

**MODIFICATION AGREEMENT
REVISING OPERATING AGREEMENT**

THIS MODIFICATION AGREEMENT, made this _____ day of February 2009, by and between the **Trenton Water Works** (“TWW”), a municipal water utility owned by the City of Trenton, New Jersey (“Trenton”); and **Aqua New Jersey, Inc.** (“Aqua”), a public utility corporation of the State of New Jersey with principal offices for the transaction of business located at 10 Black Forest Road, Hamilton, New Jersey;

W I T N E S S E T H

WHEREAS, Aqua is a subsidiary of Aqua America, Inc. and a regulated public utility, incorporated under the laws of the state of New Jersey and is engaged in the business of treating and distributing potable water for both domestic use and fire service, as well as providing wastewater treatment and collection services. Aqua was formed in 1969 under the name of Garden State Water Company through the merger of the Peoples Water Company of Phillipsburg, the Hamilton Square Water Company, and the Blackwood Water Company. Garden State changed its name to Consumers New Jersey Water Company on April 18, 1995; and

WHEREAS, TWW and Consumers entered into an Operating Agreement on August 8, 2002, whereby the parties agreed, among other things, to the sale of water from one to the other on an emergency or peak requirement basis; and

WHEREAS, currently, TWW supplies up to three (3) million gallons of water per day to Aqua, which is delivered to Aqua through the water system operated and maintained by TWW inside and outside the municipal limits of Trenton; and

WHEREAS, Trenton and the New Jersey-American Water Company, Inc. (“NJAWC”) have filed a Joint Petition with the New Jersey Board of Public Utilities (“NJBPU”), seeking, among other things, authorization for the sale of the TWW water system assets located in Ewing, Hamilton, Hopewell and Lawrence Townships (“OWUS”) to NJAWC; and

WHEREAS, NJAWC also simultaneously filed a base rate proceeding where it sought recognition in rate base of all capital costs associated with the within transaction and implementation of a wheeling rate to allow NJAWC to assess charges to transport water supplied by TWW from the water system inside Trenton (“IWUS”), which is not being acquired by NJAWC, through the OWUS to customers outside of the OWUS, such as Aqua; and

WHEREAS, Trenton, Aqua, and NJAWC have discussed and agreed upon terms for the provision of water to Aqua by TWW at such time as the sale of the OWUS is consummated pursuant to and in accordance with the approval of the NJBPU, including the levy of a wheeling charge by NJAWC on water delivered by TWW to Aqua through the OWUS; and

WHEREAS, TWW and Aqua desire to amend the Operating Agreement to provide for the provision and delivery of water by TWW through the OWUS to Aqua at such time as the sale of the OWUS is consummated;

NOW, THEREFORE, in consideration of the promises, the mutual covenants and agreements set forth below, and the respective undertakings of each party to the other, TWW and Aqua, each binding itself, its successors, and assigns, do mutually covenant, promise and agree as follows:

1. The Operating Agreement is incorporated herein by reference as though set forth at length and the parties agree to continue to be bound by the terms and conditions and to perform their respective obligations and responsibilities contained therein, except as modified herein.

2. TWW and Aqua agree that, as of the date of the consummation of the sale of the OWUS to NJAWC (the “Commencement Date”), the rate for all water provided by TWW for purchase by Aqua shall no longer be billed at the jurisdiction retail tariff rate, but shall be billed at a wholesale rate equal to the rate that NJAWC pays to TWW under the Water Supply Agreement Between City of Trenton and New Jersey-American Water Company, Inc. and any

amendments thereto (“WSA”), as adjusted from time to time, for the balance of the term of the Operating Agreement. The initial wholesale rate of \$1.88 per thousand gallons shall be subject to adjustment to include a Capital Improvement Surcharge (“CIS”) for debt service incurred by Trenton for water treatment plant improvements and shall be effective immediately upon the Commencement Date. The CIS shall also be modified to include debt service for the central pump station improvements and reservoir cover at such time as Trenton begins paying the debt service on these projects and for other projects which may qualify for the CIS under the terms of the WSA. The wholesale rate, as adjusted to include the CIS for Year 1, shall be subject to a Consumer Price Index adjustment as described in the WSA, starting in Year 2 after the Commencement Date.

3. a) Pursuant to the Stipulation to be executed by all parties in the matter initiated by the filing of the Joint Petition and pending before the Office of Administrative Law and NJBPU, it is agreed that the wheeling rate to be paid by TWW to NJAWC would be reduced from NJAWC’s filed level of \$.9635 per thousand gallons for water wheeled through the OWUS to \$.5740 per thousand gallons. TWW will not be required to pay a wheeling charge of \$.5740 per thousand gallons for all water purchased by Aqua from TWW and delivered through the OWUS below an annual volume threshold of 174,000,000 gallons (“Threshold”) for the first six (6) years after the Commencement Date.

b) In the event Aqua exceeds the Threshold, Aqua will pay to TWW an amount equal to the wheeling charge multiplied by the amount of water purchased by Aqua and delivered by TWW and NJAWC through the OWUS in excess of the Threshold, provided that if the addition of the wheeling rate to the wholesale rate results in a rate which exceeds the retail consumption tariff rate charged customers of TWW in the IWUS (\$21.16 per 1,000 cubic feet minus the \$.01 per 1,000 gallon tax imposed by N.J.S.A. 58:12A-21.a. as of October 1, 2008), Aqua shall be billed for that portion of the wheeling rate which when added to the wholesale rate results in a charge equal to TWW’s retail consumption tariff rate charged customers in the IWUS. The first annual period shall start upon the Commencement Date and TWW shall provide an invoice to Aqua, should Aqua exceed the Threshold, within thirty (30) days of the close of the first annual period.

c) Aqua shall remit to TWW within thirty (30) days of receipt of the invoice from TWW the amount due and owing for the wheeling charge. TWW shall pay NJAWC any wheeling charge due and owing NJAWC under its tariff for water wheeled by NJAWC after delivery from TWW across the OWUS for delivery to Aqua.

4. The parties agree that their respective rights and obligations as set forth in this Modification Agreement are subject to the receipt of any necessary regulatory approvals from the NJBPU as may be required under applicable law in the State of New Jersey.

5. Provided that Aqua has made timely payment to TWW of all sums due and owing under Section 3(c) of this Modification Agreement, TWW shall hold harmless, defend and indemnify Aqua, its affiliates, officers and employees against any liability, claims, actions, demands, losses, judgments, costs of suit (including reasonable attorneys fees) resulting from NJAWC's efforts to collect sums due and owing under the terms of its NJBPU approved tariff for wheeling water delivered by TWW across the OWUS for delivery to Aqua.

6. The parties to this Modification Agreement represent that they are duly organized and existing in good standing under the laws of the State of New Jersey and have the power, authority and legal right, to enter into and perform the obligations set forth in this Modification Agreement. The execution, delivery and performance of this Modification Agreement has been duly authorized by the governing bodies of each of the parties hereto and constitutes a legal, valid and binding obligation on the part of each party hereto, enforceable in accordance with its terms.

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

8. The Operating Agreement as modified by this Modification Agreement constitutes the entire agreement between the parties and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter of these agreements.

This Modification Agreement shall not be modified or amended except by writing executed by both parties.

9. This Modification Agreement shall be binding on and inure to the benefit of the contracting parties and all who succeed to their rights and responsibilities, including their respective heirs, executors, administrators, legal representatives, successors and assigns.

10. The provisions of this Modification Agreement are severable. In the event of the unenforceability or invalidity of any one or more provisions, covenants or conditions of this Modification Agreement under federal, state or other applicable laws, the parties agree to negotiate in good faith to attempt to reach agreement upon such modifications, amendments or supplements to this Modification Agreement as shall, to the extent practicable, implement and give effect to the intentions of the parties as effected herein, and the other provisions, covenants and conditions of this Modification Agreement shall, as so amended, remain in full force and effect.

11. This Modification Agreement may be executed in a number of counterparts, all of which taken together shall constitute the original hereof. If separately executed, the parts of this agreement or its signature page(s) have been executed by and delivered to all parties hereto, or their counsel, they shall have the same effect as if the signatures were all on the same copy hereof.

IN WITNESS WHEREOF, the parties have executed or caused their authorized representatives to execute this agreement as of the date first set above.

Attest: TRENTON WATER WORKS

By: _____
Douglas H. Palmer, Mayor
City of Trenton

Attest: AQUA NEW JERSEY, INC.

By: _____
William B Davis, President

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