

NEW YORK CITY WATERSHED MEMORANDUM OF AGREEMENT

January 21, 1997

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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 The City has withdrawn its application for a water supply permit, which was the subject of the administrative adjudicatory proceeding entitled In the Matter of the Application of New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.