

# NEW YORK CITY WATERSHED MEMORANDUM OF AGREEMENT

January 21, 1997

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## 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 septics, 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.