
FINANCING AGREEMENT

By and Among

**THE CITY OF NEW YORK,
NEW YORK CITY MUNICIPAL
WATER FINANCE AUTHORITY**

and

NEW YORK CITY WATER BOARD

Dated as of July 1, 1985

**Incorporating changes effected by
Amendment No. 1, dated as of October 1, 1985,
Amendment No. 2, dated as of June 1, 1988
Amendment No. 3, dated as of August 3, 1988
Amendment No. 4, dated as of May 1, 1990
Amendment No. 5, dated as of November 1, 1993**

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FINANCING AGREEMENT

FINANCING AGREEMENT, dated as of July 1, 1985, by and among **THE CITY OF NEW YORK** (the "City"), a municipal corporation of the State of New York (the "State"), the **NEW YORK CITY MUNICIPAL WATER FINANCE AUTHORITY** (the "Authority"), a body corporate and politic constituting a public benefit corporation of the State, and the **NEW YORK CITY WATER BOARD** (the "Board"), a body corporate and politic constituting a corporate municipal instrumentality of the State.

The parties hereto mutually agree as follows:

ARTICLE I.

DEFINITIONS

SECTION 1.1. Definitions. Capitalized terms contained herein, and not otherwise defined, shall have the respective meanings accorded such terms in the Resolution. The terms set forth in this Section shall have the meanings ascribed to them for all purposes of this Agreement unless the context clearly requires otherwise. Words in the singular shall include the plural and words in the plural shall include the singular where the context so requires.

"Accounts" shall mean any of the special accounts created and established pursuant to the Resolution.

"Act" shall mean the New York City Municipal Water Finance Authority Act, as amended, constituting Title 2-A of Article 5 of the Public Authorities Law, as amended.

"Agreement" shall mean this financing agreement dated as of July 1, 1985 by and among the City, the Authority and the Board, as from time to time hereafter amended or supplemented in accordance with the provisions hereof and the Resolution.

"Annual Budget" shall mean the annual budget of the Board, as amended or supplemented, adopted or in effect for a particular Fiscal Year, as provided in Section 6.4.

"Appendix A" shall mean Appendix A to this Agreement as the same may be amended from time to time in accordance with the provisions hereof.

"Authority" shall mean the New York City Municipal Water Finance Authority, a body corporate and politic constituting a public benefit corporation created and existing under and by virtue of the Act.

"Authority Budget" shall have the meaning ascribed to such term in the Resolution.

"Authority Expenses" shall mean all reasonable or necessary current expenses of the Authority, including all salaries, administrative, general, commercial, engineering, advertising,

public notice, auditing and legal expenses, insurance and surety bond premiums, fees paid to banks, insurance companies or other financial institutions for the issuance of Credit Facilities, consultants' fees and charges, payment to pension, retirement, health and hospitalization funds, costs of public hearings, ordinary and current rentals of equipment and other property, lease payments for real property or interests therein, expenses, liabilities and compensation of any Fiduciary and all other expenses necessary, incidental or convenient for the efficient operation of the Authority.

"Authorized Representative" shall mean (i) in the case of both the Authority and the Board, their respective Chairman or Executive Director, or such other person or persons so designated by resolution of the Authority or the Board, as the case may be, and (ii) in the case of the City, the Mayor, unless a different City official is designated herein to perform the act or sign the document in question.

"Bank" shall mean the bank, trust company or banking association (which may be the Trustee) designated by the Board to act as Depository for the funds of the Board.

"Board" shall mean the New York City Water Board, a body corporate and politic constituting a corporate municipal instrumentality of the State created and existing under and by virtue of the Act.

"Board Expenses" shall mean all reasonable or necessary current expenses of the Board, including all salaries, administrative, general, commercial, advertising and legal expenses, insurance and surety bond premiums, consultants' fees and charges, payment to pension, retirement, health and hospitalization funds, costs of public hearings and public notices, ordinary and current rentals of equipment, lease payments for real property or interests therein, expenses, liabilities and compensation of any depository of Board funds and all other expenses necessary, incidental or convenient for the efficient operation of the Board.

"Bond" or **"Bonds"** shall have the meaning ascribed thereto in Section 101 of the Resolution.

"Bond Payment Date" shall mean each date on which interest or both a Principal Installment and interest shall be due and payable on any of the Outstanding Bonds according to their respective terms.

"Bondholder" or **"Bondholders"** shall mean any person or persons who shall be the bearer of any Outstanding Bond or Bonds which shall at the time be registered to bearer or not registered, or the registered owner of any Outstanding Bond or Bonds which shall at the time be registered other than to bearer.

"Chief Accountant" shall mean, as of any date, the duly appointed and acting Chief Accountant of the City, or such other person duly appointed and authorized to act on behalf of the Chief Accountant, or, if there shall no longer be a Chief Accountant, the duly appointed official of the City succeeding to the duties and functions of the Chief Accountant.

"City" shall mean The City of New York.

"Commissioner" shall mean, as of any date, the duly appointed and acting Commissioner of Environmental Protection of the City, or such other person duly appointed and authorized to act on behalf of such Commissioner, or, if there shall no longer be such an office, the duly appointed official of the City succeeding to the duties and functions of such Commissioner.

"Comptroller" shall mean the Comptroller of the City or such other person duly appointed and authorized to act on behalf of the Comptroller.

"Construction Fund" shall mean the fund by that name established under Section 502 of the Resolution.

"Consulting Engineer" shall mean Metcalf & Eddy of New York, Inc. or such other independent engineer or firm of engineers of recognized standing selected by the Authority, and satisfactory to the Board, and may include an independent engineer or firm of engineers retained by the City in one or more other capacities.

"Corporation" shall mean the New York State Environmental Facilities Corporation established under the State Environmental Facilities Corporation Act and any successor entity which may succeed to its rights and duties respecting the State Revolving Fund.

"Corporation Bonds" shall mean bonds or notes issued by the Corporation under the State Environmental Facilities Corporation Act for purposes of providing financial assistance to the Authority from the State Revolving Fund.

"Costs" or **"Costs of a Water Project"** shall mean the cost of "construction", as such term is defined in the Act, including, without limiting the generality of the foregoing, the erection, building, alteration, improvement, increase, enlargement, extension, reconstruction, renovation or rehabilitation of the System or a Water Project, the inspection and supervision thereof, the engineering, architectural, legal, fiscal, economic and environmental investigations and studies, surveys, designs, plans, working drawings, specifications, procedures and other actions incidental thereto; the cost of the acquisition of all Property; the cost of demolishing, removing or relocating any buildings or structures on lands so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved or relocated; the cost of all systems, facilities, machinery, apparatus and equipment, financing charges, interest prior to, during and after construction to the extent not paid or provided for from revenues or other sources; the cost of engineering and architectural surveys, plans and specifications; the cost of consultants' and legal services; the cost of lease guarantee or bond insurance, other expenses necessary, reasonably related or incidental to the construction of such Water Project and the financing of the construction thereof, including the amounts authorized in the Resolution to be paid into any reserve or other special fund from the proceeds of Bonds and the financing of the placing of any Water Project in operation, including reimbursement to any municipality, state agency, the State, the United States of America, or any other person for expenditures that would be costs of such Water Project hereunder and all claims arising from any of the foregoing.

"Counterparty" shall mean an entity whose senior long term debt obligations, or whose obligations under an Interest Rate Exchange Agreement are guaranteed by a financial institution whose senior long term debt obligations, have a rating (at the time of the subject Interest Rate Exchange Agreement is entered into) of Aa or better by Moody's Investors Service Inc. and AA or better by Standard & Poor's Corporation.

"DEC" shall mean the New York State Department of Environmental Conservation and any successor entity which may succeed to its rights and duties respecting the State Revolving Fund.

"Director" shall mean, as of any date, the duly appointed and acting Director of Management and Budget of the City, or the person duly appointed and authorized to act on behalf of such Director, or, if there shall no longer be such an office, the duly appointed official of the City succeeding to the duties and functions of such Director.

"Disbursement Request" shall mean the written request signed by an Authorized Representative of the Authority and required to be delivered to the Trustee pursuant to Section 503 of the Resolution to effect disbursements from the Construction Fund, in substantially the forms set forth in Exhibit A to the Resolution.

"EPA" shall mean the United States Environmental Protection Agency and any successor entity.

"Fiscal Year" shall mean the twelve-month period commencing on July 1 of each year; provided, however, that the Authority, the Board and the City may, from time to time, mutually agree on a different twelve-month period as the Fiscal Year, in which case July 1, when used herein with reference to Fiscal Year, shall be construed to mean the first day of the first calendar month of such different Fiscal Year, May 1 shall be construed to mean the first day of the penultimate month of such different Fiscal Year and June 30 shall be construed to mean the last day of the last calendar month of such different Fiscal Year.

"Funds" shall mean any of the funds established pursuant to the Resolution.

"Interest Rate Exchange Agreement" shall mean any financial arrangement (i) that is entered into by the Authority with an entity that is a Counterparty at the time the arrangement is entered into; (ii) which provides that the Authority shall pay to such entity an amount based on the principal amount of a Series of Bonds, and that such entity shall pay to the Authority an amount based on the principal amount of such Series of Bonds, in each case computed in accordance with a formula set forth in such agreement, or that one shall pay to the other any net amount due under such arrangement; (iii) which has been designated in writing to the Trustee by an Authorized Representative of the Authority as an Interest Rate Exchange Agreement with respect to a Series of Bonds and (iv) which, in the opinion of Bond Counsel, will not adversely effect the exclusion of interest on Bonds from gross income for the purposes of federal income taxation.

"Lease" shall mean the Agreement of Lease, dated as of July 1, 1985 by and between the City and the Board as from time to time amended or supplemented.

"Loan" shall mean any loan or loans that the Corporation agrees to make pursuant to a Project Financing Agreement.

"Loan Agreement" shall mean any Loan Agreement to be entered into between the Authority and the Corporation pursuant to a Project Financing Agreement.

"Local Water Fund" shall mean the special fund by that name established by the Act in the custody of the Board.

"Mayor" shall mean the Mayor of the City or such other person duly appointed and authorized to act on behalf of the Mayor.

"Note" or **"Notes"** shall mean the New York City Municipal Water Finance Authority Initial Series Note, dated July 1, 1985, issued by the Authority pursuant to the Note Resolution to temporarily finance the Costs of Water Projects.

"Note Extension Agreement" shall mean the agreement by and between the Authority and the holder of the Note, dated as of November 1, 1985, extending the maturity date of the Note from November 1, 1985 to December 16, 1985.

"Note Fund" shall mean the fund by that name established pursuant to the Note Resolution.

"Note Resolution" shall mean the Note Resolution adopted by the Authority on June 26, 1985, as amended, authorizing, among other things, the issuance of the Note.

"O&M Reserve Fund Requirement" shall mean, for each Fiscal Year, an amount equal to the respective proportion set forth below of the Operating Expenses of the Board for such Fiscal Year as set forth in the Annual Budget:

<u>Fiscal Year</u>	<u>Proportion of Operating Expenses</u>
1986-1987.....	1/30
1987-1988.....	2/30
1988-1989.....	3/30
1989-1990.....	4/30
1990-1991 and thereafter.....	1/6

"Operating Expenses" shall mean all reasonable or necessary current expenses of maintaining, repairing, operating and managing the System, including all salaries, administrative, general, commercial, architectural, engineering, advertising, public notices, auditing, billing, collection and enforcement and legal expenses, insurance and surety bond premiums,

consultants' fees and charges, payments to pension, retirement, health and hospitalization funds, any taxes which may lawfully be imposed on the System or the income or operation thereof, payments to any taxing jurisdiction (other than the City) in lieu of taxes, costs of public hearings, ordinary and current rentals of equipment or other property, hydrant rentals, lease payments for real property or interest therein (but not including amounts payable by the Board to the City pursuant to Section 8.2 and 8.3 of the Lease), usual expenses of maintenance and repair (including replacements), expenses, liabilities and compensation of the Bank or any other depository of Board funds, reasonable reserves for maintenance and repair and all other expenses necessary, incidental or convenient for the efficient operation of the System, but only to the extent properly attributable to the Board or the System and, except for the administrative expenses of the Board, payable by the Board to the City pursuant to Article VIII of the Lease.

"Permitted Encumbrances" shall have the meaning ascribed thereto in the Lease.

"Project Financing Agreement" shall mean any Project Financing Agreement to be entered into among the Authority, the City, DEC and the Corporation pursuant to the State Revolving Fund Act.

"Property" shall mean any interest in any kind of property or asset, whether real, personal or mixed, tangible or intangible.

"Rate Consultant" shall mean the firm of Arthur Young or such other independent accountant or firm of independent accountants, or a management consultant or firm of management consultants, or independent engineer or firm of independent engineers which, in any case, shall be of recognized standing in the field of water and sewer system consulting (and which may be the firm then serving as the Consulting Engineer), selected by the Authority and satisfactory to the Board.

"Resolution" shall mean the bond resolution adopted by the Authority on November 14, 1985, authorizing, among other things, the issuance of the Bonds from time to time, in Series, as the same is amended or supplemented by a Supplemental Resolution.

"Revenues" shall mean (a) all the rents, fees, charges, payments and other income and receipts derived by the Board from users of the System, together with all operating aid therefor from any governmental entity, Federal, State or local, to the Board, (b) investment proceeds and proceeds of insurance received by the Board (other than the proceeds of insurance with respect to the damage or destruction of all or any portion of the System), (c) Subsidy Payments derived by the Authority, (d) amounts derived by the Authority from a Counterparty pursuant to an Interest Rate Exchange Agreement, and (e) investment proceeds derived from amounts on deposit in the Funds and Accounts established hereunder that are deposited or retained in the Revenue Fund or the Local Water Fund, but shall not include (w) amounts required to be refunded because of billing or payment errors, (x) any amount attributable to any of the foregoing sources described in clause (a) which (i) is expressly excluded by the Agreement or the Lease, or (ii) is derived from a use of the System not directly related to the supply, treatment and distribution of water to the consumers thereof or to the collection, disposal or treatment of sewage, (y) any amount from

any governmental entity, Federal, State or local, in aid of or for or with respect to the Costs of Water Projects, other than Subsidy Payments, or (z) (i) fines (excluding interest on late payments which shall constitute Revenues), (ii) amounts from the use of water to generate electricity, (iii) amounts from the State as a result of mandatory water discharges from reservoirs or (iv) amounts from the granting of easements, licenses, rights-of-way or other interests in the real property constituting a part of the System.

"Series" or **"Series of Bonds"** shall mean all of the Bonds authenticated and delivered on original issuance and identified pursuant to the Supplemental Resolution authorizing such Bonds as a separate Series of Bonds and any Bonds thereafter authenticated and delivered in lieu of or in substitution therefor pursuant to the Resolution regardless of varieties in maturity, interest rate or other provisions.

"State Environmental Facilities Corporation Act" shall mean the New York State Environmental Facilities Corporation Act, constituting Title 12 of Article 5 of the Public Authorities Law and Chapter 43-A of the Consolidated Laws of the State of New York, as from time to time amended and supplemented.

"State Revolving Fund" shall mean the New York State Water Pollution Control Revolving Fund established pursuant to the State Revolving Fund Act.

"State Revolving Fund Act" shall mean Chapter 565 of the Laws of New York of 1989, as amended.

"State Revolving Fund Regulations" shall mean the regulations of DEC promulgated pursuant to the State Revolving Fund Act, constituting 6 NYCRR, Part 649, as such may be amended from time to time.

"Subordinated Indebtedness" shall mean any bond, note or other evidence of indebtedness issued by the Authority in furtherance of its corporate purposes under the Act and payable from the Subordinated Indebtedness Fund.

"Subsidy Payments" shall mean amounts payable to the Authority from any governmental entity, Federal, State or local, in connection with Bonds of the Authority.

"Supplemental Resolution" shall mean a resolution of the Authority authorizing the issuance of a Series of Bonds or otherwise amending or supplementing the Resolution, adopted in accordance with Article VIII of the Resolution.

"System" shall mean the Water System and the Sewer System, as such terms are defined in Sections 1045-b(14) and (21) of the Act.

"Trustee" shall mean the bank or trust company appointed as Trustee pursuant to the Resolution and its successors and assigns.

"Water Project" shall have the meaning accorded such term in Section 1045-b(20) of the Act, including any sewerage facility, water facility or water and sewerage facility as described therein and constituting a part of the System.

SECTION 1.2. Agreement with Bondholders. Subject in all respects to the provisions of Article X hereof, the Authority, the Board and the City agree that this Agreement is executed in part to induce the purchase by others of the bonds, notes and other evidences of indebtedness of the Authority (including the Bonds and the Notes) issued from time to time, and all representations, warranties, covenants and agreements contained in this Agreement are declared to be for the benefit of the holders thereof.

ARTICLE II.

AGREEMENTS AS TO WATER PROJECTS AND REVENUES

SECTION 2.1. Agreement to Finance Water Projects; Description. The Authority agrees to use its best efforts to finance all or a part of the Cost of the Water Projects described in Appendix A by the issuance of Bonds from time to time in accordance with the Resolution. The total Cost of said Water Projects shall be financed in accordance with the description set forth in Appendix A. Appendix A may, from time to time, be amended to add a Water Project or to delete or change a Water Project listed thereon or to change the scope, cost or method of financing of a Water Project listed thereon, without the consent of the Trustee or the Bondholders. Upon approval by an Authorized Representative of the Authority and the Board and the approval of the Director, Appendix A shall be amended to include such Water Project and the financing thereof by the Authority shall be governed by the terms and conditions of this Agreement and the Resolution.

SECTION 2.2. No Indebtedness. Nothing contained in this Agreement, or in the Lease, the Resolution or any other document or instrument executed and delivered in connection with any of them, shall be construed as creating an indebtedness of the Board or the City within the meaning of any constitutional or statutory provision.

SECTION 2.3. Agreement of City as to Water Projects. The City agrees that any Water Project financed in whole or in part pursuant to this Agreement and the operation, maintenance and repair thereof shall be carried out by the City in accordance with the provisions of the Act and pursuant to the terms of this Agreement and the Lease.

SECTION 2.4. Grant of Revenues to Authority. In consideration of the promises and agreements of the Authority contained herein and in consideration of the issuance of the Bonds by the Authority to finance the Water Projects described in Appendix A, the Board hereby gives, grants, conveys and transfers to the Authority all of its right, title and interest in the Revenues, including, without limiting the generality of the foregoing all of its rights to collect and receive the same, subject only to the provisions of this Agreement and the Resolution permitting the

application thereof for or to the purposes and on the terms and conditions herein and therein set forth.

ARTICLE III.

TRANSFER OF FUNDS

SECTION 3.1. Application of Bond Proceeds to Pay Costs. The proceeds of the issuance of each Series of Bonds shall be deposited by the Authority with the Trustee in accordance with the provisions of the Resolution and the applicable provisions of the Supplemental Resolution authorizing such Series of Bonds; provided, however, that the portion of proceeds which is to be used to pay the Costs of any Water Project shall be held only in the Construction Fund.

SECTION 3.2. Payment From Construction Fund. (a) The Costs incurred with respect to Water Projects shall be evidenced to the Authority by a certificate signed by an Authorized Representative of the Board, or by the Chief Accountant acting as the Authorized Representative of the City. Each such certificate shall contain the information required to be set forth in a Disbursement Request. Upon receipt of such certificate the Authority shall pay or cause the Trustee to pay to the person entitled thereto amounts sufficient to pay all such certified Costs, in accordance with Section 503 of the Resolution. Neither the Authority nor the Trustee shall be required to provide funds to pay the Costs of Water Projects from any source other than the Construction Fund and no such funds shall be paid to the City by the Authority or the Trustee in excess of the amounts set aside therefor in the Construction Fund or in excess of the amount for such Projects in Appendix A.

(b) Moneys may be withdrawn from the Construction Fund for the purpose of paying an amount equal to any final judgment rendered against the Authority or the Board in any action (in which the City is not a party defendant), if the payment thereof would constitute a Cost of a Water Project.

ARTICLE IV.

PAYMENTS BY THE BOARD

SECTION 4.1. Local Water Fund. All Revenues, as promptly as practicable after receipt thereof by the Board, shall be deposited by the Board into the Local Water Fund at the Bank. There shall also be deposited in the Local Water Fund all amounts received by the Board from the Trustee pursuant to the Resolution. All amounts in the Local Water Fund shall be held in trust by the Board and applied only as provided herein, in the Act, in the Resolution or in the Note Resolution.

SECTION 4.2. Establishment of Funds; Application of Revenues in Local Water Fund. (a) The Board shall establish the following special funds:

- (i) the New York City Water Board Expense Fund (the "Board Expense Fund") to be held by the Board at one or more Depository banks; and
- (ii) the New York City Water and Sewer System Operation and Maintenance Reserve Fund (the "Operation and Maintenance Reserve Fund"), together with the General Account to be established therein, to be held at the Bank.

(b) Such funds shall be held by the Board as trust funds and the amounts on deposit therein shall be applied solely for the purposes herein and in the Lease provided.

(c) Subject to Section 11.3 hereof, commencing on the first day of each Fiscal Year and on each day thereafter the Board shall make the following payments from the Local Water Fund in the following order of priority:

FIRST: to the Trustee, for deposit in the Revenue Fund, beginning with the first day of each calendar month all Revenues in the Local Water Fund until the balance in the Revenue Fund, together with the balance in the Debt Service Fund, equals the Minimum Monthly Balance (as defined in Section 4.3(a)) for each Series of Bonds in such month and the Trustee shall have received the amounts, if any, required by the Resolution to be deposited in the Authority Expense Fund, the Debt Service Reserve Fund and the Subordinated Indebtedness Fund in such month;

SECOND: beginning with the first day of each calendar month, until paid in each calendar month, to the New York City Water Board Expense Fund, one-twelfth of the Board Expenses for the then current Fiscal Year as shown in the Annual Budget;

THIRD: beginning with the first day of each calendar month, to the City, until paid in each calendar month, for credit against the amount due from the Board pursuant to Section 8.1 of the Lease, one-twelfth of the amount certified to the Board pursuant to Sections 8.1 and 8.3(a)(i)(A) of the Lease for the then current Fiscal Year;

FOURTH: in each month, after making the deposits required by the preceding paragraphs, any balance in the Local Water Fund shall be applied daily as follows:

- (i) if, on any date, the total of the amount theretofore paid in such Fiscal Year from the Local Water Fund to the Trustee for deposit in the Revenue Fund is less than the Cash Flow Requirement and the total of the amounts theretofore paid to the City from the Local Water Fund in such Fiscal Year for the payment of

Operating Expenses is less than the amounts required to be paid pursuant to Section 8.1 of the Lease, (x) to the Trustee for deposit in the Revenue Fund an amount equal to the lesser of (1) the amount which, when added to the amounts theretofore paid from the Local Water Fund to the Trustee in such Fiscal Year for deposit in the Revenue Fund, is equal to the Cash Flow Requirement or (2) the product obtained by multiplying the balance in the Local Water Fund by a fraction the numerator of which is the amount equal to the sum of (A) 115% of the sum of Aggregate Debt Service and Projected Debt Service for the then current Fiscal Year, plus (B) 100% of the Required Deposits for such Fiscal Year and the denominator of which is the sum of subclauses (A) and (B), plus the Operating Expenses for the then current Fiscal Year; and (y) to the City, an amount equal to the lesser of (1) the amount which, when added to the amounts theretofore paid to the City from the Local Water Fund in such Fiscal Year, is equal to the amount required to be paid pursuant to Section 8.1 of the Lease or (2) the product obtained by multiplying the balance in the Local Water Fund by a fraction the numerator of which is the amount of the Operating Expenses for such Fiscal Year and the denominator of which is the sum of such Operating Expenses plus the sum of subclauses (A) and (B) of clause (x) above; or

(ii) if, as of any date, the total of the amounts theretofore paid from the Local Water Fund to the Trustee in such Fiscal Year for deposit in the Revenue Fund is at least equal to the Cash Flow Requirement, but the total of the amounts theretofore paid to the City from the Local Water Fund in such Fiscal Year for the payment of Operating Expenses is less than the amount required to be paid pursuant to Section 8.1 of the Lease, to the City an amount equal to the lesser of (x) the amount which, when added to the amounts theretofore paid, in such Fiscal Year, to the City from the Local Water Fund for the payment of Operating Expenses, is equal to the amount required to be paid pursuant to Section 8.1 of the Lease, or (y) the balance in the Local Water Fund; or

(iii) if, as of any date, the total of the amounts theretofore paid from the Local Water Fund to the Trustee in such Fiscal Year for deposit in the Revenue Fund is less than the Cash Flow Requirement and the total of the amounts theretofore paid to the City from the Local Water Fund in such Fiscal Year for the payment of Operating Expenses is at least equal to the amount required to be paid pursuant to Section 8.1 of the Lease, to the

Trustee an amount equal to the lesser of (x) the amount which, when added to the amounts theretofore paid in such Fiscal Year to the Trustee from the Local Water Fund for deposit in the Revenue Fund, is equal to the Cash Flow Requirement or (y) the balance in the Local Water Fund;

FIFTH: from the balance, if any, in the Local Water Fund after making the deposits required by paragraphs **FIRST**, **SECOND**, **THIRD** and **FOURTH**, above, to the Authority all such Revenues until the total of the amounts so paid equals the principal of and interest on bonds, notes or other obligations of the Authority (other than Bonds, Bond Anticipation Notes and Subordinated Indebtedness), certified by the Authority to the Board to be due and payable within the current Fiscal Year, together with all other amounts, certified by the Authority to the Board as necessary to make the required deposits, if any, to the reserve and other funds and accounts established for such bonds, notes or other obligations pursuant to the resolution, trust indenture or other instrument under which such bonds, notes or other obligations were issued;

SIXTH: from the balance, if any, in the Local Water Fund after making the deposits required by the preceding paragraphs to the City all such Revenues until the total of the amounts so paid is equal to the sum of (i) the rental payment required by Section 8.2 of the Lease for such Fiscal Year and (ii) the unsatisfied balance, if any, of such rental payments for any prior Fiscal Year;

SEVENTH: from the balance, if any, in the Local Water Fund after making the deposits required by the preceding paragraphs, to the Operation and Maintenance Reserve Fund, all such Revenues until the total of the amounts so paid equals the amount, if any, required to be deposited therein pursuant to Section 4.4 hereof; and

EIGHTH: the balance, if any, in the Local Water Fund after making the payments and deposits required above, to the General Account in the Operation and Maintenance Reserve Fund.

(d) in making the payments required pursuant to paragraph **FIRST** of subsection (c) of this Section the Board shall be entitled to rely on the Certificate of an Authorized Representative of the Authority described in subsection (e) of this Section;

(e) on the first day of each month in each Fiscal Year the Authority shall deliver to the Board and the Trustee a Certificate, signed by its Authorized Representative, setting forth the Authority's calculations of the Minimum Monthly Balance for each Series of Outstanding Bonds for such month and the amounts required to be deposited in the Authority Expense Fund, Debt Service Reserve Fund and Subordinated Indebtedness Fund in such month.

SECTION 4.3. Cash Flow Requirement. (a) *Minimum Monthly Balance.* The Minimum Monthly Balance to be satisfied pursuant to paragraph FIRST of Section 4.2(c) shall be calculated as of the first day of the month and shall be equal to the sum of:

(i) For each Series of Bonds which is Outstanding during the current Fiscal Year, an amount equal to the product obtained by multiplying (a) the difference between (1) the amount of interest due or projected to be due on the next succeeding Bond Payment Date for such Series and (2) the amount, if any, held in the applicable sub-account for such Series in the Capitalized Interest Account in the Debt Service Fund, by (b) a fraction, the numerator of which is the number of full months since the end of the month preceding the last Bond Payment Date for such Series (or, with respect to the first Bond Payment Date for such Series, the number of full months since the last day of the month preceding the date of issuance of such Series) and the denominator of which is the number of months between Bond Payment Dates minus one (or, with respect to the first Bond Payment Date for a Series, the number of months between the last day of the month preceding the date of issuance of such Series and the first Bond Payment Date minus one); provided, however, that if this formula would produce (A) a fraction greater than one, then the fraction shall be equal to one, or (B) a denominator less than one, then the fraction shall equal one; plus

(ii) For each Series of Bonds which is Outstanding during the current Fiscal Year, an amount equal to the Principal Installment due on the next succeeding Bond Payment Date for such Series which falls within twelve months or less on which a Principal Installment is due, multiplied by a fraction, the numerator of which is the number of full months since the last day of the month preceding the last Bond Payment Date on which a Principal Installment was due (or, with respect to the first such Bond Payment Date, twelve minus the number of full months to the first Bond Payment Date on which a Principal Installment is due), and the denominator of which is eleven; provided, however, that if this formula would produce a fraction greater than one, then the fraction shall be equal to one.

(b) *Cash Flow Requirement.* In accordance with Section 505(b) of the Resolution, on the date on which the Trustee determines that the Revenues theretofore deposited in the Revenue Fund during the then current Fiscal Year at least equal the Cash Flow Requirement for such Fiscal Year, the Trustee shall so notify the Board and the Authority and no further transfers need be made to the Revenue Fund pursuant to paragraph FOURTH of Section 4.2(c) hereof; provided, however, if the Authority shall thereafter certify, to the Board and the Trustee, an amended Cash Flow Requirement, for the remainder of the then current Fiscal Year, in excess of the Cash Flow Requirement previously certified for such Fiscal Year, the Board shall immediately transfer the Revenues in the Local Water Fund to the Trustee for deposit in the Revenue Fund in accordance with paragraph FOURTH of Section 4.2(c) hereof until receipt of a notice from the Trustee stating that the Revenues deposited in the Revenue Fund during the then current Fiscal Year at least equal the Cash Flow Requirement as amended. Any amounts held in the Revenue Fund on such date in excess of the Cash Flow Requirement shall be returned by the Trustee, as promptly as practicable, to the Board for deposit in the Local Water Fund.

SECTION 4.4. Operation and Maintenance Reserve Fund. (a) There shall be deposited to the Operation and Maintenance Reserve Fund in each Fiscal Year from the sources described in (b) below the amount required, if any, so that the amounts on deposit therein satisfy the O&M Reserve Fund Requirement for the ensuing Fiscal Year.

(b) Deposits to the Operation and Maintenance Reserve Fund may be made from the proceeds of the sale of Bonds of the Authority, from the Local Water Fund, or from any other moneys lawfully available therefor, subject to the following limitations:

(i) The maximum deposit to the Operation and Maintenance Reserve Fund from the proceeds of Bonds of the Authority, as of any time of calculation, may not exceed the O&M Reserve Fund Requirement then in effect, reduced by the cumulative sum of prior deposits thereto from proceeds of Bonds of the Authority.

(ii) Deposits to the Operation and Maintenance Reserve Fund from the Local Water Fund shall be subject to the priorities established in Section 4.2(c) hereof.

(iii) If there shall be a deficit in the Operation and Maintenance Reserve Fund on May 1 of any Fiscal Year, and if as of May 1 the Board does not project that such available Revenues will at least equal the O&M Reserve Fund Requirement for such Fiscal Year by June 30 of such Fiscal Year, then the Board shall include in its Annual Budget for the ensuing Fiscal Year an amount sufficient, together with other amounts available therefor, to at least equal the O&M Reserve Fund Requirement for the ensuing Fiscal Year.

(c) If, on July 1, 1991 (or July 1 of any Fiscal Year thereafter) the amount on deposit in the Operation and Maintenance Reserve Fund is less than the O&M Reserve Fund Requirement, such deficit shall be made up from the proceeds of the sale of Bonds issued during such Fiscal Year; provided, however, if, prior to May 1 of such Fiscal Year such deficit has not been made up from Bond proceeds the Board shall include the amount of such deficit in its Annual Budget for the ensuing Fiscal Year and the amounts necessary to restore such deficit shall be deposited in the Operation and Maintenance Reserve Fund as provided in Section 4.4(b) hereof.

(d) In addition to the deposits provided for in subsections (b) and (c) above, there shall be deposited in the General Account in the Operation and Maintenance Reserve Fund the amounts required to be so deposited in accordance with paragraph EIGHTH of subsection (c) of Section 4.2 hereof. Such amounts shall be held separate and apart from any other amounts held in the Operation and Maintenance Reserve Fund and shall be applied only as provided in Section 4.5(b) hereof.

SECTION 4.5. Application of Moneys in the Operation and Maintenance Reserve Fund. (a) If on the first day of any month the Board has not paid to the City an amount equal to the product of (i) the amount required to be paid pursuant to Section 8.1 of the Lease times (ii) a fraction in the numerator of which is the number of months which have commenced during such

Fiscal Year, and the denominator of which is 12, the Board shall withdraw from the Operation and Maintenance Reserve Fund and pay to the City, on demand, an amount equal to 1/12th of the amount so required to be paid pursuant to Section 8.1 of the Lease, or the entire balance in such Fund if less than sufficient.

(b) Amounts on deposit in the General Account may be: (i) applied in each Fiscal Year for any of the purposes of paragraphs FIRST through SEVENTH of subsection (c) of Section 4.2 hereof, in such manner as therein provided; (ii) applied to the payment of bonds in accordance with Article XII of the General Resolution or (iii) to the extent not so applied, the amounts remaining on deposit in the General Account on the last day of each Fiscal Year may, to the extent provided in a Certificate signed by the Director and delivered to the Board, on or prior to the last day of the Fiscal Year, be paid during the succeeding Fiscal Year to the Trustee for deposit in the Construction Fund, to be applied to pay the Costs of Water Projects; provided, however, that there shall not be so paid from the General Account the amounts set forth in the Annual Budget as required to be retained by the Board in such Account for such next succeeding Fiscal Year.

SECTION 4.6. Board Expense Fund. Amounts on deposit in the Board Expense Fund shall be applied by the Board solely for the purposes of paying expenses of the Board.

SECTION 4.7. Application of Revenues After Default. The Board covenants that if an "Event of Default", as defined in the Resolution, shall occur, the Board, upon demand of the Trustee, shall pay over or cause to be paid over to the Trustee all moneys and securities then held by the Board in the Local Water Fund, and thereafter, as promptly as practical, the Revenues, for application in accordance with Section 1003 of the Resolution.

SECTION 4.8. Amounts Remaining; Payments by City. (a) Any amounts received or held by the Authority or the Trustee pursuant to the provisions of the Resolution (or under any other resolution, trust indenture or similar document) or this Agreement after all Bonds (and all other bonds, notes or other evidences of indebtedness) have been paid in full or are no longer Outstanding pursuant to the provisions of the Resolution (or under any other resolution, trust indenture or similar document), and after payment of all other obligations and expenses of the Authority or provision for payment thereof has been made in accordance with the provisions of the Resolution (or under any other resolution, trust indenture or similar document), shall be paid to the City.

(b) Any payment by the City to the Water Board pursuant to Section 1045-h(3) of the Public Authorities Law shall be confined to consideration for the sale of goods or the rendering of services by the Water Board to the City pursuant to the Lease or the Financing Agreement as contemplated by the Act.

ARTICLE V.

**REPRESENTATIONS AND WARRANTIES;
CONSENT TO ASSIGNMENT; INDEMNIFICATION**

SECTION 5.1. Representations and Warranties. The Board makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(a) it is a body corporate and politic constituting a corporate municipal instrumentality and a public benefit corporation of the State duly organized and validly existing under the Constitution and the laws of the State, including the Act, and has full power and authority:

(i) to acquire the System pursuant to the Lease and to carry out its purposes in the manner proposed to be conducted pursuant to this Agreement and the Lease; and

(ii) to execute, deliver and perform and observe all of the terms and provisions of this Agreement and the Lease.

(b) The execution, delivery and performance of this Agreement, have been duly authorized by all necessary action on the part of the Board.

(c) The Board has duly and lawfully adopted, and there are now in force and effect, by-laws and rules and regulations relating to the Board and the System in conformity with the Act.

SECTION 5.2. Consent to Assignment. The lien on the Revenues created pursuant to the Act is made for the benefit of the Authority and its Bondholders. The Board hereby consents to the assignment by the Authority to the Bondholders of the benefits and rights of the Authority provided by this Agreement, including, without limitation, the lien upon the Revenues created pursuant to the Act and the pledge and agreement of the State included herein pursuant to Section 1045-t of the Act and set forth in Section 7.1 hereof, to the extent set forth in the Resolution.

SECTION 5.3. Indemnification. The City agrees, upon the same terms and conditions as are set forth in Article III of the Lease with respect to its indemnification of the Board, to keep, save and hold harmless the Authority from any and all liability, loss or damage from or in connection with any act done or omitted in the exercise of the powers of the Authority which is taken, or omitted, in good faith and in pursuance of the purposes of the Authority in accordance with the Act.

ARTICLE VI.

COVENANTS

SECTION 6.1. Rate Covenant. (a) The Board hereby covenants and agrees to establish, fix and revise, from time to time, fees, rates, rents or other charges for the use of, or services furnished, rendered or made available by the System adequate, together with any other available funds, to provide for (i) the timely payment of the Principal Installments of and interest on all Bonds and the principal of and interest on any other indebtedness of the Authority payable from Revenues, (ii) the proper operation and maintenance of the System, (iii) all other payments required for the System not otherwise provided for and (iv) all other payments required pursuant to the Agreement and the Lease.

(b) Without limiting the generality of subsection (a) above, the Board shall establish and collect rates, fees and charges sufficient in each Fiscal Year so that Revenues collected in such Fiscal Year will be at least equal to the sum of (i) one hundred fifteen percent (115%) of estimated Aggregate Debt Service and Projected Debt Service payable in such Fiscal Year, (ii) one hundred percent (100%) of the Operating Expenses and Authority Expenses payable in such Fiscal Year and (iii) one hundred percent (100%) of the amount necessary to pay the Required Deposits for such Fiscal Year; provided, however, that any Principal Installment which is a Refundable Principal Installment may be excluded from Aggregate Debt Service for purposes of the foregoing but only to the extent that such Principal Installment is payable from funds specifically held in trust therefor. A failure to generate Revenues in accordance herewith shall not constitute an "event of default" within the meaning of Article VIII, if the Board takes timely action to correct any such deficit under subsection (c) below.

(c) The Board shall review the adequacy of fees, rates and charges at least annually. If such annual review, or the report of the Rate Consultant pursuant to Section 6.2, indicates that the rates, fees and charges are, or will be, insufficient to meet the requirements of this Section 6.1, the Board shall promptly take the necessary action to cure or avoid any such deficiency. The City hereby agrees that it will diligently pursue the actions necessary to cure or avoid any such deficiency.

(d) Except to the extent required by (i) Section 1045-j(5) of the Act, as in effect on July 24, 1984, with regard to the requirement that tax-exempt organizations be charged for service provided by the System in accordance with the provisions of chapter six hundred ninety-six of the laws of eighteen hundred eighty-seven, as amended by chapters eight hundred ninety-three and eight hundred ninety-four of the laws of nineteen hundred eighty, and by provisions of law which may extend the effective dates of such chapters from time to time and (ii) existing agreements (including any successor agreements) with the Jamaica Water Supply Company designed to minimize the disparity between the cost of water paid by users of the System and the cost of water paid by those City residents served by the Jamaica Water Supply Company, the Board will not furnish or supply or cause to be furnished or supplied any product, use or service of the System, free of charge (or at a nominal charge) to any person, firm or corporation, public or private, and the Board will enforce (or cause the City to enforce) the payment of any and all amounts owing to the Board for use of the System in accordance with Section 6.7 hereof.

(e) In estimating Aggregate Debt Service for purposes of subsection (b) of this Section 6.1, the Board shall be entitled to assume that Variable Rate Bonds will bear such

interest rate or rates as the Authority shall determine; provided, however, that the interest rate or rates assumed shall not be less than the interest rate borne by such Variable Rate Bonds at the time of determination of Aggregate Debt Service.

(f) The Board agrees that the water and sewer rates established by the Board for users during the Fiscal Year ending June 30, 1986 shall not exceed those water and sewer rates in effect for users of the System during the Fiscal Year ending June 30, 1985; provided, however, that nothing contained in this Agreement shall be deemed to limit or restrict the Board's right or obligation (i) to comply with any covenant relating to rates to be charged for the use of, or services provided by, the System which may be made with the holders of Bonds in accordance with the Act or (ii) during such time as the City may declare that emergency conditions exist with respect to the supply of water, to increase rates or levy surcharges for the purpose of encouraging water conservation or of offsetting Revenue losses resulting from conservation.

SECTION 6.2. Consulting Engineer and Rate Consultant. (a) The Authority shall employ a Consulting Engineer and a Rate Consultant whose duties, respectively, shall be to make any certificates and perform any other acts required or permitted of the Consulting Engineer and the Rate Consultant hereunder or under the Resolution. If so determined hereafter by the Authority, the same person or firm may perform the duties and functions of the Consulting Engineer and the Rate Consultant.

(b) In each Fiscal Year the Consulting Engineer and the Rate Consultant shall make an examination of, and shall report on, the properties and operations of the System. Such report shall be submitted to the Authority, the Board, the City and the Trustee no later than March 1 of each year and shall set forth the following:

(i) the Consulting Engineer's advice and recommendation as to the proper operation, maintenance and repair of the System during the ensuing Fiscal Year, and an estimate of the amounts of money necessary for such purposes;

(ii) the Consulting Engineer's advice and recommendations as to improvements which should be made during the ensuing Fiscal Year, and an estimate of the amounts of money necessary for such purposes, showing the amount to be expended during such Fiscal Year from the proceeds of Bonds issued under the provisions of the Resolution;

(iii) the Rate Consultant's recommendation as to any necessary or advisable revisions of rates, fees and charges and such other advice and recommendation as it may deem desirable; and

(iv) the Consulting Engineer's findings whether the System has been maintained in good repair and sound operating condition, and its estimate of the amount, if any, required to be expended to place such properties in such condition and the details of such expenditures and the approximate time required therefor.

(c) The City covenants that if any such report shall set forth that the properties of the System have not been maintained in good repair and sound operating condition, it will promptly restore the properties to good repair and sound operating condition with all expedition practicable.

(d) The Board and the City further covenant that (i) the Consulting Engineer and the Rate Consultant shall at all times have free access to all properties of the System and every part thereof for the purposes of inspection and examination, and (ii) their books, records and accounts may be examined by the Consulting Engineer and the Rate Consultant at all reasonable times.

SECTION 6.3. Operation and Maintenance. The City hereby covenants that it shall, at all times:

(a) in accordance with the advice and recommendations of the Consulting Engineer, operate the System properly and in a sound and economical manner and shall maintain, preserve, and keep the same preserved and kept with the appurtenances and every part and parcel thereof, in good repair, working order and condition, and shall from time to time make, or cause to be made, all necessary and proper repairs, replacements and renewals so that at all times the operation of the System may be properly and advantageously conducted, regardless of any failure on the part of the Board to make the payments to the City required by Section 8.1 of the Lease; provided, however, that nothing herein contained shall require the City to operate, maintain, preserve, repair, replace, renew or reconstruct any part of the System if there shall be filed with the Board, the Authority and the Trustee (i) a certificate of the Commissioner acting as the Authorized Representative of the City stating that in the opinion of the City abandonment of operation of such part of the System will not adversely affect the operation of the System or the amount of Revenues derived therefrom and is not prejudicial to the interests of the Board, the Authority or the Bondholders and (ii) a Certificate of the Consulting Engineer concurring with such statement;

(b) enforce the rules and regulations governing the operations, use and services of the System established from time to time by the Board or the City;

(c) observe and perform all of the terms and conditions contained in the Act, and comply with all valid acts, rules, regulations, orders and directions of any legislative, executive, administrative or judicial body having competent jurisdiction of the City or the System; provided, however, that the failure of the City to comply with the covenant contained in this subsection (c) for any period shall not constitute a default on its part so long as the City (i) is taking reasonable and timely steps to permit compliance and (ii) the City shall have delivered to the Board and to the Authority a Certificate of the Consulting Engineer which (1) sets forth in reasonable detail the facts and circumstances attendant to such non-compliance, (2) sets forth the steps being taken by the City to permit compliance, (3) sets forth the estimated date on which the City will be in compliance and (4) states that in the opinion of the Consulting Engineer such non-compliance during the period described will not adversely affect the operation of the System or the amount of Revenues to be derived therefrom; and

(d) not create or suffer to be created any lien or charge upon the System or any part thereof except for Permitted Encumbrances.

SECTION 6.4. Annual Budget. On May 1 of each year (or on such later date as the Authority, the Board and the City may agree) the Authority shall deliver to the Board a certified copy of the Authority Budget for the ensuing Fiscal Year showing the Cash Flow Requirement for such Fiscal Year. Within 5 days after publication of the City's Executive Budget, the City shall certify to the Board the amounts required to be so certified in accordance with Section 8.3(a)(i) of the Lease. Based upon the information contained in (a) the Authority Budget, (b) the City's certification pursuant to Section 8.3 of the Lease and (c) the Certificate of the Consulting Engineer delivered to the Board pursuant to Section 8.3(a)(ii) of the Lease (collectively, the "Budget Documents"), the Board shall prepare the Annual Budget for the ensuing Fiscal Year. In addition to the information contained in the Budget Documents the Board shall also make provision in the Annual Budget for (i) Board Expenses for the ensuing Fiscal Year, (ii) the amount, if any, required to be deposited in the Operation and Maintenance Reserve Fund in accordance with Section 4.4 hereof and (iii) the application of the amounts in the General Account in the Operation and Maintenance Reserve Fund in accordance with Section 4.5(b) hereof. Thereafter, but in no event later than fifteen (15) days after the date of publication of the Executive Budget of the City, the Board shall adopt such Annual Budget. Promptly after adoption of the Annual Budget, and in no event later than June 10 (or such other date as the Authority, the Board and the City may agree) of each year, the Board shall establish the rates, fees and charges for the use of the System for the ensuing Fiscal Year. The Board may from time to time, either before or after commencement of the Fiscal Year to which it relates, amend the Annual Budget, but (except for its own expenses) only in accordance with and after receipt of amended Budget Documents. If, as of the first day of any Fiscal Year an Annual Budget has not been adopted, the Annual Budget for the immediately preceding Fiscal Year shall be the Annual Budget for such Fiscal Year until a new Annual Budget is adopted. The Annual Budget for Fiscal Year 1985-1986 adopted by the Board by resolution dated June 26, 1985 shall be deemed to satisfy all the procedural requirements of this Section 6.4.

SECTION 6.5. Compliance with Agreements; Tax Exemption. (a) The City and the Board each hereby covenant with the Authority that each of them shall take all such actions or refrain from taking all such actions, as the case may be, so as to comply with the terms and provisions of the Lease and this Agreement. The Authority hereby covenants with each of the City and the Board that it shall take all such actions or refrain from taking all such actions, as the case may be, so as to comply with the terms and provisions of the Resolution and this Agreement. The Authority further agrees that it will take no action to amend or supplement the Resolution in any way which would adversely affect the interest of the City or the Board without the prior written consent to such amendment or supplement by those parties thereby affected.

(b) The Authority, the City and the Board each hereby covenant one with the other that, so long as any Bonds shall be Outstanding, each will not take any action, or fail to take any action, which, if taken or not taken, as the case may be, would adversely affect the tax-exempt status of the interest payable on the Bonds then Outstanding, the interest on which, at the time of

issuance thereof, was exempt from Federal income taxation or not includable in gross income for purposes of federal income taxation.

SECTION 6.6. Compliance with Resolution. The Board and the City shall take all such actions and refrain from taking all such actions, as the case may be, and otherwise shall operate the System as shall ensure their compliance, and the compliance of the Authority, with the terms and provisions of the Resolution, or any other agreement approved by the Board and the City entered into by the Authority in connection with the undertaking or financing of a Water Project and which shall, by its terms, directly or indirectly apply to the Board or the City.

SECTION 6.7. Enforcement of Rules and Regulations. In accordance with Section 1045-i(2)(viii) of the Act, the Board shall enforce or cause the City to enforce the rules and regulations providing for discontinuance of or disconnection from the supply of water or the provision of sewer service, or both, as the case may be, for non-payment of fees, rates, rents or other charges imposed by the Board, provided that such discontinuance or disconnection shall not be carried out except in the manner and upon the notice as is required of a waterworks corporation pursuant to Sections 89(b)(3)(a)-(c) and 116 of the State Public Service Law.

SECTION 6.8. Governmental Approvals. Pursuant to Section 1045-e of the Act, the City has obtained or will obtain all reviews and approvals from the State Department of Health and the State Department of Environmental Conservation required to be completed for the Water Projects listed on or subsequently added to Appendix A.

SECTION 6.9. Covenant of City as to Rates and Charges. The City covenants that upon the issuance of the Bonds by the Authority, the City will not thereafter levy user fees, rents and other charges with respect to the System until all Bonds are paid or are no longer Outstanding pursuant to the terms of the Resolution, provided, however, that nothing herein contained shall be construed so as to prevent the City from levying ad valorem taxes for the purpose of paying the costs and expenses of the System or to pay the principal of and interest on general obligation bonds of the City heretofore or hereafter issued to finance the System or any part thereof.

SECTION 6.10. Consent of Mayor and Comptroller. Upon the consent of the Mayor and the Comptroller, the Authority may issue Bonds for the purpose of refunding outstanding general obligation bonds of the City issued for water or sewer capital purposes.

SECTION 6.11. Books, Records and Accounts. (a) If the Authority so requests pursuant to Section 1045-i(2)(ix) of the Act, the Board shall provide to the Authority and the City such reports concerning Water Projects as may be required by the Authority.

(b) Each of the Authority and the Board shall keep or cause to be kept, proper books of record and account in which complete and correct entries shall be made of all transactions relating to their corporate purposes under the Act. In accordance with Section 1045-y of the Act,

each of the Authority and the Board shall annually submit to the Mayor, the Comptroller and the Director of Management and Budget of the City a detailed report concerning their activities for the Fiscal Year. In addition, the Authority and the Board shall submit to the Mayor, the Comptroller and the Director of Management and Budget of the City audited annual financial statements of the Authority and the Board together with a report thereon of an Accountant satisfactory to the Board.

SECTION 6.12. Liens. Until the Bonds (or any other bonds, notes or other evidences of indebtedness issued by the Authority for its purposes under the Act) have been paid in full or provision has been made therefor in accordance with the Resolution (or such other resolution, trust indenture or similar document), the Board shall not create, and, to the extent it has the power to do so, shall not permit to be created, any lien upon or pledge of the Revenues except the lien and pledge thereon created by the Act.

SECTION 6.13. Security Interests. Except to the extent provided by the Act, neither the Board nor the Authority may grant any Bondholder any security interest in any of the assets or Properties of the Board.

SECTION 6.14. Compliance with Law. The Authority and the Board hereby covenant and agree each for itself that it will observe and perform all of the terms and conditions contained in the Act, and comply with all valid laws, acts, rules, regulations, orders and directions of any legislative, executive, administrative or judicial body having competent jurisdiction over its property or affairs.

SECTION 6.15. Further Assurances. To the extent permitted by law, the City and the Board from time to time shall make, do, execute, adopt, acknowledge and deliver and take all and every such further acts, deeds, conveyances, assignments, resolutions, transfers and assurances as may be necessary or desirable for the better assuring, conveying, granting, assigning, confirming and effecting the rights assigned and the Revenues pledged.

SECTION 6.16. Financing through State Revolving Fund. In connection with the financing of Water Projects by the Authority with funds provided from the State Revolving Fund, and in order to induce DEC and the Corporation to make such funds available to the Authority from the State Revolving Fund, the City, acting through the Mayor or a Deputy Mayor, if so requested by DEC and the Corporation, may enter into a Project Financing Agreement or Agreements with DEC, the Corporation and the Authority and make in any such agreement representations, warranties, covenants and agreements to the effect of the following:

(a) that the City is a municipal corporation of the State and has full legal right, power and authority (i) to conduct its business and own its properties, (ii) to enter into a Project Financing Agreement and (iii) to carry out and consummate all other transactions contemplated to be carried out by the City pursuant to a Project Financing Agreement;

(b) that the execution and delivery of a Project Financing Agreement is duly authorized by law;

(c) that a Project Financing Agreement has been duly executed and delivered and constitutes a valid and legally binding obligation of the City, enforceable in accordance with its terms, except to the extent that enforceability may be limited by bankruptcy, insolvency or other law or enactment now or hereafter enacted by the State or Federal Government affecting the enforcement of creditors' rights and the unavailability of equitable remedies or the application thereto of equitable principles; that the defense of sovereign immunity is not available to the City in any proceedings by the Corporation or DEC to enforce any of the obligations of the City under a Project Financing Agreement and, that to the fullest extent permitted by law, the City consents to the initiation of any such proceedings in any court of competent jurisdiction with venue to lie in accordance with Section 504 of the Civil Practice Law and Rules of the State;

(d) that the City has or will obtain full legal right and authority and all necessary licenses and permits required by State or Federal laws or regulations to own the Water Project, to lease the Water Project to the Board, to operate the Water Project, to carry on its activities relating thereto and to undertake and complete the Water Project; that the City has or will obtain all licenses and permits required by all other applicable laws or regulations to the extent necessary to ensure the availability of the Water Project for its intended purposes and the safety of the public;

(e) that the execution and delivery by the City of a Project Financing Agreement and the consummation of the transactions therein contemplated will not, to the best knowledge of the Mayor or the Deputy Mayor, as the case may be, violate any contract or instrument to which the City is a party or by which it is bound, or any judgment, decree, order, statute, rule or regulation applicable to the City;

(f) that the Water Project shall be in compliance with applicable Federal and State laws and regulations (including applicable consent decrees) at all times during which any Corporation Bonds are outstanding;

(g) that the Water Project shall be in compliance with all other applicable laws and regulations to the extent necessary to ensure the availability of the Water Project for its intended purposes and the safety of the public at all times during which any Corporation Bonds are outstanding;

(h) to construct or cause the construction of, operate and maintain the Water Project in accordance with the conditions set forth in Exhibit A;

(i) to promptly rectify any breach of this Section 6.16;

(j) that, so long as any Corporation Bonds are outstanding, the City will not take any action, or fail to take any action, which if taken or not taken, as the case may be, would adversely affect the exclusion from gross income of interest payable on the Corporation Bonds then outstanding for Federal income tax purposes; and

(k) such other representations, warranties, covenants and agreements as may be reasonably requested by the Corporation, including but not limited to such representations, warranties, covenants and agreements required (i) to establish and assure the Federal tax status of interest on the Corporation Bonds, (ii) to comply with the requirements of a bond purchase agreement relating to the Corporation Bonds and (iii) to comply with the State Revolving Fund Act and the State Revolving Fund Regulations.

The Commissioner may provide a certificate to the effect that he confirms any of such representations, warranties, covenants and agreements as of any date on which the Authority receives funds pursuant to any Loan Agreement.

ARTICLE VII.

AGREEMENT OF THE STATE

SECTION 7.1. Agreement of the State. In accordance with Section 1045-t of the Act, the parties hereby pledge and agree, for and on behalf of the State, that the State will not alter or limit the rights vested by the Act in the Authority or the Board to fulfill the terms of any agreement made with or for the benefit of the Bondholders, or in any way impair the rights and remedies of Bondholders, until the Bonds, together with the interest thereon, with interest on any unpaid installment of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of such holders, are fully met and discharged.

ARTICLE VIII.

EVENTS OF DEFAULT AND REMEDIES

SECTION 8.1. Events of Default. An "event of default" or a "default" shall mean, whenever they are used in this Agreement, any one or more of the following events:

(a) failure by the Board to make the payments required to be made to the Authority pursuant to Section 4.2 of this Agreement;

(b) failure of the City or the Board to observe any covenant, term or condition of this Agreement, other than as referred to in clause (a) of this section, provided, however, that such failure shall have continued for a period of sixty (60) days after written notice, specifying such failure and requesting that it be remedied, is given to the City or the Board, or both, as the case may be, by the Authority, unless the Authority shall agree in writing to an extension of such time prior to its expiration, and provided further, that if the failure stated in the notice cannot be remedied within the applicable period, the Authority shall not unreasonably withhold its consent to an extension of such time if corrective action has been instituted by the City or the Board, as the case may be, within such period and is being diligently pursued;

(c) the Authority shall file a petition or otherwise seek relief under any federal or State bankruptcy or similar law;

(d) the respective provisions of the Act pursuant to which the Resolution has been adopted or the Bonds have been issued or entered into, including, without limitation, those provisions pursuant to which the lien upon the Revenues has been created pursuant to this Agreement and the Resolution and those provisions establishing the powers and obligations of the Board and the relationship of the Authority to the Board and the City as contemplated by the Act, shall be materially and adversely limited, altered or impaired by any legislative action or any final judgment or the terms, conditions and security provided under this Agreement and the Resolution shall be materially and adversely limited, altered or impaired by any legislative action or any final judgment.

SECTION 8.2. Remedies. (a) Whenever any event of default shall have occurred and be continuing, and written notice of the default, if required, shall have been given to the City and the Board by the Authority or by the Trustee and the default shall not have been cured within the period provided therefor, the Authority and the Trustee may take whatever action at law or in equity may appear necessary or desirable to collect the payments then due and as they thereafter become due, and the Authority and the Trustee, so long as any Bonds are outstanding, may take whatever action at law or in equity may appear necessary or desirable to enforce performance and observance of any obligation, agreement or covenant of the City or the Board under this Agreement.

(b) In addition, if there is any default by the Board in the making of payments to the Authority required under this Agreement, as a result of the failure by the Board to impose sufficient fees, rates, rents or other charges, the Authority may, pursuant to Section 1045-j(7) of the Act, petition for the appointment by any court having jurisdiction in any proper action of a receiver to administer on behalf of the Board, under the direction of said court, the affairs of the Board in order to achieve Revenues at least sufficient to make such payments, and by and with the approval of said court, to establish, fix and revise, from time to time, fees, rates, rents or other charges at least sufficient therefor.

SECTION 8.3. Remedies Not Exclusive. (a) Subject to the provisions of Sections 8.1 and 8.2 hereof, the remedies conferred upon or reserved to the Authority in respect of any event of default are not intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute.

(b) No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be expressly required herein.

ARTICLE IX.

TERMINATION

SECTION 9.1. Termination. This Agreement shall terminate; and the covenants and other obligations contained herein shall be discharged and satisfied, when (i) payment of all indebtedness of the Authority has been made or provided for in accordance with the Resolution (or such other resolution, trust indenture or similar document securing such indebtedness) and (ii) either all payments required hereunder have been made in full, or provision for such payments satisfactory to the Authority has been made, or the City pays or assumes all liabilities, obligations, duties, rights and powers of the Authority hereunder.

ARTICLE X.

AMENDMENTS TO THE AGREEMENT AND THE LEASE

SECTION 10.1. Amendments to Agreement; Consents. (a) No amendment hereto shall be effective unless it is in writing, signed by each of the parties hereto and, except for an amendment to Appendix A, consented to in writing by the Trustee.

(b) Except as hereinafter expressly provided, the parties hereto may enter into any amendment, change or modification of this Agreement, including without limitation amendments to Appendix A; provided, however, the parties hereto shall not enter into, or consent to, any amendment, change or modification of the provisions of this Agreement, without first obtaining the consent of the Bondholders in accordance with Section 803 and Article IX of the Resolution, if such amendment, modification or change would materially adversely affect the rights of the Bondholders by modifying or revoking the provisions of this Agreement with respect to: (i) the operation and maintenance of the System; (ii) the grant of Revenues to the Authority; (iii) the application of the proceeds of Bonds to pay the Costs of Water Projects; (iv) the deposit or application of the Revenues in the Local Water Fund; (v) the representations and warranties of the Board; (vi) the consent to assignment by the Authority; (vii) the covenants relating to the establishment and collection of rates and charges, appointment of the Consulting Engineer and the Rate Consultant, operation and maintenance, adoption of the Annual Budget, compliance with law, the Agreement, the Lease and the Resolution, enforcement of rules and regulations, the obtaining of governmental approvals, maintenance of books, records and accounts, the creation of liens on or security interests in the Revenues or the System and further assurances; (viii) the agreement of the State; (ix) events of default and remedies; (x) termination; (xi) amendments to this Agreement and the Lease; (xii) the controlling effect of the Resolution and the Bonds; (xiii) severability of invalid provisions; (xiv) governing law; or (xv) the effective date of this Agreement.

SECTION 10.2. Amendments to Lease; Consents. (a) The Board and the City hereby covenant and agree that, so long as any Bond remains Outstanding, neither will enter into or

consent to any amendment, change or modification of the Lease without first obtaining the written consent of the Trustee thereto.

(b) The Board and the City hereby further covenant and agree that neither will enter into nor consent to any amendment, change or modification of the Lease, without first obtaining the consent of the Bondholders in accordance with Section 803 and Article IX of the Resolution, if such amendment, modification or change would materially adversely affect the rights of the Bondholders by modifying or revoking the provisions of the Lease with respect to: (i) the term of the Lease or the demise of the Leased Property; (ii) the right of the Board to restrict entry to or use of the Leased Property; (iii) the payments by the Board to the City relating to operation and maintenance of the Leased Property and construction of improvements thereto; (iv) the right of the Board to the Revenues; (v) the obligation of the City to indemnify the Board; (vi) the obligation of the City to operate and maintain the Leased Property; (vii) the agreements of the City and the Board as to care of the Leased Property; (viii) compliance with applicable law, rules and regulations as to the use of the System; (ix) billing and collection of rates and charges; (x) covenants as to the disposition of real and personal property constituting a portion of the Leased Property, encumbrances and further assurances; (xi) termination; (xii) amendments; (xiii) severability of invalid provisions; and (xiv) the effective date of the Lease.

SECTION 10.3. Consent of Trustee. In consenting to any amendment referred to in Section 10.1 and 10.2, the Trustee shall be fully protected in relying on an opinion of Bond Counsel, satisfactory to the Trustee, that such amendment is authorized or permitted by the terms of this Agreement.

ARTICLE XI.

THE NOTES

SECTION 11.1. Agreement to Renew or Extend Note. The Authority hereby agrees to use its best efforts, on or before November 1, 1985, to renew the Note or extend the maturity of the Note, for not less than 30 days beyond November 1, 1985.

SECTION 11.2. Application of Renewal Note Proceeds. The proceeds from the sale of any such renewal Note shall be applied by the Authority, on November 1, 1985, solely to the payment of the principal of and interest on the Initial Series Note due on such date.

SECTION 11.3. Payments from the Local Water Fund. (a) Notwithstanding anything contained herein to the contrary, if, as of November 1, 1985, the Note has been renewed or extended, the Board shall, commencing on November 1, 1985, cause the Bank to transfer to the Authority daily, all Revenues on deposit in the Local Water Fund until the amounts so transferred, when added to the amounts on deposit in the Note Fund, equal the principal of and the interest to become due on the Note, as renewed or extended (the "Note Requirement"). The

Authority shall, in accordance with the Note Resolution, deposit such Revenues in the Note Fund.

(b) No further transfers shall be made from the Local Water Fund to the Note Fund when the amount on deposit in the Note Fund is equal to the Note Requirement. On the date on which the Authority determines that it holds in the Note Fund an amount equal to the Note Requirement, the Authority shall notify the Board and the Bank that no further transfers need be made. Any amounts held by the Authority in the Note Fund on such date in excess of the Note Requirement shall be returned by the Authority, as promptly as practicable, to the Board and the Board shall immediately deposit any such amounts in the Local Water Fund. Any amounts remaining in the Note Fund upon the payment of the principal of and interest on the Note, as renewed or extended, shall be transferred to the Trustee for deposit in the Revenue Fund.

ARTICLE XII.

MISCELLANEOUS

SECTION 12.1. Conflicts. The provisions of this Agreement are in no way intended to, nor shall such provisions, change or in any manner alter the terms of the Resolution, or the security, rights or remedies of the Trustee or the Bondholders. In the event any provision of this Agreement conflicts at any time, or in any manner, with the provisions of the Resolution or any Bond, the provisions of the Resolution or Bond shall be controlling and conflicting provisions of this Agreement shall be disregarded.

SECTION 12.2. Assignment. The Authority has, pursuant to the Resolution, pledged and assigned to the Trustee certain of its rights and interests in and to this Agreement including, without limitation, its rights and interests in and to all amounts payable to the Authority hereunder as security for the payment of the principal of, premium, if any, and interest on the Bonds. The Board and the City hereby consent to such pledge and assignment and to the enforcement of such rights and interests by the Trustee.

SECTION 12.3. No Waiver. No failure to exercise, and no delay in exercising by the parties hereto, any right, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof, or the exercise of any right, power or privilege. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law.

SECTION 12.4. Notices.

All notices, requests and other communications under this Agreement shall be deemed to have been duly given if in writing and delivered personally or by certified mail (a) to the City at the office of the Corporation Counsel, 100 Church Street, New York, New York 10007, attention: Corporation Counsel; (b) to the Board at One Centre Street, Room 2358, New York,

New York 10007, attention: Executive Director; and (c) to the Authority at One Centre Street, Room 1209, New York, New York 10007, attention: Executive Director, or such other address as the City, the Board and the Authority, as the case may be, shall hereafter designate by notice in writing.

SECTION 12.5. Separability. In the event that any one or more of the provisions contained in this Agreement is or are invalid, irregular or unenforceable in any respect, the validity, regularity and enforceability of the remaining provisions contained in this Agreement shall be in no way affected, prejudiced or disturbed thereby.

SECTION 12.6. Headings. The descriptive headings of the several articles of this Agreement are inserted in this Agreement for convenience only and shall not be deemed to affect the meaning or construction of any of the provisions hereof.

SECTION 12.7. Governing Law. This Agreement shall be governed by, and construed in accordance with, the Constitution and laws of the State of New York.

SECTION 12.8. Payments on Saturdays, Sundays and Holidays. In any case where the date of any payment required to be made under this Agreement shall be a Saturday or a Sunday or shall be, at the place designated for such payment a legal holiday or a day on which banking institutions are authorized by law to close, then such payment shall not be made on such date but shall be made on the next preceding business day not a Saturday, Sunday or a legal holiday or a day upon which banking institutions are authorized by law to close.

SECTION 12.9. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 12.10. Date of Agreement. The date of this Agreement shall be for identification purposes only. This Agreement shall become effective upon the delivery of the initial issue of bonds, notes or other obligations of the Authority to the original purchasers thereof.

IN WITNESS WHEREOF, the City has caused this Agreement to be executed in its name by the Mayor of the City, the Authority has caused this Agreement to be executed in its name by its Chairman and the Board has caused this Agreement to be executed in its name by its Chairman, all as of the date first above written.

THE CITY OF NEW YORK

By: /s/ EDWARD I. KOCH
Edward I. Koch
Mayor of The City of New York

**NEW YORK CITY MUNICIPAL WATER
FINANCE AUTHORITY**

By: /s/ PAUL DICKSTEIN
Paul Dickstein
*Chairman of the New York City
Municipal Water Finance Authority*

NEW YORK CITY WATER BOARD

By: /s/ PETER A. PISCITELLI
Peter A. Piscitelli
*Chairman of the New York City
Water Board*

APPROVED AS TO FORM:

/s/ FREDERICK A.O. SCHWARZ, JR.
Frederick A.O. Schwarz, Jr.
*Corporation Counsel of
The City of New York*

EXHIBIT A

GENERAL WATER PROJECT CONDITIONS

(i) The Water Project shall effectively protect water quality, be managed with good management practices and fulfill all Federal and State requirements, all requirements of the State Revolving Fund Regulations and all requirements of any Project Financing Agreement and Loan Agreement executed pursuant thereto.

(ii) The Board and the City shall have the legal, institutional, managerial, contractual and financial capability to ensure adequate construction, operation, and maintenance of the Water Project.

(iii) The Water Project shall be consistent with any plans developed under Section 205, 208, 303(e) or 319 of the Federal Water Pollution Control Act.

(iv) There shall be established and maintained a dedicated source of revenue for repayment of the debt service on a Loan which is acceptable to the Corporation. The Corporation acknowledges the existence of such dedicated source pursuant to the terms of the Resolution.

(v) The City and the Board shall have such title, estate or interest in the site of the Water Project, including necessary easements and rights-of-way, to ensure undisturbed use and possession for the purposes of construction and operation for the estimated life of the Water Project.

(vi) Water Project accounts shall be maintained in accordance with generally accepted government accounting standards.

(vii) The City shall permit any reviews and audits determined necessary by DEC, the State Comptroller, the Inspector General of EPA or the Corporation and produce all records relating to any work performed under the terms of any Project Financing Agreement or Loan Agreement for examination at such times as may be designated by them or their authorized representatives, to permit extracts and copies of Water Project records to be made by them or their authorized representatives, and to fulfill information requests by them or their authorized representatives.

(viii) The City shall retain all project files and records relating to the construction of the Water Project for six years after Water Project completion and shall retain all other files and records relating to the application of Loan proceeds until the final repayment of debt service on a Loan described in any Project Financing Agreement has been made to the Corporation. As-built plans and specifications for the Water Project shall be retained for the useful life of the Water Project. The City shall make available to the Administrator of the EPA or representatives of the Administrator any files or records necessary to determine compliance with Title VI of the Federal Clean Water Act.

(ix) DEC shall have the right to approve all contracts for services and construction funded pursuant to a Project Financing Agreement and to inspect and review all construction, and all related work, of the Water Project while it is in progress and upon completion to determine that it is undertaken and completed in compliance with all relevant plans and the terms of any Project Financing Agreement or Loan Agreement.

(x) Acceptance by DEC of a certification by the Authority or the City that a Water Project requirement has been met shall not prevent DEC from performing any actions necessary to ensure the accuracy of such certification.

(xi) All contracts between the City and parties carrying out construction and other activities under the terms of a Project Financing Agreement shall provide that representatives of DEC, the State Comptroller, and the Corporation shall have access to the work wherever it is in preparation or progress, and that the contractor shall furnish proper facilities for such access and inspection and shall permit extracts and copies of Water Project records to be made by them.

(xii) The City, its Authorized Representatives and all contractors and subcontractors providing services for the Water Project shall comply with all Federal and State laws, regulations, and executive orders applicable to the Water Project regarding Affirmative Action, Equal Employment Opportunity, and small, minority and women's business enterprises.

(xiii) The City hereby certifies that it has complied with and shall continue to comply with all State Environmental Quality Review Act ("SEQRA") requirements. If the Commissioner of DEC determines that, in addition to all requirements of SEQRA, there are additional requirements associated with a National Environmental Protection Act ("NEPA") - like environmental review, the City shall comply with those additional NEPA requirements. The City certifies that it has sought DEC direction prior to initiation of and during Water Project planning and that it has secured or shall secure all required Federal, State, and local permits and approvals. The City shall provide all environmental documents as may be required by DEC and DEC shall be the joint lead agency with the City for the Water Project.

(xiv) The City shall carry out all measures determined necessary for the protection of valuable historic and archaeological sites in accordance with the State Historic Preservation Act.

(xv) The City shall ensure that the Water Project is constructed expeditiously, is completed in accordance with any Project Financing Agreement and Loan Agreement, as each may be amended, and that construction including the letting of contracts will be in accordance with the application, plans and specifications or amendments thereto approved by DEC, and in accordance with applicable requirements of Federal, State, and local laws, ordinances, rules, regulations, and executive orders and any Project Financing Agreement and Loan Agreement executed pursuant thereto.

(xvi) The City shall provide competent and adequate resident inspection of all Water Project construction under the direction of a professional engineer licensed in the State who shall have the responsibility of inspecting and determining that the construction conforms to the approved plans and specifications and certifying to the Authority, DEC, and the Corporation at

the completion of construction that the construction is in accordance with the approved plans and specifications or approved amendments thereto.

(xvii) The City shall cause all change orders to be submitted to DEC within thirty days following the date they are ordered.

(xviii) Changes which will significantly alter any treatment process incorporated in the Water Project shall not be carried out without prior approval by DEC.

(xix) Changes which will increase the estimated reasonable cost of the Water Project shown in any Project Financing Agreement shall require approval by DEC and the Corporation and amendment to a Project Financing Agreement pursuant to the terms thereof and to any Loan Agreement executed subsequent thereto pursuant to the terms thereof if State Revolving Fund assistance is to be requested for such increase. State Revolving Fund assistance for Water Project cost increase is subject to the availability of State Revolving Fund funds in accordance with the State Revolving Fund Priority System and Intended Use Plan adopted in accordance with that Priority System.

(xx) The City shall ensure proper and efficient operation and maintenance of the Water Project.

(xxi) The City shall cause the Water Project to be operated and maintained unless authorized to cease operation or dispose of the Water Project according to the provisions of Section 17-1909.4.g (ii) and (vii) of the Environmental Conservation Law.

(xxii) Review or approval of engineering reports, facilities plans, design drawings and specifications or other documents by or for DEC shall not relieve the City of its responsibility to properly plan, design, build and effectively operate and maintain the Water Project as required by laws, regulations, permits, and good management practices.

(xxiii) DEC and its representatives and the Corporation and its representatives shall not be responsible for increased costs resulting from defects in the plans, design drawings and specifications or other Water Project documents. Nothing in this contract prohibits the City from requiring more assurances, guarantees, indemnity or other contractual requirements from any party performing Water Project work.

(xxiv) The City shall cause corrective action to be taken as necessary to bring the Water Project into compliance with the Water Project performance standards contained in the approved Engineering Report or Facilities Plan (each as defined in the State Revolving Fund Regulations) for the Water Project, and the State Commissioner of DEC and the Corporation shall consider additional State Revolving Fund assistance to finance the costs of such corrective action.

(xxv) In carrying out Water Project planning, design, construction and other Water Project activities, the City shall comply or has complied with Sections 201(b), 201(g)(2), 201(g)(3), 201(g)(5), 201(g)(6), 201(o), 204(a)(1), 204(a)(2), 204(b)(1), 204(d)(2), 218, 511(c) and 513 of the Federal Water Pollution Control Act.

(xxvi) The City shall not lease the Water Project or enter into a long-term contract for operation of the Water Project except to the Water Board and as otherwise provided in any Project Financing Agreement or Loan Agreement relating to the Water Project.

(xxvii) The City has full legal right and authority and all necessary licenses and permits required by State or Federal laws or regulations as of the date of each Loan to own the Water Project, to lease the Water Project to the Board, to operate the Water Project, to carry on its activities relating thereto and to undertake and complete the Water Project; the City has all licenses and permits required by all other applicable laws or regulations as of such date to the extent necessary to ensure the availability of the Water Project for its intended purposes and the safety of the public.

(xxviii) The Water Project is in compliance with all applicable Federal and State laws (including rules and regulations). The City shall proceed with due diligence to complete the Water Project. The City has complied with and completed all requirements of SEQRA necessary to commence construction of the Water Project prior to the date of any Project Financing Agreement. The Water Project is and shall continue to be in compliance with all other applicable laws and regulations to the extent necessary to ensure the availability of the Water Project for its intended purposes and the safety of the public.

(xxix) Each of the facilities constituting a part of the Water Project and being financed with proceeds of Corporation Bonds is included within the definition of an "Eligible Project" in the State Revolving Fund Act, and the estimated cost of the Water Project is equal to or in excess of the net proceeds of the Corporation Bonds. The City intends the Water Project to be and continue to be an Eligible Project under the State Revolving Fund Act during the term of any Project Financing Agreement or Loan Agreement relating thereto.

(xxx) The City agrees that it will undertake and cause the Water Project to be completed for the purposes and in the manner set forth in any Project Financing Agreement and Loan Agreement relating thereto.

(xxxi) The City shall obtain all necessary approvals from any and all governmental agencies requisite to the completion of the Water Project and compliance with all Federal, State and local laws, ordinances and regulations applicable thereto. Upon completion of the Water Project, the City shall obtain all required permits and authorizations from appropriate authorities, if required, for operation and use of the Water Project as contemplated by any Project Financing Agreement and Loan Agreement relating thereto.

(xxxii) The City will take and institute such proceedings as shall be necessary to cause and require all contractors and material suppliers to complete their contracts diligently and in accordance with the terms of the contracts including, without limitation, the correcting of defective work.

(xxxiii) The City will cause the Water Project to be designed and constructed in accordance with plans and specifications delivered to DEC and consistent with any Project Financing Agreement and Loan Agreement relating thereto, and will proceed with the

acquisition and construction of the Water Project in conformity with law and with all applicable requirements of governmental authorities having jurisdiction with respect thereto, subject to such modifications of plans and specifications as may be approved by DEC and the Corporation as necessary or advisable to effectuate the purposes of the State Environmental Facilities Corporation Act and the State Revolving Fund Act.

(xxxiv) The City shall, with all practical dispatch and in a sound and economical manner, complete or cause to be completed the acquisition and construction of the Water Project and do all other acts and things necessary and possible to entitle the Board to receive revenues with respect to the Water Project at the earliest practicable time.

(xxxv) After completion of the Water Project, the City shall at all times operate the Water Project properly and in a sound and economical manner and shall maintain, preserve and keep the Water Project in good repair, working order and condition, and shall from time to time make all necessary and proper repairs, replacements and renewals so that at all times the operation of the Water Project may be properly conducted in a manner that is consistent with the project performance standards contained in the Engineering Report or Facilities Plan for the Water Project and the requirements of the State Pollutant Discharge Elimination System Permit, and the City shall not discontinue operation of or sell or otherwise dispose of the Water Project, except for portions of the Water Project sold or otherwise disposed of in the course of ordinary repair and replacement of obsolete or worn out parts (and provided such obsolete or worn out parts are replaced with substitute parts of comparable quality, design and conditions as the parts so replaced at the time of their original installation) without the approval of DEC and the Corporation so long as any Loan is outstanding.

(xxxvi) The City will at all times construct and operate the Water Project and cause the Water Project to be constructed and operated in compliance with all applicable Federal and State laws (including, without limitation, the State Environmental Facilities Corporation Act, the State Revolving Fund Act, the Water Quality Act and Sections 2.04(d)(2) and 513 of the Federal Water Pollution Control Act), rules, regulations, executive orders, and the Project Financing Agreement and any Loan Agreement and in compliance with all other applicable laws and regulations to the extent necessary to ensure the availability of the Water Project for its intended purposes and the safety of the public.

(xxxvii) The City shall cause there to be and shall cause to be enforced a sewer use ordinance or regulations which shall, among other things, (1) prohibit new connections to Inflow (as defined in the State Revolving Fund Regulations) sources entering the Water Project, unless such connections are in conformance with a SPDES permit, (2) require that new sewers and connections to the Water Project be properly designed and constructed, and (3) prohibit wastewater introduced into the Water Project from containing toxic or other pollutants in amounts or concentrations that endanger public safety, lessen the physical or biological integrity of the Water Project or increase the disposal cost of wastewater treatment sludge in accordance with pretreatment requirements applicable under Federal and State law.

(xxxviii) In the event that Loan proceeds are not sufficient to pay the costs of a Water Project in full, the City nevertheless shall be obligated to complete the Water Project in accordance with any Project Financing Agreement or Loan Agreement relating thereto.

(xxxix) The City shall deliver to the Corporation, DEC and, to the extent required by any Loan Agreement, the Trustee under any financing indenture of trust relating to a Loan, a certificate of the City stating that the Water Project has been completed in accordance with any related Project Financing Agreement and any related Loan Agreement within seven (7) business days following such completion. The City shall in addition notify DEC and the Corporation in writing within thirty (30) days of the actual date of initiation of operation of the Water Project.

(xl) The City shall permit representatives of DEC, the Comptroller of the State and the Corporation to have access to the Water Project at all reasonable times, and all contracts of the City for construction or operation of all or a portion of the Water Project shall contain provisions that permit such access and shall permit extracts and copies of Water Project records to be made by the foregoing persons.

(xli) The City shall cause to be provided competent and adequate resident inspection of all Water Project construction, under the direction of a professional engineer licensed in the State. The City shall cause such engineer to be directed to inspect work necessary for the construction of the Water Project and to determine whether such work has been performed in accordance with the approved plans and specifications. Any work not in accordance with approved plans and specifications shall be remedied, unless such noncompliance is waived by DEC.