
AGREEMENT OF LEASE

By and Between

THE CITY OF NEW YORK

and

NEW YORK CITY WATER BOARD

Dated as of July 1, 1985
(as amended by Amendment No. 1 to
Lease Agreement dated as of November 1, 1985)

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AGREEMENT OF LEASE dated as of July 1, 1985, between the City of New York (the "City") and the New York City Water Board (the "Board"), a body corporate and politic constituting a corporate municipal instrumentality of the State of New York (the "State").

WITNESSETH:

WHEREAS, the New York City Municipal Water Finance Authority (the "Authority") was created by the New York City Municipal Water Finance Authority Act (the "Act") and is vested with the powers and duties described in the Act, including the power to borrow money, issue debt and enter into agreements with the Board and the City for the financing by the Authority of "Water Projects", as such term is defined in the Act; and

WHEREAS, pursuant to the Act the Board was established by Chapter 515 of the Laws of 1984 and is authorized thereby to establish and collect fees, rates, rents and other service charges for the use of, or for services furnished, rendered or made available by, the water and sewer system so as to receive revenues which, together with other revenues available to the Board, will be sufficient to place such systems on a self-sustaining basis; and

WHEREAS, pursuant to the provisions of the Act, the Board and the City are authorized to enter into an agreement for the transfer from the City to the Board, for use in the exercise of its corporate powers and purposes, of the water system and the sewerage system; and

WHEREAS, pursuant to the provisions of the Act, the Mayor of the City (the "Mayor") has duly executed and delivered this Lease on behalf of the City; and

WHEREAS, the Board by resolution has duly authorized the execution of this Lease on its behalf; and

WHEREAS, pursuant to the provisions of the Act, this Lease has been approved by the resolution of the Authority.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants hereinafter contained, it is agreed as follows:

**ARTICLE I.
DEFINITIONS**

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

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

"Agreement" shall mean the Financing Agreement dated as of July 1, 1985, among the City, the Authority and the Board, as amended from time to time.

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

"Authorized Representative" shall mean, 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 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.

"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.

"Bond" or **"Bonds"** shall mean any bonds, notes or other evidences of indebtedness for borrowed money issued by the Authority.

"City" shall mean The City of New York.

"Construction" shall have the meaning accorded such term in Section 1045-b(5) of the Act.

"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.

"Decree" shall have the meaning set forth in Section 4.4 hereof.

"Effective Date" shall mean 12:01 a.m. on July 1, 1985.

"Fiscal Year" shall mean the twelve-month period commencing on July 1 of each year; provided, however, that the Board and the City may, from time to time, agree on a different twelve-month period as the Fiscal Year.

"Lease" shall mean this 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.

"Leased Property" shall mean the real and personal property and other rights leased by the City to the Board pursuant to Article II hereof.

"Lease Term" shall mean the term of this Lease determined pursuant to Sections 2.1(a) and 12.2 hereof.

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

"Mineral Activities" has the meaning set forth in Section 2.1 (b)(5) hereof.

"O & M Reserve Requirement" shall have the meaning ascribed to such term in the Agreement.

"Permitted Encumbrances", when used with reference to the System, shall mean (i) any and all liens, encumbrances, security interests or other defects in or clouds on title which may exist on the Effective Date, (ii) this Lease, (iii) utility, access and other easements, rights of way and exceptions which do not materially impair the operation or maintenance of the Leased Property or the Revenues therefrom, (iv) mechanics', materialmen's, warehousemen's, carriers' and other similar liens, to the extent permitted by law and liens for taxes at the time not delinquent or being contested and (v) agreements for the sale and leaseback of elements of the System.

"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.

"Reconciliation Payments" shall mean payments pursuant to Section 11.4 hereof.

"Resolution" shall mean the Water and Sewer System General Revenue Bond Resolution adopted by the Authority on November 14, 1985, as the same may be amended or supplemented from time to time.

"Revenues" shall mean (a) all the rents, fees, charges, payments and other income and receipts derived by the Board from users of the System, and (b) all 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 part of the System), together with all operating aid with respect to the System from any governmental entity, Federal, State or local, to the Board, 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 this Lease or the Agreement or (ii) is derived from a use of the System not directly related to the supply and distribution of water to the consumers thereof or to the collection, treatment or disposal 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 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) any amounts

from the granting of easements, licenses, rights of way or other interests in the real property constituting a part of the System.

"Sewerage System" has the meaning accorded such term in Section 1045-b(14) of the Act.

"State" means the State of New York.

"System" means the Water System and the Sewerage System, collectively.

"Water Project" has 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.

"Water System" has the meaning accorded such term in Section 1045-b(21) of the Act.

ARTICLE II. LEASE

SECTION 2.1. Term of Lease; Demise of Leased Property. (a) The term of this Lease shall commence on the Effective Date and shall continue until the later of (i) the 40th anniversary of the Effective Date or (ii) the date on which all Bonds are paid in full or provision therefor shall have been made in accordance with the resolution, trust indenture or other instrument under which they were issued.

(b) The City hereby leases the Leased Property to the Board, and the Board hereby hires, takes and leases the Leased Property from the City, to be used for its corporate purposes and solely upon the terms and conditions hereinafter expressed, for the Lease Term. The Leased Property shall include (whether now in use or hereafter acquired, and whether or not located within the boundaries of the City) all of the City's right, title and interest in any properties specified in clauses 1, 2 and 3 below, and shall not include any of the City's right, title or interest in any properties described in clauses 4, 5 or 6 below, all as more fully set forth below:

There shall be included in the Leased Property:

1. the Sewerage System, including but not limited to all plants, structures and other real and personal property acquired, rehabilitated or constructed (including all work in progress as soon as commenced) and used or to be used for the purpose of collecting, treating and disposing of sewage, including main, trunk, intercepting, collecting, lateral, outlet or other sewers, outfall, pumping stations, treatment and disposal plants, groundwater recharge basins, backflow prevention devices, sludge dewatering or disposal equipment and facilities, vessels, barges, clarifiers, filters, phosphorous removal equipment, and other plants, structures, equipment, vehicles, conveyances, real or personal property or rights therein and appurtenances thereto used in the collection, conveyance, pumping, treatment, neutralizing, storing and disposing of sewage;

2. the Water System, including but not limited to all plants, structures and other real and personal property acquired, rehabilitated, or constructed (including all work in progress as soon as commenced) and used or to be used for the purpose of supplying, distributing or treating water, including, but not limited to, surface or groundwater reservoirs, basins, dams, canals, aqueducts, standpipes, conduits, pipelines, mains, pumping stations, water distribution systems, compensating reservoirs, intake systems, water-works or sources of water supply, wells, purification or filtration plants or other treatment plants and works, connections, water meters, rights of flowage or diversion and other plants, structures, equipment, vehicles, conveyances, real or personal property or rights therein and appurtenances thereto used in or for the accumulation, supply, treatment or distribution of water; and

3. any other materials, supplies, plans and property contained in the above-mentioned plants and structures incidental to, or necessary or useful and convenient for the operation of such facilities described in subparagraphs 1 or 2 hereof;

reserving and excepting unto the City, however:

4. any property or rights of the City the conveyance of which pursuant to this Lease would cause a reversion to or in favor of, or permit a reentry by or in favor of, any third party;

5. all mines and minerals whatsoever (but not including surface or subsurface waters) already or hereafter found and discovered, on or under the lands to be conveyed pursuant to this Lease; with power and authority for the City to perform the following acts (the "Mineral Activities"): to enter upon and leave such lands at all times to work, mine, get, prepare, process and take away any and all of said minerals below or on the surface of such lands and to sink, drive, make and use shafts, pits, air and water courses and other approaches, entrances and exits in connection therewith; provided, however, that the City shall not undertake any Mineral Activities which shall interfere with the operation, maintenance, or collection of Revenues of the System; and

6. all growing crops and timber of any kind upon the lands to be conveyed pursuant to this Lease, together with the right to enter upon such lands with such equipment as the City may deem necessary or convenient to care for or remove such crops or timber at any time, provided, however, that the City shall not undertake any such caring for or removal which shall interfere with the operation, maintenance, or collection of Revenues of the System.

SECTION 2.2. *Right of City to Enter Leased Property.* The City shall retain the right to enter upon any portion of the Leased Property to use any property which is located in, across or upon the Leased Property for any purpose unless, in the reasonable judgment of the Board, such entry or use would adversely affect the collection of Revenues.

SECTION 2.3. *Payments By Board.* The Board shall pay to the City the rental and other payments enumerated in Article VIII hereof and the Reconciliation Payments described in Article XI hereof, at the times and in the amounts therein set forth.

SECTION 2.4. *Revenues of the Board.* All Revenues received or receivable by the Board shall belong to the Board, and shall be applied as provided in the Agreement and the Resolution.

SECTION 2.5. *Substitution of Board for City.* As provided in Section 1045-h(7) of the Act, where necessary or desirable and to the extent not prohibited by any State or Federal law, the City and the Board shall use their best efforts to substitute the Board for the City as the party in interest concerning any applications heretofore or hereafter filed or proceedings heretofore or hereafter commenced in relation to the Leased Property with the State Department of Environmental Conservation, the State Department of Health or any other agency of the State or with the United States Environmental Protection Agency or any other Federal agency or instrumentality. The City and the Board shall enter into one or more agreements to effect such substitutions, which agreements may provide that any such application or proceeding shall inure to and be for the benefit of the Board and shall be binding upon the Board to the same extent and in the same manner as if the Board had been a party to such application or proceeding from its inception, and that the Board shall be deemed a party thereto. Such agreements may provide that, to the extent permitted by the approving or licensing party, all licenses, approvals, permits or decisions, heretofore or hereafter issued or granted pursuant to or as a result of any such application or proceeding shall inure to the benefit of and be binding upon the Board, and that such agreements may be assigned and transferred by the City to the Board to the extent such assignment and transfer is not prohibited by State or Federal law.

SECTION 2.6. *Condition of Leased Property.* The Board accepts the Leased Property in its condition as of the Effective Date, without warranty or representation by the City, subject to Permitted Encumbrances.

SECTION 2.7. *Filing of Lease.* Upon the issuance of Bonds by the Authority, the Board shall file with the Clerk of the City and the Secretary of State a copy of this Lease and copies of all other instruments or documents effectuating the transfer contemplated by this Lease and shall take possession of the Leased Property.

ARTICLE III.

INDEMNIFICATION

SECTION 3.1. *Indemnification.* Subject to Sections 3.2, 7.2 and 7.3 hereof, the City agrees, to the extent permitted by law, to keep, save and hold harmless the Board 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 Board which is taken or omitted in good faith in pursuance of the purposes of the Board in accordance with the Act.

SECTION 3.2. *Conditions.* The right to indemnification of the Board by the City pursuant to Section 3.1 hereof is expressly subject to satisfaction of the following conditions:

- (a) The Board shall promptly forward to the City all summonses or notices pertaining to claims received or served upon the Board and its members, officers and employees, together with a written request for indemnification pursuant to this Article;

(b) The Board and its members, officers and employees shall cooperate in aiding the City to investigate, adjust, settle or defend each claim, action or proceeding; and

(c) Except as provided in Section 7.2 hereof, the defense of all claims, actions and proceedings shall be conducted by, or under the supervision of, the City. The Corporation Counsel of the City shall be the attorney of record on behalf of the Board in all actions and proceedings for which indemnification is requested by the Board.

ARTICLE IV. OPERATION AND MAINTENANCE OF THE LEASED PROPERTY

SECTION 4.1. *City to Operate and Maintain.* The City shall continue to administer and operate the Leased Property, maintain the Leased Property in good and safe order and condition and make all repairs therein. As used in this section, "maintain" and "repair" shall include all necessary repairs, replacements, renewals, alterations and additions, whether structural, non-structural, ordinary or extraordinary and "administer" shall include, without limitation, the enforcement of regulations of the Board and the City relating to the use of the System. The Board hereby agrees to pay the City for such services the amounts specified in Section 8.1(a) of this Lease. Except as specifically provided in or pursuant to this Lease, nothing contained in this Section 4.1 shall be construed to impose any obligation or liability upon the City for the administration, operation, maintenance and repair of the System not heretofore imposed upon it in connection with such System.

SECTION 4.2. *Agreement as to Leased Property.* Neither the City nor the Board shall commit or suffer, and shall use all reasonable care to prevent, waste, damage or injury to the Leased Property.

SECTION 4.3. *Compliance with Regulations.* The System shall be used, operated and maintained in accordance with all applicable law, including the applicable rules and regulations of the Board and the City. The Commissioner of Environmental Protection of the City shall continue to exercise his powers pursuant to the laws of the United States, the State of New York, and local law to administer, operate, maintain and regulate the use of the System; provided, however, that nothing herein contained shall diminish the power of the Board pursuant to the Act to promulgate such rules and regulations as it deems necessary from time to time.

SECTION 4.4. *Effect of Decree.* Nothing in this Agreement shall be construed in any way to impair, diminish or otherwise adversely to affect the rights, powers, privileges, conditions and obligations of the City contained in the Decree of the United States Supreme Court in *New Jersey v. New York*, 347 U.S. 995 (1954) (the "Decree").

**ARTICLE V.
CAPITAL PROGRAM**

SECTION 5.1. *Capital Costs Incurred by City.* The City may incur Costs (as defined in the Agreement) in the Construction, effectuation and financing of a Water Project specified or approved pursuant to Section 2.1 of the Agreement.

SECTION 5.2. *City to Construct.* The Board hereby authorizes the City to perform the Construction and effectuation of any Water Project specified or approved by the Board pursuant to Section 5.1 hereof.

SECTION 5.3. *Property Acquisition.* Nothing contained in this Lease shall limit the City's right and power of eminent domain and condemnation, and the City may acquire all real and personal property or any interest therein necessary or useful for the Construction or effectuation of a Water Project. If the City effects such acquisition by eminent domain or condemnation, it shall take the property or interest therein, as the case may be, in its own name.

**ARTICLE VI.
DEPARTMENT OF FINANCE AND DEPARTMENT OF
ENVIRONMENTAL PROTECTION -
PROVISION OF BILLING SERVICES**

SECTION 6.1. *Billing.* Subject to Section 6.4 hereof, the Board hereby hires, retains and employs the City and the City hereby agrees to render the following services. The City's Department of Finance and Department of Environmental Protection will provide billing services to the Board, including but not limited to notification to users of the System of the water and sewer charges levied by the Board, collection thereof, and maintenance of the books, records and accounts of such billing systems.

SECTION 6.2. *Levy of Water and Sewer Charges.* In accordance with Section 1045-j(8) of the Act, the Board hereby directs the City to levy the amount of any delinquent water and sewer charges levied by the Board or by the City against the persons and property liable therefor and authorizes the City to exercise all of its powers pursuant to the provisions of the laws of the State covering enforcement and collection of unpaid taxes of the City and to enforce and collect such water and sewer charges, including, if necessary, the institution of civil actions by the City in its own name, in the name of the Board or in both names against such persons or properties.

SECTION 6.3. *Late Payments.* (a) All late payments of water and sewer charges shall be the property of the Board, and shall be collected by the City on behalf of the Board in accordance with procedures established pursuant to Section 6.1 hereof. In order to make adjustment for the collection by the Board of payments for water and sewer service rendered prior to the Effective Date, the City shall be paid the amount of \$15,000,000, from payments received in cash prior to the Effective Date for water and sewer service to be rendered on and after the Effective Date. Any such payments received in excess of this amount shall be transferred to the Board, in full and complete satisfaction of the respective rights of the City and the Board to any such payments.

(b) The provisions of subsection (a) of this Section 6.3 notwithstanding, the Board hereby grants, transfers, assigns and gives to the City all of its rights and interest in and to all outstanding water and sewer charges levied and uncollected on all properties at the time title thereto is vested in the City pursuant to *in rem* proceedings and in consideration thereof the City shall pay to the Board, in each Fiscal Year after the Effective Date, an amount equal to 2% of such outstanding charges; provided, however, that, if during the Lease Term the City and the Board mutually agree on a different procedure for allocating such outstanding charges, which such parties determine to be more equitable than the procedure hereinabove in this subsection (b) described, this Lease may be amended to substitute such different procedure without obtaining the consent of the Authority, the holder or holders of any Bonds or any trustee for the holders of the Bonds.

SECTION 6.4. *Discontinuance of Billing Services.* In the event that the Board no longer desires that billing services be provided by the City pursuant to this Article, or in the event that the City no longer desires to provide such services, the party desiring such termination shall give written notice of such fact to the other party not later than two years prior to the termination of such services. Notwithstanding the termination of billing services by the City pursuant to this Section, Section 6.2 of this Lease shall remain in full force and effect, and the Board shall pay the City the cost of services provided to the Board pursuant to Section 1045-j(8) of the Act.

ARTICLE VII. LAW DEPARTMENT — PROVISION OF LEGAL SERVICES

SECTION 7.1. *Legal Services.* (a) The Board hereby hires, retains and employs the City, through its Law Department to provide legal services to the Board.

(b) Except as set forth in Section 7.2 hereof, nothing in this Lease shall prevent the Board from selecting other counsel with respect to some or all legal matters.

SECTION 7.2. *Outside Counsel.* The Board may retain outside counsel or co-counsel to defend against claims against the Board with the prior written approval of the Corporation Counsel (which approval shall not be unreasonably withheld). If the Board retains outside counsel or co-counsel to defend against such claims without such approval, the Board shall not be entitled to indemnification from the City with respect to such claims pursuant to Article III hereof unless the City elects in writing to provide such indemnification.

SECTION 7.3. *Termination of Legal Services; General Representation.* (a) *Specific Matters.* In the event that the Board no longer wishes the City's Law Department to provide legal services with respect to a particular matter, the Board shall give written notice of such fact to the City no later than thirty (30) days prior to the termination of all or part of such services. Such thirty day period shall not apply in the case of expedited proceedings, orders to show cause or other proceedings or matters in which such notice would be impracticable; provided, however, that in such event, the Board shall notify the City immediately of its decision to use other counsel.

(b) *General.* In the event that the Board wishes to select counsel other than the Law Department to represent it with respect to substantially all legal matters, the Board shall give written notice of such fact to the City no later than one year prior to the proposed termination of such representation. The Board shall not be entitled to indemnification from the City pursuant to Article III hereof as to matters for which it is represented by such counsel unless the City elects in writing to provide such indemnification.

ARTICLE VIII. PAYMENTS BY THE BOARD

SECTION 8.1. *Payments by Board for Operation, Maintenance and Reimbursement of City Expenses.* Subject to the statutory lien created by Section 1045-j(6) of the Act, to Sections 8.3 and 8.4 of this Lease, and to the provisions of the Agreement, the Board shall make the following payments to the City:

(a) An amount sufficient to pay (i) the cost of administration, maintenance, repair and operation of the Leased Property, including overhead costs incurred by the City attributable to the Leased Property (but net of the amount of any governmental operating aid received or receivable within the current Fiscal Year with respect to the System), (ii) the cost of materials and supplies, and (iii) the amount of any judgment or settlement paid by the City (and not otherwise reimbursed) arising out of a tort claim, but (A) only to the extent that the City's liability therefor is related to Construction of a Water Project or the operation or maintenance of the System and (B) in no event shall the payment in any Fiscal Year exceed an amount equal to 5% of the aggregate revenues shown on the last year-end audited financial statements of the Board;

(b) An amount sufficient to reimburse the City for capital Costs (as defined in the Agreement) incurred by the City for the construction of Water Projects which are not paid or reimbursed from any other source, to the extent requested by the City, including, without limiting the generality of the foregoing, the payment of any judgment or settlement arising out of a contract claim with respect to the Construction of any Water Project;

(c) An amount sufficient to pay the cost of billing and other services provided by the City pursuant to Article VI hereof;

(d) An amount sufficient to pay the cost of legal services provided by the City pursuant to Article VII hereof;

(e) An amount sufficient to reimburse the City for the compensation, or the costs of the services, of any City officers and employees provided on a full-time or part-time basis to the Board pursuant to Article X hereof.

SECTION 8.2. *Base Rental Payments.* In addition to the payments described in Section 8.1, the Board shall pay to the City, as a rental payment for the System, but only to the extent requested by the City in each Fiscal Year, an amount not to exceed the greater of: (a) the principal and interest payable on general obligation bonds issued by the City for water and sewer purposes, certified by the City to be paid within such Fiscal Year, or (b) 15% of the amount of

principal and interest payable on the Bonds of the Authority and certified by the Authority to be paid within such Fiscal Year.

SECTION 8.3. *Method of Payment.* (a) Amounts payable pursuant to Section 8.1 (a)-(e) and Section 8.2 shall be paid as follows:

(i) No later than five (5) business days after publication of the City's Executive Budget for the ensuing Fiscal Year, the City, acting by its Director of Management and Budget or such other person as the City shall designate, shall certify the following amounts to the Board with regard to such Fiscal Year: (A) the amount which the City reasonably anticipates it will have expended in connection with each of the costs described in paragraphs (a) through (e) of Section 8.1 hereof; and (B) the payments, if any, payable pursuant to Section 8.2 hereof.

(ii) Prior to making payments pursuant to Section 8.1(a) or (b), the Board shall have received, together with the certifications described in paragraph (a)(i) above, a certificate of the Consulting Engineer, in such form and with such exhibits as may be agreed upon by the City and the Board, to the effect that such amounts certified by the City for costs incurred or to be incurred in connection with paragraphs (a) and (b) of Section 8.1 hereof are reasonable and appropriate.

(iii) The Board shall commence payment of amounts certified by the City pursuant to paragraph (a)(i) of this Section 8.3 in accordance with Article IV of the Agreement.

(b) After all amounts certified by the City pursuant to paragraph (a) above have been paid and any other payments required under Section 1045-j(1) of the Act have been made by the Board, or provisions for their respective payment have been made, any surplus of funds received by the Board in each Fiscal Year shall be paid to the City as Additional Rent.

SECTION 8.4. *Rate Covenants.* The Board has covenanted in Section 6.1 of the Agreement to establish, fix and revise its rates and charges in the manner therein set forth, and the covenants and agreements contained in such Section 6.1 are hereby expressly incorporated by reference herein as if fully set forth herein.

ARTICLE IX. PROCEDURES FOR FISCAL YEAR 1985-1986

SECTION 9.1. *Procedures for Determining Rental and other Payments for Fiscal Year 1985-1986.* (a) For Fiscal Year 1985-1986, the actions to be taken pursuant to Article VIII hereof shall be taken as follows:

(i) The certification pursuant to Section 8.3(a)(i) shall be made not later than the Effective Date and the certification of the Consulting Engineer described in Section 8.3(a)(ii) shall not be required for Fiscal Year 1985-1986.

(ii) The City hereby assigns all Revenues received or receivable in respect of such rates and charges for Fiscal Year 1985-1986 to the Board as of the Effective Date, and the Board shall be responsible for adjustments, revisions, rebates, or increases, if any, with respect thereto.

(b) When an action required to be taken under this Lease can not be timely performed during Fiscal Year 1985-1986 because the specified time for such action is (i) prior to the Effective Date or (ii) so soon after the Effective Date that the action could be timely taken only with extreme hardship to the City or the Board, then such action shall be deemed timely taken for purposes of this Lease if taken as soon as practicable.

ARTICLE X. USE OF CITY OFFICERS AND EMPLOYEES BY THE BOARD

SECTION 10.1. *City Officers and Employees.* Subject to the approval of the Mayor and the head of the agency involved, the City and the Board may enter into agreements whereby the City will provide to the Board the services of officers and employees of the City to carry out the public purposes of the Board.

ARTICLE XI. PARTICULAR COVENANTS

SECTION 11.1. *Disposition of Property.* (a) The Board agrees that it will not sell, lease, sublease, assign, transfer, encumber or otherwise dispose of any part of the Leased Property, or any other real property or personal property which may be acquired by the Board, or its interest in this Lease, without the prior written approval of the City.

(b) The City may dispose of personal property included in the Leased Property only with the written consent of the Board: The Board agrees to adopt rules and procedures for expedited or standing consents to dispositions of personal property valued at less than \$1 million per unit of such property. For dispositions of personal property valued at \$1 million per unit of property or more, the Board shall consent upon receipt of a certificate from the Consulting Engineer to the effect that such personal property may be disposed of without materially adversely affecting the Revenues of the System or impairing the ability of the Board to make any payments required by this Lease or the Agreement or any other agreement to which it may be a party or be bound. If the Board consents to the proposed disposition, it shall release its leasehold interest in the property being disposed of.

(c) The \$1 million per unit value set forth in subsection (b) above may be increased by the Board from time to time by amounts which are designed to reasonably reflect the effects of inflation, if the Board receives an Accountant's Certificate (as defined in the Agreement) concurring in the Board's judgment as to the reasonableness of the amount of such increase without obtaining the consent of the Authority, the holders of the Bonds or any trustee for the holders of the Bonds.

(d) (i) The City will not sell, transfer, or otherwise dispose of real property included in the Leased Property without the Board's written consent. The Board will give such consent upon receipt of a certificate signed by the Consulting Engineer to the effect that the real property to be disposed of may be disposed of without materially adversely affecting the Revenues of the System or impairing the ability of the Board to make any payments required by this Lease or the Agreement or any other agreement to which it may be a party or be bound. If the Board consents, it shall release its leasehold interest in the property being disposed of.

(ii) Notwithstanding the foregoing, the City, with the prior written consent of the Board, may grant interests in the Leased Property which, in the reasonable judgment of the Board, do not interfere with the operation and maintenance of the System and the collection of the Revenues from the System.

SECTION 11.2. *Contracts.* The Board covenants that it will not, without the consent of the City, enter into any contracts requiring the payment of funds or the performance of work or the delivery of goods that extend beyond the end of the Lease Term or any renewal thereof.

SECTION 11.3. *Encumbrances.* The Board may not authorize any use of, or grant any lien, encumbrance, security interest, license, easement or right-of-way in connection with, the Leased Property without the prior written approval of the Commissioner of Environmental Protection of the City. The City may grant temporary licenses to use the Leased Property which do not interfere with the operation and maintenance of the System and the collection of the Revenues from the System.

ARTICLE XII. MISCELLANEOUS

SECTION 12.1. *Further Assurances.* The City and the Board hereby covenant, from time to time, to do all acts and to make or enter into and deliver any contracts, agreements, leases, conveyances or other instruments as may be necessary or appropriate to effectuate this Lease or to better assure, lease, transfer and confirm to the Board the interest granted hereby.

SECTION 12.2. *Termination.* Notwithstanding the provisions of Section 12.1 hereof, the City may terminate this Lease at any time upon 30 days written notice to the Board and the Authority; *provided, however,* no such termination shall take effect until (a) the date on which all Bonds are paid in full or provision therefor shall have been made in accordance with the resolution, trust indenture or other instrument under which they were issued and (b) the City shall have paid or assumed all other liabilities and obligations of the Board.

SECTION 12.3. *No Personal Liability.* Nothing contained in this Lease and no act of the Board or any officer or employee of the City performed or omitted in pursuance, effectuation or implementation thereof shall be construed to give rise to or create any personal liability whatsoever on the part of any present or future individual member or group of individual members of the Board or any officer or employee of the City.

SECTION 12.4. *Waivers and Amendments.* No failure to exercise, and no delay in exercising on the part of the City or the Board, as the case may be, any right, power or privilege hereunder, shall operate as the 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 other right, power or privilege. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law. This Lease may not be amended or modified unless such amendment or modification is in writing, duly authorized by the City, acting either by the Mayor alone or by resolution of the Board of Estimate of the City, and by resolution of the Board and by the Authority.

SECTION 12.5. *Notices.* All notices, requests and other communications under this Lease 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 12.6. *Severability.* In the event that any one or more of the provisions contained in this Lease is or are invalid, irregular or unenforceable in any respect, the validity, regularity and enforceability of the remaining provisions contained in this Lease shall be in no way affected, prejudiced or disturbed thereby.

SECTION 12.7. *Headings.* The descriptive headings of the several Articles and Sections of this Lease are inserted in this Lease for convenience only and shall not be deemed to affect the meaning or construction of any of the provisions hereof.

SECTION 12.8. *Authorized Representatives.* The Board may appoint one or more officers or employees as its authorized representatives for the purpose of taking any action to be taken by the Board hereunder. The Board shall notify the City in writing of its authorized representatives and may change the same by notice in writing, effective when received.

SECTION 12.9. *Effectiveness of this Lease.* This Lease shall become effective, as of the Effective Date, upon the first issuance by the Authority of Bonds, irrespective of the date of its execution and delivery by the parties hereto.

IN WITNESS WHEREOF, this Agreement of Lease has been duly executed by the parties hereto on 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 WATER BOARD

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

**APPROVED:
NEW YORK CITY MUNICIPAL WATER
FINANCE AUTHORITY**

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

APPROVED AS TO FORM:

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