SUSSEX

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1992
SERVICE CONTRACT

between

THE SUSSEX COUNTY MUNICIPAL UTILITIES AUTHORITY

and

THE BOROUGH OF SUSSEX

IN THE COUNTY OF SUSSEX

Dated as of August 17, 1992

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THIS AGREEMENT

made and dated as of August 17, 1992

BETWEEN

THE SUSSEX COUNTY MUNICIPAL UTILITIES AUTHORITY (the"Authority"), a public body politic and corporate of the State of New Jersey,

AND

THE BOROUGH OF SUSSEX, a municipal corporation of the State of New Jersey, situate in the County of Sussex, New Jersey (and hereinafter referred to as the "Borough"),

WITNESSETH

WHEREAS, pursuant to the Municipal and County Utilities Authorities Law, constituting Chapter 183 of the Pamphlet Laws of 1957, of the State of New Jersey, approved August 22, 1957, as amended and supplemented (the "Act"), the Authority was created by virtue of a resolution duly adopted on August 10, 1971, by the Board of Chosen Freeholders of the County of Sussex, New Jersey (the "County") and is a public body politic and corporate of the State of New Jersey organized and existing under the Act constituting a political subdivision and established as an instrumentality exercising public and essential governmental functions to provide for the public health and welfare, with all necessary or proper powers to acquire, construct, maintain, operate or improve works for (1) the accumulation, supply or

distribution of water, (ii) the collection, treatment, purification or disposal of sewage or other wastes, (iii) the operation of a septic tank or other "on-site wastewater system" (as defined in the Act), and (iv) the collection, treatment, recycling, and disposal of solid wastes, and to provide for utility services designed to provide or distribute an adequate supply of water for public and private uses and to relieve the lands and waters in, bordering or entering the County from pollution or threatened pollution from domestic, industrial or other sources, including pollution derived from chemical and hazardous wastes, to provide utility services for the collection, disposal and recycling of solid waste, including sewage sludge in an environmentally sound manner and for improvement of conditions affecting the public health and with all the powers, privileges and authority conferred by the Act; and

WHEREAS, in partial fulfillment of its functions, the Authority did design, finance, construct and put in operation an interceptor sewer system and sewage disposal plant for the transmission, treatment and disposal of certain sanitary sewage and other wastes, as generally described in the Wastewater Facilities Plan for the Upper Wallkill Basin, certified by the New Jersey Department of Environmental Protection and Energy ("DEPE") and the United States Environmental Protection Agency (the "EPA"); and

WHEREAS, the Borough has an existing sewage collection system, and has requested and is willing to have sewage

originating from it or within its territory treated and disposed of by the Authority pursuant to the terms of this Agreement, and has duly authorized its proper officials to enter into and execute for it this Agreement; and

WHEREAS, the Authority is willing to expand the capacity of its Upper Wallkill Plant, and upgrade the level of wastewater treatment provided, in order to allow for connection of the Borough's sewage collection and transmission system to the Upper Wallkill System;

NOW, THEREFORE, in consideration of the premises, of the mutual covenants and agreements herein set forth, and of the undertakings of each party to the other, the parties hereto, each binding itself, its successors and assigns, do mutually covenant, promise and agree as follows:

ARTICLE I

DEFINITIONS

Section 101. Definitions. As used or referred to in this Agreement, unless a different meaning clearly appears from the context:

"Act" means the Municipal and County Utilities Authorities Law, constituting Chapter 183 of the Pamphlet Laws of 1957, of the State of New Jersey, approved August 22, 1957, and the acts amendatory thereof and supplemental thereto;

"Agreement" means this Service Contract;

"Annual Charge" shall have the meaning given to such term in Article IV hereof;

"Authority" shall have the meaning hereinabove given to such term;

"District" means the area within the territorial boundaries of all of the municipal corporations of the State of New Jersey situate in the County of Sussex, except (a) any such municipal corporation, the Governing body of which did, prior to the creation of the Authority, create or join in the creation of a sewerage authority pursuant to Section 9 of the Act; and (b) any such municipal corporation, the Governing body of which adopted a resolution withdrawing from the District in accordance with Section 11 of the Act or Chapter 423 of the Laws of 1971, and has not adopted an ordinance in accordance with Section 11 of the Act determining that the area within the territorial area of such municipal corporation shall again be a part of the District;

"Federal Acts" means the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended by the Federal Water Pollution Control Act Amendments of 1972 (Pub. L. 92-500 and Pub. L. 93-243) and the Clean Water Act of 1977 (Pub. L. 97-217), as the same may be further amended and supplemented;

"Fiscal Year" means the period of twelve calendar months ending with November 30 of any year;

"Franklin Borough" means the Borough of Franklin, in the County of Sussex, New Jersey;

"Force Majeure", as employed herein, means acts of God, strikes, lockouts or other industrial or similar disturbances, acts of the public enemy, orders of any kind of the Government of the United States, of the State or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, tornadoes, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, explosions, partial or entire failure of utilities, shortages of labor, material, supplies or transportation, or any other similar or different cause not reasonably within the control of the party claiming such inability. It is understood and agreed that the settlement of existing or impending strikes, lockouts or other industrial disturbances shall be entirely within the discretion of the party having the difficulty and that the above requirements that any force majeure shall be reasonably beyond the control of the party and shall be remedied with all reasonable dispatch shall be

deemed to be fulfilled even though such existing or impending strikes, lockouts and other industrial or similar disturbances may not be settled and could have been settled by acceding to the demands of the opposing person or persons;

"General charge" shall mean a portion of the Annual Charge as set forth in Article 4;

"Governing body" shall have the meaning given to such term by the Act;

"Hamburg Borough" means the Borough of Hamburg, in the County of Sussex, New Jersey;

"Local Sewerage System" means, with respect to a participant, all sewer systems of the Participant which are or may be connected, or are or may be required under the terms of Article III hereof to be connected, with the Upper Wallkill System, including all collection facilities and sewage transmission facilities owned by such Participant and any extensions or enlargements thereof;

"Operating Charge" shall mean a portion of the Annual Charge as set for in Article 4;

"Participant" shall mean Franklin Borough, Hamburg Borough, Hardyston Township Municipal Utilities Authority, Sussex Borough, Vernon Sewage Transmission Corporation, Wallkill Sewer Company, or any combination thereof, and any municipal corporation, Authority, Person, Partnership, Firm, Corporation, or Public Body having a service contract providing for or relating to the treatment and disposal of sewage collected by means of the Upper

Wallkill System, and the costs and expenses of such treatment and disposal, other than the County of Sussex;

"Phase I-A Project" means the following sewerage facilities in the Upper Wallkill River Basin which has been constructed or acquired by the Authority, with all necessary and incidental connections, manholes, valves, metering stations, equipment, apparatus, structures and appurtenances, and all other real or tangible personal property necessary or desirable for the efficient construction and operation of such facilities;

(a) An interceptor pipeline beginning at a point near the intersection of Franklin Avenue and Cork Hill Road, and continuing in a Northerly direction to the Northern end of Newton Street, within Franklin Borough, at which point it discharges into a sewage pumping station located at the Northern end of Newton Street in Franklin Borough;

(b) An interceptor pipeline between a beginning point near Stanaback Road, within Franklin Borough, and the interceptor pipeline described in (a) above, including a spur interceptor to Fowler Street;

(c) A sewage force main between a beginning point at a sewage Pumping Station located at the Northern end of Newton Street, within Franklin Borough, and continuing in a Northerly direction to a wastewater treatment plant located near the Wallkill River, within the Township of Hardyston;

(d) A sewage pumping station located at the Northern end of Newton Street, within Franklin Borough;

(e) An interceptor pipeline between a beginning point at the intersection of the Lehigh and Hudson River Railroad and Ginger Bread Castle Road, within Hamburg Borough, and a sewage pumping station located approximately 500 feet northerly of the intersection of the abandoned New York Susquehanna and Western Railroad spur and Wallkill Avenue, within Hamburg Borough;

(f) A sewage pumping station located approximately 500 feet northerly of the intersection of the New York Susquehanna and Western Railroad spur and Wallkill Avenue within Hamburg Borough;

(g) A sewage force main between a beginning point at the sewage pumping station described in (f) above, within the Borough of Hamburg, continuing in a westerly direction to a wastewater treatment plant located near the Wallkill River, within the Township of Hardyston;

(h) A sewage pumping station located on State Route 94 in Hardyston Township, approximately 2000 feet north of the intersection of Wheatsworth Road and State Route 94 which discharges into the sewage force main described in (c) above;

(i) A wastewater treatment plant located near the Wallkill River, within the Township of Hardyston, said plant presently being capable of treating and discharging a maximum average daily wastewater flow of two and one-half million gallons per day (2.5 MGD) to sufficient purity to maintain the current New Jersey Department of Environmental Protection Water Quality Standards for the Wallkill River, as well as treating the sewage and septic tank sludges generated within Sussex County, said plant

containing a sludge and septic waste composting facility;

"Phase II Project" shall mean the following additions to the existing Upper Wallkill Wastewater Treatment Plant:

(a) Construction of a third aeration basin, of similar size as the existing aeration basins, including all necessary pumping, piping, electrical facilities, and appurtenances associated with said aeration basin.

(b) Construction of effluent filtration or microscreening facilities of sufficient capacity to treat 3.0 MGD of secondary effluent.

(c) Construction of Ultra-Violet Light disinfection facilitiiies of sufficient capacity to treat 3.0 MGD of plant effluent.

(d) Documentation, satisfactory to the NJDEPE, which confirms that the existing primary and secondary clarifiers are of sufficient size to properly treat 3.0 MGD of sewage.

(e) Construction of a connection to the existing treatment plant, along with a sewage flow metering station, on the existing plant site, to which Sussex Borough may connect its sewage force main.

"Pollution" shall have the meaning given to such term in the Act;

"Services Charges" means rents, rates, fees or other charges for direct or indirect connection with, or the use of services of, the Upper Wallkill System which the Authority, under the provisions of Sections 22 or 23, or both, of the Act, is or may

be authorized to charge and collect with regard to persons or real property;

"Sewage" shall have the meaning given to such term in the Act;

"Sussex Borough" means the Borough of Sussex, in the County of Sussex, New Jersey;

"Upper Wallkill Basin" or "Upper Walkill River Basin" means that area of the District delineated on the map attached hereto marked "Schedule A" and by this reference made a part hereof;

"Upper Wallkill System" means the existing Phase I-A Project and all additions, extensions and improvements thereto or any part of the foregoing, and any renewals or replacements thereof, acquired or constructed or to be acquired or constructed by the Authority for the purposes of the Authority under the Act, but does not include the Local Sewage System of any Participant.

Section 102. Short Title. This agreement may hereafter be cited by the Authority or by the Borough and is herein sometimes referred to as the "1992 Sussex Borough Service Contract".

Section 103. Severability of Invalid Provision. If any one or more of the covenants or agreements provided in the Agreement, on the part of the Authority or the Borough to be performed should be contrary to law, then such covenant or covenants, agreement or agreements, shall be deemed separable from the remaining covenants and agreements, and shall in no way affect the validity of the other provisions of the Agreement.

ARTICLE II

CONSTRUCTION, OPERATION AND ENLARGEMENT
OF THE PHASE II PROJECT

Section 201. Construction, Operation and Enlargement of Phase II Project and the Upper Wallkill System. The Authority shall with all practicable speed prepare and complete plans for the construction and financing of the Phase II Project, and, upon completion of such financing or the making of arrangements therefor satisfactory to the Authority, the Authority shall with all practicable speed construct and complete the Phase II Project and place the same in operation; provided, however, that (A) the Authority shall not undertake the acquisition or construction of any portion of the Phase II Project until such time as the Authority and the NJDEPE have executed a loan agreement acceptable for the financing of the construction of the Phase II Project, and (B) the Authority shall not award construction contracts for any portion of the Phase II Project until such time as the Borough and the NJDEPE have executed a loan agreement for the financing of the construction of its Local Sewerage System. The Authority will thereafter operate in accordance with applicable requirements of governmental authorities having jurisdiction with respect thereto, and maintain, alter, improve, renew and replace, and subject to the terms of Section 202 and Section 601 hereof, enlarge and extend the Upper Wallkill System so as to treat and dispose of all sewage originating within the

service area of the Upper Wallkill System.

The Authority shall not be required to construct the Phase II Project should it not be able to obtain all necessary permits and approvals from the NJDEPE or any other governmental authority having jurisdiction. The Authority shall also not be required to construct the Phase II Project unless and until the Borough has obtained all necessary permits and approvals required for construction of the pumping station and force main necessary to convey its wastewater to the Upper Wallkill System.

Section 202. Public Hearings Prior to Enlargement and Extension of the Upper Wallkill System. The Authority shall not construct, and nothing in this Agreement shall be deemed to require the Authority to construct, any further enlargement or extension of the Upper Wallkill System unless it shall (A) have caused to be prepared by its consulting engineers a study with respect to such further enlargement or extension which sets forth an estimate as of the then current Fiscal Year of the total cost and expense of planning, financing, constructing and acquiring the enlargement or extension, and putting it in operation, the estimated date of completion of the enlargement or extension, and an estimate of the Annual Charges payable by each Participant for or with respect to the five (5) Fiscal Years immediately succeeding the Fiscal Year in which completion of the enlargement or extension is estimated by the Authority, (B) file a copy of such study with each Participant, (C) cause notice of the time, subject matter and place of the hearing hereinafter mentioned (i)

to be published at least once in a newspaper of general circulation published in the County of Sussex, New Jersey, and (ii) to be mailed to each Participant, and (D) not sooner than fifteen (15) days after such publication and mailing and thirty (30) days after such filing, hold a public hearing on such study at which any Participant may appear and, by agent or attorney, be heard with respect thereto.

Section 203. Project Plans to be Approved. Before undertaking construction of any enlargement of the Upper Wallkill System, the Authority will submit the plans and specifications for such construction to the DEPE (or a successor thereto) for approval as to sufficiency of design of the Authority's proposed enlargement project, and compliance with standards as then promulgated by DEPE, and all necessary permits shall be obtained by the Authority from DEPE to proceed with such construction, and all necessary approvals shall be secured from any other agency of the State of New Jersey or any other governmental authorities which have jurisdiction or authority as to type or degree of treatment of sewage by said enlarged sewage treatment plant or as to effluent therefrom.

Section 204. Insurance. The Authority will at all times maintain with responsible insurers all such insurance as is customarily maintained with respect to sewerage systems of like character against loss or damage to the Upper Wallkill System and against public or other liability to the extent not less than reasonably necessary to protect the interests of the Authority

and all Participants, and will at all times maintain with responsible insurers all insurance reasonably required and obtainable within limits and at costs deemed reasonable by the Authority to indemnify and save harmless all Participants against all liabilities, judgments, costs, damages, expenses and attorneys' fees for loss, damage or injury to person or property resulting directly or indirectly from the operation or a failure of operation of the Upper Wallkill System caused by the negligence or willful act of the Authority, its employees or agents.

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ARTICLE III

CONNECTIONS TO THE UPPER WALLKILL SYSTEM

Section 301. Connections Required. Upon notice from the Authority, the Borough will permit its Local Sewerage System, or the discharge pipes therefrom, to be connected with the Upper Wallkill System, at such point which the Authority and the Borough may mutually agree upon prior to the commencement of the construction of the Phase II Project. The Borough, at its own cost and expense, will construct, install and operate any and all extensions of its Local Sewerage System necessary to cause the same to reach to and deliver sewage at the said point of connection, and, after the making of such connection or connections, will keep its Local Sewerage System connected with the Upper Wallkill System, and will deliver and discharge into the Upper Wallkill System all sewage originating in its territory and collected in its Local Sewerage System.

Section 302. Sewage Not Required to be Discharged Into Upper Wallkill System. Notwithstanding the provisions of Section 301 hereof, the Borough shall not be obligated to deliver and discharge into the Upper Wallkill System sewage which the Authority may by its written consent exempt from delivery and discharge into the Upper Wallkill System.

Section 303. Sewage to be Accepted for Discharge Into Upper Wallkill System. The Authority hereby agrees to accept and

treat, from the Borough, sewage (including domestic, commercial, institutional and industrial sewage, plus associated infiltration, as provided by Authority Rules and Regulations) of a volume up to 464,000 gallons per day (monthly average), provided the strength and characteristics of such sewage comply with Authority Rules and Regulations as set forth in Section 501 hereof and N.J.S.A. 40:14B-20 (12). For purposes of this Section, sewage shall include the liquified waste material/sludge generated by operation of the Borough's water filtration plant located in Wantage Township, New Jersey. The Borough shall be responsible for making, constructing, or performing any necessary connection, facilities, or tasks required in order to discharge said liquified wastewater/sludge into its local sewerage system for transmission to and treatment at the Authority's Upper Wallkill Plant. Notwithstanding the provisions of Section 301 hereof or any other Section hereof, the Borough shall not have the right under this Agreement to deliver and discharge into the Upper Wallkill System any sewage or other wastes except either (1) sewage originating within the territorial boundaries of the Borough up to a maximum of 464,000 gallons per day (monthly average) as outlined above; and (2) any other sewage delivered and discharged into the Upper Wallkill System by the Borough with the written consent of the Authority.

Section 304. Meters and Measurements of Sewage and Records Thereof. (A) The Authority will provide, install and use, as part of the Phase II Project a meter (which meter shall be

calibrated at least annually) or other devices, methods or procedures for determining the volume (directly, by differentials or otherwise), and from time to time as necessary make tests and use other means for determining the quality and other characteristics, of the sewage which shall be delivered and discharged into the Upper Wallkill System by or for the account of the Borough. Said meter, and all existing meters associated with each Participant shall, in accordance with sound engineering practice, determine such volume and, when necessary, such quality and characteristics of sewage received from every participant. In the event of malfunction or failure of any meter or other device, the Authority may use its estimates as to flow, quality and other characteristics of sewage until such meter or device is repaired or replaced, and any such required repair or replacement shall be promptly made or undertaken by the Authority. Such estimates to be so used shall be based on the monthly average of flow, quality and other characteristics of sewage for the prior twelve (12) months (or lesser period of months) prior to the malfunction or failure of any such meter or other device. A copy of every such determination made by the Authority as to each Participant with respect to any Fiscal Year shall be mailed to each Participant at its usual place of business, and for all purposes of the 1992 Sussex Borough Service Contract, shall be conclusively deemed to have been made in accordance with the 1992 Sussex Borough Service Contract and to be correct at the expiration of the period of ninety (90) days after such mailing

except as may be provided by an award in an arbitration or the final judgment of a court of competent jurisdiction in any action or proceeding begun by a Participant within such period.

(B) The Authority will make and keep permanent records of the volume and, when ascertained, the quality and other characteristics of sewage delivered and discharged into the Upper Wallkill System by or for the account of each Participant. For the purpose of determining the volume, quality and other characteristics of any sewage which shall or may be delivered and discharged into the Upper Wallkill System by the Borough the Authority shall have the right at all reasonable times to enter upon and inspect the Local Sewerage System or drainage systems of the Borough, and to take normal samples under ordinary operating conditions and make tests, measurements, and analyses of sewage or other wastes in, entering or to be discharged into such sewer or drainage systems. The Authority will make and keep a record of tests, measurements and analyses of such sewage or other wastes entering such sewer or drainage systems, and upon the written request of any Participant will make available to such Participant the results of such tests, measurements or analyses.

(C) The Borough shall have the right at all reasonable times when accompanied by an employee of the Authority to enter upon and inspect the Upper Wallkill System, including particularly all meters and flow measuring devices.

ARTICLE IV

AUTHORITY CHARGES AND PAYMENT THEREOF

Section 401. Obligation of the Borough. The Borough shall make payments (herein sometimes called "Annual Charges") annually to the Authority for or with respect to the facilities and services made or to be made available to it hereunder by the Authority regarding the treatment and disposal of sewage and other wastes originating within its territory.

Section 402. Annual Charge. (A) The Annual Charge for each Fiscal Year payable hereunder by the Borough, beginning in the year in which the Borough initiates discharge into the Upper Wallkill System, shall consist of and include an Operating Charge and a General Charge. The Operating Charge to all Participants shall at all times be sufficient to pay or provide for the expenses of operating, repair and maintenance of the Upper Wallkill System including (without limitation of the foregoing) insurance, renewals and replacements, and the cost of all enlargements and alterations of the Upper Wallkill System not otherwise provided for. The General Charge to all Participants shall at all times be sufficient to pay the principal of and interest on any and all bonds, loans or other obligations of the Authority issued to finance in whole or in part the Upper Wallkill System as the same become due, and to provide for any deficits of the Authority resulting from failure to receive sums

payable to the Authority by any Participant or any other person, partnership, firm or corporation, or from any other cause, and to provide and maintain such reserves or sinking funds for any of the foregoing purposes as may be required by the terms of any contract or other obligations of the Authority. The Annual Charges made and imposed by the Authority shall be computed at rates which shall at all times be uniform as to all Participants for the same type, class and amount of use or services of the Upper Wallkill System, and the rates applicable with respect to sewage delivered and discharged into the Upper Wallkill System by any Participant shall not be more favorable to such Participant than the rates applicable with respect to sewage so delivered and discharged by any other Participant. The Authority, prior to each Fiscal Year, shall develop a schedule of such rates in a manner consistent with the Act and, from time to time whenever necessary after prescribing such schedule (but only after public hearing thereon held by the Authority, at least twenty days after notice of the time and place on such hearing shall have been mailed to each Participant at its usual place of business), the Authority shall revise the schedule of such rates, which shall at all times comply with the terms of any contract or other obligation of the Authority and shall be based or computed on the quantity, quality and other characteristics of sewage so discharged and delivered. Any Participant aggrieved by any part of such a revised schedule which fails to conform with the terms and provisions of this Agreement may institute appropriate

judicial proceedings to have the same reviewed for the purpose of obtaining correction of said part of such revised schedule.

(B) The portion of the General Charge to be included in the Annual Charge of each Participant shall bear the same ratio to the total amount to be included in the General Charge pursuant to subsection (A) of this Section as the amount of the sewage delivered by such Participant into the Upper Wallkill System (which amount, for the purposes of this subsection (B), shall in no event be less than such Participants Assigned Minimum Flow of Wastewater) bears to the total amount of sewage delivered by all Participants into the Upper Wallkill System. The Borough's Assigned Minimum Flow shall be 312,000 gallons per day (annual average) beginning on the date of initiation of discharge to the Upper Wallkill System.

(C) The portion of the Operating Charge to be included in the Annual Charge of each Participant shall bear the same ratio to the total amount to be included in the Operating Charge pursuant to subsection (A) of this Section as the amount of the sewage delivered by such Participant into the Upper Wallkill System (which amount shall in no event be less than the Assigned Minimum Flow) bears to the total amount of sewage delivered by all Participants into the Upper Wallkill System. The Borough's Assigned Minimum Flow shall be 312,000 gallons per day (Annual average), beginning on the date of initiation of discharge to the Upper Wallkill System.

Section 403. Payment of Annual Charges by the Borough.

(A) On or before December 15 of each Fiscal Year, beginning in the year in which the Borough initiates discharging into the Upper Wallkill System, the Authority will make an estimate of the amount of the Annual Charge which will become payable by the Borough for such Fiscal Year, and make and deliver to the Borough its certificate signed by an Authority Officer stating such estimated amount of such Annual Charge for such Fiscal Year.

(B) The Borough shall pay to the Authority in each Fiscal Year the estimated amount of the Annual Charge stated in the certificate delivered to it by the Authority as aforesaid in four equal payments on or before February 15, May 15, August 15 and November 15 of such Fiscal Year.

(C) On or before December 31 of the Fiscal Year immediately succeeding the Fiscal Year in which the Borough initiated discharge into the Upper Wallkill System and on or before December 31 of each Fiscal Year thereafter, the Authority will make and deliver to the Borough its certificate signed by an Authority Officer stating (1) the amount of the Annual Charge with respect to the Borough for the immediately preceding Fiscal Year computed in accordance with Section 402; and (2) the part (if any) of such Annual Charge not previously paid to the Authority by the Borough pursuant to and in accordance with Paragraph (B) of this Section, accompanied by an Accountant's Certificate approving the statements in such certificate, and on or before February 1 immediately following the close of such

Fiscal Year, the Borough will pay to the Authority the unpaid part of any Annual Charge so stated in such certificate. The Annual Charge, payable by the Borough for each Fiscal Year, shall in all events be due and payable no later than February 1 immediately succeeding the close of such Fiscal Year, but current provision for and payment of such Annual Charges on an estimated basis shall be made by the Borough in accordance with the foregoing Paragraphs of this Section. In the event that the amount of the Annual Charge made and charged by the Authority to and payable by the Borough for any Fiscal Year computed as provided in this Article shall be less than the estimated amount of such Annual Charge stated in the certificate delivered in such Fiscal Year to it by the Authority and paid by it to the Authority, the Authority will return the amount of the difference between said amounts of Annual Charges to the Borough on or before February 15 of the immediately succeeding Fiscal Year by credit against payments due to the Authority under the provisions of Paragraphs (B) or (C) of this Section.

(D) The Borough will in each year make all budgetary, emergency and other provisions or appropriations necessary to provide for and authorize the prompt payment by the Borough to the Authority of all amounts payable by the Borough pursuant hereto, all as stated in the certificates delivered to it by the Authority as aforesaid.

Section 404. Limitation on Service Charges. The sums payable by the Borough to the Authority under the provisions of

this Article are and shall be in lieu of Service Charges with regard to real property in the Borough directly or indirectly connected with the Upper Wallkill System and real property connected to the Local Sewerage System of the Borough connected with the Upper Wallkill System in accordance with Article III. So long as the Borough shall not be in default in the making of any payments becoming due from it under the provisions of this Article, the Authority will suspend Service Charges with regard to such real property. For the purposes of this Section, the Borough shall be deemed to be in default if the Borough, for a period of thirty (30) days after its due date, shall fail to make in full to the Authority any payment required to be made by it under the provisions of this Agreement.

Section 405. Payment of Connection Fees (A) The Borough shall pay to the Authority a Connection Fee, the purpose of which is to reimburse the Authority's existing Participants as required by Section 601 of their respective Service Contracts for debt service previously paid by the existing Participants on the existing Phase I-A Upper Wallkill System, from which the Borough will realize a benefit. The Connection Fee shall total $935,000, and shall be paid to the Authority in ten (10) equal annual installments of $93,500 per year, beginning in the year in which the Borough initiates discharges into the Upper Wallkill System. Payments shall be made in equal quarterly installments, payable on the same dates as the Authority's Annual Charge.

(B) The Borough shall not issue either a Certificate of

Occupancy or a sewer connection permit to any proposed new connection to the Borough's Local Sewerage System, after the date of initiation of discharge by the Borough into the Upper Wallkill System, until such time as the Borough receives a certificate issued by the Authority confirming that the Authority's connection fee (established as per NJSA 40:14B-22) has been paid by the party proposing to connect to the Borough's Local Sewerage System.

Section 406. Loss of Allocation in the Event of Non-Payment of Charges. (A) In the Event the Borough fails to pay, in full, any Annual Charge or other payment due the Authority under the provisions of this Agreement for a period of thirty (30) days after its due date, it shall be deemed in default. Upon such default, the Authority, in addition to any and all other legal or equitable remedies it might have under this Agreement or pursuant to law, shall have the right to revoke, rescind and take back all unused portions of the sewage flow allocation granted to the Borough pursuant to Section 303 of this Agreement. For purposes of this Section, the unused portion of the Borough's allocation shall be the difference between the 464,000 gpd allocation pursuant to Section 303 above, and the average daily gallonage actually discharged by the Borough to the Upper Wallkill Plant during the six (6) month period immediately preceding the default. Should the Borough have discharged sewage into the Upper Wallkill Plant for less than six (6) months prior to default, the unused portion of the allocation shall be 464,000

gpd less the average daily gallonage disposed of by the Borough at the Upper Wallkill Plant since the Borough initiated discharge to the Upper Wallkill Plant. Notwithstanding provisions of this Section, the Borough will continue to be obligated to pay Annual Charges as provided in Section 401.

(B) In the event of the revocation/recision of the Borough's unused sewerage flow allocation pursuant to subparagraph (A) above, the Authority shall retain such revoked/rescinded allocation for a period of twelve (12) months during which it will not redistribute it to other parties. During said twelve (12) month period the Borough may cure the default giving rise to the revocation/recision by paying all payments due to the Authority at the time payment is made, together with interest, at the rate of 1-1/2% per month from the due date until the date payment is made, on all such payments which are past due. Upon such cureing during the said twelve (12) month period the entire revoked/rescinded allocation shall be restored to the Borough. Upon the expiration of the said twelve (12) month period without the default being cured as above stated, the Authority shall be free to distribute the revoked/rescinded allocation to third parties. Should the Borough effect a cure of the defect thereafter, there shall be restored to the Borough so much of the revoked/rescinded allocation which has not been redistributed out to third parties as of the date of cure.

Section 407. Reimbursement to Authority Upon Discontinuance of Project. The parties recognize that the Authority will incur expenses, in excess of expenses funded by the Sussex Borough Escrow Agreement, incidental to the proposed Phase II Project in order to facilitate the ability of the Borough to connect its sewage collection system to the Upper Wallkill System. The parties further recognize that such will entail the Authority incurring debt for funding design and permitting activities, and that in the event the Phase II Project is discontinued at some point prior to conclusion, there would be no benefit to the Authority or its present Participants. Consequently, to ensure that the Authority's present Participants do not suffer an inequitable loss as a result of the Authority's willingness to participate in the Phase II Project, the parties hereby agree that should the Phase II Project be discontinued or fail to be implemented for any reason other than the intentional or negligent acts or omissions of the Authority, the Borough shall reimburse the Authority for all reasonable costs and expenses incurred by the Authority incidental to the Phase II Project, including but not limited to, expenses incurred for or in connection with the design and permitting of the expansion of the Upper Wallkill system which was needed to accommodate the Borough of Sussex, and financing costs and debt service connected with the Phase II Project. The Authority shall certify to the Borough the amount for which reimbursement is due and shall supply the Borough, at the Borough's request, with documentation, including

vouchers, invoices, receipts etc. supporting the claimed amount. Reimbursement shall be paid over a period of three years in equal annual installments beginning in the year in which the Authority provides said certification.

ARTICLE V

OPERATION OF THE UPPER WALLKILL SYSTEM
AND LOCAL SEWERAGE SYSTEM

Section 501. Rules and Regulations. (A) The Authority may at any time promulgate, issue, publish, and from time to time amend, supplement and enforce, all such rules and regulations concerning the Upper Wallkill System or the business and affairs of the Authority as may be permitted by law, including but not limited to rules and regulations regulating the making of connections to the Upper Wallkill System or the use or services of the Upper Wallkill System or prohibiting or regulating the discharge into the Upper Wallkill System from any sewer, sanitation or drainage systems connected therewith of (a) storm water drainage from ground surface, roof leaders or catch basins or from any other source, (b) industrial wastes, or (c) oils, acids, garbage, metallic salts, radioactive, toxic or explosive materials or any other substances which, alone or in combination with other substances discharged into the Upper Wallkill System, are or may be in the opinion of the Authority injurious or deleterious to the Upper Wallkill System or to its efficient operation, or the Wallkill River, or both. The Borough shall fully comply with such rules and regulations and will cause the same to be fully observed and complied with throughout its territory. Such rules and regulations may include lists of harmful wastes, the discharge of which into the Upper Wallkill System or any sewer, sanitation or drainage system connected

therewith shall be prohibited. In the enforcement of such rules and regulations (or in the enforcement of Annual Charges), the Authority may refuse to permit or continue the connection to the Upper Wallkill System of properties in the Borough for good cause. Such refusal shall not be deemed to result in any violation by the Authority of the provisions of this Agreement as to construction or operation of the Upper Wallkill System or the charging or collection of Annual Charges or any other matter. All such rules and regulations and any amendments thereof shall take effect as to the Borough sixty (60) days after a copy thereof shall have been mailed to the Borough and, for all purposes of this Agreement, shall be conclusively deemed to have been made in accordance with this Article at the expiration of said period of sixty (60) days except as may be provided by the final judgment of a court of competent jurisdiction in an action, or determined pursuant to arbitration as hereinafter mentioned, begun by the Borough within such period. Any controversy arising out of or relating to such rules or regulations may, upon notice given by the Borough to any other Participant under contract with the Authority which may be affected thereby, be settled by arbitration in accordance with the rules then obtaining of the American Arbitration Association and any decision rendered shall be binding upon the Borough and the Authority; provided, however, that any such decision which would prevent the Authority from complying with the provisions of any contract or other obligation

of the Authority with or for the benefit of holders of its bonds, notes or other obligations shall not be binding upon the Authority.

(B) The Authority may from time to time fix, charge and collect reasonable rates or other charges for the discharge into the Upper Wallkill System from the Borough of sewage in volumes or of a quality or other characteristics which are not in compliance with This Agreement or said rules and regulations then in effect. Such charges shall equal the increase in the cost of managing the effluent or the sludge of the Upper Wallkill System as determined by the Authority.

Section 502. Construction and Operation of Local Sewerage System. (A) The Borough shall proceed to plan, finance, acquire and construct as part of its Local Sewerage System all such sanitary sewage collection facilities as are necessary or convenient, together with the Upper Wallkill System of the Authority, for the relief of waters within or bordering the territorial boundaries of the Borough from pollution or threatened pollution by sewage industrial and other wastes arising from sources within said boundaries. The Borough will at all times operate its Local Sewerage System in such a manner so that the Borough will at all times be in compliance with the provisions of the Federal Acts and any rules and regulations promulgated pursuant thereto and any laws of the State of New Jersey with respect to the collection, treatment and disposal of

sewage, including by way of illustration rather than limitation, any rules and regulations of DEPE (or any successor thereto). The Local Sewerage System of the Borough shall be operated and maintained in such a manner as to exclude, to the maximum reasonable extent, excessive infiltration or storm water inflow therefrom, and in the event such excessive infiltration or inflow shall exist or occur the Borough shall promptly make all reasonable repairs and take all other measures necessary or desirable to reduce the amount or volume thereof to normally allowable levels which are acceptable to the Authority and DEPE (or any successor or successors thereto). In connection with any such excessive infiltration or inflow condition, the Borough shall undertake with all practicable speed any required sewer system evaluation survey and necessary or desirable rehabilitation.

(B) The Borough agrees to take all available administrative steps, and pursue any and all remedies provided by law, to enforce compliance, in the operation of its Local Sewerage System, with all rules and regulations promulgated by the Authority, and to adopt and maintain in full force and effect a sewer use ordinance in compliance with the rules and regulations of the DEPE and EPA. The Borough further agrees to comply with all EPA requirements relating to user charges.

(C) The Borough shall not make or permit any new connection to or extension of its sewer, sanitation or drainage systems

which is so designed as to permit entrance directly or indirectly into the Upper Wallkill System of storm water drainage from ground surface, roof leaders, catch basins or any other source. The Borough, before making any new connection to or extension of its said sewer, sanitation or drainage systems, will submit the plans therefor to the Authority for its approval and, in making the same, will permit the Authority to inspect the work, and will comply with all requests of the Authority with respect thereto reasonably designed to assure exclusion from the Upper Wallkill System of any such storm water drainage. In the event that the Borough discharges sewage into the Authority's Upper Wallkill System, the volume of which is in excess of 464,000 gallons per day (monthly average) allocated to the Borough pursuant to Section 303 of this Agreement, the Borough shall pay to the Authority a surcharge for each and every gallon in excess of its allocation. The amount of such surcharge shall be in accordance with the Annual Rate Schedule of the Authority then in effect, and said amount shall apply to all Participants. Such surcharge shall be paid in addition to and not as a substitute for the standard charge for treatment of said excess gallonage. Surcharges for a particular quarter shall be billed the following quarter and payment shall be due at the time that the standard quarterly bill for sewage treatment services is due. The Authority shall include said surcharge amount in its Annual Rate Schedule each year.

Section 503. Accounts. The Authority will keep proper books of record and account in which complete and correct entries shall be made of its transactions relating to the Upper Wallkill System or any part thereof, and which, together with all other books and papers of the Authority, shall at all reasonable times be subject to public inspection. The Authority will cause its books and accounts to be audited annually by a certified public or registered municipal accountant selected by the Authority, and annually within one hundred (100) days after the close of each Fiscal Year, copies of the reports of such audits so made shall be furnished to the Authority and to the Borough, including statements in reasonable detail accompanied by a certificate of said accountant, of financial condition, of revenues and operating expenses, and of all funds held by or for the Authority.

ARTICLE VI

MISCELLANEOUS

Section 601. Contracts With or Service to Others. (A) The Authority will not enter into any agreement providing for or relating to the treatment and disposal of sewage originating in the Borough or sewage originating outside the Borough collected in sewers which at the date of this Agreement are connected with the Local Sewerage System of the Borough, unless (1) the other contracting party shall be the Borough or (2) the Borough shall have given its written consent thereto; provided, however, that nothing in this Agreement contained shall restrict in any way the right and power of the Authority, in its discretion, at any time and from time to time, to enter into agreements with any municipal corporation or with any other body, person, partnership, firm or corporation providing for or relating to the disposal of sewage or with respect to the delivery or discharge into the Upper Wallkill System of sewage or other wastes originating within or without the District, provided that (a) the charges with respect to such sewage or other wastes delivered and discharged into the Upper Wallkill System made and imposed with respect thereto or charged and collected pursuant to the Act shall not be computed or established at any rates less favorable to the Authority than the rates applicable with respect to sewage delivered and discharged into the Upper Wallkill System by the

Borough, and the terms and conditions of any such agreement shall not be less favorable to the Authority than the terms and conditions of this Agreement and (b) prior to entering into any contract for sewage disposal with other potential participants, an equitable system will be developed by the Authority and the Participants and included in each such contract to effect, through the rates, rents, fees or other charges imposed by each such contract, a reimbursement to the Participants of those portions of the Annual Charges theretofore paid to the Authority by the Participants representing the principal of and interest on all bonds, notes or other obligations of the Authority issued to pay for the costs of planning, financing, acquiring, constructing and operating that portion (which may or may not be determined by the Authority on a percentage basis) of the Upper Wallkill System which exceeds that required to accept from and service the daily flows from the existing Participants, including the Borough.

(B) Subject to all applicable statutes, rules, regulations, and ordinances applicable to and governing same, the Borough shall have the right to seek additional users outside of the Borough's boundary lines for any excess, unused, allocation it might have pursuant to this agreement.

Section 602. Enforcement. (1) The Authority will at all times take all reasonable measures permitted by the Act or otherwise by law to collect and enforce prompt payment to it or for it of all Service or Annual Charges prescribed, fixed,

certified or charged by it in accordance with this Agreement. If any payment or part thereof due to the Authority from the Borough shall remain unpaid for thirty (30) days following its due date, the Borough shall be charged with and will pay to the Authority interest on the amount unpaid from its due date until paid at the maximum applicable legal rate of interest, and the Authority, in its discretion may charge and collect Service Charges with regard to persons and real property directly or indirectly connected to the Upper Wallkill System sufficient to meet any default or deficiency in any payments herein agreed to be made by the Borough. If in any such case Service Charges are so collected, the amount so collected by the Authority will be credited against the amount of such default or deficiency or any payments then or theretofore due to the Authority from the Borough under the provisions of Article IV hereof, and the Authority will furnish to the Borough a list of the names of the persons making payment to the Authority of such Service Charges and of the amounts so paid by such persons respectively, and the Borough will give fair and proper credit to such persons for the amounts so paid by them.

(2) Every obligation assumed by or imposed upon the Borough by this Agreement shall be enforceable by the Authority by appropriate action, suit or proceeding at law or in equity, and the Authority may have and pursue any and all remedies provided by law for the enforcement of such obligations including the remedies and processes provided by the Act with respect to

Service Charges or other obligations.

(3) Failure on the part of the Authority or of the Borough in any instance or under any circumstances to observe or fully perform any obligation assumed by or imposed upon it by this Agreement shall not make the Authority liable in damages to the Borough or any Participant, or the Borough liable in damages to the Authority or any Participant, or relieve the Borough from making any payment to the Authority provided the Authority continues (unless such continuation is rendered impractical by reason of the occurrence of Force Majeure) to accept and treat sewage from the Borough or fully performing any other obligations required of it under this Agreement, but the Borough may have and pursue any and all other remedies provided by law for compelling performance by the Authority of said obligation assumed by or imposed upon the Authority.

Section 603. Certain Acts Not a Waiver. Acceptance by the Authority into the Upper Wallkill System from the Borough of sewage in a volume or at a rate or with characteristics exceeding or violating any limit or restriction provided for by or pursuant to this Agreement in one or more instances or under one or more circumstances shall not constitute a waiver of such limit or restriction or of any of the provisions of this Agreement and shall not in any way obligate the Authority thereafter to accept or make provision for sewage delivered and discharged into the Upper Wallkill System in a volume or at a rate or with characteristics exceeding or violating any such limit or

restriction in any other instance or under any other circumstance.

Section 604. Special Consents by Borough. Whenever under the terms of this Agreement the Borough is authorized to give its written consent, such consent may be given and shall be conclusively evidenced by a copy, certified by its Clerk and under its seal, of a resolution purporting to have been adopted by its governing body and purporting to give such consent.

Section 605. Special Consents by Authority. (A) Whenever under the terms of this Agreement the Authority is authorized to give its written consent, such consent may be given and shall be conclusively evidenced by a copy, certified by its Secretary and under its seal, of a resolution purporting to have been adopted by the Authority or its members and purporting to give such consent.

(B) Whenever under the terms of the Agreement, the Authority is authorized to give its written consent, the Authority, in its discretion, may give or refuse such written consent and, if given, may restrict, limit or condition such consent in such manner as it shall deem advisable.

Section 606. Term of Agreement. This Agreement shall come into effect upon its execution and delivery by or on behalf of the Borough and the Authority, and shall thereafter be and remain in full force and effect, but at any time after five (5) years from the date of this Agreement and after payment in full of all obligations of the Authority, including its bonds, notes or other

obligations, original or refunding or both, issued to finance the planning, financing, construction, replacement, maintenance or operation of the Upper Wallkill System, the Borough and the Authority may agree in a signed writing to terminate this Agreement.

Section 607. Obligation of the Authority. All bonds, notes or other obligations of the Authority referred to in this Agreement or to be issued by the Authority shall, for all purposes of this Agreement be the sole obligation of the Authority and shall not in any way be deemed a debt or liability of the Borough.

Section 608. Pledge or Assignment. The Authority may at any time assign or pledge for the benefit and security of the holders of bonds, notes or other evidence of indebtedness heretofore or hereafter issued by the Authority any of its rights under the provisions of this Agreement including but not limited to its rights to receive payments from the Borough, and thereafter this Agreement shall not be terminated, modified, amended, supplemented or changed by the Authority or the Borough except in the manner (if any) and subject to the conditions (if any) permitted by the terms and provisions of such assignment or pledge.

Section 609. Execution in Counterparts. This Agreement may be executed in any number of counterparts each of which shall be executed by the Authority and the Borough, and all of which shall be regarded for all purposes as one original and shall

constitute and be but one and the same.

IN WITNESS WHEREOF, the Authority and the Borough have caused their respective corporate seals to be hereunto affixed and attested and these presents to be signed by the respective officers thereunder duly authorized and this Agreement to be dated as of the day and year first above written.

THE SUSSEX COUNTY MUNICIPAL
UTILITIES AUTHORITY

(SEAL)

BY _____
JoAnn D'Angeli, Chairman

ATTEST:

_____
Kurt Braun, Secretary

THE BOROUGH OF SUSSEX

(SEAL)

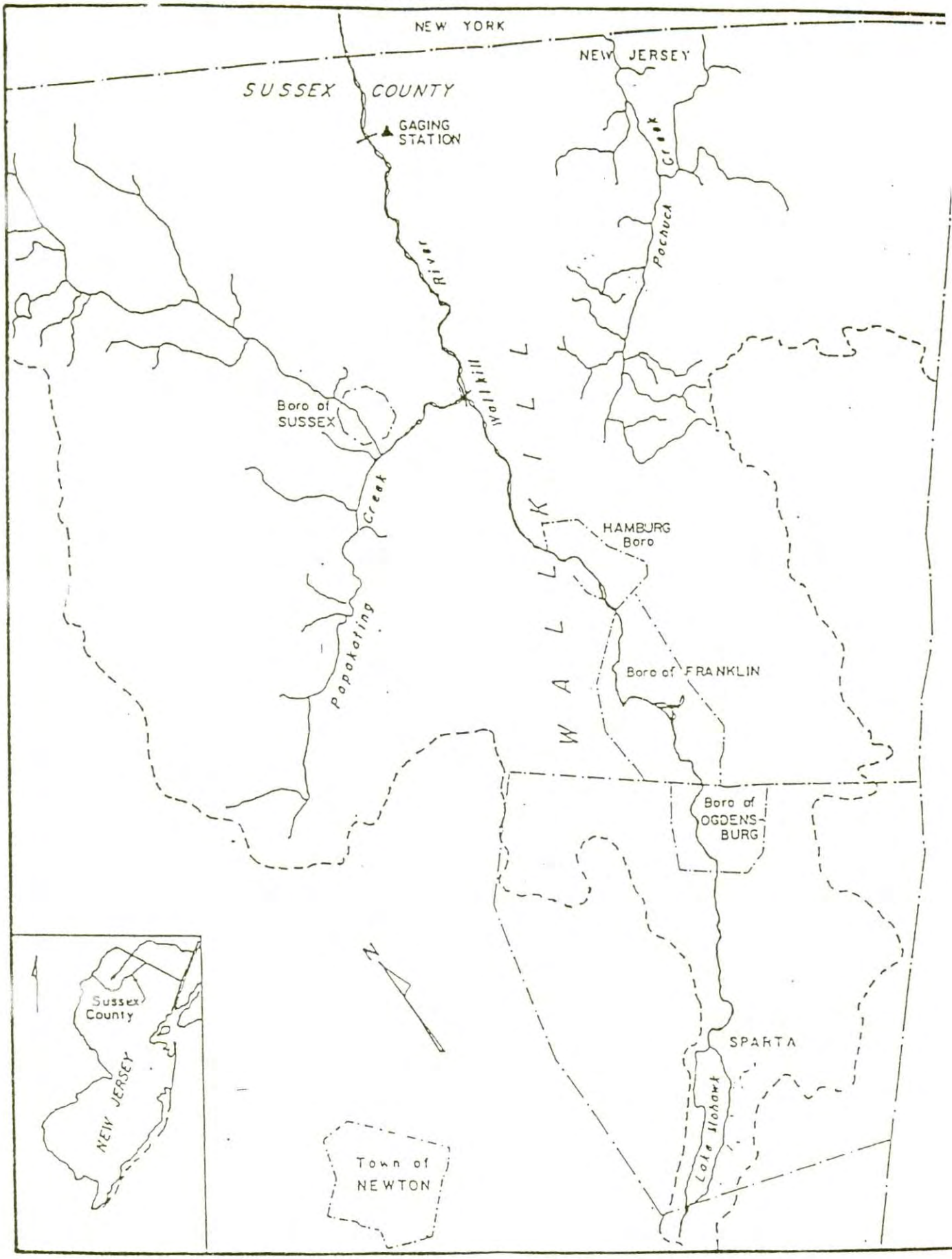
ATTEST:

BY _____
Peter Horvath, Mayor

_____
Borough Clerk

le\wp51\susart6

APPENDIX A


NEW YORK
NEW JERSEY
SUSSEX COUNTY
GAGING STATION
Pochuck Creek
Wallkill River
Boro of SUSSEX
Papakating Creek
HAMBURG Boro
Boro of FRANKLIN
Boro of OGDENSBURG
SPARTA
Lake Mohawk
Town of NEWTON
Sussex County
NEW JERSEY