

NEW YORK CITY WATERSHED MEMORANDUM OF AGREEMENT

January 21, 1997

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ARTICLE VI MISCELLANEOUS PROVISIONS

159. New Filtration Avoidance Determination.

(a) If, prior to January 24, 1997, NYSDEC issues a final water supply permit pursuant to paragraph 58 of this Agreement, NYSDOH approves the Watershed Regulations with conditions set forth in paragraph 88 of this Agreement, this Agreement is executed, and the program contracts which are required under paragraph 88 of this Agreement to be executed immediately have been executed and submitted for registration pursuant to the City Charter, then USEPA will issue a four-month interim filtration avoidance determination ("Interim FAD") by that date consistent with the draft appended hereto in Attachment LL. This Interim FAD will supersede the December 1993 FAD. The Interim FAD will be effective until a further determination, scheduled for April 15, 1997, is made by EPA in consultation with NYSDOH.

(b) If USEPA has issued such Interim FAD, and the Watershed Regulations become effective on or about April 15, 1997, and the pre-conditions listed above remain operative, then USEPA will issue a new filtration avoidance determination (the "1997 FAD") consistent with the draft appended hereto in Attachment LL. USEPA, in consultation with NYSDOH, may amend or modify the 1997 FAD at any time, without the consent of the Parties. Any such amendment or modification will be consistent with the terms of this Agreement.

(c) If issued, the 1997 FAD will be effective until a further determination is made in consultation with NYSDOH. Such further determination is scheduled for April 15, 2002 but may occur earlier should USEPA determine it warranted, in consultation with NYSDOH. USEPA and NYSDOH acknowledge that the watershed protection programs

embodied in this Agreement and the 1997 FAD, if implemented, should provide for the protection of public health, as envisioned by the federal Surface Water Treatment Rule adopted pursuant to the Federal Safe Drinking Water Act, and constitute a vital factor for allowing the City to avoid filtration. Therefore, it is USEPA's and NYSDOH's current intention that, if the Catskill and Delaware System continues to meet the objective criteria for filtration avoidance, and, if the City continues to meet its obligations under the 1997 FAD and such watershed protection programs in this Agreement and any successor filtration avoidance determinations embodying such programs, these agencies will allow, to the extent permissible under applicable law, the source waters from these systems to continue to be used, under filtration avoidance determinations, as unfiltered public drinking water supplies, for a period of at least twenty years.

(d) In November 1999 USEPA shall commence a formal review and evaluation of the City's compliance with the terms and conditions of the 1997 FAD, to be completed on or before May 31, 2000. In addition to any review at the conclusion of any filtration avoidance determination, USEPA may conduct such other formal interim reviews and evaluations at such appropriate intervals as are necessary to assess the City's continued compliance with subsequent filtration avoidance determinations. USEPA will conduct such reviews in consultation with the City and NYSDOH. During the reviews, USEPA will solicit public comment on the City's compliance with the terms and conditions of the 1997 FAD or subsequent filtration avoidance determinations, as the case may be.

(e) Any filtration avoidance determination is separate and distinct from, and shall not be deemed incorporated in, or enforceable as a part of, this Agreement.

(f) If the pre-conditions set forth above for issuance of an Interim FAD are not met, or if an Interim FAD is issued but the Watershed Regulations do not become effective by April 15, 1997, then it is USEPA's intention not to issue any further filtration avoidance determination, but to take alternative action it deems appropriate under the Safe Drinking Water Act, without further reference to this Agreement.

160. Primacy Agency. Within five days of NYSDEC issuing a water supply permit pursuant to paragraph 58 and an approval by NYSDOH of the Watershed Regulations becoming effective pursuant to paragraph 88, USEPA shall issue a determination delegating primary enforcement responsibility to NYSDOH for the SWTR as it applies to all surface water sources within New York State except the Catskill and Delaware System. The determination shall further provide that effective May 15, 2007, USEPA will delegate primary enforcement responsibility for the SWTR to NYSDOH for the Catskill and Delaware System. For the period of time prior to the delegation of primary enforcement responsibility to NYSDOH for the Catskill and Delaware System, USEPA and NYSDOH will work jointly and cooperatively with respect to decisions concerning enforcement of the SWTR as it applies to the Catskill and Delaware System. However, USEPA shall retain primary enforcement responsibility during such period.

161. Lead Agency Determination. The Parties hereby waive any notice requirement for purposes of establishing lead agency under SEQRA for (i) the City's obligations set forth

in this Agreement; (ii) the land acquisition program; and (iii) the promulgation and approval of the Watershed Regulations. The Parties consent to the designation of NYCDEP as lead agency (6 NYCRR § 617.6) for purposes of their review under SEQR.

162. Total Maximum Daily Loads. NYCDEP and NYSDEC will jointly develop Total Maximum Daily Loads ("TMDLs"), wasteload allocations ("WLAs") and load allocations ("LAs") for phosphorus in each of the reservoirs in the Catskill and Delaware, and Croton Systems. USEPA will provide technical support in the development of TMDLs and review and approve submitted TMDLs. The water quality management goal of the TMDL program is to assure that the total phosphorus loading from point and non-point sources into a reservoir does not cause a contravention of the water quality standard for phosphorus. The New York State guidance value for phosphorus will be used for TMDL development. The Phase I TMDLs will be developed in conformance with the methodology set forth in Attachment MM.

(a) NYCDEP has developed Phase I TMDL reports by applying the Reckhow land use models and simple reservoir models. These TMDL reports used the best available data and followed procedures contained in the methodology. NYCDEP has submitted reservoir reports to NYSDEC with Phase I TMDLs and, where the load exceeds the TMDL, proposed WLAs and LAs, for all nineteen reservoirs.

(b) By January 23, 1997, NYSDEC will review the Phase I TMDL reports and provide public notice of TMDLs and submit Phase I TMDLs for all reservoirs and, where appropriate, WLAs and LAs to USEPA for approval. USEPA will review and make a determination on Phase I TMDLs by the later of February 23, 1997 or thirty (30) days after submittal by NYSDEC.

(c) NYCDEP and NYSDEC will jointly evaluate and identify potential management practices for controlling nonpoint source pollution which, if implemented, would provide reasonable assurances that nonpoint source reductions attain the LAs. USEPA will continue to provide information on nonpoint source management measures through the State Nonpoint Source Program. USEPA commits to assist NYSDEC and NYCDEP to obtain information on specific management measures if the needed information is not readily available through the Clean Water Act Section 319 Program. USEPA commits to gathering and providing, to NYSDEC and NYCDEP, information on nonpoint management measures it has gained through the national nonpoint source grant and research program. Nonpoint source management practices would be designed based on the types of land use in the relevant basin and any other reservoir basin-specific conditions. NYCDEP and NYSDEC shall issue a report identifying the potential management practices in accordance with the following schedule:

(i) By the later of April 1, 1997 or ninety (90) days after USEPA approval of TMDLs - all reservoirs in the Croton System ;

(ii) By the later of July 1, 1997 or one hundred eighty (180) days after USEPA approval of TMDLs - all reservoirs in the Catskill and Delaware System.

(d) For each reservoir which exceeds its USEPA approved TMDL, NYSDEC, in cooperation with NYCDEP, will take the following actions:

(i) NYSDEC will review all surface water permits in the reservoir drainage basin for consistency with the effluent limits for phosphorus specified in the Watershed Regulations. By the later of April 1, 1997 or ninety (90) days after USEPA approval of TMDLs, NYSDEC will propose permit modifications for all surface water permits in the reservoir drainage basin to implement the effluent limits for phosphorus specified in the Watershed Regulations. This permit review will not delay or otherwise adversely impact NYSDEC's commitment to review all existing surface water permits in the Watershed for consistency with effluent limits specified in the Watershed Regulations and propose permit modifications to implement the wastewater treatment plant requirements in the Watershed Regulations in accordance with paragraph 163. Provided, however, that if NYSDEC submits Phase I TMDLs to USEPA by January 23, 1997 and USEPA fails to comply with its obligation to make a determination on Phase I TMDLs within thirty (30) days pursuant to sub-paragraph (b) above, NYSDEC may delay its paragraph 163 obligations to review permits and propose permit modifications in order to coordinate such paragraph 163 obligations with its obligations to review permits and propose permit modifications under this paragraph 162.

(ii) Proposed permits for new WWTPs with surface discharges in the reservoir drainage basin, to the extent permitted under the phosphorus offset program authorized in the Watershed Regulations, will be processed within the timeframes established by the UPA. Proposed permits shall require a total phosphorus effluent limit of 0.2 mg/l. For new surface discharges, the proposed permit shall require that every one (1) kilogram of projected increase in the phosphorus load resulting from the new WWTP and accompanying nonpoint source runoff is offset by three (3) kilograms of reductions in phosphorus loading within such basin. Proposed permits for expanded surface discharges shall require that every one (1) kilogram of projected increase in the phosphorus load resulting from the expansion of the existing WWTP and accompanying nonpoint source runoff is offset by two (2) kilograms of reductions in phosphorus loading within such basin.

(iii) Proposed permits for new or expanded WWTPs with subsurface discharges in the reservoir basin will be processed within the timeframes established by the UPA and will contain the following total phosphorus effluent limits:

SPDES Permitted Total Flow (gal/day) Total Phosphorus Limit (mg/l)

£ 50,000 1.0

> 50,000 and < 500,000 0.5

³ 500,000 0.2

(iv) Notwithstanding the above, no offsets shall be included in the proposed permits for those new or expanded WWTPs where NYSDEC determines that existing conditions are resulting in the release or discharge of inadequately treated sewage into the water supply and that there is no other feasible method of correcting that release or discharge other than through the new or expanded WWTP. In those situations, the additional treatment capacity of the new or expanded WWTP may only be of a size sufficient to service the area identified as the source of contamination and any area of immediate concern. In an effort to avoid potential inconsistencies between draft SPDES permit and NYCDEP determinations under the Watershed Regulations, NYSDEC shall consult with NYCDEP prior to issuing a draft SPDES permit.

(v) Within six months of receiving a report identifying potential management practices for nonpoint source pollution, NYSDEC shall work jointly with NYCDEP and shall identify potential nonpoint source management practices it will implement and recommend potential non-point source management practices to be implemented by other parties. NYSDEC shall provide a description and a schedule of the implementation mechanisms.

(e) After completion of the Phase I TMDL reports, NYCDEP shall continue with the development of Phase II TMDL reports. For reservoirs West of Hudson, Phase II TMDL development will include a generalized watershed loading function (GWLF) terrestrial model to estimate nonpoint source loadings. For reservoirs East of Hudson, Phase II TMDLs will utilize improved data. A methodology document for the development of Phase II TMDLs will be proposed by NYCDEP, reviewed by the TAC, and agreed upon by NYSDEC, USEPA, and NYCDEP. NYCDEP shall perform the modeling analysis for Phase II TMDL reports and submit, to NYSDEC, Phase II TMDLs, and, for those reservoirs where the load is exceeding the TMDL, proposed WLAs and LAs by the later of June 30, 1998 or nine (9) months after agreement on the Phase II methodology.

(f) By the later of December, 1998 or six months after submission of the Phase II Reports by NYCDEP, NYSDEC will review the NYCDEP Phase II TMDL reports, provide public notice of TMDLs and submit Phase II TMDLs and, where appropriate, WLAs and LAs to USEPA for approval. USEPA will review and make a determination on Phase II TMDLs by the later of January, 1999 or one month after submission of Phase II TMDLs by NYSDEC.

(g) NYCDEP and NYSDEC will continue to identify, evaluate and develop potential management practices for controlling nonpoint source pollution which, if implemented, would provide reasonable assurances that nonpoint source reductions attain the LAs. Nonpoint source management practices would be designed based on the types of land use in the relevant basin and any other reservoir-basin specific conditions. NYCDEP and NYSDEC shall issue a report identifying the potential management practices by the later of January 1, 1999 or six months after submission of Phase II TMDL Reports by NYCDEP to NYSDEC.

(h) For each reservoir which exceeds its USEPA approved Phase II TMDL, NYSDEC, in cooperation with NYCDEP and USEPA, will take the following actions:

(i) NYSDEC will review all surface water permits in the reservoir drainage basin to identify all permits needing modification to achieve appropriate point source reductions indicated by the Phase II TMDLs. By April 1999, NYSDEC will propose such permit modifications.

(ii) Proposed permits for new WWTPs with surface discharges in the reservoir drainage basin, to the extent permitted under the phosphorus offset program authorized in the Watershed Regulations, will be processed within the timeframes established by the UPA. Proposed permits shall require a total phosphorus effluent limit of 0.2 mg/l. For new surface discharges, to the extent permitted under the phosphorus offset program authorized in the Watershed Regulations, the proposed permit shall require that every one (1) kilogram of projected increase in the phosphorus load resulting from the new WWTP and accompanying nonpoint source runoff is offset by three (3) kilograms of reductions in phosphorus loading within such basin. Proposed permits for expanded surface discharges shall require that every one (1) kilogram of projected increase in the phosphorus load resulting from the expansion of the existing WWTP and accompanying nonpoint source runoff is offset by two (2) kilograms of reductions in phosphorus loading within such basin.

(iii) Proposed permits for new or expanded WWTPs with subsurface discharges in the reservoir basin will be processed within the timeframes established by the UPA and will contain the following total phosphorus effluent limits:

SPDES Permitted Total Flow (gal/day) Total Phosphorus Limit (mg/l)

£ 50,000 1.0

> 50,000 and < 500,000 0.5

³ 500,000 0.2

(iv) Notwithstanding the above, no offsets shall be included in the proposed permits for those new or expanded WWTPs where NYSDEC determines that existing conditions are resulting in the release or discharge of inadequately treated sewage into the water supply and that there is no other feasible method of correcting that release or discharge other than through the new or expanded WWTP. In those situations, the additional treatment capacity of the new or expanded WWTP may only be of a size sufficient to service the area identified as the source of contamination and any area of immediate concern. In an effort to avoid potential inconsistencies between draft SPDES permit and NYCDEP determinations under the Watershed Regulations, NYSDEC shall consult with NYCDEP prior to issuing a draft SPDES permit.

(v) Within six months of receiving a report identifying potential management practices for nonpoint source pollution, NYSDEC shall work jointly with NYCDEP and shall identify potential nonpoint source management practices it will implement and recommend potential non-point source management practices to be implemented by other parties. NYSDEC shall provide a description and a schedule of the implementation mechanisms.

(i) After Phase II, NYSDEC and NYCDEP will continue to monitor and regularly assess phosphorus load allocations for each reservoir basin. As additional data become available, where appropriate and on a reasonable schedule, NYSDEC, NYCDEP and USEPA, together, will refine modeling efforts, adjust loading estimates and where necessary revise wasteload allocations and load allocations.

(j) NYSDEC's development of TMDLs for phosphorus shall not affect the City's agreement to pay the incremental costs, including operation and maintenance costs, to upgrade existing WWTPs to comply with the phosphorus control requirements of the Watershed Regulations, as set forth in paragraph 141 of this Agreement; or the City's agreement to provide up to Seventy Five Million Dollars (\$75,000,000) to pay capital construction costs for new WWTPs, community septic systems, or septic districts in the Identified Communities in West of Hudson, as set forth in paragraph 122. The City also agrees to pay the cost of operating and maintaining such new WWTPs, in accordance with paragraph 122, regardless of whether the phosphorus controls are required as a result of either NYSDEC TMDLs or the Watershed Regulations.

163. NYSDEC Review of SPDES Permits in Watershed.

(a) NYSDEC will review all existing surface water permits in the Watershed for consistency with the effluent limits specified in the Watershed Regulations. By April 1997, NYSDEC will issue draft permit modifications including monitoring requirements set forth in the September 23, 1993 MOU between NYSDEC and NYCDEP for all existing surface water permits in the Watershed to implement the wastewater treatment plant requirements specified in the Watershed Regulations. Any interim limits specified by NYSDEC shall be consistent with the limits contained in the current SPDES permit for the facility.

(b) NYSDEC shall include as special conditions of any draft permit for a new or expanded WWTP which implements the Phosphorus Offset Pilot Program, described in Sections 18-82(g) and 18-83(a) of the Watershed Regulations, those measures necessary to: (i) achieve offsets through point or non-point source reductions, including any easements or contracts for access to the offset site or to ensure the performance of the owner of such site; (ii) maintain any best management practices critical to the attainment of the offset; (iii) monitor the offset for compliance with the requirements of the permit; and (iv) achieve contingency reductions of phosphorus in the event that the proposed and permitted measures do not achieve the required phosphorus offset.

164. Enhanced Monitoring.

(a) The Parties have designated the International Life Science Institute ("ILSI") to receive a grant from the Empire State Development Corporation to review and assess the current City and State water quality monitoring programs in the Watershed. A scope of work for such consultant is set forth in Attachment NN.

(b) Within one hundred and fifty (150) days of a notification of grant award from the Empire State Development Corporation, ILSI shall prepare a draft report which sets forth the assessment of the current City and State water quality monitoring programs in the Watershed and recommends any necessary enhancements or modifications to the programs. Prior to the commencement of work of any expert panel convened by ILSI, ILSI shall notify the State, City, USEPA, Environmental Parties, the CW Corporation, Westchester County and Putnam County of the composition of the panel. ILSI shall consider material and information provided by the City, State, or other interested persons in preparing the draft report. The Parties shall promptly provide information in response to any reasonable request for information from ILSI.

(c) ILSI shall submit the draft report to the USEPA, State, City, CW Corporation, Putnam County, Westchester County, and the Environmental Parties for review and comment. The reviewers shall have thirty (30) days from receipt to review the draft report and submit written comments to ILSI for consideration. Within thirty (30) days of the date on which written comments on the draft report are to be submitted, ILSI shall prepare a final report. ILSI shall provide a copy of the final report to all parties who provided comments on the draft report, and the WPPC, and shall make copies and summaries of the report available to the public.

(d) Consistent with the attached scope of work, any recommended enhancements or modifications shall be prioritized by ILSI and shall: (1) build upon the existing programs; (2) ensure that the City and State programs, collectively, are comprehensive and Watershed-wide; and (3) ensure that the programs continually assess water quality conditions and activities affecting water quality.

(e) The City and State shall determine whether to implement such recommendations or modifications. If the City or State does not implement such recommendations, it shall provide a written determination to the Parties of the reasons for its decision. The Parties agree to support the State's and/or City's request for federal funding for the purpose of an enhanced monitoring program.

(f) If, as a result of appropriations granted by Congress and approved by the President pursuant to Section 128 of the Safe Drinking Water Act Amendments of 1996 ("SDWA"), the State receives at least Seventy-Five Million Dollars (\$75,000,000), then at least Sixty Million Dollars (\$60,000,000) of such funds shall be expended on projects that demonstrate, assess or provide for comprehensive monitoring and surveillance in the Watershed ("Monitoring Projects"). Irrespective of the specific amount of funds appropriated pursuant to SDWA Section 128, the State commits to spend at least seventy-five percent (75%) of the total funds received in federal fiscal years 1997 through 2001 on Monitoring Projects. Such Monitoring Projects must be consistent with the applicable

requirements of the SDWA, any laws providing for such appropriation, and any requirements established by the State and USEPA in administering such program. Upon the concurrence of Westchester County, Putnam County, New York City, USEPA, the CW Corporation and the Environmental Parties, the State may modify the spending levels set forth in this subparagraph.

(g) In the event the State receives federal funding as a result of an appropriation granted by Congress and approved by the President pursuant to Section 128 of the SDWA, the State and USEPA shall give priority to Monitoring Projects in its determination of which projects receive such federal funding. Within ninety (90) days of the Effective Date of this Agreement, the City shall provide the State with a report describing the City's existing water quality monitoring program and any anticipated modifications to such program that will not be implemented by the City through the use of federal funds available pursuant to Section 128 of the SDWA. Any funds provided by the State to the City to implement such monitoring projects shall be applied by the City only toward enhancement of the City's water quality monitoring program beyond (i) the scope of the water quality monitoring program that the City would have undertaken notwithstanding the availability of federal funds, or (ii) the scope of the City's water quality monitoring program pursuant to the report described above.

(h) For a period of at least five (5) years from the Effective Date of this Agreement, the City agrees to maintain substantially the same level of water quality monitoring in the Watershed as it currently undertakes, provided that nothing contained herein shall obligate the City to maintain a specific level of staffing or facilities, and the City shall have the discretion to best allocate its resources in fulfillment of the foregoing agreement so long as substantially the same level of monitoring is maintained, and provided further, that any discrete monitoring projects undertaken by the City that have stated completion dates (as opposed to ongoing monitoring programs) need not be continued once they are completed.

165. Phosphorus Pilot Program. NYCDEP shall provide the Executive Committee of the Partnership Council, at least two months prior to the fifth anniversary of the effective date of the Watershed Regulations promulgated pursuant to CAPA, a report on the effectiveness of the pilot offset programs for WWTPs in phosphorus restricted basins set forth in Sections 18-82 and 18-83 of the Watershed Regulations. If NYCDEP determines that there is insufficient data to determine whether the offsets sought in the pilot programs have been achieved, the time frame for the pilot programs shall be extended for a period not to exceed an additional five years to allow for acquisition of further data. Nothing contained in this paragraph shall allow for an increase in the number or size of the plants allowed pursuant to the pilot program. If NYCDEP determines that there is sufficient data to determine whether the offsets sought in the pilot programs have been achieved, then within two months of receiving NYCDEP's report, the Executive Committee shall make a recommendation on the effectiveness of the pilot program. After the Executive Committee issues its recommendation, if NYCDEP determines that the phosphorus offsets sought in the pilot programs have been achieved, and that amendment

of the Watershed Regulations is appropriate, NYCDEP shall commence any necessary rulemaking.

166. Home Heating Oil Tank Insurance. In recognition of the desirable consumer benefits of providing an insurance product to homeowners whose homes are heated by fuel oil, the New York State Department of Insurance has established the Homeowner's Environmental Loss Protection ("HELP") Program. Under the HELP Program, insurance policies are sold on a mass merchandising basis by a New York State licensed insurer to the customers of fuel oil dealers who are participating in the HELP Program. Such policies provide coverage against the costs of clean-up, property damage and fuel oil tank repair or replacement caused by the accidental release of fuel oil from homeowner fuel oil tank systems. The City shall use its best efforts to publicize and promote the HELP program, including publication of a brochure explaining the program, a onetime mailing of the brochure to Watershed residents, notification of the program to applicants for approvals under the Watershed Regulations, and seminars for fuel oil dealers in the Watershed.

167. Legislative Proposals. The Governor will sponsor, and the Parties will support proposed State legislation, appended hereto as Attachment U, that will implement the following: (i) require City-held Watershed Conservation Easements to be taxed; (ii) allow for transfers of land from the State to the City and allow such acquired lands to be free of tax liability under certain State tax programs; and (iii) allow the use of the principal of the EOH Water Quality Fund to pay interest on bonds or other obligations issued to fund eligible projects.

168. Pesticide and Fertilizer Technical Working Group.

(a) NYSDEC will convene a pesticide and fertilizer technical working group (the "Working Group") within thirty (30) days of the Effective Date of this Agreement to analyze the State's current regulations and standards on the storage, use and application of pesticides and fertilizers, and to recommend any changes to such regulations and standards to protect the City's water supply from potential contamination from pesticides or fertilizers or to enhance the City's ability to monitor any impacts from such storage, use or application.

(b) The Working Group shall be composed of the following: a representative of NYSDEC who shall serve as Chair; a representative of USEPA; a member of WAC; a representative of the New York State Department of Agriculture and Markets; a representative of NYCDEP; a representative of the Environmental Parties; a representative of a pesticide applicator trade organization; a representative from the WOH Municipal Parties, chosen by the CW Corporation; and a representative from the EOH Municipal Parties, chosen jointly by Westchester County and Putnam County. Members of the Working Group shall have appropriate scientific or technical expertise to enable the Working Group to fulfill its purpose.

(c) Within six (6) months of the Effective Date of this Agreement, the Working Group shall submit a final draft of its report to the Executive Committee with its recommendations. Recommendations shall be made by majority vote. Any member of the Working Group who dissents from a Group recommendation shall be entitled to submit his/her own draft report, stating the reasons for his/her dissent and any alternative recommendations. The Executive Committee shall be given at least thirty (30) days to submit comments on the draft reports. The Working Group shall consider the Executive Committee's comments in preparing the final report(s) and shall submit the final report, and any dissenting report, to the WPPC.

(d) In addition to convening and chairing the Working Group, within six months after receiving the final report of the Working Group, the State shall develop, in consultation with NYCDEP, and consistent with the final report of the Working Group, training materials to be incorporated into the State's pesticide applicator certification program, explaining the City's drinking water supply system, informing applicators of the potential for contamination from improper application of pesticides within the watershed of a surface water supply, and recommending that applicators not apply pesticides within an appropriate limiting distance of a watercourse, wetland or reservoir, reservoir stem or controlled lake.

169. Galley Study. The City shall conduct a study to assess the effectiveness of galley systems in treating sewage in a watershed of a surface water supply system ("Galley Study"). The Galley Study shall include galley systems as constructed in Putnam and Westchester Counties and under impervious and pervious surfaces.

(a) The Galley Study shall be conducted in accordance with the Protocol appended hereto as Attachment OO. The State and NYCDEP, with the assistance of Westchester County and Putnam County, shall select the individual sites to be used for the Galley Study and obtain the agreement of the owners of the site and the galley system to participate in the Galley Study, including allowing NYCDEP and the county access to the site to inspect and monitor the site and galley system and collect such samples as are necessary to conduct the Galley Study. With respect to each landowner who agrees to participate in the Galley Study, the City will agree to repair any damage to such property caused by the City or its agents in conducting the Study. The City may modify the Protocol with the concurrence of NYSDOH, USEPA, Environmental Parties, Putnam County and Westchester County.

(b) NYCDEP shall conduct the Galley Study in coordination with Westchester and Putnam Counties and in accordance with the agreed upon Protocol and methodology. NYCDEP expects to complete the Galley Study within eighteen months of the State's securing the agreement of galley system and property owners to participate in the Galley Study.

(c) If the Galley Study shows that certain types of galley systems, used in Westchester and Putnam Counties and allowed under the Regulations, do not adequately treat sewage when compared to conventional septic systems, the City will propose appropriate

revisions to the Watershed Regulations, which may include conditions and limitations on the use of such galley systems. NYSDOH will approve such revisions to the Watershed Regulations, provided they are consistent with these studies, and adopt such revisions as State regulations pursuant to SAPA.

170. Septic System Siting Study.

(a) The City shall conduct a study to assess the adequacy of a one hundred (100) foot separation distance between septic system absorption fields and watercourses and wetlands ("Septic System Siting Study"). The study shall be conducted in accordance with the Quality Assurance Plan dated August 21, 1995 which has been approved by USEPA and NYSDOH, as clarified by a December, 1995 status report submitted to USEPA and a February 5, 1996 letter from Robert Lemieux, First Deputy Commissioner, NYCDEP to Richard Caspe, Director, Water Management Division, USEPA. The Septic System Siting Study will provide the technical basis for future changes, if any, to septic system setback regulations.

(b) NYCDEP expects to complete the study and issue a final report analyzing the results of the study and, if there is significant pathogen transport beyond the one hundred (100) foot separation distance, recommending any appropriate changes to the Watershed Regulations and NYSDOH septic system regulations by December 31, 1999.

(c) NYSDOH will review the study results and recommendations and if, based on its review, NYSDOH determines that there is significant pathogen transport beyond the one hundred (100) foot separation distance, determine appropriate changes to 10 NYCRR Appendix 75-A. If NYSDOH does not adopt the recommendation or modifies the recommendation of the final report, NYSDOH will issue a written determination setting forth the rationale for its action. If, based on the results of the Study, NYSDOH proposes appropriate revisions to 10 NYCRR Appendix 75-A, the City may propose consistent revisions to the Watershed Regulations. Provided the revisions proposed by the City are consistent with proposed revisions to 10 NYCRR Appendix 75-A, NYSDOH will approve such revisions to the Watershed Regulations and also adopt the revisions to the Watershed Regulations pursuant to SAPA.

171. Assignment of Rights Between Coalition and CW Corporation. The Coalition may assign to the CW Corporation any of the obligations, commitments, rights, or interests given to the Coalition by this Agreement except for those obligations or commitments contained in paragraphs 172, 173, and 176 (legal challenges). The Coalition shall notify each Party in writing of any such transfer.

172. Coalition of Watershed Towns v. City of New York. Within seven (7) days of (a) the promulgation of the Watershed Regulations by NYSDOH pursuant to SAPA as provided by paragraph 90 of Article III, or (b) the issuance of a water supply permit for the land acquisition program by NYSDEC consistent with the terms set forth in Attachment V, whichever is later, the Parties involved in the matter of Coalition of Watershed Towns, et al. v. City of New York, et al., (Supreme Court, Albany County),

Index number 1800-94, shall execute a stipulation discontinuing and seeking dismissal of the proceeding in all respects with prejudice subject only to compliance with the terms of this Agreement.

173. City of New York v. State Department of Health. Within seven (7) days of (a) the promulgation of the Watershed Regulations by NYSDOH pursuant to SAPA as provided by paragraph 90 of Article III, or (b) the issuance of a water supply permit for the land acquisition program by NYSDEC consistent with the terms set forth in Attachment V, whichever is later, the City will request permission from the Appellate Division, Third Department to withdraw its appeal in the matter of City of New York v. State Department of Health, No. 73696, with prejudice and without costs. Within seven (7) days of the Effective Date of this Agreement, NYSDOH will issue a Supplemental Declaratory Ruling, in all material respects similar in substance to the draft appended hereto as Attachment PP.

174. Inclusion of City's Obligations in City's Annual Budget. The Mayor shall include in each annual budget submitted to the Council of the City of New York, sufficient funds to meet the City's obligations under this Agreement for the fiscal year.

175. Water Rates. Anything herein to the contrary notwithstanding, the extent to which the costs of any programs set out in Article V hereof paid for by the City may be included in the rates and charges for the supply of water from the City's water supply systems shall be determined solely by the substance of such programs and the provisions of the Water Supply Act of 1905 (NYC Admin. Code Section 24-360), the Public Authorities Law, and any other applicable law. Nothing contained herein, including the City's agreement to pay for such costs, shall be deemed to modify the foregoing, or to expand, limit or waive any obligations or rights that any Party or any other person or entity may otherwise have with respect to water charges or rates, including, without limitation, any right to contest such charges or rates.

176. Waiver of Future Challenges.

(a) The Parties agree that they will forego any future legal challenges to the validity or enforceability of the following, including the City's, State's, or USEPA's compliance with SEQR, the National Environmental Policy Act, and all applicable administrative procedures in connection with the issuance, signing or promulgation of the following:

(i) The December 1993 Filtration Avoidance Determination and any prior filtration avoidance determination for the Catskill and Delaware System;

(ii) USEPA's Interim FAD and 1997 FAD for the Catskill and Delaware Systems, as set forth in paragraph 159;

(iii) The 1993 NYSDOH Declaratory Ruling;

(iv) NYSDOH's Supplemental Declaratory Ruling as set forth in paragraph 173;

(v) The Watershed Regulations appended hereto as Attachment W or with such revisions as the Parties agree to;

(vi) The land acquisition program, and the water supply permit to be issued by NYSDEC, consistent with the terms set forth in Article II of this Agreement;

(vii) The Memorandum of Understanding dated September 23, 1993 between NYSDEC and NYCDEP, and the following addenda: A, B, C, E, G, H, I, J, K, L, M, N, O, P and R;

(viii) The results of the galley system study conducted in accordance with paragraph 169;

(ix) USEPA's determination, referred to in paragraph 160, delegating primary enforcement responsibility to NYSDOH for the SWTR as it applies to all surface water sources in New York State except the Catskill and Delaware System; and

(x) This Agreement and all subsidiary agreements attached hereto.

(b) Notwithstanding the foregoing: (i) Westchester County, Putnam County, the Coalition, and the Municipal Parties reserve the right to submit comments during the CAPA and SAPA review for the Regulations, the USEPA filtration avoidance determination comment period, and the NYSDEC water supply permit public comment period that clarify that they support the permit, Regulations, and filtration avoidance determination based upon, and in the context of, this Agreement, including, in particular, the Watershed Protection and Partnership Programs set forth herein; and (ii) the Environmental Parties reserve the right to submit comments during the CAPA and SAPA review for the Regulations, the USEPA filtration avoidance determination comment period, and the NYSDEC water supply permit public comment period that clarify that they support the permit, Regulations, and filtration avoidance determination based upon, and in the context of, this Agreement.

(c) Nothing in this Agreement is intended to or shall expand, limit or waive any rights or obligations any Party or any other entity or person may have under the Public Health Law, including Sections 1104 and 1105. Except as set forth in paragraphs 142 and 143 (Future WWTP Upgrades), nothing in this Agreement is intended to or shall be construed as an agreement or admission by the City that it is liable for any costs, damages or claims under the Public Health Law, including Sections 1104 and 1105, or any other law.

177. Mediation of Future Disputes. The Parties agree that in addition to discontinuing the litigation listed in paragraphs 172 and 173 above, they will advise the Executive Committee of the Council of grievances between the Parties concerning the terms of this Agreement or significant programmatic or policy decisions affecting the Watershed and shall make good faith efforts to resolve such disputes prior to commencing litigation. The Council shall have no authority to arbitrate, or to require arbitration of, any such grievances without the written consent of all parties to the grievance.

178. Enforcement Discretion Regarding Violations Related to Failure of Agreed-upon Funding.

(a) If the City fails to provide funding as agreed to under paragraphs 126 and 141 of this Agreement for costs incurred to comply with requirements of the Watershed Regulations in a manner which allows for the timely completion of the upgrades in compliance with the Watershed Regulations, and the City's failure to pay directly and solely causes a facility owner or operator to violate any term or provision of the Watershed Regulations requiring such upgrades, a permit, including a SPDES permit, or other approval, the City agrees that it will not pursue an enforcement action against the facility owner or operator for such violation. Notwithstanding the above, the City's agreement not to pursue an enforcement action shall not apply where the City is in good faith contesting its obligation to pay a request for funds. Nothing in this paragraph shall prevent the City from pursuing an enforcement action against a facility owner or operator for any violation occurring or continuing after the City pays any such amount and after the operator has had a reasonable period of time to implement the upgrade.

(b) Any SPDES permit modified pursuant to this Agreement and/or the Memorandum of Understanding dated September 23, 1993 between NYSDEC and NYCDEP, as amended, to incorporate the requirements of the New York City Watershed Regulations, or as set forth in subparagraphs 162(d)(i) & 162(h)(i) for the drainage basin of the Cannonsville Reservoir, shall contain a compliance schedule for the design, permitting, funding, contracting, construction and debugging of the equipment or operational modifications as appropriate and necessary for compliance with the modified permit requirements (including any modified effluent limitations) which is consistent with the procedure and implementation schedule for Regulatory Upgrades and phosphorus controls in the drainage basin of the Cannonsville Reservoir as set forth in paragraphs 141 and 144.

179. State and City Review of Performance Under This Agreement.

(a) On or before July 1, 1999, the City and State shall each submit, to the WPPC, written progress reports on their respective activities in regard to implementing this Agreement. The Executive Committee of the WPPC shall consider such reports in any review conducted pursuant to paragraph 105(j) of this Agreement.

(b) On or before the fifth anniversary of the Effective Date of this Agreement, the City and the State shall submit, to the WPPC, written evaluations of their respective activities in regard to implementing this Agreement and any other activities relating to the protection of water quality in the New York City Watershed. Such evaluations shall include recommendations for any needed improvements in the respective programs. The Executive Committee of the WPPC shall consider such evaluations and recommendations in any review conducted pursuant to paragraph 105(c) of this Agreement.

180. Complete Agreement. This Agreement, including the annexed Attachments A through XX, represents the complete understanding of the Parties with respect to the terms of this Agreement and supersedes all inconsistent prior understandings and

agreements with respect to such terms. This Agreement does not preclude future duly authorized written agreements between two or more of the Parties, provided that such future agreement does not diminish the rights of any other Party under this Agreement. This Agreement cannot be amended in a manner that diminishes the rights of any Party without the written consent of such Party.

181. Agreement is a Legally Binding Contract. The respective commitments of the Parties in this Agreement are in consideration of each other, thereby making this Agreement a legally binding contract enforceable by any aggrieved Party subject to the following:

(a) This Agreement may be enforced in a court of competent jurisdiction, and any such action will be governed by the laws of the State of New York.

(b) If any Municipal Party, Environmental Party, Westchester County, Putnam County, the CW Corporation or the Coalition substantially prevails in an action to enforce this Agreement or a contract entered into pursuant to Article V or paragraph 93 of this Agreement, the City, State, or USEPA, as the case may be, will pay the prevailing party reasonable attorneys' fees which have been actually incurred, including, without limitation, reasonable in-house counsel fees, provided however, that in any action involving USEPA, attorney's fees shall be paid by the federal government in accordance with, and only as authorized by, federal law. In addition, any Municipal Party, Westchester County, Putnam County or the Coalition which substantially prevails in such action may recover consequential damages, where appropriate, provided however, that any costs incurred to borrow money to replace funds not received from the City shall not be recoverable to the extent such Party is entitled to receive liquidated damages under paragraph 158.

(c) Any Municipal Party, Westchester County, Putnam County or the Coalition is deemed to be an aggrieved party pursuant to this paragraph whenever it, or one of its residents, tenants or properties, has the right to receive the benefit of a particular paragraph of this Agreement for which the breach or violation is alleged.

(d) The Environmental Parties may only enforce a continuing material breach of:

(i) The obligations of the State and City as set forth in all paragraphs of Article II of this Agreement;

(ii) The obligations of the State and City as set forth in paragraphs 88 (NYSDOH Approval), 89 (City CAPA Promulgation), 90 (NYSDOH SAPA Promulgation), and 92 (Waiver of Rights Regarding Approval and Promulgation), of Article III of this Agreement;

(iii) The funding obligations of the City and State as set forth in paragraphs 121 (SPDES Upgrades), 124 (Septic Rehabilitations and Replacements), 125 (Stormwater Retrofits), 126 (Sand and Salt Storage Facilities), 127 (Stream Corridor Protection), 138 (Watershed

Planning in the Croton System), 140 (East of Hudson Water Quality Investment Program), 141 (Upgrades to Existing WWTPs to Comply with Watershed Regulations), 142 (Future Operation and Maintenance Costs at Public WWTPs for Equipment Installed or Methods Instituted Between July 1, 1991 and November 2, 1995) 152 (State Partnership Programs) of Article V of this Agreement;

(iv) The obligation of USEPA to issue an Interim and 1997 Filtration Avoidance Determination and formally review and evaluate the City's compliance with the terms and conditions of the 1997 FAD as set forth in paragraph 159 of this Agreement;

(v) The obligation of USEPA to make a determination on primacy as set forth in paragraph 160 (Primacy Agency) of this Agreement;

(vi) The obligation of the City and State to develop TMDLs, waste load allocations and load allocations as set forth in paragraph 162 (Total Maximum Daily Loads);

(vii) The obligation of the State to modify SPDES permits for wastewater treatment plants in the watershed as set forth in paragraph 163(a) or to include special conditions in SPDES permits as set forth in paragraph 163(b) (NYSDEC Review of SPDES Permits in Watershed);

(viii) The City and State obligations for enhanced water quality monitoring as set forth in paragraph 164 (Enhanced Monitoring) of this Agreement;

(ix) The obligation of the City to conduct a galley study, and the obligation of the State to approve any necessary revisions to the Watershed Regulations and adopt such revisions as State regulations, as set forth in paragraph 169 (Galley Study) of Article VI of this Agreement;

(x) The obligation of the City to conduct a septic system siting study, and the obligation of the State to consider the recommendations of the study and make any necessary changes to State regulations as set forth in paragraph 170 (Septic System Siting Study) of Article VI of this Agreement; and

(xi) The obligations set forth in paragraph 179 (State and City Review of Performance Under this Agreement) in Article VI of this Agreement.

(e) No action shall be commenced pursuant to subparagraph (d) of this paragraph:

(i) Prior to sixty days after the Environmental Party has given notice of the alleged material breach to:

(1) NYSDEC and the City for an alleged material breach of the enforceable provisions of Article II set forth in subparagraph (d) of this paragraph;

(2) NYSDOH and the City for alleged material breaches of the enforceable provisions of Article III set forth in subparagraph (d) of this paragraph;

(3) The party alleged to be in material breach of the enforceable provisions of Articles V and VI set forth in subparagraph (d) of this paragraph; or

(ii) In the case of an alleged material breach by the City, if the State is diligently prosecuting an administrative or judicial enforcement proceeding to require compliance with the terms of this Agreement.

(f) In any action commenced pursuant to subparagraph (d) of this paragraph, damages for breach of this Agreement shall not be available, except attorneys' fees as provided in subparagraph (b) of this paragraph. The Parties agree that the court in which such action is brought may enforce the obligations of this Agreement by specific performance.

(g) Nothing in this paragraph is intended to diminish the right of the local, state or federal government to enforce all applicable provisions of local, state and federal law.

(h) Nothing in this Agreement shall act to confer third-party beneficiary rights on any person or entity not a Party to this Agreement.

182. Citizen Suits. Nothing in this Agreement is intended to or shall either increase or limit any right any Party may have to initiate a citizen suit pursuant to Section 1449 of the federal Safe Drinking Water Act, or a citizen suit provision of any other statute. Citizens may exercise any rights they may have under Section 1449 of the SDWA to seek to compel the Primacy Agency to require filtration of the Catskill and Delaware System should there be noncompliance with the terms thereof, and to enforce the relevant provisions of this Agreement relating to land acquisition and to the approval and adoption of the Watershed Regulations.

183. Notices. Except to the extent that any other paragraph specifically requires or authorizes a different form of notice, any notice required or permitted to be given hereunder shall be in writing, and shall be delivered by certified mail, postage prepaid, or by hand, or by overnight courier, or by telecopy confirmed by any of the previous methods, addressed to the receiving party at its address as shown on Attachment XX or at such other or further address as the receiving party shall provide to the other Parties in writing from time to time.

184. Additional Parties. The municipalities located in the portion of the Watershed within Dutchess County shall have sixty days (60) from the Effective Date to sign this Agreement.

185. Authorization to Execute. The Parties signing this Agreement represent that they have been duly authorized to enter into this Agreement pursuant to their respective lawful authorities.

New York State — United States Environmental Protection Agency

Agreement on Filtration

A successful land acquisition program is a critical element of the New York City watershed protection program. This watershed protection program, if implemented, should provide for the protection of public health, as envisioned by the federal Surface Water Treatment Rule adopted pursuant to the federal Safe Drinking Water Act, and constitutes a vital factor for allowing the City to avoid filtration. Accordingly, in the event that the water supply permit issued to the City by the NYSDEC ("Permit") is restricted or suspended for a substantial period of time in accordance with the provisions of the Permit, and that the acquisition of land necessary for watershed protection has been significantly impeded thereby, then the State and USEPA agree that filtration should be required. In making a determination of whether the City's land acquisition program has been significantly impeded, USEPA and NYSDOH shall consider the extent, quality and location of sensitive watershed lands then under City ownership. USEPA and NYSDOH should also consider the City's compliance with the land acquisition schedule set out in Attachment H of the MOA (and any subsequently approved revisions). In making such determination, each regulatory agency shall consult with the other regardless of which has primary enforcement responsibility for implementation of the SWTR (40 CFR section 141.70 et seq.) pursuant to section 1413 of the SDWA (42 U.S.C. section 300 g-2) as it applies to the Catskill and Delaware System.