) delineating the boundaries of Hamlets, commercial/industrial areas and Village extensions pursuant to paragraph 68(a).

(c) Immediately upon the execution of this Agreement, the City shall enter into written agreements, in the form set forth in Attachments FF and GG, with Westchester County, Putnam County and the Coalition or CW Corporation, to disburse the Local Consultation Funds. The agreement with the CW Corporation shall cover Towns and Villages in West of Hudson; the agreement with Westchester County shall cover Towns and Villages in Westchester County; and the agreement with Putnam County shall cover Towns and

Villages in Putnam County. Each such agreement shall include the following terms and conditions:

(i) Whenever the City submits a group of parcels to a Town or Village for review under paragraphs 60 and 71, the City shall advise the other contracting Party.

(ii) Subject to subparagraph (d) below, the City shall pay the amount requested for the review of such parcels within 60 days after receipt of the request, with appropriate back-up documentation.

(iii) The other contracting Party shall disburse the Local Consultation Funds to the appropriate Towns or Villages upon receipt of such payment from the City.

(d) Anything herein to the contrary notwithstanding it is understood and agreed that the limits expressed in subparagraph (a) above are aggregate limits on the total amount of Local Consultation Funds payable by the City to any Town or Village for reviewing all submissions made by the City pursuant to paragraphs 60 and 71.

149. Certain Funds Intended to Benefit Signatories Only. Anything herein to the contrary notwithstanding, unless consented to by the City, it is understood and agreed upon by all the Parties that any funds payable by the City pursuant to paragraphs 121, 122, 123, 124, 125, 126, 127, 130, 131, 132, 133, 135, 136, 140 (other than for sewage diversion projects) and 147, shall only be spent on projects within the jurisdictions of Towns and Villages in the Watershed which execute this Agreement and agree to observe its terms and conditions. Nothing in this paragraph is intended to limit or enlarge any other right a municipality or its residents may have in relation to the City under law or prior agreements.

150. General Provisions Applicable to all Watershed Partnership and Protection Programs.

(a) Whenever the provisions of paragraph 93 and paragraphs 120 through 148 call for the City to make payments to the CW Corporation, EFC, Coalition of Watershed Towns, Westchester County, Putnam County, or any Municipal Party, such payments shall be made promptly by the due date specified, in the form of a check or warrant in the proper amount and made payable to the party entitled to receive such payment. The inter-municipal agreements referred to in paragraphs 93, 120, 121, 122, 124, 125, 126, 128, 129, 131, 134, 138, 139, 140, 141, 146, 147, and 148 shall be executed concurrently with this Agreement and funds shall be provided not later than 90 days following their execution, as more specifically provided in each section.

(b) Except where specifically provided for in this Agreement, no funds provided by the City pursuant to this Agreement shall be used to pay any costs incurred prior to the Effective Date of this Agreement.

(c) Whenever the provisions of paragraph 93 and paragraphs 120 through 148 call for the City to enter into an agreement with another party or parties to establish, manage, administer, fund or implement a Watershed Partnership and Protection Program, such agreement shall, in addition to any terms and conditions specified in the paragraph providing for such agreement, include the following special terms and conditions:

(i) During the term of the agreement, the other party or parties shall provide the City with an annual report, accounting for the receipt and disbursement of all funds provided by the City under such agreement during the previous annual period.

(ii) The other party or parties shall maintain accurate and complete records detailing the receipt and expenditure of all funds provided by the City thereunder (together with appropriate back-up), and shall maintain such documents for a period of seven years from document generation and shall allow the City access thereto for inspection and photocopying at all reasonable times.

(iii) All receipts and disbursements of City funds are subject to audit by the City and State, and the other Party or Parties agree(s) to cooperate with any audit of the agreement undertaken by the City or the State.

(iv) All projects, facilities or other measures funded under such agreements requiring review and approval by the NYCDEP under the Watershed Regulations or required to be designed, constructed or implemented in accordance with the standards set forth in the Watershed Regulations, shall be submitted for such review and approval and shall be designed, constructed, and implemented in accordance with the Watershed Regulations.

(v) Whenever the advance of City funds is based on budgets to be submitted under such agreement, all City funds for a given budget period and not actually spent, and all accrued and unspent interest on City funds previously advanced, shall be credited against the amount of City funds requested for the next ensuing budget period. All accrued interest on City funds advanced under such budget shall be credited against the total dollar figure to be spent by the City under the program.

(vi) The agreement may be modified upon the written consent of the parties to the agreement without the approval of all the Parties to this Agreement provided that the modification does not diminish the rights of any Party to this Agreement.

(d) An employee, officer, director or member of the CW Corporation, upon learning that any project proposed for funding by the CW Corporation will directly benefit himself/herself or a member of his/her family (parents, grandparents, siblings, children, or grandchildren), or will directly benefit any firm in which he/she or any of the foregoing persons holds a financial interest, shall: disclose his/her association to the Board of Directors of the Corporation; and refrain from participating in any consideration, review or approval of the project at issue.

(e) Where the City is required by this Agreement to enter into an agreement with any other entity, whether or not that entity is a Party, the City is relieved of any obligation to enter into that agreement (but not the underlying obligation to fund or complete the appropriate program), including the obligation to maintain a valid and enforceable program contract as a condition of the water supply permit for the land acquisition program and NYSDOH's approval of the Watershed Regulations, if the other entity refuses to enter into such an agreement consistent with the appropriate terms set forth in this Agreement.

(f) The terms and conditions set forth for all Watershed Partnership and Protection Programs may be delayed if the City 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 part of the City or its agent was not the proximate cause; provided, however, that the City notifies the Watershed Protection and Partnership Council in writing within 10 days of obtaining knowledge of any such condition and requests an appropriate extension of the relevant terms of this Agreement, provided further that the City will make its best efforts to provide for alternative arrangements to fulfill the obligation.

151. Compliance With State Law. All Watershed Protection and Partnership Program contracts shall provide that the program will be carried out in compliance with SEQRA and applicable state and local regulatory standards.

152. State Partnership Programs. The State shall provide up to Fifty-Three Million Seven Hundred and Seventy-Five Thousand Dollars (\$53,775,000) ("State Partnership Programs") over fifteen years to foster partnership initiatives in the Watershed and implement this Agreement. If any appropriation in support of a State Partnership Program is removed from the State budget by the Legislature, the Governor will use his or her best efforts to restore such appropriation for the applicable State fiscal year.

(a) For the State fiscal year 1996-1997, the Legislature has approved the Governor's request for Six Hundred Thousand Dollars (\$600,000) ("Pilot Program Funds") to be expended by the New York State Department of Economic Development ("NYSDED") to provide technical assistance to participants in the offset pilot program established by Section 18-82(g) and 18-83(a) of the Watershed Regulations ("Pilot Program"). Each eligible participant in the Pilot Program shall receive up to One Hundred Thousand Dollars (\$100,000). Pilot Program Funds shall be used solely to design, engineer, construct, and maintain equipment, facilities, or other measures necessary to achieve the phosphorus offsets required by the Pilot Program; to monitor the effectiveness of such equipment, facilities, or other measures in achieving the required phosphorus offsets; and to evaluate the effectiveness of the Pilot Program in protecting water quality. Any information, including monitoring results, resulting from the use of Pilot Program Funds shall be made available to NYSDEC, NYCDEP, USEPA and the WPPC. Pilot Program Funds shall be administered and disbursed by NYSDDED. NYSDDED shall receive and evaluate applications from, and allocate Pilot Program Funds to, participants in the Pilot Program who have obtained NYCDEP approval for a WWTP and accompanying phosphorus offsets pursuant to Sections 18-82(g) and 18-83(a) of the Watershed

Regulations. NYSDED shall submit a report to the WPPC and NYCDEP within thirty (30) days of the end of the State fiscal year, indicating the Pilot Program participants which have applied for Pilot Program Funds and the allocation of such funds, if any, made to each such Pilot Program participant during the prior State fiscal year, and the amount of Pilot Program Funds remaining at the end of such fiscal year. The first report shall be submitted on June 30, 1997, and each subsequent report shall be submitted by the next succeeding June 30.

(b) For the State fiscal year 1996-1997, the Legislature has approved the Governor's request for One Million Five Hundred Thousand Dollars (\$1,500,000) to be expended by the NYSDOH to implement enforcement, monitoring, and technical assistance programs within the NYSDOH, and to sub-allocate up to Four Hundred Ten Thousand Dollars (\$410,000) to the NYSDEC for monitoring, technical assistance, and enforcement programs; to sub-allocate up to One Hundred Fifty Thousand Dollars (\$150,000) to the New York State Department of State ("NYSDOS") to establish a Master Plan and Zoning Incentive Award Account ("Incentive Funds") for WOH Municipal Parties that successfully develop and implement community development tools to the satisfaction of NYSDOS; and up to One Hundred Ten Thousand Dollars (\$110,000) to the New York State Department of Law for the establishment of a Watershed Inspector General's Office to provide enforcement of laws and regulations pertaining to the use, operation, and protection of the Watershed.

(c) Incentive Funds shall be administered and disbursed by the NYSDOS. An additional Three Hundred Fifty Thousand Dollars (\$350,000) for NYSDOS shall be included in subsequent Executive Budgets. The NYSDOS shall receive and evaluate applications from, and allocate Incentive Funds to, WOH Municipal Parties that develop and implement community development tools and necessary local laws. NYSDOS shall submit a report to the WPPC and NYCDEP within ninety (90) days of the end of the State fiscal year, indicating the municipalities which have applied for Incentive Funds and the allocation of such funds, if any, made to each such municipality during the prior State fiscal year, and the amount of Incentive Funds remaining at the end of such fiscal year. The first report shall be submitted on June 30, 1997, and each subsequent report shall be submitted by the next succeeding June 30.

(d) New York State, through EFC, will provide a minimum of Seventeen Million Dollars (\$17,000,000) in subsidized financing through the State Revolving Fund for Water Pollution Control ("SRF") to Westchester and Putnam counties to finance the construction costs of an eligible Sewage Diversion Project and other Eligible Projects identified in paragraph 140, provided that such other Eligible Projects have a project priority score that would place such other Eligible Project above the funding line in the SRF Intended Use Plan for the year in which such other Eligible Project is proposed for SRF financing. Upon identification and definition of an Eligible Project by Westchester or Putnam, EFC will list the projects on either the Annual Project Priority List or the Multi-Year Project Priority List of the SRF Intended Use Plan. Projects which are expected to be financed during the upcoming federal fiscal year will be placed on the Annual Project Priority List; all other projects will be placed on the Multi-Year Project

Priority List. Nothing in this paragraph is intended to otherwise limit the right of Westchester and Putnam counties to obtain SRF assistance in an amount greater than the amount set forth above, to the extent funding is available for such Eligible Projects and other projects not identified in this Agreement which are eligible for financing under the SRF.

(e) As set forth above in paragraph 76, the State commits to spend Seven Million, Five Hundred Thousand Dollars (\$7,500,000) to acquire fee title to, or Watershed Conservation Easements on, real property in the Croton Watershed beginning in State fiscal year 1998-99.

(f) The State shall provide an additional Twenty-Six Million Eight Hundred Twenty-Five Thousand Dollars (\$26,825,000) to pay the costs of the following programs. The State may satisfy this commitment by either specifically appropriating funds, re-directing existing State resources or utilizing federal funds. Nothing herein shall be construed as precluding the State from spending more than the amount stated above:

(i) A grant to the International Life Science Institute from the Empire State Development Corporation for fees and expenses, not to exceed One Hundred Thousand Dollars (\$100,000), to review and assess the City and State's Watershed monitoring programs and recommend any necessary enhancements to such programs as set forth in paragraph 164;

(ii) The establishment of a coordinator of State Partnership programs who will be responsible for the coordination of all State Partnership Programs implemented in the Watershed;

(iii) Not less than Thirteen Million, Five Hundred Thousand Dollars (\$13,500,000) for the continuation of the programs established in subparagraph (b) above within the NYSDEC and NYSDOH to provide enforcement, monitoring and technical assistance in the Watershed;

(iv) Zoning and Master Plan Development assistance provided by the NYSDOS to interested WOH Municipal Parties to aid said municipalities in the development of community development tools and any necessary local laws;

(v) The establishment and maintenance of a "One Stop Shopping" Permit program by the NYSDOS to assist the regulated community in identifying the necessary governmental permits required to implement a regulated activity in the Watershed;

(vi) The continued support of the Watershed Inspector General's Office;

(vii) The support of responsible, environmentally sensitive economic development projects through the use of existing NYSDDED economic development information centers, a regional development program to promote regional economic development interests, a public relations and tourism development program to target the special programs and resources in the Watershed, and the use of the existing industrial



productivity program to help increase efficiency of new or existing Watershed businesses;

(viii) The New York State Department of Labor's existing worker training and skills development program to provide training courses to build the skills of the Watershed regions' labor markets;

(ix) The establishment and maintenance of a telephone "hotline" to provide callers with the names and telephone numbers of commercial pesticide and fertilizer applicators who apply natural substances which do not have an adverse impact on water quality; and

(x) Not less than Four Hundred, Twenty-five Thousand Dollars (\$425,000) for Watershed Protection and Partnership Council Operation Funds as provided in paragraph 137.

(g) The State shall provide the WPPC with an annual report within ninety (90) days of the end of each State's fiscal year accounting for the disbursement of State Partnership Funds during the previous fiscal year. The report shall include an identification of the programs which were funded with State Partnership Funds, the amount of such funding, and the use to which such funds were put. The first report shall be submitted on June 30, 1997, and each subsequent report shall be submitted by the next succeeding June 30.

153. Utility Crossings. The City will continue its policy of granting permits allowing City property to be crossed for access to utility services. The City will reduce by fifty percent (50%) the annual permit fees currently charged by the City to rural electric cooperatives for lines crossing City-owned property. Through December 31, 2005, the annual permit fee for rural electric cooperatives will not be increased and will not exceed \$200 per household served by the rural electric cooperative. After December 31, 2005, increases in the annual permit fee and the per-household cap will be limited to the rate of inflation.

154. Letter of Credit.

(a) On or before the Effective Date of this Agreement, the City shall obtain an irrevocable and unconditional letter of credit in a form consistent with Attachment QQ from the Chase Manhattan Bank (or another financial institution reasonably satisfactory to Westchester County, Putnam County and the Coalition), which shall require the financial institution issuing the letter of credit to make payments under the following programs, in accordance with the terms and conditions governing such programs as set forth in this Agreement and any applicable program contract, in the event that in or after City fiscal year 1998 (starting July 1, 1997), the City has not appropriated the funds necessary for such program and thereafter the City fails to make a payment that would otherwise be due and owing under a contract for such program: Septic System Delegation (paragraph 93); Catskill Watershed Corporation Funding (paragraph 120); Public Education (paragraph 131); West of Hudson Economic Development Study (paragraph 134); Catskill Fund for the Future (paragraph 135); Tax Consulting Fund (paragraph 136); and Watershed Planning in the Croton System (paragraph 138). The letter of credit shall run for a term of eight (8) years (inclusive of the City fiscal year 1997), shall be in a

maximum aggregate available amount of Sixty Five Million Dollars (\$65,000,000), as reduced from time to time in accordance with the terms and conditions set out in Attachment QQ; and shall be payable severally to the Catskill Watershed Corporation, Putnam County and Westchester County to cover the City's outstanding obligations in respect of such programs, all as more fully provided in and under the terms and conditions of Attachment QQ. The City may substitute another letter of credit from another financial institution reasonably satisfactory to Westchester County, Putnam County, and the CW Corporation. Any such substituted letter of credit shall have terms reasonably satisfactory to Westchester County, Putnam County, and the CW Corporation, provided that Westchester County, Putnam County, and the CW Corporation shall accept such letter of credit as reasonably satisfactory if it provides for the following terms:

(i) it is an irrevocable, unconditional letter of credit which:

(A) has a term expiring not earlier than the term of the letter of credit it is replacing;

(B) has an available amount not less than the remaining amount available on the letter of credit it is replacing; and

(C) allows the beneficiaries thereof to severally draw on the substitute letter of credit at such times, in such amounts, and utilizing such procedures that provide coverage of the City's outstanding obligations with respect to such programs, in accordance with this Agreement and the subject program contracts, equivalent to the letter of credit it is replacing; or

(ii) it contains such other terms and conditions as may be agreed to by the City, Westchester County, Putnam County, and the CW Corporation.

(b) The letter of credit, once issued, may be amended or modified upon the written agreement of the financial institution issuing the letter of credit, the City, Westchester County, Putnam County and the CW Corporation.

#### 155. Invalidation of the Watershed Regulations.

(a) Notwithstanding the City's obligations in paragraph 93 and paragraphs 120 through 148, if all or part of the Watershed Regulations promulgated pursuant to paragraphs 89 and 90 become unenforceable pursuant to an order of a court of competent jurisdiction, but the land acquisition permit remains in effect, the City's obligation to fund the programs listed in subparagraph (b) below will be suspended as set forth in subparagraph (b) and the EOH Water Quality Investment Program and the Catskill Fund will be restricted as set forth in subparagraphs (c) and (d) below. The City shall notify, in writing, Ulster and Schoharie Counties (in regard to septic systems only), the WPPC, EFC, the CW Corporation, a representative of the Environmental Parties, Westchester County, and Putnam County if a court finds that all or part of the Watershed Regulations are unenforceable. The City's funding obligations under this Agreement and applicable program contracts will be suspended and the EOH Water Quality Investment Program

and Catskill Fund will be restricted as of the date both the City Watershed Regulations and NYSDOH's Watershed Regulations (if promulgated) become unenforceable (regardless of whether the City has provided notice of the court decision) and will remain suspended or restricted for so long as both the City's Watershed Regulations and NYSDOH's Watershed Regulations (if promulgated) remain unenforceable pursuant to court order or until new watershed regulations, not including the watershed regulations adopted in 1953, regulating the same activities are promulgated. If all or part of the Watershed Regulations become unenforceable, the Parties agree to support promulgation of the same or substantially similar regulations.

(b) The programs for which the City's payments will be suspended pursuant to this paragraph and the corresponding sections of the City's Watershed Regulations and NYSDOH's Watershed Regulations (if promulgated) which will lead to such suspension are:

- Program Watershed Regulation Septic System Delegation (paragraph 93) all of section 18-38
- Sewer Extensions (paragraph 123) all of section 18-36, 18-37, 18-38, or Subchapter D
- Sand and Salt Storage Facilities (paragraph 126) all of section 18-45
- WOH Future Stormwater Controls (paragraph 128) all of section 18-39
- Alternate Design Septic Systems (paragraph 129) all of section 18-38
- Public Education (paragraph 131) all of Subchapters C and D
- Watershed Planning in the Croton System (paragraph 138) all of section 18-36 or Subchapter D
- Future Stormwater Controls: Single-family Houses, Small Businesses, Low-income Housing (paragraph 145) all of section 18-39

If the City's obligation to make payments under a program is suspended pursuant to this paragraph, the City will be entitled to stop providing funds for such program which become due and owing after the date of the suspension except where funds have already been contractually committed in good faith prior to the City's notice of the court decision for a specific project in substantial compliance with the terms of this Agreement and the applicable program contract. Substantial compliance shall include compliance with all applicable terms of this Agreement. If the City's funding obligations are reinstated, the City shall recommence funding the programs in accordance with the terms of this Agreement and the program contracts, except that the duration of the program shall be extended, where appropriate and consistent with relevant regulatory compliance timeframes, for a period of time equal to the time for which the City's payment obligations were suspended. The City shall not be required to make a lump sum payment of the unpaid suspended payments.

(c) The East of Hudson Water Quality Investment Program shall be restricted if all of section 18-36, 18-37, 18-38 or 18-39 or Subchapter D of the Watershed Regulations become unenforceable as set forth in subparagraph (a) above. If, and for so long as, the East of Hudson Water Quality Investment Program is restricted, all preliminary decisions

by Westchester County or Putnam County to use funds from the EOH Water Quality Funds to fund a project shall be subject to the prior approval, and not simply the prior review, of the Executive Committee as provided in paragraph 105(p), except where funds have already been contractually committed in good faith prior to the City's notice of the court decision for a specific project in substantial compliance with the terms of this Agreement and the agreement between the City and the County. Substantial compliance shall include compliance with all applicable terms of this Agreement.

(d) The Catskill Fund for the Future shall be restricted if all of sections 18-36, 18-38 and 18-39 of the Watershed Regulations become unenforceable as set forth in subparagraph (a) above.

(i) If, and for so long as, the Catskill Fund for the Future is restricted pursuant to subparagraphs (a) and (d), the City will deposit payments which become due and owing to the Catskill Fund into an interest bearing escrow account to be established and held by EFC or such other entity as is agreed to by the City and the CW Corporation. The cost of the escrow account will be paid from the Catskill Fund. Earnings on funds deposited in the escrow account will be held and applied in the same manner as the principal. The CW Corporation may continue to fund Qualified Economic Development Projects with the funds already paid into the Catskill Fund before the Catskill Fund was restricted, provided that such Projects remain subject to the substantive requirements and DEP notification and approval provisions of the Regulations as provided in paragraph 135(e)(v). In addition, the CW Corporation in its sole discretion may transfer funds from the Catskill Fund or, with the City's agreement, from the escrow account, to one or more of the following programs: SPDES Upgrades (paragraph 121); New Sewage Treatment Infrastructure Facilities, but solely for use in creating and funding septic districts (paragraph 122); Septic System Rehabilitations and Replacements (paragraph 124); Stormwater Retrofits (paragraph 125); and Sand and Salt Storage Facilities (paragraph 126).

(ii) If the restrictions on the Catskill Fund are lifted pursuant to subparagraph (a) or if the City or NYSDOH initiates a new rulemaking within 5 years of the Catskill Fund being restricted to adopt new watershed regulations other than the regulations adopted in 1953, and then either the City or NYSDOH, with the City's agreement, adopts such new regulations within 5 years of initiating such rulemaking, the funds in the escrow account shall be paid to the CW Corporation and may be used by the CW Corporation in accordance with the terms of paragraph 135 and the Catskill Fund program contract. If the Catskill Fund remains restricted, and if (A) neither the City nor NYSDOH initiates a new rulemaking to adopt new watershed regulations other than the regulations adopted in 1953, for a period of 5 years, (B) only NYSDOH initiates such new rulemaking and adopts Regulations that are not substantially similar to the Watershed Regulations and does so over the City's objection, or (C) the City or NYSDOH initiates such new rulemaking but neither the City nor NYSDOH adopts new watershed regulations within 5 years of initiating the rulemaking, the funds in the escrow account shall be paid to the City. For purposes of this subparagraph, the City shall be deemed to be in agreement with a NYSDOH rulemaking if it consents to the rulemaking or does not submit comments

during the rulemaking comment period requesting that the NYSDOH refrain from promulgating new rules and explain its reason for such request.

#### 156. Invalidation of the Water Supply Permit.

(a) Notwithstanding the City's obligations in paragraph 76(b) and paragraphs 120 through 148, if the water supply permit for the City's land acquisition program described in Article II is voided or suspended by a court of competent jurisdiction such that the City is no longer authorized to purchase land or Watershed Conservation Easements under the permit, but the Watershed Regulations remain in effect, the City's obligation under this Agreement and the program contracts to fund the programs listed in subparagraph (b) below will be suspended and the Catskill Fund will be restricted as set forth in subparagraph (c) below. For purposes of this paragraph the terms "voided" and "suspended" do not include "modifications," "revocations," or "suspensions" issued by the NYSDEC pursuant to 6 NYCRR § 621.14. The City shall notify, in writing, the Executive Committee, the CW Corporation, a representative of the Environmental Parties, Westchester County, and Putnam County if a court voids or suspends the water supply permit. The City's funding obligations under this Agreement and applicable program contracts will be suspended and the Catskill Fund will be restricted as of the date the City is no longer authorized to purchase land or Watershed Conservation Easements under the permit pursuant to Court Order (regardless of whether the City has provided notice of the court decision) and will remain suspended or restricted under this paragraph until (i) the permit is reinstated so that the City is again able to purchase land or Watershed Conservation Easements under the permit or (ii) the City obtains a new permit for a land acquisition program and such permit does not contain limitations imposed by the NYSDEC without the City's consent that are materially more restrictive than the permit for the land acquisition program set forth in Article II. In addition, the City's funding obligations for the Dunraven Causeway Bridge Reconstruction (paragraph 132) and Resurfacing of Schoharie Roads (paragraph 133) under this Agreement shall be reinstated if the City conducts a land acquisition program for watershed protection purposes during the 10 year term of the permit. Sporadic land acquisitions for such purposes as remediation of a specific water quality problem, abatement of a specific threat to water quality, access to City property, and utility easements shall not constitute a land acquisition program for watershed protection.

(b) The programs for which the City's payments will be suspended pursuant to this paragraph are: Forestry Management Program (paragraph 130); Public Education (paragraph 131); Dunraven Causeway Bridge Reconstruction (paragraph 132); Resurfacing of Schoharie Roads (paragraph 133); Tax Consulting Fund (paragraph 136); Croton Land Acquisition (paragraph 74(b)); and Local Consultation on Land Acquisition (paragraph 148). If the City's obligation to make payments under such programs are suspended, the City will be entitled to stop providing funds for such programs which become due and owing after the date of the suspension, except where funds have already been contractually committed in good faith prior to the City's notice of the court decision for a specific project in substantial compliance with the terms of this Agreement and the applicable program contract. Substantial compliance shall include compliance with all

applicable terms of this Agreement. If the suspension of the City's funding obligations is lifted pursuant to subparagraph (a) above, the City shall recommence funding the programs in accordance with the terms of this Agreement and the program contracts, except that the duration of the program shall be extended, where appropriate and consistent with regulatory timeframes, for a period of time equal to the time for which the City's payment obligations were suspended. The City shall not be required to make a lump sum payment of the unpaid suspended payments.

(c) If the Catskill Fund for the Future is restricted pursuant to subparagraph (a), the City will continue making payments as they become due and owing into the Catskill Fund. However, notwithstanding the provisions of paragraph 135, for so long as the Fund remains restricted pursuant to subparagraph (a), use of the Fund will be limited as follows:

(i) If the permit is voided or suspended as described in subparagraph (a) above during the first five years after the permit is issued, only 50% of the funds paid by the City into the Catskill Fund may be used for Qualified Economic Development Projects. The 50% shall be calculated as follows: all of the first \$10 million paid by the City into the Fund may be used for Qualified Economic Development Projects; none of the last \$10 million paid by the City into the Fund may be used for Qualified Economic Development Projects; and 50% of the remainder paid by the City into the Fund may be used for Qualified Economic Development Projects. Earnings on the Fund may be used in the same manner as the principal on which they were earned. If at the time the permit is voided or suspended, a greater percentage of the Catskill Fund is being used for Qualified Economic Development Projects than is allowed under this subparagraph, the CW Corporation shall not be required to recall or cancel any loans or grants which it has already made or contractually committed in good faith to make, but shall instead cease making new loans or grants for Qualified Economic Development Projects until such percentage is achieved. The CW Corporation, in its sole discretion, may either hold funds which may not be used for Qualified Economic Development Projects in the Catskill Fund or transfer such funds from the Catskill Fund to one or more of the following: SPDES Upgrades (paragraph 121); New Sewage Treatment Infrastructure Facilities, but solely for use in creating and funding septic districts (paragraph 122); Septic System Rehabilitations and Replacements (paragraph 124); Stormwater Retrofits (paragraph 125); and Sand and Salt Storage Facilities (paragraph 126).

(ii) If the permit is voided or suspended as described in subparagraph (a) above, during the sixth through tenth year after the permit is issued, the percent of funds in the Catskill Fund which may be used for Qualified Economic Development Projects shall increase by 10% for each year that the permit remains in effect after the fifth year.

(iii) If the permit is voided or suspended more than ten years after the permit was issued, there shall be no additional restrictions on the use of the Catskill Fund and all of the Fund may be used for Qualified Economic Development Projects.

(iv) In addition to the situations set forth in subparagraph (a), if, during the 10 year term of the permit, the City conducts a land acquisition program for watershed protection, the restrictions on use of the Catskill Fund set forth in subparagraphs (i)-(iii) shall be lifted. Sporadic land acquisitions for such purposes as remediation of a specific water quality problem, abatement of a specific threat to water quality, access to City property, and utility easements shall not constitute a land acquisition program for watershed protection. If the Catskill Fund remains restricted at the end of the 10 year term of the permit, the CW Corporation shall immediately transfer any funds which it may not use for Qualified Economic Development Projects from the Catskill Fund to one or more of the following programs: SPDES Upgrades (paragraph 121); New Sewage Treatment Infrastructure Facilities, but solely for use in creating and funding septic districts (paragraph 122); Septic System Rehabilitations and Replacements (paragraph 124); Stormwater Retrofits (paragraph 125); and Sand and Salt Storage Facilities (paragraph 126).

#### 157. Invalidation of Both the Watershed Regulations and the Water Supply Permit.

(a) Notwithstanding the City's obligations in paragraphs 120 through 148, if both (i) all the Watershed Regulations promulgated pursuant to paragraphs 89 and 90 become unenforceable pursuant to an order of a court of competent jurisdiction and (ii) the water supply permit for the City's land acquisition program is voided or suspended by a court of competent jurisdiction such that the City is no longer authorized to purchase land or Watershed Conservation Easements under the permit, the City's obligation under this Agreement and the applicable Program Contracts to fund the programs listed in subparagraph (b) below will be suspended and the EOH Water Quality Investment Program and the Catskill Fund will be restricted as set forth in subparagraphs (c) and (d) below. The City's funding obligations under this Agreement and applicable program contracts will be suspended and the EOH Water Quality Investment Program and Catskill Fund will be restricted as of the date both conditions (i) and (ii) occur and will remain suspended or restricted under this paragraph until any of the following conditions occurs: (1) all or part of the City or NYSDOH's Watershed Regulations no longer remain unenforceable pursuant to a court order; (2) new Watershed Regulations are promulgated by either NYSDOH or the City; (3) the water supply permit is reinstated such that the City is again able to purchase land or Watershed Conservation Easements under the permit; or (4) the City obtains a new permit for a land acquisition program and such permit does not contain limitations imposed by NYSDEC without the City's consent that are materially more restrictive than the permit for the land acquisition program set forth in Article II. If any of such conditions in (1), (2), (3) or (4) occur, the provisions of paragraphs 155 or 156 shall govern to the extent applicable. If all or part of the Watershed Regulations become unenforceable, the parties agree to support promulgation of the same or substantially similar regulations. In addition, the City's funding obligations for the Dunraven Causeway Bridge Reconstruction (paragraph 132) and Resurfacing of Schoharie Roads (paragraph 133) under this Agreement shall be reinstated and the restrictions on the Catskill Fund set forth in subparagraph (d) shall be lifted if the City conducts a land acquisition program for watershed protection purposes during the ten year term of the permit. Sporadic land acquisitions for such purposes as remediation of a specific water quality problem, abatement of a specific threat to water quality, access

to City property, and utility easements shall not constitute a land acquisition program for watershed protection.

(b) The programs for which the City's payments will be suspended pursuant to this paragraph are: Septic System Delegation (paragraph 93); Catskill Watershed Corporation Funding (paragraph 120); and all Article V programs except the Catskill Fund for the Future (paragraph 135), East of Hudson Water Quality programs (paragraph 140), Phosphorus Controls in Cannonsville (paragraph 144), WWTP Upgrades (paragraph 141) and Sewage Diversion Feasibility Studies (paragraph 139). If the City's obligation to make payments under such programs is suspended pursuant to this paragraph, the City will be entitled to stop providing funds for such programs which become due and owing after the date of suspension, except where funds have already been contractually committed in good faith prior to the City's notice of the court decision for a specific project in substantial compliance with the terms of this Agreement and the applicable program contract. Substantial compliance shall include compliance with all applicable terms of this Agreement.

(c) If, and for so long as, the East of Hudson Water Quality Investment Program is restricted pursuant to subparagraph (a), all preliminary decisions by Westchester County or Putnam County to use funds from the EOH Water Quality Funds to fund a project shall be subject to the prior approval, and not simply the prior review, of the Executive Committee as provided in paragraph 105(p), except where funds have already been contractually committed in good faith prior to the City's notice of the court decision for a specific project in substantial compliance with the terms of this Agreement and the agreement between the City and the County. Substantial compliance shall include compliance with all applicable terms of this Agreement.

(d) The Catskill Fund for the Future:

(i) If, and for so long as, the Catskill Fund is restricted pursuant to subparagraph (a), the City will deposit payments which become due and owing to the Catskill Fund into an interest bearing escrow account to be established and held by EFC or such other entity as is agreed to by the City and the CW Corporation. The cost of the escrow account will be paid from the Catskill Fund. Earnings on funds deposited in the escrow account will be held and applied in the same manner as the principal.

(ii) Funds which, at the time the Catskill Fund is restricted pursuant to subparagraph (a), have already been paid into the Catskill Fund and have already been contractually committed in good faith for a specific Qualified Economic Development Project in substantial compliance with the terms of this Agreement and the Catskill Fund program contract may be used for the Project for which they were committed. Substantial compliance shall include compliance with all applicable terms of this Agreement.

(iii) The CW Corporation, in its sole discretion, may either hold in the Catskill Fund all other funds which have already been paid into the Catskill Fund at the time the Catskill Fund is restricted pursuant to subparagraph (a) or transfer such funds from the Catskill



Fund to one or more of the following programs: SPDES Upgrades (paragraph 121); New Sewage Treatment Infrastructure Facilities, but solely for use in creating and funding septic districts (paragraph 122); Septic System Rehabilitations and Replacements (paragraph 124); Stormwater Retrofits (paragraph 125); and Sand and Salt Storage Facilities (paragraph 126).

(iv) All funds in the escrow account shall be paid to the City and all uncommitted funds held in the Catskill Fund must be transferred to one or more of the programs listed below if, and for so long as, the Catskill Fund is restricted pursuant to subparagraph (a), and if both (A) the conditions in subparagraph 155(a) are satisfied such that the Catskill Fund funds held in escrow would be returned to the City under subparagraph 155(d)(ii), and (B) the conditions in subparagraph 156(a) are satisfied such that the Catskill Fund funds which may not be used for Qualified Economic Development Projects would be transferred to specified water quality programs under to subparagraph 156(c)(iv). The programs to which funds may be transferred pursuant to this subparagraph are: SPDES Upgrades (paragraph 121); New Sewage Treatment Infrastructure Facilities, but solely for use in creating and funding septic districts (paragraph 122); Septic System Rehabilitations and Replacements (paragraph 124); Stormwater Retrofits (paragraph 125); and Sand and Salt Storage Facilities (paragraph 126).

(e) Notwithstanding the City's obligations in paragraphs 121 through 150, if, and for so long as both (i) fewer than all of the Watershed Regulations but at least Sections 18-36, 18-38, and 18-39 become unenforceable as described in subparagraphs 155(a) and (d) above, and (ii) the water supply permit for the City's land acquisition program is voided or suspended as described in paragraph 156(a) above, so that the limitations in both subparagraph 155(d) and subparagraph 156(c) relating to the Catskill Fund are triggered, the more restrictive limitation on the use of the Catskill Fund shall apply.

158. Liquidated Damages for Late Payment Under a Valid and Enforceable Program Contract.

(a) If the City fails to make a payment under a program listed below within 30 days of the date such payment became due and owing under a valid and enforceable contract, the City shall pay interest on such payment from the date such payment became due and owing until the date such payment is actually made. Interest shall be payable at an annual rate equal to the prime lending rate used by Chase Manhattan Bank, New York, New York, or its successor, as of the date the payment became due and owing, plus 2% compounded annually. Such interest shall be in addition to, and not in lieu of, other damages, including consequential damages (other than the costs of borrowing to replace funds not received from the City) and interest, a Party may be entitled to under the common law and statutes of New York State, including the Civil Practice Law and Rules. The programs for which the City may owe interest under this paragraph are: Catskill Watershed Corporation Funding (paragraph 120); Septic System Rehabilitations and Replacements (paragraph 124); Stormwater Retrofits (paragraph 125); Sand and Salt Storage Facilities (paragraph 126); WOH Future Stormwater Controls (paragraph 128); Alternate Design Septic Systems (paragraph 129); Public Education (paragraph 131);

WOH Economic Development Study (paragraph 134); Catskill Fund for the Future (paragraph 135); Tax Consulting Fund (paragraph 136); Funding of the Watershed Protection and Partnership Council (paragraph 137); Watershed Planning in the Croton System (paragraph 138); Sewage Diversion Feasibility Studies (paragraph 139); EOH Water Quality Investment Program (paragraph 140); Payment of Costs and Expenses (paragraph 146); Good Neighbor Payments (paragraph 147); and Local Consultation on Land Acquisition (paragraph 148). A failure by the City to maintain valid and enforceable contracts for a program shall not be subject to the provisions of this paragraph if the City continues to make timely payments for the program in accordance with the terms of this Agreement and the applicable program contract, provided that such payments are not required to be refunded to the City.

(b) If the City fails to make a payment or payments to EFC which are due and owing under a valid and enforceable contract under the new Sewage Treatment Infrastructure Facilities program (paragraph 122), and such failure results in EFC not making a payment to a municipality or contractor for a project funded under the program, the City shall pay the municipality where the project is located the amount of the missed payments plus interest and damages as provided in subparagraph (a) above. Any payments by the City, for interest and consequential damages (but not the amount of the missed payments), shall be in addition to, and not credited against, the City's funding obligations under the New Sewage Treatment Infrastructure Facilities Program.

(c) If the City fails to make a payment or payments to the relevant County Health Department which are due and owing under a delegation Memoranda of Understanding entered into pursuant to paragraph 93 of this Agreement (Septic System Delegation), and such failure results in the relevant County Health Department incurring incremental costs under such agreement in excess of such funds paid by the City pursuant to a delegation agreement, the City shall pay the County Health Department the amount of the missed payments plus interest and damages as provided in subparagraph (a) above.

178. Enforcement Discretion Regarding Violations Related to Failure of Agreed-upon Funding.

179. State and City Review of Performance Under This Agreement.

180. Complete Agreement.

181. Agreement is a Legally Binding Contract.

182. Citizen Suits.

183. Notices.

184. Additional Parties.

185. Authorization to Execute.

---

#### ARTICLE VI MISCELLANEOUS PROVISIONS

159. New Filtration Avoidance Determination.

(a) If, prior to January 24, 1997, NYSDEC issues a final water supply permit pursuant to paragraph 58 of this Agreement, NYSDOH approves the Watershed Regulations with conditions set forth in paragraph 88 of this Agreement, this Agreement is executed, and the program contracts which are required under paragraph 88 of this Agreement to be executed immediately have been executed and submitted for registration pursuant to the City Charter, then USEPA will issue a four-month interim filtration avoidance determination ("Interim FAD") by that date consistent with the draft appended hereto in Attachment LL. This Interim FAD will supersede the December 1993 FAD. The Interim FAD will be effective until a further determination, scheduled for April 15, 1997, is made by EPA in consultation with NYSDOH.

(b) If USEPA has issued such Interim FAD, and the Watershed Regulations become effective on or about April 15, 1997, and the pre-conditions listed above remain operative, then USEPA will issue a new filtration avoidance determination (the "1997 FAD") consistent with the draft appended hereto in Attachment LL. USEPA, in consultation with NYSDOH, may amend or modify the 1997 FAD at any time, without the consent of the Parties. Any such amendment or modification will be consistent with the terms of this Agreement.

(c) If issued, the 1997 FAD will be effective until a further determination is made in consultation with NYSDOH. Such further determination is scheduled for April 15, 2002 but may occur earlier should USEPA determine it warranted, in consultation with NYSDOH. USEPA and NYSDOH acknowledge that the watershed protection programs

embodied in this Agreement and the 1997 FAD, if implemented, should provide for the protection of public health, as envisioned by the federal Surface Water Treatment Rule adopted pursuant to the Federal Safe Drinking Water Act, and constitute a vital factor for allowing the City to avoid filtration. Therefore, it is USEPA's and NYSDOH's current intention that, if the Catskill and Delaware System continues to meet the objective criteria for filtration avoidance, and, if the City continues to meet its obligations under the 1997 FAD and such watershed protection programs in this Agreement and any successor filtration avoidance determinations embodying such programs, these agencies will allow, to the extent permissible under applicable law, the source waters from these systems to continue to be used, under filtration avoidance determinations, as unfiltered public drinking water supplies, for a period of at least twenty years.

(d) In November 1999 USEPA shall commence a formal review and evaluation of the City's compliance with the terms and conditions of the 1997 FAD, to be completed on or before May 31, 2000. In addition to any review at the conclusion of any filtration avoidance determination, USEPA may conduct such other formal interim reviews and evaluations at such appropriate intervals as are necessary to assess the City's continued compliance with subsequent filtration avoidance determinations. USEPA will conduct such reviews in consultation with the City and NYSDOH. During the reviews, USEPA will solicit public comment on the City's compliance with the terms and conditions of the 1997 FAD or subsequent filtration avoidance determinations, as the case may be.

(e) Any filtration avoidance determination is separate and distinct from, and shall not be deemed incorporated in, or enforceable as a part of, this Agreement.

(f) If the pre-conditions set forth above for issuance of an Interim FAD are not met, or if an Interim FAD is issued but the Watershed Regulations do not become effective by April 15, 1997, then it is USEPA's intention not to issue any further filtration avoidance determination, but to take alternative action it deems appropriate under the Safe Drinking Water Act, without further reference to this Agreement.

160. Primacy Agency. Within five days of NYSDEC issuing a water supply permit pursuant to paragraph 58 and an approval by NYSDOH of the Watershed Regulations becoming effective pursuant to paragraph 88, USEPA shall issue a determination delegating primary enforcement responsibility to NYSDOH for the SWTR as it applies to all surface water sources within New York State except the Catskill and Delaware System. The determination shall further provide that effective May 15, 2007, USEPA will delegate primary enforcement responsibility for the SWTR to NYSDOH for the Catskill and Delaware System. For the period of time prior to the delegation of primary enforcement responsibility to NYSDOH for the Catskill and Delaware System, USEPA and NYSDOH will work jointly and cooperatively with respect to decisions concerning enforcement of the SWTR as it applies to the Catskill and Delaware System. However, USEPA shall retain primary enforcement responsibility during such period.

161. Lead Agency Determination. The Parties hereby waive any notice requirement for purposes of establishing lead agency under SEQR for (i) the City's obligations set forth

in this Agreement; (ii) the land acquisition program; and (iii) the promulgation and approval of the Watershed Regulations. The Parties consent to the designation of NYCDEP as lead agency (6 NYCRR § 617.6) for purposes of their review under SEQR.

162. Total Maximum Daily Loads. NYCDEP and NYSDEC will jointly develop Total Maximum Daily Loads ("TMDLs"), wasteload allocations ("WLAs") and load allocations ("LAs") for phosphorus in each of the reservoirs in the Catskill and Delaware, and Croton Systems. USEPA will provide technical support in the development of TMDLs and review and approve submitted TMDLs. The water quality management goal of the TMDL program is to assure that the total phosphorus loading from point and non-point sources into a reservoir does not cause a contravention of the water quality standard for phosphorus. The New York State guidance value for phosphorus will be used for TMDL development. The Phase I TMDLs will be developed in conformance with the methodology set forth in Attachment MM.

(a) NYCDEP has developed Phase I TMDL reports by applying the Reckhow land use models and simple reservoir models. These TMDL reports used the best available data and followed procedures contained in the methodology. NYCDEP has submitted reservoir reports to NYSDEC with Phase I TMDLs and, where the load exceeds the TMDL, proposed WLAs and LAs, for all nineteen reservoirs.

(b) By January 23, 1997, NYSDEC will review the Phase I TMDL reports and provide public notice of TMDLs and submit Phase I TMDLs for all reservoirs and, where appropriate, WLAs and LAs to USEPA for approval. USEPA will review and make a determination on Phase I TMDLs by the later of February 23, 1997 or thirty (30) days after submittal by NYSDEC.

(c) NYCDEP and NYSDEC will jointly evaluate and identify potential management practices for controlling nonpoint source pollution which, if implemented, would provide reasonable assurances that nonpoint source reductions attain the LAs. USEPA will continue to provide information on nonpoint source management measures through the State Nonpoint Source Program. USEPA commits to assist NYSDEC and NYCDEP to obtain information on specific management measures if the needed information is not readily available through the Clean Water Act Section 319 Program. USEPA commits to gathering and providing, to NYSDEC and NYCDEP, information on nonpoint management measures it has gained through the national nonpoint source grant and research program. Nonpoint source management practices would be designed based on the types of land use in the relevant basin and any other reservoir basin-specific conditions. NYCDEP and NYSDEC shall issue a report identifying the potential management practices in accordance with the following schedule:

(i) By the later of April 1, 1997 or ninety (90) days after USEPA approval of TMDLs - all reservoirs in the Croton System ;

(ii) By the later of July 1, 1997 or one hundred eighty (180) days after USEPA approval of TMDLs - all reservoirs in the Catskill and Delaware System.

(d) For each reservoir which exceeds its USEPA approved TMDL, NYSDEC, in cooperation with NYCDEP, will take the following actions:

(i) NYSDEC will review all surface water permits in the reservoir drainage basin for consistency with the effluent limits for phosphorus specified in the Watershed Regulations. By the later of April 1, 1997 or ninety (90) days after USEPA approval of TMDLs, NYSDEC will propose permit modifications for all surface water permits in the reservoir drainage basin to implement the effluent limits for phosphorus specified in the Watershed Regulations. This permit review will not delay or otherwise adversely impact NYSDEC's commitment to review all existing surface water permits in the Watershed for consistency with effluent limits specified in the Watershed Regulations and propose permit modifications to implement the wastewater treatment plant requirements in the Watershed Regulations in accordance with paragraph 163. Provided, however, that if NYSDEC submits Phase I TMDLs to USEPA by January 23, 1997 and USEPA fails to comply with its obligation to make a determination on Phase I TMDLs within thirty (30) days pursuant to sub-paragraph (b) above, NYSDEC may delay its paragraph 163 obligations to review permits and propose permit modifications in order to coordinate such paragraph 163 obligations with its obligations to review permits and propose permit modifications under this paragraph 162.

(ii) Proposed permits for new WWTPs with surface discharges in the reservoir drainage basin, to the extent permitted under the phosphorus offset program authorized in the Watershed Regulations, will be processed within the timeframes established by the UPA. Proposed permits shall require a total phosphorus effluent limit of 0.2 mg/l. For new surface discharges, the proposed permit shall require that every one (1) kilogram of projected increase in the phosphorus load resulting from the new WWTP and accompanying nonpoint source runoff is offset by three (3) kilograms of reductions in phosphorus loading within such basin. Proposed permits for expanded surface discharges shall require that every one (1) kilogram of projected increase in the phosphorus load resulting from the expansion of the existing WWTP and accompanying nonpoint source runoff is offset by two (2) kilograms of reductions in phosphorus loading within such basin.

(iii) Proposed permits for new or expanded WWTPs with subsurface discharges in the reservoir basin will be processed within the timeframes established by the UPA and will contain the following total phosphorus effluent limits:

SPDES Permitted Total Flow (gal/day) Total Phosphorus Limit (mg/l)

£ 50,000 1.0

> 50,000 and < 500,000 0.5

<sup>3</sup> 500,000 0.2

(iv) Notwithstanding the above, no offsets shall be included in the proposed permits for those new or expanded WWTPs where NYSDEC determines that existing conditions are resulting in the release or discharge of inadequately treated sewage into the water supply and that there is no other feasible method of correcting that release or discharge other than through the new or expanded WWTP. In those situations, the additional treatment capacity of the new or expanded WWTP may only be of a size sufficient to service the area identified as the source of contamination and any area of immediate concern. In an effort to avoid potential inconsistencies between draft SPDES permit and NYCDEP determinations under the Watershed Regulations, NYSDEC shall consult with NYCDEP prior to issuing a draft SPDES permit.

(v) Within six months of receiving a report identifying potential management practices for nonpoint source pollution, NYSDEC shall work jointly with NYCDEP and shall identify potential nonpoint source management practices it will implement and recommend potential non-point source management practices to be implemented by other parties. NYSDEC shall provide a description and a schedule of the implementation mechanisms.

(e) After completion of the Phase I TMDL reports, NYCDEP shall continue with the development of Phase II TMDL reports. For reservoirs West of Hudson, Phase II TMDL development will include a generalized watershed loading function (GWLF) terrestrial model to estimate nonpoint source loadings. For reservoirs East of Hudson, Phase II TMDLs will utilize improved data. A methodology document for the development of Phase II TMDLs will be proposed by NYCDEP, reviewed by the TAC, and agreed upon by NYSDEC, USEPA, and NYCDEP. NYCDEP shall perform the modeling analysis for Phase II TMDL reports and submit, to NYSDEC, Phase II TMDLs, and, for those reservoirs where the load is exceeding the TMDL, proposed WLAs and LAs by the later of June 30, 1998 or nine (9) months after agreement on the Phase II methodology.

(f) By the later of December, 1998 or six months after submission of the Phase II Reports by NYCDEP, NYSDEC will review the NYCDEP Phase II TMDL reports, provide public notice of TMDLs and submit Phase II TMDLs and, where appropriate, WLAs and LAs to USEPA for approval. USEPA will review and make a determination on Phase II TMDLs by the later of January, 1999 or one month after submission of Phase II TMDLs by NYSDEC.

(g) NYCDEP and NYSDEC will continue to identify, evaluate and develop potential management practices for controlling nonpoint source pollution which, if implemented, would provide reasonable assurances that nonpoint source reductions attain the LAs. Nonpoint source management practices would be designed based on the types of land use in the relevant basin and any other reservoir-basin specific conditions. NYCDEP and NYSDEC shall issue a report identifying the potential management practices by the later of January 1, 1999 or six months after submission of Phase II TMDL Reports by NYCDEP to NYSDEC.

(h) For each reservoir which exceeds its USEPA approved Phase II TMDL, NYSDEC, in cooperation with NYCDEP and USEPA, will take the following actions:

(i) NYSDEC will review all surface water permits in the reservoir drainage basin to identify all permits needing modification to achieve appropriate point source reductions indicated by the Phase II TMDLs. By April 1999, NYSDEC will propose such permit modifications.

(ii) Proposed permits for new WWTPs with surface discharges in the reservoir drainage basin, to the extent permitted under the phosphorus offset program authorized in the Watershed Regulations, will be processed within the timeframes established by the UPA. Proposed permits shall require a total phosphorus effluent limit of 0.2 mg/l. For new surface discharges, to the extent permitted under the phosphorus offset program authorized in the Watershed Regulations, the proposed permit shall require that every one (1) kilogram of projected increase in the phosphorus load resulting from the new WWTP and accompanying nonpoint source runoff is offset by three (3) kilograms of reductions in phosphorus loading within such basin. Proposed permits for expanded surface discharges shall require that every one (1) kilogram of projected increase in the phosphorus load resulting from the expansion of the existing WWTP and accompanying nonpoint source runoff is offset by two (2) kilograms of reductions in phosphorus loading within such basin.

(iii) Proposed permits for new or expanded WWTPs with subsurface discharges in the reservoir basin will be processed within the timeframes established by the UPA and will contain the following total phosphorus effluent limits:

SPDES Permitted Total Flow (gal/day) Total Phosphorus Limit (mg/l)

£ 50,000 1.0

> 50,000 and < 500,000 0.5

<sup>3</sup> 500,000 0.2

(iv) Notwithstanding the above, no offsets shall be included in the proposed permits for those new or expanded WWTPs where NYSDEC determines that existing conditions are resulting in the release or discharge of inadequately treated sewage into the water supply and that there is no other feasible method of correcting that release or discharge other than through the new or expanded WWTP. In those situations, the additional treatment capacity of the new or expanded WWTP may only be of a size sufficient to service the area identified as the source of contamination and any area of immediate concern. In an effort to avoid potential inconsistencies between draft SPDES permit and NYCDEP determinations under the Watershed Regulations, NYSDEC shall consult with NYCDEP prior to issuing a draft SPDES permit.



(v) Within six months of receiving a report identifying potential management practices for nonpoint source pollution, NYSDEC shall work jointly with NYCDEP and shall identify potential nonpoint source management practices it will implement and recommend potential non-point source management practices to be implemented by other parties. NYSDEC shall provide a description and a schedule of the implementation mechanisms.

(i) After Phase II, NYSDEC and NYCDEP will continue to monitor and regularly assess phosphorus load allocations for each reservoir basin. As additional data become available, where appropriate and on a reasonable schedule, NYSDEC, NYCDEP and USEPA, together, will refine modeling efforts, adjust loading estimates and where necessary revise wasteload allocations and load allocations.

(j) NYSDEC's development of TMDLs for phosphorus shall not affect the City's agreement to pay the incremental costs, including operation and maintenance costs, to upgrade existing WWTPs to comply with the phosphorus control requirements of the Watershed Regulations, as set forth in paragraph 141 of this Agreement; or the City's agreement to provide up to Seventy Five Million Dollars (\$75,000,000) to pay capital construction costs for new WWTPs, community septic systems, or septic districts in the Identified Communities in West of Hudson, as set forth in paragraph 122. The City also agrees to pay the cost of operating and maintaining such new WWTPs, in accordance with paragraph 122, regardless of whether the phosphorus controls are required as a result of either NYSDEC TMDLs or the Watershed Regulations.

#### 163. NYSDEC Review of SPDES Permits in Watershed.

(a) NYSDEC will review all existing surface water permits in the Watershed for consistency with the effluent limits specified in the Watershed Regulations. By April 1997, NYSDEC will issue draft permit modifications including monitoring requirements set forth in the September 23, 1993 MOU between NYSDEC and NYCDEP for all existing surface water permits in the Watershed to implement the wastewater treatment plant requirements specified in the Watershed Regulations. Any interim limits specified by NYSDEC shall be consistent with the limits contained in the current SPDES permit for the facility.

(b) NYSDEC shall include as special conditions of any draft permit for a new or expanded WWTP which implements the Phosphorus Offset Pilot Program, described in Sections 18-82(g) and 18-83(a) of the Watershed Regulations, those measures necessary to: (i) achieve offsets through point or non-point source reductions, including any easements or contracts for access to the offset site or to ensure the performance of the owner of such site; (ii) maintain any best management practices critical to the attainment of the offset; (iii) monitor the offset for compliance with the requirements of the permit; and (iv) achieve contingency reductions of phosphorus in the event that the proposed and permitted measures do not achieve the required phosphorus offset.

#### 164. Enhanced Monitoring.

(a) The Parties have designated the International Life Science Institute ("ILSI") to receive a grant from the Empire State Development Corporation to review and assess the current City and State water quality monitoring programs in the Watershed. A scope of work for such consultant is set forth in Attachment NN.

(b) Within one hundred and fifty (150) days of a notification of grant award from the Empire State Development Corporation, ILSI shall prepare a draft report which sets forth the assessment of the current City and State water quality monitoring programs in the Watershed and recommends any necessary enhancements or modifications to the programs. Prior to the commencement of work of any expert panel convened by ILSI, ILSI shall notify the State, City, USEPA, Environmental Parties, the CW Corporation, Westchester County and Putnam County of the composition of the panel. ILSI shall consider material and information provided by the City, State, or other interested persons in preparing the draft report. The Parties shall promptly provide information in response to any reasonable request for information from ILSI.

(c) ILSI shall submit the draft report to the USEPA, State, City, CW Corporation, Putnam County, Westchester County, and the Environmental Parties for review and comment. The reviewers shall have thirty (30) days from receipt to review the draft report and submit written comments to ILSI for consideration. Within thirty (30) days of the date on which written comments on the draft report are to be submitted, ILSI shall prepare a final report. ILSI shall provide a copy of the final report to all parties who provided comments on the draft report, and the WPPC, and shall make copies and summaries of the report available to the public.

(d) Consistent with the attached scope of work, any recommended enhancements or modifications shall be prioritized by ILSI and shall: (1) build upon the existing programs; (2) ensure that the City and State programs, collectively, are comprehensive and Watershed-wide; and (3) ensure that the programs continually assess water quality conditions and activities affecting water quality.

(e) The City and State shall determine whether to implement such recommendations or modifications. If the City or State does not implement such recommendations, it shall provide a written determination to the Parties of the reasons for its decision. The Parties agree to support the State's and/or City's request for federal funding for the purpose of an enhanced monitoring program.

(f) If, as a result of appropriations granted by Congress and approved by the President pursuant to Section 128 of the Safe Drinking Water Act Amendments of 1996 ("SDWA"), the State receives at least Seventy-Five Million Dollars (\$75,000,000), then at least Sixty Million Dollars (\$60,000,000) of such funds shall be expended on projects that demonstrate, assess or provide for comprehensive monitoring and surveillance in the Watershed ("Monitoring Projects"). Irrespective of the specific amount of funds appropriated pursuant to SDWA Section 128, the State commits to spend at least seventy-five percent (75%) of the total funds received in federal fiscal years 1997 through 2001 on Monitoring Projects. Such Monitoring Projects must be consistent with the applicable

requirements of the SDWA, any laws providing for such appropriation, and any requirements established by the State and USEPA in administering such program. Upon the concurrence of Westchester County, Putnam County, New York City, USEPA, the CW Corporation and the Environmental Parties, the State may modify the spending levels set forth in this subparagraph.

(g) In the event the State receives federal funding as a result of an appropriation granted by Congress and approved by the President pursuant to Section 128 of the SDWA, the State and USEPA shall give priority to Monitoring Projects in its determination of which projects receive such federal funding. Within ninety (90) days of the Effective Date of this Agreement, the City shall provide the State with a report describing the City's existing water quality monitoring program and any anticipated modifications to such program that will not be implemented by the City through the use of federal funds available pursuant to Section 128 of the SDWA. Any funds provided by the State to the City to implement such monitoring projects shall be applied by the City only toward enhancement of the City's water quality monitoring program beyond (i) the scope of the water quality monitoring program that the City would have undertaken notwithstanding the availability of federal funds, or (ii) the scope of the City's water quality monitoring program pursuant to the report described above.

(h) For a period of at least five (5) years from the Effective Date of this Agreement, the City agrees to maintain substantially the same level of water quality monitoring in the Watershed as it currently undertakes, provided that nothing contained herein shall obligate the City to maintain a specific level of staffing or facilities, and the City shall have the discretion to best allocate its resources in fulfillment of the foregoing agreement so long as substantially the same level of monitoring is maintained, and provided further, that any discrete monitoring projects undertaken by the City that have stated completion dates (as opposed to ongoing monitoring programs) need not be continued once they are completed.

165. Phosphorus Pilot Program. NYCDEP shall provide the Executive Committee of the Partnership Council, at least two months prior to the fifth anniversary of the effective date of the Watershed Regulations promulgated pursuant to CAPA, a report on the effectiveness of the pilot offset programs for WWTPs in phosphorus restricted basins set forth in Sections 18-82 and 18-83 of the Watershed Regulations. If NYCDEP determines that there is insufficient data to determine whether the offsets sought in the pilot programs have been achieved, the time frame for the pilot programs shall be extended for a period not to exceed an additional five years to allow for acquisition of further data. Nothing contained in this paragraph shall allow for an increase in the number or size of the plants allowed pursuant to the pilot program. If NYCDEP determines that there is sufficient data to determine whether the offsets sought in the pilot programs have been achieved, then within two months of receiving NYCDEP's report, the Executive Committee shall make a recommendation on the effectiveness of the pilot program. After the Executive Committee issues its recommendation, if NYCDEP determines that the phosphorus offsets sought in the pilot programs have been achieved, and that amendment

of the Watershed Regulations is appropriate, NYCDEP shall commence any necessary rulemaking.

166. Home Heating Oil Tank Insurance. In recognition of the desirable consumer benefits of providing an insurance product to homeowners whose homes are heated by fuel oil, the New York State Department of Insurance has established the Homeowner's Environmental Loss Protection ("HELP") Program. Under the HELP Program, insurance policies are sold on a mass merchandising basis by a New York State licensed insurer to the customers of fuel oil dealers who are participating in the HELP Program. Such policies provide coverage against the costs of clean-up, property damage and fuel oil tank repair or replacement caused by the accidental release of fuel oil from homeowner fuel oil tank systems. The City shall use its best efforts to publicize and promote the HELP program, including publication of a brochure explaining the program, a onetime mailing of the brochure to Watershed residents, notification of the program to applicants for approvals under the Watershed Regulations, and seminars for fuel oil dealers in the Watershed.

167. Legislative Proposals. The Governor will sponsor, and the Parties will support proposed State legislation, appended hereto as Attachment U, that will implement the following: (i) require City-held Watershed Conservation Easements to be taxed; (ii) allow for transfers of land from the State to the City and allow such acquired lands to be free of tax liability under certain State tax programs; and (iii) allow the use of the principal of the EOH Water Quality Fund to pay interest on bonds or other obligations issued to fund eligible projects.

168. Pesticide and Fertilizer Technical Working Group.

(a) NYSDEC will convene a pesticide and fertilizer technical working group (the "Working Group") within thirty (30) days of the Effective Date of this Agreement to analyze the State's current regulations and standards on the storage, use and application of pesticides and fertilizers, and to recommend any changes to such regulations and standards to protect the City's water supply from potential contamination from pesticides or fertilizers or to enhance the City's ability to monitor any impacts from such storage, use or application.

(b) The Working Group shall be composed of the following: a representative of NYSDEC who shall serve as Chair; a representative of USEPA; a member of WAC; a representative of the New York State Department of Agriculture and Markets; a representative of NYCDEP; a representative of the Environmental Parties; a representative of a pesticide applicator trade organization; a representative from the WOH Municipal Parties, chosen by the CW Corporation; and a representative from the EOH Municipal Parties, chosen jointly by Westchester County and Putnam County. Members of the Working Group shall have appropriate scientific or technical expertise to enable the Working Group to fulfill its purpose.

(c) Within six (6) months of the Effective Date of this Agreement, the Working Group shall submit a final draft of its report to the Executive Committee with its recommendations. Recommendations shall be made by majority vote. Any member of the Working Group who dissents from a Group recommendation shall be entitled to submit his/her own draft report, stating the reasons for his/her dissent and any alternative recommendations. The Executive Committee shall be given at least thirty (30) days to submit comments on the draft reports. The Working Group shall consider the Executive Committee's comments in preparing the final report(s) and shall submit the final report, and any dissenting report, to the WPPC.

(d) In addition to convening and chairing the Working Group, within six months after receiving the final report of the Working Group, the State shall develop, in consultation with NYCDEP, and consistent with the final report of the Working Group, training materials to be incorporated into the State's pesticide applicator certification program, explaining the City's drinking water supply system, informing applicators of the potential for contamination from improper application of pesticides within the watershed of a surface water supply, and recommending that applicators not apply pesticides within an appropriate limiting distance of a watercourse, wetland or reservoir, reservoir stem or controlled lake.

169. Galley Study. The City shall conduct a study to assess the effectiveness of galley systems in treating sewage in a watershed of a surface water supply system ("Galley Study"). The Galley Study shall include galley systems as constructed in Putnam and Westchester Counties and under impervious and pervious surfaces.

(a) The Galley Study shall be conducted in accordance with the Protocol appended hereto as Attachment OO. The State and NYCDEP, with the assistance of Westchester County and Putnam County, shall select the individual sites to be used for the Galley Study and obtain the agreement of the owners of the site and the galley system to participate in the Galley Study, including allowing NYCDEP and the county access to the site to inspect and monitor the site and galley system and collect such samples as are necessary to conduct the Galley Study. With respect to each landowner who agrees to participate in the Galley Study, the City will agree to repair any damage to such property caused by the City or its agents in conducting the Study. The City may modify the Protocol with the concurrence of NYSDOH, USEPA, Environmental Parties, Putnam County and Westchester County.

(b) NYCDEP shall conduct the Galley Study in coordination with Westchester and Putnam Counties and in accordance with the agreed upon Protocol and methodology. NYCDEP expects to complete the Galley Study within eighteen months of the State's securing the agreement of galley system and property owners to participate in the Galley Study.

(c) If the Galley Study shows that certain types of galley systems, used in Westchester and Putnam Counties and allowed under the Regulations, do not adequately treat sewage when compared to conventional septic systems, the City will propose appropriate

revisions to the Watershed Regulations, which may include conditions and limitations on the use of such galley systems. NYSDOH will approve such revisions to the Watershed Regulations, provided they are consistent with these studies, and adopt such revisions as State regulations pursuant to SAPA.

170. Septic System Siting Study.

(a) The City shall conduct a study to assess the adequacy of a one hundred (100) foot separation distance between septic system absorption fields and watercourses and wetlands ("Septic System Siting Study"). The study shall be conducted in accordance with the Quality Assurance Plan dated August 21, 1995 which has been approved by USEPA and NYSDOH, as clarified by a December, 1995 status report submitted to USEPA and a February 5, 1996 letter from Robert Lemieux, First Deputy Commissioner, NYCDEP to Richard Caspe, Director, Water Management Division, USEPA. The Septic System Siting Study will provide the technical basis for future changes, if any, to septic system setback regulations.

(b) NYCDEP expects to complete the study and issue a final report analyzing the results of the study and, if there is significant pathogen transport beyond the one hundred (100) foot separation distance, recommending any appropriate changes to the Watershed Regulations and NYSDOH septic system regulations by December 31, 1999.

(c) NYSDOH will review the study results and recommendations and if, based on its review, NYSDOH determines that there is significant pathogen transport beyond the one hundred (100) foot separation distance, determine appropriate changes to 10 NYCRR Appendix 75-A. If NYSDOH does not adopt the recommendation or modifies the recommendation of the final report, NYSDOH will issue a written determination setting forth the rationale for its action. If, based on the results of the Study, NYSDOH proposes appropriate revisions to 10 NYCRR Appendix 75-A, the City may propose consistent revisions to the Watershed Regulations. Provided the revisions proposed by the City are consistent with proposed revisions to 10 NYCRR Appendix 75-A, NYSDOH will approve such revisions to the Watershed Regulations and also adopt the revisions to the Watershed Regulations pursuant to SAPA.

171. Assignment of Rights Between Coalition and CW Corporation. The Coalition may assign to the CW Corporation any of the obligations, commitments, rights, or interests given to the Coalition by this Agreement except for those obligations or commitments contained in paragraphs 172, 173, and 176 (legal challenges). The Coalition shall notify each Party in writing of any such transfer.

172. Coalition of Watershed Towns v. City of New York. Within seven (7) days of (a) the promulgation of the Watershed Regulations by NYSDOH pursuant to SAPA as provided by paragraph 90 of Article III, or (b) the issuance of a water supply permit for the land acquisition program by NYSDEC consistent with the terms set forth in Attachment V, whichever is later, the Parties involved in the matter of Coalition of Watershed Towns, et al. v. City of New York, et al., (Supreme Court, Albany County),

Index number 1800-94, shall execute a stipulation discontinuing and seeking dismissal of the proceeding in all respects with prejudice subject only to compliance with the terms of this Agreement.

173. City of New York v. State Department of Health. Within seven (7) days of (a) the promulgation of the Watershed Regulations by NYSDOH pursuant to SAPA as provided by paragraph 90 of Article III, or (b) the issuance of a water supply permit for the land acquisition program by NYSDEC consistent with the terms set forth in Attachment V, whichever is later, the City will request permission from the Appellate Division, Third Department to withdraw its appeal in the matter of City of New York v. State Department of Health, No. 73696, with prejudice and without costs. Within seven (7) days of the Effective Date of this Agreement, NYSDOH will issue a Supplemental Declaratory Ruling, in all material respects similar in substance to the draft appended hereto as Attachment PP.

174. Inclusion of City's Obligations in City's Annual Budget. The Mayor shall include in each annual budget submitted to the Council of the City of New York, sufficient funds to meet the City's obligations under this Agreement for the fiscal year.

175. Water Rates. Anything herein to the contrary notwithstanding, the extent to which the costs of any programs set out in Article V hereof paid for by the City may be included in the rates and charges for the supply of water from the City's water supply systems shall be determined solely by the substance of such programs and the provisions of the Water Supply Act of 1905 (NYC Admin. Code Section 24-360), the Public Authorities Law, and any other applicable law. Nothing contained herein, including the City's agreement to pay for such costs, shall be deemed to modify the foregoing, or to expand, limit or waive any obligations or rights that any Party or any other person or entity may otherwise have with respect to water charges or rates, including, without limitation, any right to contest such charges or rates.

176. Waiver of Future Challenges.

(a) The Parties agree that they will forego any future legal challenges to the validity or enforceability of the following, including the City's, State's, or USEPA's compliance with SEQR, the National Environmental Policy Act, and all applicable administrative procedures in connection with the issuance, signing or promulgation of the following:

(i) The December 1993 Filtration Avoidance Determination and any prior filtration avoidance determination for the Catskill and Delaware System;

(ii) USEPA's Interim FAD and 1997 FAD for the Catskill and Delaware Systems, as set forth in paragraph 159;

(iii) The 1993 NYSDOH Declaratory Ruling;

(iv) NYSDOH's Supplemental Declaratory Ruling as set forth in paragraph 173;

(v) The Watershed Regulations appended hereto as Attachment W or with such revisions as the Parties agree to;

(vi) The land acquisition program, and the water supply permit to be issued by NYSDEC, consistent with the terms set forth in Article II of this Agreement;

(vii) The Memorandum of Understanding dated September 23, 1993 between NYSDEC and NYCDEP, and the following addenda: A, B, C, E, G, H, I, J, K, L, M, N, O, P and R;

(viii) The results of the galley system study conducted in accordance with paragraph 169;

(ix) USEPA's determination, referred to in paragraph 160, delegating primary enforcement responsibility to NYSDOH for the SWTR as it applies to all surface water sources in New York State except the Catskill and Delaware System; and

(x) This Agreement and all subsidiary agreements attached hereto.

(b) Notwithstanding the foregoing: (i) Westchester County, Putnam County, the Coalition, and the Municipal Parties reserve the right to submit comments during the CAPA and SAPA review for the Regulations, the USEPA filtration avoidance determination comment period, and the NYSDEC water supply permit public comment period that clarify that they support the permit, Regulations, and filtration avoidance determination based upon, and in the context of, this Agreement, including, in particular, the Watershed Protection and Partnership Programs set forth herein; and (ii) the Environmental Parties reserve the right to submit comments during the CAPA and SAPA review for the Regulations, the USEPA filtration avoidance determination comment period, and the NYSDEC water supply permit public comment period that clarify that they support the permit, Regulations, and filtration avoidance determination based upon, and in the context of, this Agreement.

(c) Nothing in this Agreement is intended to or shall expand, limit or waive any rights or obligations any Party or any other entity or person may have under the Public Health Law, including Sections 1104 and 1105. Except as set forth in paragraphs 142 and 143 (Future WWTP Upgrades), nothing in this Agreement is intended to or shall be construed as an agreement or admission by the City that it is liable for any costs, damages or claims under the Public Health Law, including Sections 1104 and 1105, or any other law.

177. Mediation of Future Disputes. The Parties agree that in addition to discontinuing the litigation listed in paragraphs 172 and 173 above, they will advise the Executive Committee of the Council of grievances between the Parties concerning the terms of this Agreement or significant programmatic or policy decisions affecting the Watershed and shall make good faith efforts to resolve such disputes prior to commencing litigation. The Council shall have no authority to arbitrate, or to require arbitration of, any such grievances without the written consent of all parties to the grievance.



178. Enforcement Discretion Regarding Violations Related to Failure of Agreed-upon Funding.

(a) If the City fails to provide funding as agreed to under paragraphs 126 and 141 of this Agreement for costs incurred to comply with requirements of the Watershed Regulations in a manner which allows for the timely completion of the upgrades in compliance with the Watershed Regulations, and the City's failure to pay directly and solely causes a facility owner or operator to violate any term or provision of the Watershed Regulations requiring such upgrades, a permit, including a SPDES permit, or other approval, the City agrees that it will not pursue an enforcement action against the facility owner or operator for such violation. Notwithstanding the above, the City's agreement not to pursue an enforcement action shall not apply where the City is in good faith contesting its obligation to pay a request for funds. Nothing in this paragraph shall prevent the City from pursuing an enforcement action against a facility owner or operator for any violation occurring or continuing after the City pays any such amount and after the operator has had a reasonable period of time to implement the upgrade.

(b) Any SPDES permit modified pursuant to this Agreement and/or the Memorandum of Understanding dated September 23, 1993 between NYSDEC and NYCDEP, as amended, to incorporate the requirements of the New York City Watershed Regulations, or as set forth in subparagraphs 162(d)(i) & 162(h)(i) for the drainage basin of the Cannonsville Reservoir, shall contain a compliance schedule for the design, permitting, funding, contracting, construction and debugging of the equipment or operational modifications as appropriate and necessary for compliance with the modified permit requirements (including any modified effluent limitations) which is consistent with the procedure and implementation schedule for Regulatory Upgrades and phosphorus controls in the drainage basin of the Cannonsville Reservoir as set forth in paragraphs 141 and 144.

179. State and City Review of Performance Under This Agreement.

(a) On or before July 1, 1999, the City and State shall each submit, to the WPPC, written progress reports on their respective activities in regard to implementing this Agreement. The Executive Committee of the WPPC shall consider such reports in any review conducted pursuant to paragraph 105(j) of this Agreement.

(b) On or before the fifth anniversary of the Effective Date of this Agreement, the City and the State shall submit, to the WPPC, written evaluations of their respective activities in regard to implementing this Agreement and any other activities relating to the protection of water quality in the New York City Watershed. Such evaluations shall include recommendations for any needed improvements in the respective programs. The Executive Committee of the WPPC shall consider such evaluations and recommendations in any review conducted pursuant to paragraph 105(c) of this Agreement.

180. Complete Agreement. This Agreement, including the annexed Attachments A through XX, represents the complete understanding of the Parties with respect to the terms of this Agreement and supersedes all inconsistent prior understandings and

agreements with respect to such terms. This Agreement does not preclude future duly authorized written agreements between two or more of the Parties, provided that such future agreement does not diminish the rights of any other Party under this Agreement. This Agreement cannot be amended in a manner that diminishes the rights of any Party without the written consent of such Party.

181. Agreement is a Legally Binding Contract. The respective commitments of the Parties in this Agreement are in consideration of each other, thereby making this Agreement a legally binding contract enforceable by any aggrieved Party subject to the following:

(a) This Agreement may be enforced in a court of competent jurisdiction, and any such action will be governed by the laws of the State of New York.

(b) If any Municipal Party, Environmental Party, Westchester County, Putnam County, the CW Corporation or the Coalition substantially prevails in an action to enforce this Agreement or a contract entered into pursuant to Article V or paragraph 93 of this Agreement, the City, State, or USEPA, as the case may be, will pay the prevailing party reasonable attorneys' fees which have been actually incurred, including, without limitation, reasonable in-house counsel fees, provided however, that in any action involving USEPA, attorney's fees shall be paid by the federal government in accordance with, and only as authorized by, federal law. In addition, any Municipal Party, Westchester County, Putnam County or the Coalition which substantially prevails in such action may recover consequential damages, where appropriate, provided however, that any costs incurred to borrow money to replace funds not received from the City shall not be recoverable to the extent such Party is entitled to receive liquidated damages under paragraph 158.

(c) Any Municipal Party, Westchester County, Putnam County or the Coalition is deemed to be an aggrieved party pursuant to this paragraph whenever it, or one of its residents, tenants or properties, has the right to receive the benefit of a particular paragraph of this Agreement for which the breach or violation is alleged.

(d) The Environmental Parties may only enforce a continuing material breach of:

(i) The obligations of the State and City as set forth in all paragraphs of Article II of this Agreement;

(ii) The obligations of the State and City as set forth in paragraphs 88 (NYSDOH Approval), 89 (City CAPA Promulgation), 90 (NYSDOH SAPA Promulgation), and 92 (Waiver of Rights Regarding Approval and Promulgation), of Article III of this Agreement;

(iii) The funding obligations of the City and State as set forth in paragraphs 121 (SPDES Upgrades), 124 (Septic Rehabilitations and Replacements), 125 (Stormwater Retrofits), 126 (Sand and Salt Storage Facilities), 127 (Stream Corridor Protection), 138 (Watershed

Planning in the Croton System), 140 (East of Hudson Water Quality Investment Program), 141 (Upgrades to Existing WWTPs to Comply with Watershed Regulations), 142 (Future Operation and Maintenance Costs at Public WWTPs for Equipment Installed or Methods Instituted Between July 1, 1991 and November 2, 1995) 152 (State Partnership Programs) of Article V of this Agreement;

(iv) The obligation of USEPA to issue an Interim and 1997 Filtration Avoidance Determination and formally review and evaluate the City's compliance with the terms and conditions of the 1997 FAD as set forth in paragraph 159 of this Agreement;

(v) The obligation of USEPA to make a determination on primacy as set forth in paragraph 160 (Primacy Agency) of this Agreement;

(vi) The obligation of the City and State to develop TMDLs, waste load allocations and load allocations as set forth in paragraph 162 (Total Maximum Daily Loads);

(vii) The obligation of the State to modify SPDES permits for wastewater treatment plants in the watershed as set forth in paragraph 163(a) or to include special conditions in SPDES permits as set forth in paragraph 163(b) (NYSDEC Review of SPDES Permits in Watershed);

(viii) The City and State obligations for enhanced water quality monitoring as set forth in paragraph 164 (Enhanced Monitoring) of this Agreement;

(ix) The obligation of the City to conduct a galley study, and the obligation of the State to approve any necessary revisions to the Watershed Regulations and adopt such revisions as State regulations, as set forth in paragraph 169 (Galley Study) of Article VI of this Agreement;

(x) The obligation of the City to conduct a septic system siting study, and the obligation of the State to consider the recommendations of the study and make any necessary changes to State regulations as set forth in paragraph 170 (Septic System Siting Study) of Article VI of this Agreement; and

(xi) The obligations set forth in paragraph 179 (State and City Review of Performance Under this Agreement) in Article VI of this Agreement.

(e) No action shall be commenced pursuant to subparagraph (d) of this paragraph:

(i) Prior to sixty days after the Environmental Party has given notice of the alleged material breach to:

(1) NYSDEC and the City for an alleged material breach of the enforceable provisions of Article II set forth in subparagraph (d) of this paragraph;

(2) NYSDOH and the City for alleged material breaches of the enforceable provisions of Article III set forth in subparagraph (d) of this paragraph;

(3) The party alleged to be in material breach of the enforceable provisions of Articles V and VI set forth in subparagraph (d) of this paragraph; or

(ii) In the case of an alleged material breach by the City, if the State is diligently prosecuting an administrative or judicial enforcement proceeding to require compliance with the terms of this Agreement.

(f) In any action commenced pursuant to subparagraph (d) of this paragraph, damages for breach of this Agreement shall not be available, except attorneys' fees as provided in subparagraph (b) of this paragraph. The Parties agree that the court in which such action is brought may enforce the obligations of this Agreement by specific performance.

(g) Nothing in this paragraph is intended to diminish the right of the local, state or federal government to enforce all applicable provisions of local, state and federal law.

(h) Nothing in this Agreement shall act to confer third-party beneficiary rights on any person or entity not a Party to this Agreement.

182. Citizen Suits. Nothing in this Agreement is intended to or shall either increase or limit any right any Party may have to initiate a citizen suit pursuant to Section 1449 of the federal Safe Drinking Water Act, or a citizen suit provision of any other statute. Citizens may exercise any rights they may have under Section 1449 of the SDWA to seek to compel the Primacy Agency to require filtration of the Catskill and Delaware System should there be noncompliance with the terms thereof, and to enforce the relevant provisions of this Agreement relating to land acquisition and to the approval and adoption of the Watershed Regulations.

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

184. Additional Parties. The municipalities located in the portion of the Watershed within Dutchess County shall have sixty days (60) from the Effective Date to sign this Agreement.

185. Authorization to Execute. The Parties signing this Agreement represent that they have been duly authorized to enter into this Agreement pursuant to their respective lawful authorities.

---

New York State — United States Environmental Protection Agency

Agreement on Filtration

A successful land acquisition program is a critical element of the New York City watershed protection program. This watershed protection program, if implemented, should provide for the protection of public health, as envisioned by the federal Surface Water Treatment Rule adopted pursuant to the federal Safe Drinking Water Act, and constitutes a vital factor for allowing the City to avoid filtration. Accordingly, in the event that the water supply permit issued to the City by the NYSDEC ("Permit") is restricted or suspended for a substantial period of time in accordance with the provisions of the Permit, and that the acquisition of land necessary for watershed protection has been significantly impeded thereby, then the State and USEPA agree that filtration should be required. In making a determination of whether the City's land acquisition program has been significantly impeded, USEPA and NYSDOH shall consider the extent, quality and location of sensitive watershed lands then under City ownership. USEPA and NYSDOH should also consider the City's compliance with the land acquisition schedule set out in Attachment H of the MOA (and any subsequently approved revisions). In making such determination, each regulatory agency shall consult with the other regardless of which has primary enforcement responsibility for implementation of the SWTR (40 CFR section 141.70 et seq.) pursuant to section 1413 of the SDWA (42 U.S.C. section 300 g-2) as it applies to the Catskill and Delaware System.