

WATER PURCHASE AGREEMENT

between

BOROUGH OF SEASIDE HEIGHTS

and

NEW JERSEY-AMERICAN WATER COMPANY, INC.

1-2-07

THIS AGREEMENT, made this 21 day of March, 2007, between the Borough of Seaside Heights, a municipal corporation of the State of New Jersey, with its municipal office located at 901 Boulevard, Seaside Heights, New Jersey, 08751, hereinafter referred to as the "Borough" and New Jersey-American Water Company, Inc., a public utility corporation of the State of New Jersey with its principal office located at 131 Woodcrest Road, Cherry Hill, New Jersey, 08003, hereinafter referred to as the "NJAW."

WHEREAS, NJAW has acquired from the Borough the water system assets of the Borough located in Ortley Beach, Dover Township and Pelican Island, located within Dover Township; and

WHEREAS, NJAW and the Borough have entered into an agreement for NJAW to purchase the water system assets of the Borough on Pelican Island, located within Berkeley Township; and

WHEREAS, In connection with the purchase of these water system assets, the Borough has agreed to supply NJAW with water to service these water systems;

NOW THEREFORE, for and in consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and intending to be legally bound, the parties hereto agree as follows:

1. Water Service

- a. The Borough agrees to supply to NJAW and NJAW agrees to purchase from the Borough a continuous supply of potable water through interconnection points located at the Seaside Heights Water Treatment Plant and at the eastern end of the channel crossing, (the "Interconnection Points") beginning on the 31st day of January, 2007 (the "Effective Date").
- b. The quantity of water to be supplied by the Borough and purchased by NJAW may vary from day to day depending on the operational requirements of NJAW. The quantity of water to be supplied by the Borough and purchased by NJAW in any twenty-four (24) hour period shall not be subject to any minimum or maximum limits. The Borough expressly agrees that it will supply NJAW with a quantity of water sufficient to meet the daily water demand and fire flow requirements of NJAW's customers in Ortley Beach and Pelican Island.
- c. It is NJAW's sole responsibility to provide water service to its customers at a flow rate, pressure and duration adequate for metered service and the Borough shall have no liability to NJAW or any customer of NJAW for costs, expenses, damages, liability, loss, claims, suits or proceedings whatsoever in nature arising out of alleged inadequate water pressure or alleged inadequate flow rate in NJAW's distribution systems in Ortley Beach and Pelican Island.

2. Water Quality

- a. The water to be furnished by the Borough to NJAW hereunder shall be potable water which meets the statutory and regulatory standards promulgated by the New Jersey Department of Environmental Protection and the United States Environmental Protection Agency, or any successor regulatory agencies having jurisdiction.

- b. The Borough shall not be responsible for the quality of water delivered beyond the Interconnection Points. NJAW agrees to indemnify, defend and hold the Borough harmless against any and all claims, liability, loss, damages, costs or expense (including, without limitation, reasonable attorney's fees) suffered or incurred by the Borough related to the quality of water in NJAW's system.
- c. The Borough agrees that it is responsible to supply water to NJAW at the Interconnection Points which meets the water quality standards specified in paragraph 2.a. The Borough agrees to indemnify, defend and hold NJAW harmless against any and all claims, liability, loss, damages, costs or expense (including, without limitation, reasonable attorney's fees) suffered or incurred by NJAW arising out of or related to the Borough's failure to supply water at the Interconnection Points meeting the water quality standards specified in paragraph 2.a.
- d. Compliance with the water quality provisions of this Agreement shall be determined by sampling at the Interconnection Points. NJAW will establish a sampling tap at each Interconnection Point and will monitor the quality of the water as necessary to ensure the Borough's compliance with the applicable water quality requirements. Reports of analysis of samples from those taps will be provided to the Borough.

3. Terms of Payment.

- (a) During the twelve (12) month period beginning on the Effective Date, NJAW agrees to pay an initial unit cost of Two Dollars and Seventy-Five Cents (\$2.75) for each one thousand (1000) gallons of water purchased from the Borough as measured by the meters located at the Interconnection Points. The parties understand and agree that NJAW intends to install a meter at its expense to measure water delivered to all customers of its customers on Pelican Island. Until such time as that meter is installed, the water purchased by NJAW with respect to Pelican Island will be measured by the sum of individual meter readings as measured by NJAW and reported to the Borough. This initial unit cost consists of a fixed component of Two Dollars and Thirty-Five Cents (\$2.35) for each 1000 gallons (the "Fixed Component") and a variable component of Forty Cents (\$0.40) for each 1000 gallons for electric power, chemicals and water treatment residuals disposal (which includes all costs for filter backwash) (the "Variable Component"). The Fixed Component shall remain constant during the term of this Agreement and any renewals thereof. The Variable Component shall be increased or decreased on each anniversary of the Effective Date as described in Paragraph 3.b. The Borough agrees to cooperate with NJAW on the location of the meter to measure the water for Pelican Island.
- (b) The Variable Component shall be increased or decreased by calculating the sum of the Borough's costs for electric power, chemicals and water treatment residuals disposal (which includes all costs for filter backwash) for the twelve (12) month period immediately preceding each anniversary of the Effective Date and dividing that sum by the total amount of potable water produced during the same twelve month period in terms of thousands of gallons. The amount of the Variable Component determined in accordance with this paragraph shall be added to the Fixed Component to determine the unit cost for each 1000

gallons of water purchased from the Borough by NJAW for the 12 month period beginning on the applicable anniversary of the Effective Date.

- (c) The meters at the Interconnection Points shall be read once per month, jointly by the Borough and NJAW. Until such time as the meter for Pelican Island is installed, the meters on Pelican Island shall also be read once a month by NJAW, which shall provide a report to the Borough with the total of such reading, subject to optional verification by the Borough. NJAW will pay the total monthly meter registration multiplied by the applicable unit cost within 30 days after receipt of a monthly bill from the Borough.

4. Interruptions in Service - Force Majeure Event.

- (a) "Force Majeure Event" means the inability of a party to perform due to acts of God, strikes, lockouts or other industrial disturbances, orders of the government of the United States or the State of New Jersey or any agency or instrumentality thereof, 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, partial or entire failure of the water supply, arrests, civil disturbances, acts of any public enemy and any other causes not reasonably within the control of the party claiming such inability.
- (b) If either NJAW or the Borough shall be rendered unable wholly or in part to satisfy their respective obligations under this Agreement by reason of any Force Majeure Event, and further, if the party alleging the Force Majeure Event gives written notice of such Force Majeure Event to the other party hereto within a reasonable time after occurrence of the event then the obligations of the party giving such notice, to the extent affected by the Force Majeure Event, shall be suspended or modified during the continuance of such party's inability to perform its obligations hereunder. The party claiming an inability to perform shall use all reasonable efforts to remove or overcome such Force Majeure Event.

5. Ownership and Maintenance of Facilities

- a. The Interconnection Points between the Borough and NJAW shall be comprised of a meter vault, meter(s) and appurtenances as shown on Attachment A which shall be installed at the sole cost of NJAW and which shall be and remain the property of NJAW.
- b. NJAW shall test the meter(s) installed at the Interconnection Points annually. The responsibility for testing and maintenance and the associated costs and expenses will be borne by NJAW. NJAW also agrees to test its meter(s) at such additional times as may be requested by the Borough. The reasonable cost of any such additional tests will be borne by the Borough unless the results of such additional tests establish that the meter being tested does not perform within the accuracy limits established by the manufacturer of the meter.

6. Notices of Emergencies and Interruptions of Service

- a. The Borough will provide NJAW with a minimum of thirty (30) days notice of any planned interruptions of the water supply for maintenance or repairs or any other non-emergency condition affecting NJAW's ability to obtain water at the Interconnection Points.
- b. In the event of an emergency condition affecting the other party's water system or water supply, including conditions which adversely affect water quality, NJAW and the Borough agree to notify one another of the nature of the emergency as soon as practicable and by the most expeditious means, including telephone or telefax. The description of the emergency, its nature and expected duration and its effect on the quality, availability or ability to withdraw water will be confirmed in writing to the other party within twenty-four (24) hours.

7. Duration of Agreement and Renewal; Assignment

- a. The initial term of this Agreement shall be for a period of five (5) years from the Effective Date. This Agreement may be renewed by NJAW for additional terms of five (5) years with the consent of the Borough, which consent shall not be unreasonably withheld, and upon ninety (90) days prior written notice by NJAW to the Borough.
- b. Upon the expiration of the initial five (5) year term of this Agreement, this Agreement may be canceled by NJAW or the Borough at any time and at their sole discretion upon prior written notice to the other party received at least 12 months prior to the effective termination date.

8. Assignment

This Agreement shall be binding and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. This Agreement may not be assigned by either party without approval of the other party, which approval shall not be unreasonably withheld.

9. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey.

10. Entire Agreement.

This Agreement constitutes the entire understanding between the parties hereto and the parties shall not be bound by any other agreements or understandings or conditions respecting the subject matter hereof other than those expressly set forth in this Agreement. This Agreement may be amended only in a writing executed by NJAW and the Borough.

11. Notices.

Notices given by either party to the other party shall be in writing and shall be served personally or by depositing such notice in the United States mail certified, return receipt requested with certification and postage charges prepaid and properly addressed and directed to the party to receive the same as follows:

As to the Borough:

Borough of Seaside Heights
901 Boulevard
P. O. Box 38
Seaside Heights, New Jersey 08751
Attn: Borough Administrator
Telecopy No. 908-793-9476

with a copy to:

Borough of Seaside Heights
901 Boulevard
P. O. Box 38
Seaside Heights, New Jersey 08751
Attn: Borough Clerk
Telecopy No. 908-793-0319

As to NJAW:

New Jersey-American Water Company, Inc.
131 Woodcrest Road
Cherry Hill, NJ 08003
Attn: Vice President - Operations
Telecopy No. 856-310-2249

with a copy to:

New Jersey-American Water Company, Inc.
131 Woodcrest Road
Cherry Hill, NJ 08003
Attn: Corporate Secretary
Telecopy No. 856-310-2279

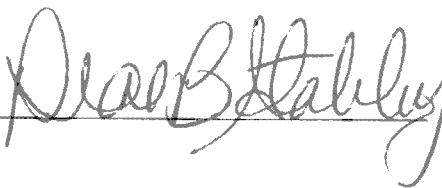
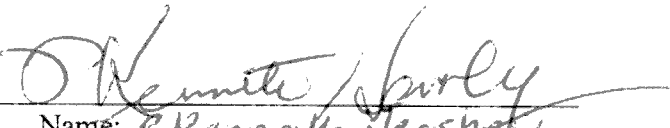
12. Severability

- a. In the event that any 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 each of the parties hereto that such illegality or invalidity shall not affect any other provisions hereof, but that this Agreement shall be construed and enforced as such illegal or invalid provision had not been contained herein unless a court of competent jurisdiction holds that (i) such provisions are not severable from all other provisions of this Agreement or that (ii) the invalidity of the affecting provisions materially alters the substance of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their duly authorized officers and have affixed their corporate seals the day and year first written above.

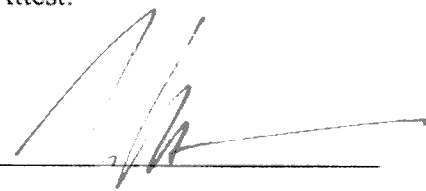
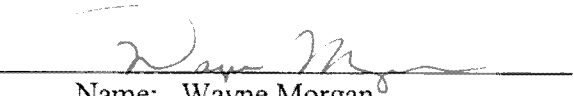
Attest:

BOROUGH OF SEASIDE HEIGHTS


By: 
Name: Kenneth Hershey
Title: Mayor

Attest:

NEW JERSEY-AMERICAN WATER COMPANY, INC.


By: 
Name: Wayne Morgan
Title: Vice President- Service Delivery

Jordan S. Menster
Assistant Secretary