

Draft Dated January 21, 2021

AGREEMENT
BETWEEN
EGG HARBOR CITY,
ATLANTIC COUNTY, NEW JERSEY
AND NEW JERSEY-AMERICAN WATER COMPANY, INC.
FOR SALE OF SYSTEMS

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AGREEMENT BETWEEN
EGG HARBOR CITY,
ATLANTIC COUNTY, NEW JERSEY
AND NEW JERSEY-AMERICAN WATER COMPANY, INC. FOR
SALE OF SYSTEMS

THIS AGREEMENT (this “Agreement”) is made this ____ day ____ of 2021 by and between EGG HARBOR CITY, a municipal corporation of the State of New Jersey, with its principal office located at 500 London Avenue, Egg Harbor City, New Jersey 08215, County of Atlantic and State of New Jersey (hereinafter referred to as “Owner”)

AND

New Jersey-American Water Company, Inc., a corporation of the State of New Jersey, with its principal office located at 1 Water Street, Camden, New Jersey 08102 (hereinafter referred to as “Buyer”).

WITNESSETH:

WHEREAS, Owner is currently the owner of certain Water and Wastewater Systems (as further defined herein, collectively, the “Systems”) located in Egg Harbor City, Atlantic County, New Jersey; and

WHEREAS, Owner desires to sell and Buyer desires to purchase said Systems; and

WHEREAS, Owner prepared, distributed and advertised a Request for Proposals, including certain proposal documents in connection with the proposed sale of the Systems, pursuant to the New Jersey Water Infrastructure Protection Act, *N.J.S.A. 58:30-1 et seq.*; and

WHEREAS, on March 5, 2020, Owner received proposals from various private water and wastewater utilities; and

WHEREAS, Owner has determined that the proposal most advantageous to the public was submitted by Buyer and has determined that the best interests of Owner will be met by the sale of the Systems to Buyer in accordance with and subject to the terms of this Agreement.

NOW, THEREFORE, and in consideration of the sum of \$21,800,000.00 to be paid and satisfied as stipulated herein and in further consideration of the mutual covenants herein contained, Owner agrees to convey to Buyer the Systems under the terms and conditions hereinafter set forth herein:

ARTICLE 1. DEFINITIONS

Section 1.1 Specific Definitions.

Certain defined terms shall have the meanings assigned to the terms in the preambles hereof but may nevertheless be referenced below for convenience. When used in this Agreement, the following terms shall have the meanings hereinafter indicated:

“**Act**” shall mean the Water Infrastructure Protection Act, supplementing Title 58 of the Revised Statutes, and amending R.S.40:62-3 (*N.J.S.A. 58:30-1 et seq.*).

“**Agreement**” shall be as defined in the preamble.

“**Authorized Representative**” shall mean, in the case of Buyer, the President, or such other individual(s) specified in writing, as the representative of Buyer for all purposes of this Agreement and, in the case of the Owner, the City Clerk or such other representative of Owner designated in writing via resolution or ordinance, as appropriate, by Owner.

“**BPU**” shall mean the Board of Public Utilities of the State of New Jersey.

“**City**” shall mean Egg Harbor City, Atlantic County, New Jersey.

“**Closing**” or “**Closing Date**” shall mean the date and time specified in Section 5.2 of this Agreement.

“**Customer Service Standards**” shall mean the level of type of service customarily received by the customers of the Systems, as set forth on Appendix F.

“**Date**” or “**Effective Date**” shall mean the date of this Agreement, when executed by all parties.

“**DEP**” shall mean the New Jersey Department of Environmental Protection.

“Deposit” shall mean an amount of money equal to 10% of the Purchase Price paid by Buyer and held by Owner in accordance with the terms of this Agreement.

“Escrow” shall be as defined in Section 2.2.

“Escrow Agent” shall mean OceanFirst Bank N.A.

“Escrow Agreement” shall be as defined in Section 2.2.

“Excluded Assets” shall mean specifically identified equipment and assets that are not included with the Purchase of the Systems as listed in Appendix H, cash and accounts receivable accrued prior to and including the Closing Date, and any claims or actions which Owner may have against any third party in the event of litigation. All assets owned or leased by the City and used primarily in the performance of the City’s general public works, and not in operation and maintenance of the Systems, are excluded and generally listed on Appendix H.

“Existing Collateral Agreements” shall mean those agreements relating to the Systems referenced on Appendix C.

“Final Contingencies” shall be as defined in Section 4.1.

“Initial Contingencies” shall be as defined in Section 3.1.

“Material Adverse Condition” shall mean any condition that is, or could reasonably be expected to have, individually or in the aggregate with other conditions, a material adverse effect on the business, assets, operations, financial condition, liabilities or prospects of the Systems.

“Municipal Consent” shall mean Owner’s ordinance, which shall be adopted by Owner under law, granting the authority to Buyer to provide water and wastewater services in the City and granting Buyer the right to utilize the roads, streets, alleys, byways and public places within the City and conveying the franchise rights to the Systems, when approved by the BPU; the Municipal Consent will be in the form attached hereto as Appendix D.

“Municipal Facilities” shall be as defined in Section 8.1.

“Purchase Price” shall be as defined in Section 2.1.

“Real Property” shall mean the parcels of real estate, easements and rights of way, and other property rights described in the Appendix B annexed hereto. To the extent that any such easements, rights of way or other property rights, used or useful in the Systems have not been documented and recorded as of the Date first written above, the City will obtain such documentation and recordation as may be determined appropriate by Buyer prior to closing.

“State” shall mean the State of New Jersey.

“Systems” shall mean, collectively, the Water System and/or the Wastewater System and Real Property owned by the City.

“Transaction Costs” shall mean reasonable costs and expenses incurred and reasonably anticipated to be incurred by Owner in connection with the sale of the Systems which shall not exceed \$100,000.

“Water System” shall mean the all assets, real, personal or mixed, and used primarily in the operation or maintenance of the City’s water system whether or not described in the Appendices A or B, including machinery, equipment, tools, keys, plans, records, files and data related to the water system, unless listed on Appendix H.

“Wastewater System” shall mean all assets, real, personal or mixed, and used primarily in the maintenance or operation of the City’s sewer system whether or not described in Appendix A or B, including machinery, equipment, tools, keys, plans, records, files and data related to the wastewater system, unless listed on Appendix H.

“Works in Progress” shall mean any capital improvements currently being undertaken which the Buyer shall undertake as part of its ongoing operational requirements and which shall be deemed to be included in the Systems.

Section 1.2 General References

Whenever the context may require, any pronoun that is used in this Agreement shall include the corresponding masculine, feminine and neuter forms, and the singular shall include the plural and vice versa. Unless otherwise noted, the words “include”, “includes” and “including” when used in this Agreement shall be deemed to be followed by the phrase “without limitation”. The words “agree”, “agreements”, “approval” and “consent” when used in this Agreement shall be deemed to be followed by the phrase “which shall not be reasonably withheld or unduly delayed”, except or unless the context may otherwise specify. The words “hereof”, “hereinafter”, “hereinbefore” and “herein” refer to this Agreement.

ARTICLE 2. SALE OF SYSTEMS AND PURCHASE PRICE

Section 2.1 Sale of Systems and Purchase Price

Subject to the conditions otherwise set forth herein, Owner hereby conveys to Buyer all of its rights, title and interest in and to the Systems. The total purchase price or consideration of the sale of the Systems shall be \$21,800,000.00 (the **“Purchase Price”**), plus the sum of the Transaction Costs, all of which shall be paid by Buyer in the following manner:

- (a) Deposit: Upon execution of this Agreement, Buyer shall submit an amount equal to the Deposit to be held in escrow as hereinafter provided in Section 2.2. Upon submission of the Deposit, the \$20,000 bid bond previously provided by Buyer to Owner shall be returned to the Buyer.
- (b) Balance Due at Closing: Upon Closing, subject to the terms and conditions of this Agreement, the balance of the Purchase Price, less the Deposit, increased or decreased by items to be apportioned pursuant to this Agreement shall be paid to Owner by Buyer, by certified check, bank cashier's check or wire transfer.

Section 2.2 Deposit in Escrow

The Deposit shall be deposited by Owner in an interest-bearing account utilizing Owner's employer identification number with the Escrow Agent, in the name of the Owner in trust for Owner and Buyer as their interests appear hereunder (the "**Escrow**") pursuant to the terms of the agreement entered into by the parties and the Escrow Agent (the "**Escrow Agreement**").

Section 2.3 Interest Earnings on Deposit

Except as set forth in Section 2.5, the interest accrued on the Deposit shall be paid to Owner upon Closing.

Section 2.4 Payment of Transaction Costs

Upon passage of a resolution approving the submission of the Agreement for approval to the BPU and the signing of this Agreement, Buyer will pay to Owner \$50,000, which is one half (½) of the allowable Transaction Costs, which amount shall be non-refundable (the "Non-refundable Transaction Costs"). Buyer shall pay to Owner the remaining portion of the Transaction Costs, up to \$100,000, upon Closing (the "Refundable Transaction Costs"). Prior to Closing, Owner shall provide commercially reasonable documentation for all Transaction Costs to Buyer for review prior to Buyer's payment of the balance of the Transaction Costs at Closing.

Section 2.5 Effect of Owner's Breach

If the Agreement is terminated or the Closing does not take place for any reason relating to the fault of the Owner, the Deposit paid by Buyer and all accrued interest shall be returned to Buyer.

Section 2.6 Effect of Buyer's Breach on the Deposit

Owner and Buyer recognize that this Agreement and the Municipal Consent require the regulatory approval of the BPU. As authorized by Owner in Section 3.1, it shall be the responsibility of the Buyer to apply for, and pursue diligently, such approvals. Owner agrees to cooperate with Buyer to take all steps necessary to submit the petition for such approvals and any reasonable supplements or amendments to the petition to BPU to achieve the Final Approval Order. Failure of the BPU to approve the Agreement or the Municipal Consent due to a breach by Buyer resulting in a failure to complete the sale will give rise to Owner's rights to terminate this Agreement with 30 days written notice to Buyer. Any such termination shall make this Agreement null and void and of no further force or effect. Upon termination for Buyer's breach pursuant to this Section, 25% of the Deposit and all accrued interest shall be retained by Owner as liquidated damages.

ARTICLE 3. INITIAL CONTINGENCIES

Section 3.1 Initial Contingencies

All contingencies set forth in this Section 3.1 are collectively referred to as the "Initial Contingencies".

- A. Owner's obligation to perform pursuant to this Agreement is contingent upon satisfaction of all the conditions set forth in paragraphs 1 through 4 below.
 1. Approval of the Agreement and Municipal Consent. Approval by at least two-thirds of the authorized membership of the Owner's governing body

of the Agreement and approval for the Buyer to submit, on behalf of Owner, the Agreement to the BPU for approval and further authorizing the appropriate Owner representative to submit the proposed use of the Purchase Price to the Director of the Department of Community Affairs (“DCA”) for approval (the “Municipal Approval”). Concurrently with the Municipal Approval, the City shall adopt by at least two-thirds of the authorized membership of the Owner’s governing body the Municipal Consent in substantially the same form as set forth on Appendix D annexed hereto.

2. Customer Lists. As of the date of execution of this Agreement, Owner shall provide Buyer with the last known names and addresses of all water and wastewater service customers connected to the Systems, irrespective of whether they are located in the City including water and/or wastewater service customers for which Owner does not bill for such services, together with an electronic data file, in a format reasonably satisfactory to the Buyer, containing such customer information. Such list and electronic file are to be updated by Owner as of the date of Closing and provided to Buyer
3. Transfer of permits. Owner shall make application for the transfer, effective at the Closing, of all water diversion, extension, operating and other water or wastewater system permits and approvals issued to Owner prior to the Closing by the DEP or any other local, State, or federal agency.
4. Bondholders and Lenders. Owner shall submit for all necessary determinations and execute all documents as necessary to ensure that Buyer shall have no obligation to any bondholders or lender, if applicable, relating to the Systems.

B. Buyer’s obligation to perform pursuant to this Agreement is contingent upon satisfaction of the condition set forth in paragraph 1, below.

1. Buyer shall, pursuant to N.J.S.A. 58:30-7, and as authorized by Owner in Section 3.A.1 above, submit the Agreement and the Municipal Consent to the BPU for approval. This action shall be taken by Buyer to discharge Owner’s obligation pursuant to the Act to cause the Agreement to be submitted to the BPU for approval.

Section 3.2 Failure of Initial Contingencies

In the event that all the Initial Contingencies are not satisfied within 180 calendar days from the Date of this Agreement, Buyer or Owner may declare this Agreement terminated by

giving written notice to the other party, in accordance with Section 9.3 (Notices) of this Agreement, whereupon this Agreement shall be null and void and of no force or effect in accordance with the provisions of Section 2.5. Notwithstanding the foregoing, if, at any time, the said Initial Contingencies are satisfied prior to a party providing notice of termination of this Agreement, the parties shall be bound by the terms of this Agreement and the parties' right to terminate under this Article shall cease to exist.

ARTICLE 4. FINAL CONTINGENCIES

Section 4.1 Final Contingencies

The performance of this Agreement is further contingent upon satisfaction of all the conditions set forth below (collectively, the “**Final Contingencies**”).

(a) BPU Approval.

The BPU shall have issued a “Final Approval Order”. A Final Approval Order shall mean an Order or Orders collectively approving the Agreement and the Municipal Consent on terms and conditions reasonably satisfactory to Buyer, including, but not limited to, a determination that the Purchase Price and Transaction Costs are reasonable under the Act without imposing any Material Adverse Conditions, in the reasonable opinion of the Buyer and its counsel, and as to which there are no pending no: (1) applications, motions or petitions for rehearing, reargument or reconsideration; (2) applications for stays; (3) litigation seeking injunctive or other similar relief; or, (4) appeals and as to which the time for filing an appeal as a matter of right has expired.

(b) DCA Approval

DCA shall have issued the appropriate notice approving Owner's proposed use of the Purchase Price.

(c) Transfer of Permits

Owner shall have received notice of approval of the transfer to Buyer from the DEP or any other local, State or federal agency having jurisdiction, effective at Closing, of all water diversion, extension, operating and other water or wastewater system permits and approvals issued to Owner prior to Closing

(d) Transfer of All Contract Rights for All Existing Collateral Agreements in Connection with the Systems

Owner shall execute appropriate documents to assign or transfer to Buyer all of its rights to all Existing Collateral Agreements.

(e) Other Approvals

Owner makes no warranties that the sale of the Systems is not subject to the approval of any other local, State, or federal agencies. Buyer and Owner shall cooperate in obtaining any other approvals deemed necessary by Buyer or Owner prior to the Closing.

(f) Conditions of the Systems

Owner shall operate and maintain the Systems, including the facilities and equipment described in Appendix A for the term of this Agreement such that at the Closing, except for normal wear and tear and the Works in Progress, there will be no significant changes in the physical condition of the Systems other than what was evident on the Date of this Agreement. Subject to Section 4.3 (Risk of Loss), Owner shall not be liable for any damage, destruction or diminution in value of the Systems resulting from acts of God, natural disasters or unforeseen circumstances.

(g) Access to the Systems

Buyer, at Buyer's sole cost, shall have reasonable access to the Systems from the Date of this Agreement until the Closing Date for purposes including, but not limited to,

examination of customer accounts, ordinances, deeds, contracts, maps and plans, inspections and tests of plant and equipment, and surveys of the Real Property and easements. In addition, Buyer shall have ninety (90) days (“Evaluation Period”) from the Date of this Agreement to complete and be satisfied with the results of any Phase I and Phase II Environmental Site Assessment or other environmental assessment performed with respect to the Real Property. If Buyer determines that it is not satisfied with its environmental assessments, Buyer shall notify Owner prior to the expiration of the Evaluation Period. Owner shall then have fifteen (15) business days from the date of Owner’s receipt of such notification, together with copies of any applicable documents in connections with such determination, to exercise Owner’s right to either remedy the environmental issue prior to Closing or to advise Buyer that Owner is unable or unwilling to remedy the environmental issue. If Owner notifies Buyer that Owner is unable or unwilling to remedy the environmental issue, then Buyer may elect to (1) terminate the Agreement, in which case the Deposit shall be returned to Buyer and 50% of the accrued interest and the previously paid Non-Refundable Transaction Costs shall be retained by Owner, (2) propose an adjustment to the Purchase Price, and if accepted by Owner, accept the Real Property “as is” and proceed to Closing (provided all other contingencies have been satisfied) or (3) accept the Real Property “as is” and proceed to Closing (provided all other contingencies have been satisfied) with no adjustment in the Purchase Price. Buyer hereby agrees to indemnify and hold Owner harmless from any and all claims, demands, suits, actions, damages, liabilities, or expenses in respect to or arising from Buyer’s access to the Systems during this period. Buyer’s rights under this Section shall be exercised during normal business hours, with reasonable notice and shall not interfere with Owner’s continuing operation of the Systems. Buyer is responsible for preparation of surveys, certifications and easements necessary for Closing and final sale.

(h) Consent of Mullica and Galloway

The municipalities of Galloway Township and Mullica Township shall have granted their consent for Buyer to provide water service to those residents in their municipalities that are currently served by Owner in form and substance reasonably acceptable to Buyer. Owner shall cooperate with Buyer in obtaining the municipal consents from Galloway Township and Mullica Township as soon as reasonably possible.

(i) Extension of Agreements

Except as may be required for Works in Progress, Owner will not, after the Date of this Agreement, enter into any extension of service agreements which would extend past the Closing Date for water or wastewater service or in connection with any of the Existing Collateral Agreements without the written consent of Buyer.

Section 4.2 Failure of Final Contingencies

In the event that all Final Contingencies are not satisfied within 365 calendar days from the date of adoption by Owner of the Municipal Consent (provided that such non-satisfaction is not due to the failure of Buyer to reasonably and diligently undertake and pursue the obligations of Buyer hereunder) this Agreement may be terminated by Buyer or Owner in accordance with the provisions of Section 4.1.

Section 4.3 Risk of Loss

- (a) In the event that the condition of the Systems is significantly adversely changed from the Date of this Agreement to the Closing Date by acts of God, natural disasters or unforeseen circumstances, Owner and Buyer may mutually agree, in writing to a reduction in the Purchase Price or other consideration as compensation for the significant adverse change to the Systems. If Owner and Buyer cannot reach agreement within 60 days of receipt of notice of the event, both parties may agree to submit to binding arbitration in accordance with New Jersey State Board of Mediation Rules, as to a level of reduction of the Purchase Price. In the event Owner and Buyer cannot reach agreement on the Purchase Price adjustment or whether to commit to binding arbitration, either party has the option to

terminate this Agreement with 30 days written notice, in which case any remaining funds in the escrow shall be forfeited in their entirety and the Deposit shall be returned to Buyer and 50% of the accrued interest.

Section 4.4 Cooperation of Parties

This Agreement must be submitted to the governing body and adopted by at least two-third of its authorized membership. Upon approval of the governing body of this Agreement and the Municipal Consent, the Agreement and the Municipal Consent must be submitted to the BPU for review and approval. Owner shall be responsible for obtaining approval of the governing body and Buyer, as authorized by Owner in Section 3.1.A.1, shall be responsible for obtaining a Final Approval Order. Owner shall be responsible for obtaining DCA approval. The parties agree to cooperate with each other in obtaining such respective approvals. After the Closing, Buyer shall provide for a smooth, uninterrupted transition of service from Owner to Buyer and the parties shall cooperate with each other to facilitate the transition.

ARTICLE 5. CLOSING

Section 5.1 Closing

The transfer of the Systems from Owner to Buyer shall take place at the Closing, which shall occur and be governed by the terms hereof.

- (a) At Closing, the Owner will execute, acknowledge (if appropriate), and deliver to the Buyer:
 - 1. a bargain and sale deed associated with the Systems with covenant against grantor's acts, in recordable form, duly executed by the Owner;
 - 2. an assignment of easements to convey all existing easement rights associated with the Systems, subject to the Permitted Encumbrances;
 - 3. all deeds and easements, in recordable form, necessary and required for Buyer to own, operate and access the Systems;
 - 4. a bill of sale;
 - 5. an assignment of the Existing Collateral Agreements;

6. an assignment agreement for all assignable permits, licenses, plans, warranties and guaranties benefitting the Systems;
 7. a settlement statement;
 8. a certified copy of the appropriate Owner resolution(s) and/or ordinances authorizing the transactions contemplated hereunder;
 9. a signed certification by the Owner that the warranties and representations in Article 6 are true and correct as of the Closing Date;
 10. originals or copies of all governmental permits and licenses for the Systems, or any component thereof, in the Owner's possession, to the extent transferable;
 11. payoff letters from each lender from which Owner has incurred indebtedness for borrowed or grant money and/or a debt defeasance schedule, as appropriate, as referenced in Section 5.5;
 12. Such other resolutions, instruments, affidavits and documents as may be reasonably necessary to effectuate the transaction.
- (b) At Closing, Buyer will execute, acknowledge (if appropriate) and deliver to Owner:
1. an assignment of easements to convey all existing easement rights associated with the Systems, subject to the Permitted Encumbrances;
 2. an assignment agreement of the Existing Collateral Agreements;
 3. an assignment agreement for all assignable permits, licenses, plans, warranties and guaranties benefitting the Systems
 4. a settlement statement;
 5. Certified copy of appropriate corporate resolution(s) authorizing the transactions contemplated hereunder;
 6. a signed certification by Buyer that the warranties and representations in Article 7 are true and correct as of the Closing Date;
 7. The Purchase Price;
 8. The balance of the Transaction Costs Payment; and
 9. Such other documents, resolutions, instruments, affidavits and documents as may be reasonably necessary to effectuate the transaction.

Section 5.2 Closing Date

The Closing hereunder shall take place within 45 days following the satisfaction of all contingencies enumerated in Articles 3 and 4 and the conditions in Section 5.3 herein.

Section 5.3 Conditions of Title to Real Property

With the exception of those easements identified on Appendix B attached hereto, which shall be assigned by separate documents, the Real Property, as described in Appendix B attached hereto, shall be conveyed by bargain and sale deed with covenants against Owner's acts. Title shall be good and marketable and shall be deemed so if said title is insurable by a title company licensed to do business in the State at regular rates without additional premiums. Title shall be conveyed by Owner subject only to the following exceptions: (i) survey exceptions, provided that no survey exceptions shall adversely affect the components of the Systems located on the Real Property and the title company will insure that said Systems may remain and shall insure against forced removal; (ii) the exceptions set forth on Appendix E; (iii) the easements, covenants, declaration and restrictions, annexed hereto as Appendix E; and (iv) applicable zoning and government regulations, provided the current zoning and government regulations do not prevent the continued use of the Systems located on the Real Property. To the extent that good and marketable title cannot be conveyed, Owner shall use its best efforts to quiet title. At Closing, Owner shall convey to Buyer all rights, easements and agreements necessary for the use and maintenance of the Systems including water, sewer or other utility pipelines, poles, wires or other like facilities and appurtenances thereto over, across and under real property. To the extent Owner cannot convey same, Owner shall use its best efforts to obtain same. This obligation includes, as necessary, the subdivision, at Owner's cost (or Owner may elect to designate such costs as Transaction Costs), of any fee parcels on which assets of the Systems are located. If prior to Closing, Owner elects not to cure or is unable to cure any title defect or is unable to convey property interests

necessary for Buyer to own and operate the Systems, Buyer may at its choice (i) continue to close with a corresponding reduction in the Purchase Price equivalent to Buyer's costs for (a) curing any title defects and (b) obtaining any easements necessary for ownership and operation of the Systems or (ii) terminate the Agreement upon written notice to the Owner. If the Buyer terminates the Agreement pursuant to this section, the Owner shall promptly and in no event later than ten (10) business days after such termination repay to Buyer the Deposit and any Refundable Transaction Costs paid to Owner.

Section 5.4 Satisfaction of Liens

If, at Closing, there may be any liens or encumbrances which Owner is obligated to pay and discharge, Owner may use any portion or all of the Purchase Price to satisfy same, provided that Owner shall simultaneously deliver to Buyer, at the time of Closing, instruments in a recordable form and sufficient to discharge such liens and encumbrances of record together with the cost of recording or filing said instruments. If a request is made within a reasonable time prior to the time of Closing, Buyer agrees to provide, at the time of Closing, separate certified checks, if requested, aggregating the amount of the balance of the Purchase Price to facilitate the discharge of any such liens or encumbrances.

Section 5.5 Bonds and Loans

By the Closing Date Owner shall have approved: (a) defeasance and redemption of any outstanding bonds issued by Owner on the Systems and (b) discharge of any other outstanding debt, including loans, issued to Owner and payable to any current lender. At Closing, Owner shall deliver a payoff letter from each lender from which Owner has incurred indebtedness for borrowed or grant money. Some loans or obligations that the City has incurred for the construction and maintenance of the systems are non-callable and will remain outstanding after

closing. These will be addressed through a debt defeasance schedule, which shall be provided at Closing.

Section 5.6 Realty Adjustments

Taxes, charges for utilities or other assessments, and items identified in Buyer's title report, if applicable, shall be adjusted as of the Closing Date. The State realty transfer taxes, if applicable, shall be paid by Owner. Expenses associated with surveys, inspections, examination of title and title insurance shall be paid by Buyer.

Section 5.7 Assessments

If, at the time of Closing, the Real Property shall be or shall have been affected by an assessment or assessments which are then payable in full or which are payable in annual installments of which the first installment is then due or has been paid, then, those which are to become due and payable after the delivery of the deed(s), shall be deemed to be due and payable at time of Closing and to be liens upon Real Property and shall be paid and discharged by Owner at or before the time of Closing. Owner represents that it has no knowledge of any existing or potential assessments. For the purpose of this Section only, the term "assessments" shall not include charges for connection to utilities.

Section 5.8 No Sale of Excluded Assets

The Excluded Assets shall not be conveyed by Owner as part of the sale of the Systems.

Section 5.9 Effective Date of Adjustments

Closing adjustments will be effective for billing purposes on the Closing Date. Following approval and execution of the Agreement, Owner and Buyer shall develop a mutually agreeable plan for conducting the final meter reading of all meters for all of Owner's customers and rendering final bills to all customers based upon said meter readings. Buyer understands that Owner will pursue collection of past due accounts prior to Closing. Buyer will cooperate in remitting to

Owner, any and all payments forwarded to Buyer by customers for services rendered prior to and including the Closing Date. Owner is entitled to revenues for service rendered up to and including the Closing Date and is likewise responsible for all operating expenses up to and including the Closing Date. Buyer is entitled to revenues for services rendered subsequent to the Closing Date and is similarly responsible for operating expenses subsequent to the Closing Date.

Section 5.10 Operation of the Systems

Upon Closing, Buyer will operate the Systems at its own cost and expense and in accordance with applicable local, State, and federal laws, rules and regulations, including the Customer Service Standards.

Section 5.11 Post-Closing Agreement

The parties recognize that certain undertakings set forth in this Agreement, exclusive of the Final Contingencies, may not be capable of being fully performed on or before the Closing Date and such items shall be addressed in an agreement to be executed by both parties at Closing, which shall identify such items and the respective responsibilities thereto.

Section 5.12 Post-Closing Obligations

Subject to the approval of the BPU, Buyer shall be responsible for the following post-Closing obligations:

- (a) Capital Improvements.

In addition to those repairs otherwise required for the operation of the Systems under law, within ten (10) years following Closing, Buyer shall invest \$14,000,000 in capital improvements in the Systems, with a minimum of \$9,000,000 investing within five (5) years of Closing.

(b) Rate Stabilization.

Owner and Buyer shall mutually agree to adjust water rates, as currently defined in Chapter 255, Section 14 of the Code of the City of Egg Harbor, to achieve a five percent (5%) reduction to total water revenues generated by the Water System. Owner shall adopt a Municipal Ordinance to adjust water rates to reflect this five percent (5%) reduction which will become effective upon Closing.

The Buyer shall adopt Owner's adjusted water rates and the Owner's existing wastewater rates (also defined in Chapter 255, Section 14) upon Closing and shall hold said rates for a minimum of two (2) years. Thereafter, the Owner's rates would change at the same time and frequency of Buyer's general rate case proceedings. To be effective after said two-year period, Buyer shall petition the BPU in its next general rate case proceeding to move the Owner's water rates to the Buyer's Service Area No. 1 rates. In addition, the Buyer shall petition the BPU to phase the Owner's wastewater rates into the Buyer's Statewide Wastewater Collection Area rates applicable to Buyer's similarly situated wastewater customers.

(c) Public Fire Protection Fees.

The Buyer will adopt the Owner's existing public fire protection charges for the public fire hydrants located in the City and the adjacent communities of Galloway Township and Mullica Township and shall charge those fire protection fees to the adjacent communities and the City post-Closing. All future changes to public fire protection fees shall be included in Buyer's future BPU rate proceedings and shall not be subject to the Rate Stabilization provision herein.

(d) Cellular Leases.

Upon Closing, the Owner shall retain the payment Owner received from Unison Site Management related to Owner's conveyance of leasing rights of the cellular carriers that

installed equipment on the Owner's elevated water storage tank. Prior to Closing, Owner shall obtain the assignment of the agreement with Unison to Buyer.

ARTICLE 6. OWNER'S REPRESENTATIONS

Section 6.1 Owner's Representations

Owner represents and warrants to Buyer that: (a) Owner is a municipality properly created under the laws of the State; (b) Owner is the owner of the Systems; and (c) Owner has the full right and authority to execute this Agreement and consummate all of the transactions here contemplated, subject to the contingencies hereunder and all applicable State laws.

Section 6.2 Indemnification

Owner represents and warrants that Owner will indemnify and save harmless Buyer from any and all claims, demands, suits, actions, damages, liabilities, or expenses, including reasonable attorneys' fees, in respect to or arising out of the ownership and/or operation of the Systems prior to Closing. Buyer is not indemnified for any interference with the Systems operations or negligent actions made by the Buyer before the Date of Closing.

Section 6.3 Title to Assets

Owner represents and warrants that, except as noted in Appendix B attached hereto, title to all assets of the Systems are good and marketable and, at the time of Closing, will be free and clear of all liens and encumbrances, except for those items listed in Appendix E.

Section 6.4 No Warranties

Except for the representations and warranties set forth herein, Owner represents that the Systems are being sold "as is" and Owner has not made, is not making and will not make any statement, representation or warranty, express or implied, regarding the condition of the Systems.

Section 6.5 No Complaints

Owner represents and warrants, to the best of Owner's knowledge, that there are no formal complaints and no litigation, either at law or in equity, nor any proceedings before any court, commission or regulatory body pending, or threatened against Owner, in any way pertaining to the Systems.

Section 6.6 No Default

Owner represents and warrants, to the best of Owner's knowledge, that Owner is not in default of any provisions of law, character, by-laws, contract, franchise, rules or regulations of any governmental agency or any instrument to which it is a party and which in any way affects the Systems.

Section 6.7 No Reimbursement Obligations

Owner represents and warrants, to the best of Owner's knowledge, that Owner is not a party to any water or wastewater extension agreement or other contract which, if assigned to Buyer, would obligate Buyer by rebate, reimbursement or other payment to return moneys to third party by reason of installation of some portion of the Systems.

Section 6.8 System Compliance

Owner represents and warrants that, except as otherwise disclosed to Buyer in writing, as of the Closing Date the Systems are in compliance with all State, federal and local laws and regulations and there have been no environmental violations of a continuing nature that have not been addressed by Owner.

Section 6.9 Tariff

Owner represents and warrants that the municipal tariff, attached as Appendix G, represents the true rates of the Systems and such rates are in effect as of the Closing Date and as described in Section 5.7.B.

Section 6.10 Works in Progress

Owner represents and warrants that it shall use best efforts to complete all Works in Progress prior to the Closing Date.

Section 6.11 Title to Real Property

Owner represents and warrants that it is, or shall by the Closing Date be, the sole owner and have good and marketable title to each fee parcel of real property included in the Systems and has or shall have by the Closing Date all necessary leasehold interest, license or easement in all other real property necessary for the ownership and operation of the Systems.

Section 6.12 Permits

Owner represents and warrants that Appendix L sets forth a complete and accurate list of all permits held by the Owner, all of which are in full force and effect and no appeals or other proceedings are pending or threatened with respect to the issuance, terms or conditions of any such permits. To the best of its knowledge and except as noted in Appendix L, the Owner has (i) provided to Buyer true and complete copies of all permits set forth in Appendix L, (ii) the Owner holds all permits which are necessary or required under applicable law for the ownership, operation and maintenance of the Systems and the assets to be conveyed to Buyer as currently or previously operated and maintained, (iii) Owner has not received any written notice or other written communication from any governmental authority or other person regarding (1) any actual or alleged violation or failure to comply with any such permits, or (2) any revocation, withdrawal, non-renewal, suspension, cancellation or termination of any such permits. With respect to any permits held by the Owner that are scheduled to expire prior to the Closing Date, any applications for renewal of such licenses and permits have been or will be duly filed by the Owner with the applicable governmental authority within the time frame required under applicable law.

Section 6.13 Environmental

Owner represents and warrants that to the best of its knowledge and except as noted in Appendix M, the Owner is in full compliance with and has not been and is not in violation of or liable under any applicable environmental law. Owner has no basis to expect nor has it received any actual or threatened order, notice or other communication from any governmental authority or other person of any actual or potential violation or failure to comply with any environmental law or of any actual or threatened obligation to undertake or bear the cost of any environmental, health and safety liabilities with respect to the Systems.

Owner represents and warrants that to the best of the Owner's knowledge and except as noted in Appendix M, there are no pending or threatened claims, encumbrances or other restrictions of any nature, resulting from any environmental, health and safety liabilities or arising under or pursuant to any environmental law with respect to or affecting the Systems.

Owner represents and warrants that to the best of the Owner's knowledge and except as noted in Appendix M, there are no hazardous materials, except those used in connection with the operation of the Systems, present on or in the Systems, including any hazardous materials contained in barrels, above or underground storage tanks, landfills, land deposits, dumps, equipment (whether moveable or fixed) or other containers, either temporary or permanent.

Owner represents and warrants that to the best of the Owner's knowledge and except as noted in Appendix M, none of the following exists at the Systems: (1) underground storage tanks; (2) asbestos-containing material in any form, other than asbestos-cement water mains; (3) materials or equipment containing polychlorinated biphenyl; (4) groundwater monitoring wells; (5) lead contamination; or (6) landfills, surface impoundments, or disposal areas.

Section 6.14 The Act

Owner represents and warrants that as of the Date of this Agreement Owner has complied with and completed all requirements necessary pursuant to the Act to enter into and consummate this Agreement.

Section 6.15 Survival

All warranties and representations contained in this Article 6 shall survive Closing.

ARTICLE 7. BUYER'S REPRESENTATIONS

Section 7.1 Buyer's Representations

Buyer represents and warrants to Owner that: (a) Buyer is a duly organized corporation, validly existing and in good standing under the laws of the State; (b) Buyer has the authority to execute this Agreement and perform Buyer's obligations under this Agreement, has been duly authorized by all necessary corporate action and does not conflict with any provision contained in its charter, rules, regulations or by-laws or in any instrument to which Buyer is a party or by which Buyer is bound; and (c) Buyer will furnish to Owner a certified copy of the resolution of Buyer authorizing Buyer to consummate this Agreement and enter into the transactions provided herein.

Section 7.2 Indemnification

Buyer represents that Buyer will indemnify and hold harmless, including paying all reasonable attorney's fees, Owner from and against any and all claims, demands, suits, actions, damages, liabilities or expenses in respect to or arising out of operation of the Systems subsequent to the Closing Date.

Section 7.3 No Warranties

Except as specifically represented and warranted in this Agreement, Buyer represents that Buyer is purchasing the Systems "as is".

Section 7.4 Right to Inspect

Buyer represents that, prior to the Effective Date, Buyer has been afforded the opportunity to inspect and has inspected the Systems to the extent that Buyer deemed necessary and that Buyer has the continuing right to continue such inspections pursuant to Article IV Section VIII of this Agreement.

Section 7.5 Other Limitations of Local, State, and Federal Laws and Regulations

Buyer accepts the terms of this Agreement subject to the terms and limitations of all applicable local, State, and federal laws, statutes, rules and/or regulations.

Section 7.6 Assumption of Contracts

Buyer agrees to assume all outstanding contractual obligations of Owner with the Existing Collateral Agreements set forth in Appendix C hereto for the remaining term of such contracts.

Section 7.7 Customer Service Standards

Buyer covenants and agrees to provide the customers of the Systems with continuous uninterrupted service including the supply of potable water in perpetuity and to operate the Systems in a manner at least equivalent to the Customer Service Standards and with the terms and conditions of Buyer's Tariff and the rules and regulations of the BPU.

Section 7.8 Land Use Regulation

Buyer agrees that any maintenance or expansion of the Systems will be done in conformance with existing City land use and zoning ordinances, master plan and historic district standards, if applicable. Any deviations from the City's land use ordinance will require a variance.

Section 7.9 Survival

All warranties and representations contained in this Article 7 shall survive Closing.

ARTICLE 8. PUBLIC SERVICE

Section 8.1 Services to City Facilities

Subject to BPU approval, Buyer agrees to provide water and wastewater services at no cost to the City facilities listed in Appendix I (the “**Municipal Facilities**”) at approximately the same volume levels as established during the 12 month period following the Closing Date. To the extent that any service volumes for the Municipal Facilities exceed those that are established with the 12 month period, the increased volumes shall be charged to Owner at the rates in effect from time to time by Buyer for all other services throughout the City. Buyer’s obligation to provide no cost service to the Municipal Facilities shall end ten years from the Closing Date at which time the Municipal Facilities will be charged the applicable rates pursuant to Buyer’s Tariff in effect at that time **[NTD: NJAW and City will discuss and agree on list of the applicable municipal facilities.]**

ARTICLE 9. ADDITIONAL REPRESENTATIONS AND UNDERSTANDINGS

Section 9.1 No Broker

Buyer and Owner represent to one another that this sale has been effectuated without the aid or assistance of any real estate broker or finder and that no commission or finder’s fee is due to anyone by reason of any act on the part of Buyer or Owner.

Section 9.2 No Recordation

It is understood and agreed that this Agreement shall not be recorded in the Atlantic County Clerk’s Office, or elsewhere; however, the parties acknowledge that all transfers of title to real estate and other interest in properties will be so recorded.

Section 9.3 Notices

No notice, request, consent, approval, waiver or other communication under this Agreement shall be effective or deemed to have been given, unless the same is in writing and is

personally delivered and acknowledged by signature of addressee, or authorized agent at the office address, or by express mail, or federal express, or telefax (provided the addressee sends a telefax confirmation that the notice has been received), or mailed by certified mail, return receipt requested. All the above should be addressed to the parties at the addresses noted below:

To Owner: Egg Harbor City, in the County of Atlantic
Attention: City Clerk, Meg Steeb
500 London Avenue
Egg Harbor City, New Jersey 08215

To Buyer: New Jersey-American Water Company, Inc.
1 Water Street
Camden, New Jersey 08102
Attention: General Counsel

Section 9.4 Applicable Law

This Agreement and the performance hereof shall be governed, interpreted, construed and regulated by the laws of the State. Any action brought by either party related to this Agreement shall be brought in the Superior Court, Atlantic County, State of New Jersey.

Section 9.5 Counterparts

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

Section 9.6 No Assignment

This Agreement may not be assigned by any party without the prior written consent of the other party.

Section 9.7 Entire Agreement

This Agreement, together with all Appendices, sets forth all of the promises, agreements, conditions and understandings between the parties hereto relative to the subject matter hereof,

and there are no promises, agreements, conditions or understandings, either written or oral, expressed or implied between them other than as herein set forth. Except as herein otherwise specifically provided, no subsequent, alterations, amendments, changes or additions to this Agreement shall be binding upon either party, unless reduced to writing and signed by all parties.

Section 9.8 Survival

Only those covenants, agreements, representations and warranties herein made which expressly provide for post-closing survival shall survive the Closing.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed by their proper corporate officers and their proper corporate seals to be hereto affixed, the day and year first above written.

BUYER:

OWNER:

NEW JERSEY-AMERICAN
WATER COMPANY, INC.

EGG HARBOR CITY

Appendix A

Description of the Systems

A. Water System

The existing water supply, treatment and distribution system consists of three (3) actively permitted water supply wells, one (1) water treatment plant, one (1) elevated water storage tank, and the water distribution system. The age of the water system infrastructure ranges from early 1900's to more recent improvements completed as recent as 2015.

The water treatment plant has a 1,200 gpm (firm capacity) and consists of three (3) package water treatment modules incorporating aeration, detention and gravity filtration. Each module is rated for 600 gpm flowrate; a backwash pump station, holding tank, and reclaim system; two (2) 75,000 gallon above ground clear well tanks; a pump room with three (3) 40 HP high service pumps with VFDs; associated piping, control valves, flow meters, analyzers, etc.; a chlorine gas disinfection system; a fluoride feed system; a treatment building which contains a control/electrical room, chemical rooms, and mechanical room; and a maintenance and equipment storage building.

The water distribution system consists of approximately 37 miles of water main. The City provides water service to the residents of the City as well as portions of Galloway Township and Mullica Township. The City owns the infrastructure in Galloway Township (South Egg Harbor), which services approximately 75 customers. The infrastructure that the City owns in Galloway Township consists of mostly 6" diameter water main, but also some 4" and 2" diameter mains. The customers in Mullica Township are serviced off of the 12" diameter water main that is installed along Hamburg Avenue. Hamburg Avenue is the border between Mullica Township and the City and the 12" diameter main is located within the City limits. The number of customers serviced in Mullica Township is approximately 20 customers. The City owns and operates the infrastructure in the outlying service area, including the responsibility of responding to emergency calls.

B. Wastewater System

The existing wastewater collection and pumping system consists of nine (9) sanitary lift stations, the associated force main, and gravity sewer mains. The City does not own or operate a wastewater treatment facility. All wastewater is conveyed to the Atlantic County Utilities Authority (ACUA) for treatment.

The sanitary system consists of approximately 23 miles of gravity main and approximately four (4) miles of force main associated with the lift stations. Most of the sanitary collection system is 8"-12" diameter Vitrified Clay or terra cotta pipe. It is estimated that there are approximately 400 manholes of varying age based upon the age and length of the gravity main. The City owns the sanitary laterals from the main to the clean out. Accordingly, property owners are responsible for the sewer lateral up to the clean out.

The City is part of the consolidated district for the ACUA. All wastewater is metered at the Chicago Avenue ACUA Pump Station and conveyed to the ACUA interceptor system for treatment at the ACUA Regional Wastewater Treatment Plant.

Appendix C

Existing Collateral Agreements

Appendix D

Form of Municipal Consent

Ordinance No. _____

**AN ORDINANCE
GRANTING CONSENT AND PERMISSION TO NEW JERSEY-AMERICAN
WATER COMPANY TO FURNISH POTABLE WATER AND WASTEWATER
CONVEYANCE IN THE CITY OF EGG HARBOR CITY, NEW JERSEY**

WHEREAS, the City of Egg Harbor City, County of Atlantic and State of New Jersey (the “City”), hereby grants consent and permission to New Jersey-American Water Company (“New Jersey-American”), a New Jersey Corporation to furnish potable water and wastewater conveyance within the City; and

WHEREAS, New Jersey-American is in the process of acquiring the water and wastewater systems (the “Systems”) currently owned and operated by the City, subject to regulatory approvals; and

WHEREAS, The City is desirous of having New Jersey-American acquire the Systems; and

WHEREAS, New Jersey-American is a regulated public utility corporation of the State of New Jersey presently seeking the municipal consent of the City to permit New Jersey-American to provide potable water and wastewater conveyance service through the Systems; and

WHEREAS, New Jersey-American has requested the consent of the City as required by N.J.S.A. 48:19-17 and 48:19-20, as amended, to lay its pipes beneath and restore such public roads, streets and places as it may deem necessary for its corporate purposes, free from all charges to be made for said privilege (except that fees for road opening permits shall be paid), provided that all said pipes installed after the date of this ordinance shall be laid at least three feet (3’) below the surface and shall not in any way unnecessarily obstruct or interfere with the public travel or cause or permit other than temporary damage to public or private property; and

WHEREAS, it is deemed to be in the best interests of the citizens of the City to provide this consent;

WHEREAS, the Mayor and Council of the City have concluded that granting of said consent shall enhance the health, safety and welfare of the citizens of the City.

NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY AS FOLLOWS:

Section 1. That exclusive and perpetual consent and permission to furnish water and wastewater conveyance to the City and all residents, businesses and government buildings therein is hereby given and granted to New Jersey-American, its successors and assigns, subject to

approval of such consent and permission by the Board of Public Utilities of the State of New Jersey.

Section 2. That exclusive consent and permission is given to New Jersey-American , its successors and assigns, under the provisions of N.J.S.A. 48:19-17 and N.J.S.A. 48:19-20, as amended, without charge therefore, (except fees for road opening permits which shall be paid) as the same may be required in order to permit New Jersey American-Water to own and operate the Systems add to, extend, replace, operate and maintain said Systems in the public property described herein in order to provide said potable water and wastewater conveyance service. This shall include permission to lay pipes beneath the public roads, streets, public property and public places. The public property shall include roads, streets and public places. The privilege granted herein shall include the construction, installation and maintenance of hydrants on and along the roads of the City, as well as streets, parks and public places at locations within the City;

Section 3. That a certified copy of this Ordinance, upon final passage, shall be sent to the New Jersey-American, the New Jersey Department of Environmental Protection and the Board of Public Utilities of the State of New Jersey.

Section 4. That the consent granted herein shall be subject to the New Jersey-American complying with all applicable laws of the City and/or the State of New Jersey including, but not limited to, any and all applicable statutes and administrative agency rules and/or regulations.

Section 5. The Mayor and the Clerk of the City are authorized to execute the documents and agreements necessary to effectuate this municipal consent.

Section 5. Each section, subsection, sentence, clause and phrase of this Ordinance is declared to be an independent section, subsection, sentence, clause and phrase, and the finding or holding of any such portion of this Ordinance to be unconstitutional, void, or ineffective for any cause, or reason, shall not affect any other portion of this Ordinance.

Section 6. All ordinances or parts of ordinances inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.

Appendix E
Permitted Encumbrances

Appendix F

Customer Service Standards

1. Qualified respondent shall maintain Water System service lines from mains to curb line of property and shall undertake all necessary capital improvements, maintenance, repairs and replacement to the Systems as shall be required from time to time. Such undertaking shall be made in accordance with prudent industry standards.
2. Qualified respondent shall maintain buildings and property in a neat and orderly appearance consistent with community standards and shall undertake reasonable measures to protect the health, safety and welfare of the public with respect to the Systems.
3. Qualified respondent shall operate Systems in a manner to reduce odors, dust, spills and other nuisances. Qualified respondent shall provide appropriate customer service staffing and response times for any complaints about nuisances or service problems.
4. Qualified respondent's employees shall provide a qualified staff and experienced employees and third- party contractors who have direct experience in operating similar Systems. Qualified respondent shall maintain the necessary number of employees, staff and third- party contractors to operate, maintain and manage the Systems.
5. Qualified respondent shall implement a plan of action protocol for emergency events which shall include notices to the City and other regulating entities having jurisdiction and for measures which facilitate coordinated emergency response actions, as needed. Qualified respondent shall maintain a toll-free 24-hour telephone number where users of the Systems can report emergencies

Appendix G
Municipal Tariff

Appendix H
Excluded Assets

Appendix I
Municipal Facilities

Appendix J

Works in Progress

The City does not independently have any current capital projects or non-routine maintenance currently being planned. However, the City has been coordinating with NJDOT on improvements to the US Route 30, which will eliminate, replace, and reconfigure significant portions of water main along US Route 30 and construct a new section of water main along Atlantic Avenue from St. Louis Avenue to 12th Terrace.

A schematic map of the proposed US Route 30 reconfiguration and improvements is attached to this Appendix.

Appendix K

Owner-Retained Properties and Easements

Appendix L

Permits

Appendix M
Environmental