

WATER PURCHASE AGREEMENT

By and Between

New Jersey-American Water Company, Inc.  
A public utility corporation of the State of New Jersey

And

The City of Wildwood  
In the County of Cape May,  
A municipal corporation of the State of New Jersey

Dated: As of November 30, 2003

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Schedule A –Purchase Limitations and Requirements

THIS WATER PURCHASE AGREEMENT, ("Agreement") is made as of the 30 day of November, 2003, by and between New Jersey-American Water Company, Inc., a public utility corporation of the State of New Jersey with its principal office at 500 Grove Street, Haddon Heights, New Jersey, 08035 ("Company") and the City of Wildwood in the County of Cape May, a municipal corporation with its principal office at 4400 New Jersey Avenue, Wildwood, New Jersey 08260 ("City").

WHEREAS, City has available a sufficient supply of water and sufficient capacity to deliver water and is willing to make water available to Company as provided herein; and

WHEREAS, Company desires to purchase water from the City to assure an adequate supply of water to meet the needs of its customers.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth below, the parties hereby agree as follows:

The following terms used in this contract shall, unless the context clearly establishes otherwise, have the following meanings:

1. Definitions.

- A. "Annual Purchase Period" or "APP" is, that period commencing on January 1 and ending December 31 of each year beginning in 2004.
- B. "Annual Purchase Requirement" or "APR" is the minimum total volume of water expressed in million gallons per year, as set forth on Schedule A hereto, that Company is required to purchase from City during each Annual Purchase Period beginning in 2004.
- C. "BPU" is the New Jersey Board of Public Utilities or any successor agency thereto.

- D. "Daily Period" is the twenty-four (24) hour period from midnight to the following midnight in any given day.
- E. "Daily Water Use Restrictions" are the limitations on Company's ability to take water from the City on Saturdays and Sundays during the months of May, June, July, August and September and on Memorial Day, the Fourth of July and Labor Day of each year.
- F. "Effective Date" is the date of execution of this Agreement.
- G. "Force Majeure" is the inability of a party to perform due to acts of God; orders of the Government of the United States or the State of New Jersey, or any agency or instrumentality thereof; orders of any other governmental or quasi-governmental agency having jurisdiction over water supplies furnished hereunder; acts of terrorism; insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; storms; floods; washouts; droughts; explosions; breakage or accidents to machinery, pipelines, dams or canals or partial or entire failure or contamination of water supply, not due to the negligence of the party claiming such occurrence as the reason for the inability to perform; arrests; civil disturbances; acts of any public enemy; and any other causes not reasonably within the control of the party claiming such inability to perform.
- H. "GPM " is gallons per minute.
- I. "Maximum Annual Volume Peak Season Months" is the maximum volume of water that Company can purchase per year from City during the months of May through September of each year.

- J. "Maximum Daily Purchase" or "MDP" is the maximum volume of water purchased by the Company during any Daily Period.
- K. "Maximum Instantaneous Flow Rate" is the maximum rate of flow to be delivered at any given time, expressed in gallons per minute (GPM).
- L. "Maximum Monthly Purchase" or "MMP" is the maximum volume of water purchased by the Company during any month as outlined on Schedule A.
- M. "MG" is Million Gallons.
- N. "MGD" is Million Gallons per Day.
- O. "MGY" is Million Gallons per Year.
- P. "MGM" is Million Gallons per Month.
- Q. Off-Peak Season Months are: January, February, March, April, October, November, and December of each contract year.
- R. Peak Season Months are: May, June, July, August and September of each contract year.
- S. "Point of Delivery" is the location of City metering facilities at which water is delivered to Company's transmission and distribution system. The Point of Delivery, is a proposed metered interconnection and vault between the City's and Company's existing water distribution systems at Route 9 near Linden Avenue in Middle Township. The Point of Delivery location is subject to final design and land acquisition.

2. Purchase of Water; Cooperation between Parties.

- A. Subject to the provisions of paragraph 10 hereof, City shall supply, and Company agrees to purchase the APR in each APP in accordance with the provisions of this Agreement, provided that the Company shall have

the ability to temporarily revise or suspend the APR, MDP, MMP and Maximum Instantaneous Flow Rates limitations, whether upward or downward, with the prior approval of the City, for the Company's emergency service or for other service needs. The Company shall not be liable for payment of any water provided to the Company by the City that does not meet all federal and state applicable water quality standards. Purchase requirements and any monthly, daily and instantaneous flow rate limitations are provided for in Schedule A attached hereto and incorporated herein by reference.

- B. Charges for water services provided to Company shall be billed to Company pursuant to Schedule A and as set forth in the City's Water Resale Tariff Rate, which is currently \$1.52 per thousand gallons, which may be revised or superceded from time to time as approved by the BPU or local finance board. It is the intent of the parties hereto that the rates that Company will be charged under this Agreement shall be the same rates applicable to all other sales for resale customers of the City. The City has acknowledged that the \$1.52 per thousand gallons rate is the same rate currently charged to all sale for resale customers of the City.
- C. Each party acknowledges that it has an obligation to provide safe, adequate and proper water service to its respective customers. Each party further acknowledges that the facilities of the other, including the Points of Delivery have been designed for a certain maximum capacity. The parties agree to cooperate in the purchase and sale of the APR so

that there is no undue constraint or stress placed on either party's system. The parties believe that such cooperation will be for their mutual protection and agree to regularly communicate and meet to plan for their current and future water supply needs.

D. The City shall promptly notify the Company in writing of any occurrence or governmental action (including, without limitation, the issuance of an order by the Commissioner of the NJDEP pursuant to N.J.A.C. 7:19-10) that may impair the City's ability to supply water to the Company in accordance with this Agreement. If, during the term of this Agreement, the City does not have the sufficient supply or capacity of water to satisfy the Company's contractual water supply needs, as determined by the NJDEP or as caused by the actions or orders of the NJDEP, either party shall have the right to terminate this Agreement in its sole discretion.

3. Delivery of Water. The City shall deliver safe and adequate water to the Company, and title shall pass to Company, at the Points of Delivery.
4. Billing Procedures. The Company will provide monthly water readings to the City. The City and the Company will take a joint physical reading on a quarterly basis. The quantity of water will be billed monthly. Bills will be rendered based on the actual amount of water delivered to Company. The bill will show the Company's APR and year-to-date purchases as applied toward satisfying the APR. The bill rendered for the last month of any APP (the "Final Bill") shall include any charges due the City pursuant to Paragraph 2 with respect to any difference between the APR and the actual

quantity of water received by the Company during such APP, to be billed to Company at the applicable rate.

5. Billing Disputes. If a billing dispute arises, the Company and/or the City will notify (Notice of Dispute) the other party in writing. The Company and the City will, within two (2) working days, jointly obtain an actual water meter reading. If the dispute cannot be resolved following the second meter reading, a meter test will be performed by any qualified firm acceptable to both parties. If the meter test proves that the meter is within the accuracy limits set forth in governing BPU regulations, Company shall, within two business days of such meter test, pay to the City the disputed and undisputed portions of the bill. If the meter test proves that the meter test is not within the accuracy limits set forth in governing BPU regulations, a billing adjustment will be made in accordance with such regulations, the Company will pay for the cost of the meter test and the meter will be replaced or recalibrated at the Company's option at the Company's sole cost and expense. If there are three (3) such disputes within any 12-month period, Company shall have the right to install a new meter.
6. Meters. Meters shall be tested periodically by the Company according to governing BPU regulations.
7. Water Quality. City shall comply with all NJDEP and USEPA regulations regarding treatment and delivery of water. City shall provide to Company water similar in quality to that provided to its other customers. The City shall perform water quality tests as required by NJDEP and USEPA laws and regulations, and Company shall be entitled to take split samples with the City



upon request in writing to the City. All water quality tests shall be performed only by State of New Jersey certified laboratories. The City shall comply with all applicable notice requirements established by the NJDEP and USEPA, and any successor government agencies or departments, if water supplied by the City does not meet NJDEP and USEPA water quality standards. The City shall provide Company with reports of any water quality test results for water samples taken at the Points of Entry (as defined by NJDEP). Water supplied by the City to the Company pursuant to this Agreement shall meet all applicable drinking water quality standards or criteria adopted by the NJDEP and/or the USEPA, as the same shall be amended from time to time. Notice of any violation shall be given to Company of any safe drinking water standard that occurs within the City's system that could reasonably affect the quality of water delivered to the Company.

8. Service Interruptions. Planned service interruptions may be required in the course of operation of City facilities. The City will use its reasonable best efforts to minimize such occurrences, as well as the duration thereof. Reasonable advance notification of service interruptions will be provided to Company by the City.
9. Reporting; Changes to Annual Purchase Requirement
  - A. The APR, MDP, MMP, Maximum Instantaneous Flow Rates, Daily Water Use Restrictions and Maximum Annual Volume Peak Season Months set forth in Schedule A may only be adjusted by amending this Agreement in writing.

- B. The APR, MDP, MMP, Maximum Instantaneous Flow Rates, Daily Water Use Restrictions and Maximum Annual Volume Peak Season Months set forth in Schedule A shall be adjusted by City upon Company's request if Company experiences a service interruption, mechanical failure or if Company has to shut down its water main(s) through which the water purchased from City is transferred to the Company's water system or if the Company suffers Force Majeure.

The City will make reasonable efforts, consistent with the City's overall operational and technical requirements, to satisfy such request for an amendment of the Agreement to reflect request by Company to increase its APR.

10. Force Majeure; Protective Covenants.

- A. If by reason of Force Majeure, the City shall be rendered unable, wholly or in part, to satisfy its obligations under this Agreement, then the obligations of the City, to the extent affected by such Force Majeure, shall be suspended or reduced during the continuance of the inability to perform hereunder, but for no longer period. Telephonic notice of the Force Majeure will be given Company at the earliest possible time, and will be described subsequently in writing to Company within three (3) business days after the occurrence of the Force Majeure event. City shall use its best efforts to remove or overcome such Force Majeure as soon as possible. The City shall not be liable for damages to the Company or any customer of the Company for any act, omission or

circumstance occasioned by, or in consequence of, a Force Majeure occurrence.

- B. If by reason of Force Majeure, the Company shall be rendered unable, wholly or in part, to satisfy its obligations under this Agreement, other than the obligation to make payments of amounts due hereunder, then the obligation of the Company, to the extent affected by such Force Majeure, shall be suspended or reduced during the continuance of the inability to perform hereunder but for no longer period. Telephonic notice of the Force Majeure will be given to the City at the earliest possible time, and will be described subsequently in writing to the City within three (3) business days after the occurrence of the Force Majeure event. The Company shall use commercially reasonable efforts to remove or overcome such Force Majeure as soon as possible. The Company shall not be liable for damages to the City for any act, omission or circumstance occasioned by, or in consequence of, Force Majeure.

#### 11. Indemnification.

- A. Except as limited in Paragraphs 10A through B above, the City agrees to indemnify, protect, and hold harmless the Company from any and all liability, loss, damages, costs or expense (including, without limitation, reasonable attorney's fees) arising out of claims alleging that the City failed to meet its obligations under this Agreement.
- B. In the event the Company has a short-term emergency need for water which will cause it to exceed its Maximum Instantaneous Flow Rate, MDP,

MMP or APR, the City will attempt to satisfy such emergency need. For purposes of this subsection B, emergency shall be defined as: a well or tank failure; water main break; or major fire related demand for water in the Company's system.

12. Severability. In the event that one or more of the provisions of this Agreement shall for any reason be held to be illegal or invalid by a court of competent jurisdiction, it is the intent of the parties hereto that such illegality or invalidity shall not affect any other provisions hereof, and this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein unless a court of competent jurisdiction holds that such provisions are not severable from all other provisions of the Agreement or that the deletion materially alters the substance of this Agreement.

13. Term of Agreement. This Agreement shall be effective for a period of 10 years and six months from the Effective Date of this Agreement. The Company must give written notice of its desire to renew the agreement to the City at least six (6) months prior to the expiration of the Agreement. Notwithstanding the foregoing, if at any time during the initial or any renewal term of this Agreement, the City increases its rates applicable to the Company's purchases of water pursuant to this Agreement, the Company shall be entitled to terminate this Agreement upon the expiration of a period of six (6) months from such rate effective date provided the Company has given written notice of such termination to Company within six (6) months of the rate effective date. The City shall notify the Company of rate increase applications filed with the BPU and/or local finance board at the time of filing of said application.

14. Successors. This Agreement may not be assigned by either party without the prior written consent of other party, which consent shall not be unreasonably withheld. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.
15. Integration and Amendment. This Agreement, including all Schedules and Exhibits, hereto, constitutes the entire understanding between the parties respecting the subject matter hereof, and the parties shall not be bound by any agreements, understandings or conditions, whether written or oral, respecting the subject matter hereof, other than those expressly set forth and stipulated in this Agreement or in the City's tariff on file with the BPU. This Agreement may be amended only in writing signed by City and Company.
16. Governing Law. This Agreement shall be governed by the laws of the State of New Jersey.
17. Notices. All notices and demands of any kind ("Notice") which any party may be required or may desire to serve upon the other party in connection with this Agreement must be in writing and must be served either by personal service, acknowledged by signature of addressee or authorized agent at the office address; by express mail; federal express; telefax, provided the addressee sends a telefax confirmation that the notice has been received; or by certified mail, return receipt requested, postage prepaid. Service of any such notice by express mail, federal express, or certified mail shall be deemed complete the second business day after mailing. Service of any such Notice by personal delivery or by telefax shall be deemed complete upon the date of

acknowledgment by the addressee or the date of telefax confirmation, whichever applies. Such Notices shall be addressed as follows:

If to City: City of Wildwood  
4400 New Jersey Avenue  
Wildwood, NJ 08260

With a Copy to: Wildwood Water Utility  
3100 New Jersey Avenue  
Wildwood, NJ 08260  
Attn: Director

If to Company: New Jersey-American Water Company, Inc.  
989 Lenox Drive, Suite 224  
Lawrenceville, NJ 08648  
Attn: Corporate Secretary

With a Copy to: New Jersey-American Water Company, Inc.  
989 Lenox Drive, Suite 224  
Lawrenceville, NJ 08648  
Attn: Vice President – Operations

18. Construction and Ownership of Facilities. The Company shall construct a metered interconnection between its and the City's existing water distribution systems at Route 9 near Linden Avenue in Middle Township and all required piping and appurtenances to from the metered interconnection to the existing Company system in Middle Township. Meter vaults, meters, flow control valves, controls and booster pumps to be located at the Points of Delivery will be designed in accordance with water supply needs of Company in cooperation with the City, and shall be installed, owned, operated and maintained by the Company. Company shall be responsible, at its sole cost and expense, for the construction, operation, maintenance and repair of all piping and distribution system improvements, including without limitation, booster pumps, pressure reducing valves and monitoring and control equipment, necessary to manage and transport water from

the Points of Delivery into Company's system. This Agreement shall not create or vest in the City any ownership interest in, or right or title to, any part of the facilities installed, owned, operated and maintained by the Company, nor shall this Agreement create or vest in the City any ownership interest in, or right or title to, any part of the Company's facilities. The City will assist the Company in obtaining land and/or an easement for a metering/pump station, if necessary.

19. Permits and Approvals. Construction of facilities and water purchases under this Agreement will be contingent upon Company obtaining all required permits and approvals. The parties agree to cooperate in obtaining said permits and approvals. If the required permits and/or approvals cannot be secured, this Agreement shall become null and void.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed, under seal, by their authorized representatives, the year and day first written above.

WITNESS/ATTEST:

Karen M. Goe  
By: Deputy City Clerk  
Title:

ATTEST:

Jacquelyn B. Hugoe  
By:  
Title:

Jacquelyn B. Hugoe  
Assistant Secretary

CITY OF WILDWOOD

[Signature]  
By:  
Title:

NEW JERSEY-AMERICAN COMPANY, INC.

[Signature]  
By: Dennis L. Ciemniecki  
Title: Vice President - Operations

**SCHEDULE A**  
**PURCHASE LIMITATIONS AND REQUIREMENTS**

Seller	City of Wildwood ("City")
Purchaser	New Jersey-American Water Company, Inc. ("Company")
Annual Purchase Requirement (APR)	35 million gallons each APP beginning in 2005. There is no APR in 2004
Maximum Instantaneous Flow Rate	700 GPM (350 GPM in 2004)
Maximum Daily Purchase (MDP)	1 million gallons (0.5 million gallons in 2004)
Daily Water Use Restrictions	No water shall be taken by Company on Saturdays, Sundays or federal holidays during Peak Season Months.
Maximum Monthly Purchase (MMP)	22 million gallons (11 million in 2004)
Maximum Annual Volume Peak Season Months	45 million gallons during Peak Season Months. More water can be purchased, if available, with notice during Off-Peak Season Months.
Point of Delivery	Middle Township, Route 9 near Linden Avenue



**AMENDMENT NO. 1 TO  
WATER PURCHASE AGREEMENT**

This Amendment No. 1 to Water Purchase Agreement dated 30th day of November, 2003 ("Agreement") is made as of this 14 day of June, 2006, by and between New Jersey-American Water Company, Inc., a public utility corporation of the State of New Jersey with its principal office at 131 Woodcrest Road, Cherry Hill, NJ 08003 ("Company") and the City of Wildwood, a municipal corporations in the state of New Jersey, with its principal office at 4400 New Jersey Avenue, Wildwood, NJ 08260 ("City").

WHEREAS, Company and City have executed the Agreement providing for the supply and purchase of water; and,

WHEREAS, the Company has requested, and the City is willing to make available to Company, additional off peak and annual capacity.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth below and in the Agreement, the parties hereby agree as follows:

1. The following definitions shall be added to Section 1 of the Agreement:

**"Total Maximum Annual Volume"** is the maximum total volume of water expressed in million gallons per year (MGY) that the Company is permitted to purchase from the City during each Annual Purchase Period.

**"Maximum Annual Volume for the Non- Peak Season"** is the maximum total volume of water expressed in MGY that the Company is permitted to purchase from the City during the months of January, February, March, April, October, November, and December combined during each Annual Purchase Period.

All other conditions in Section 1 shall remain unchanged and in full force and effect.

2. Schedule A shall be amended to add the following terms:

**The Maximum Annual Volume shall be 75 MGY.**

**The Maximum Annual Volume for the Non Peak Season shall be 30 MGY.**

All other terms and conditions in Schedule A shall remain unchanged and in full force and effect.

3. Section 13 shall be amended to add the following language as the next to last sentences:

"The Company and the City agree that during the initial term of the Agreement that they may enter into negotiations regarding the future transfer of water through the Company system to the existing City system, such water to be developed and provided by the City at a location yet to be determined. The Company and the City acknowledge that if such negotiations are not completed by the initial term of the Agreement, then the City may in its sole discretion terminate the Agreement without renewal at the end of the initial term. If the City does not choose to terminate the Agreement under the terms set forth above, then the Company and the City agree to meet, and in good faith, negotiate and extension of the Agreement to be executed by the parties in writing. Said meeting shall take place no less than (120) days prior to the expiration of the initial term of the Agreement"

All other conditions in Section 13 of the Water Sales agreement shall remain unchanged and in full force and effect.

4. Section 2 shall be amended to add the following language to the first sentence of the paragraph:

"Charges for water services provided to the Company shall be billed to the Company pursuant to Schedule A and as set forth in the City's water resale tariff rate, which is currently at \$1.52 per 1,000 gallons which may be revised or superseded from time to time as approved by the City of Wildwood pursuant to NJS 40A:31-23 as amended from time to time."

- 5. If this Amendment is not approved by the New Jersey Department of Environmental Protection or if the approval does not result in additional annual capacity of 30 MGY for the Company, then the Amendment shall be null and void and the Agreement shall remain unchanged.
- 6. Except as set forth in this Amendment the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment No. 1 to be executed by their authorized representatives the year and day first written above.

Attest:

*[Signature]* 6-29-06

CITY OF WILDWOOD

By:

*[Signature]*

Attest:

*[Signature]*  
JORDAN MERESKY  
ASST. SECRETARY

NEW JERSEY-AMERICAN WATER  
COMPANY, INC.

By:

*[Signature]*

**AMENDMENT NO. 2 TO  
WATER PURCHASE AGREEMENT**

This Amendment No. 2 to Water Purchase Agreement dated 30th day of November, 2003 ("Agreement") is made as of this 8<sup>th</sup> day of October, 2008, by and between New Jersey-American Water Company, Inc., a public utility corporation of the State of New Jersey with its principal office at 131 Woodcrest Road, Cherry Hill, NJ 08003 ("Company") and the City of Wildwood, a municipal corporations in the state of New Jersey, with its principal office at 4400 New Jersey Avenue, Wildwood, NJ 08260 ("City").

WHEREAS, Company and City have executed the Agreement and Amendment No. 1 providing for the supply and purchase of water; and,

WHEREAS, the Company has requested, and the City is willing to make available to Company, additional off peak and annual capacity.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth below and in the Agreement, the parties hereby agree as follows:

1. Schedule A shall be amended to add the following terms:

The **Maximum Annual Volume** shall be **90 MGY**.

The **Maximum Annual Volume for the Non Peak Season** shall be **45 MGY**.

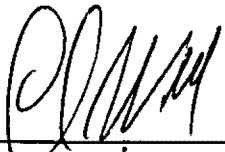
This increase of 15 MGY during the off peak months shall be available for the years 2008 through 2012 with an option to renew annually to the end of the contract at the discretion of both parties.

All other terms and conditions in Schedule A shall remain unchanged and in full force and effect.


2. Except as set forth in this Amendment No. 2, the Agreement and Amendment No. 1 shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment No. 1 to be executed by their authorized representatives the year and day first written above.


Attest:

  
\_\_\_\_\_  
City Clerk 10-15-08


CITY OF WILDWOOD

  
By: \_\_\_\_\_  
Mayor Ernest Troiano

Attest:

  
\_\_\_\_\_  
**Jordan S. Maraky**  
Assistant Secretary

NEW JERSEY-AMERICAN WATER  
COMPANY, INC.

  
By: \_\_\_\_\_  
Steven J. Tambini, P. E.  
VP Operations 9/24/08