
Section 1: 10-Q (10-Q)

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM 10-Q

(Mark One)

- QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the quarterly period ended September 30, 2018

OR

- TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____

Commission File Number 0-422

MIDDLESEX WATER COMPANY

(Exact name of registrant as specified in its charter)

New Jersey
(State of incorporation)

22-1114430
(IRS employer identification no.)

1500 Ronson Road, Iselin, New Jersey 08830
(Address of principal executive offices, including zip code)

(732) 634-1500
(Registrant's telephone number, including area code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or such shorter period that the registrant was required to submit and post files).

Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See the definitions of large accelerated filer, accelerated filer, non-accelerated filer, smaller reporting company and emerging growth company in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act).

Yes No

The number of shares outstanding of each of the registrant's classes of common stock, as of October 31, 2018: Common Stock, No Par Value: 16,398,280 shares outstanding.

INDEX

PART I.	<u>FINANCIAL INFORMATION</u>	<u>PAGE</u>
Item 1.	<u>Financial Statements (Unaudited):</u>	
	<u>Condensed Consolidated Statements of Income</u>	1
	<u>Condensed Consolidated Balance Sheets</u>	2
	<u>Condensed Consolidated Statements of Cash Flows</u>	3
	<u>Condensed Consolidated Statements of Capital Stock and Long-Term Debt</u>	4
	<u>Notes to Unaudited Condensed Consolidated Financial Statements</u>	5
Item 2.	<u>Management's Discussion and Analysis of Financial Condition and Results of Operations</u>	15
Item 3.	<u>Quantitative and Qualitative Disclosures of Market Risk</u>	23
Item 4.	<u>Controls and Procedures</u>	23
PART II.	<u>OTHER INFORMATION</u>	
Item 1.	<u>Legal Proceedings</u>	24
Item 1A.	<u>Risk Factors</u>	24
Item 2.	<u>Unregistered Sales of Equity Securities and Use of Proceeds</u>	24
Item 3.	<u>Defaults upon Senior Securities</u>	24
Item 4.	<u>Mine Safety Disclosures</u>	24
Item 5.	<u>Other Information</u>	24
Item 6.	<u>Exhibits</u>	25
	<u>SIGNATURES</u>	26

MIDDLESEX WATER COMPANY
CONDENSED CONSOLIDATED STATEMENTS OF INCOME
(Unaudited)
(In thousands except per share amounts)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2018	2017	2018	2017
Operating Revenues	\$ 38,713	\$ 36,174	\$ 104,809	\$ 99,319
Operating Expenses:				
Operations and Maintenance	18,114	16,383	52,773	49,178
Depreciation	3,792	3,587	11,137	10,280
Other Taxes	3,889	3,603	10,910	10,327
Total Operating Expenses	25,795	23,573	74,820	69,785
Operating Income	12,918	12,601	29,989	29,534
Other Income (Expense):				
Allowance for Funds Used During Construction	424	174	805	473
Other Income (Expense), net	409	248	1,277	684
Total Other Income, net	833	422	2,082	1,157
Interest Charges	1,723	1,493	4,929	3,965
Income before Income Taxes	12,028	11,530	27,142	26,726
Income Taxes	(262)	3,888	1,683	9,263
Net Income	12,290	7,642	25,459	17,463
Preferred Stock Dividend Requirements	36	36	108	108
Earnings Applicable to Common Stock	\$ 12,254	\$ 7,606	\$ 25,351	\$ 17,355
Earnings per share of Common Stock:				
Basic	\$ 0.75	\$ 0.47	\$ 1.55	\$ 1.06
Diluted	\$ 0.74	\$ 0.46	\$ 1.54	\$ 1.06
Average Number of				
Common Shares Outstanding:				
Basic	16,394	16,340	16,379	16,324
Diluted	16,550	16,496	16,535	16,480
Cash Dividends Paid per Common Share	\$ 0.2238	\$ 0.2113	\$ 0.6713	\$ 0.6338

See Notes to Condensed Consolidated Financial Statements.

MIDDLESEX WATER COMPANY
CONDENSED CONSOLIDATED BALANCE SHEETS
(Unaudited)
(In thousands)

		September 30, 2018	December 31, 2017
ASSETS			
UTILITY PLANT:	Water Production	\$ 155,308	\$ 153,844
	Transmission and Distribution	489,512	468,649
	General	71,224	69,457
	Construction Work in Progress	37,580	11,562
	TOTAL	753,624	703,512
	Less Accumulated Depreciation	154,520	146,272
	UTILITY PLANT - NET	599,104	557,240
CURRENT ASSETS:			
	Cash and Cash Equivalents	3,579	4,937
	Accounts Receivable, net	13,544	10,785
	Unbilled Revenues	9,097	6,999
	Materials and Supplies (at average cost)	5,633	4,118
	Prepayments	3,519	2,408
	TOTAL CURRENT ASSETS	35,372	29,247
DEFERRED CHARGES AND OTHER ASSETS:			
	Preliminary Survey and Investigation Charges	5,049	4,676
	Regulatory Assets	101,133	58,423
	Operations Contracts, Developer and Other Receivables	439	439
	Restricted Cash	1,956	1,460
	Non-utility Assets - Net	9,651	9,478
	Other	94	177
	TOTAL DEFERRED CHARGES AND OTHER ASSETS	118,322	74,653
	TOTAL ASSETS	\$ 752,798	\$ 661,140
CAPITALIZATION AND LIABILITIES			
CAPITALIZATION:			
	Common Stock, No Par Value	\$ 156,741	155,120
	Retained Earnings	88,413	74,055
	TOTAL COMMON EQUITY	245,154	229,175
	Preferred Stock	2,433	2,433
	Long-term Debt	141,083	139,045
	TOTAL CAPITALIZATION	388,670	370,653
CURRENT LIABILITIES:			
	Current Portion of Long-term Debt	7,327	6,865
	Notes Payable	48,500	28,000
	Accounts Payable	19,535	13,929
	Accrued Taxes	14,818	11,418
	Accrued Interest	548	1,093
	Unearned Revenues and Advanced Service Fees	1,036	951
	Other	2,646	2,281
	TOTAL CURRENT LIABILITIES	94,410	64,537
COMMITMENTS AND CONTINGENT LIABILITIES (Note 7)			
DEFERRED CREDITS AND OTHER LIABILITIES:			
	Customer Advances for Construction	22,080	21,423
	Accumulated Deferred Income Taxes	45,790	43,160
	Employee Benefit Plans	33,882	36,686
	Regulatory Liabilities	81,635	43,745
	Other	1,199	1,315
	TOTAL DEFERRED CREDITS AND OTHER LIABILITIES	184,586	146,329
CONTRIBUTIONS IN AID OF CONSTRUCTION		85,132	79,621
	TOTAL CAPITALIZATION AND LIABILITIES	\$ 752,798	\$ 661,140

See Notes to Condensed Consolidated Financial Statements.

MIDDLESEX WATER COMPANY
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(Unaudited)
(In thousands)

	Nine Months Ended September 30,	
	2018	2017
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net Income	\$ 25,459	\$ 17,463
Adjustments to Reconcile Net Income to		
Net Cash Provided by Operating Activities:		
Depreciation and Amortization	11,743	10,677
Provision for Deferred Income Taxes	(5,975)	8,394
Equity Portion of Allowance for Funds Used During Construction (AFUDC)	(538)	(323)
Cash Surrender Value of Life Insurance	(119)	(161)
Stock Compensation Expense	757	673
Changes in Assets and Liabilities:		
Accounts Receivable	(2,759)	(1,601)
Unbilled Revenues	(2,098)	(2,038)
Materials and Supplies	(1,515)	(347)
Prepayments	(1,111)	(564)
Accounts Payable	5,606	(230)
Accrued Taxes	3,400	(504)
Accrued Interest	(545)	(693)
Employee Benefit Plans	(1,426)	(1,362)
Unearned Revenue & Advanced Service Fees	85	39
Other Assets and Liabilities	1,899	(774)
NET CASH PROVIDED BY OPERATING ACTIVITIES	32,863	28,649
CASH FLOWS FROM INVESTING ACTIVITIES:		
Utility Plant Expenditures, Including AFUDC of \$267 in 2018, \$150 in 2017	(49,518)	(35,170)
NET CASH USED IN INVESTING ACTIVITIES	(49,518)	(35,170)
CASH FLOWS FROM FINANCING ACTIVITIES:		
Redemption of Long-term Debt	(6,013)	(5,163)
Proceeds from Issuance of Long-term Debt	9,265	6,968
Net Short-term Bank Borrowings	20,500	12,500
Deferred Debt Issuance Expense	(862)	(144)
Proceeds from Issuance of Common Stock	864	908
Payment of Common Dividends	(10,993)	(10,344)
Payment of Preferred Dividends	(108)	(108)
Construction Advances and Contributions-Net	3,140	726
NET CASH PROVIDED BY FINANCING ACTIVITIES	15,793	5,343
NET CHANGES IN CASH AND CASH EQUIVALENTS	(62)	(1,178)
CASH AND CASH EQUIVALENTS AT BEGINNING OF PERIOD	6,397	4,318
CASH AND CASH EQUIVALENTS AT END OF PERIOD	\$ 5,535	\$ 3,140
SUPPLEMENTAL DISCLOSURE OF NON-CASH ACTIVITY:		
Utility Plant received as Construction Advances and Contributions	\$ 3,028	\$ 3,238
SUPPLEMENTAL DISCLOSURE OF CASH FLOWS INFORMATION:		
Cash Paid During the Year for:		
Interest	\$ 5,090	\$ 4,775
Interest Capitalized	\$ 267	\$ 150
Income Taxes	\$ 3,191	\$ 1,462

See Notes to Condensed Consolidated Financial Statements.

MIDDLESEX WATER COMPANY
CONDENSED CONSOLIDATED STATEMENTS OF CAPITAL STOCK
AND LONG-TERM DEBT
(Unaudited)
(In thousands)

	September 30, 2018	December 31, 2017
Common Stock, No Par Value		
Shares Authorized - 40,000		
Shares Outstanding - 2018 - 16,398; 2017 - 16,352	\$ 156,741	\$ 155,120
Retained Earnings	88,413	74,055
TOTAL COMMON EQUITY	\$ 245,154	\$ 229,175
Cumulative Preferred Stock, No Par Value:		
Shares Authorized - 126		
Shares Outstanding - 23		
Convertible:		
Shares Outstanding, \$7.00 Series - 10	1,005	1,005
Shares Outstanding, \$8.00 Series - 3	350	350
Nonredeemable:		
Shares Outstanding, \$7.00 Series - 1	78	78
Shares Outstanding, \$4.75 Series - 10	1,000	1,000
TOTAL PREFERRED STOCK	\$ 2,433	\$ 2,433
Long-term Debt:		
8.05%, Amortizing Secured Note, due December 20, 2021	\$ 990	\$ 1,180
6.25%, Amortizing Secured Note, due May 19, 2028	4,060	4,375
6.44%, Amortizing Secured Note, due August 25, 2030	3,337	3,547
6.46%, Amortizing Secured Note, due September 19, 2031	3,617	3,827
4.22%, State Revolving Trust Note, due December 31, 2022	254	279
3.60%, State Revolving Trust Note, due May 1, 2025	1,743	1,851
3.30% State Revolving Trust Note, due March 1, 2026	351	392
3.49%, State Revolving Trust Note, due January 25, 2027	389	427
4.03%, State Revolving Trust Note, due December 1, 2026	527	553
4.00% to 5.00%, State Revolving Trust Bond, due August 1, 2021	111	162
0.00%, State Revolving Fund Bond, due August 1, 2021	88	128
3.64%, State Revolving Trust Note, due July 1, 2028	246	256
3.64%, State Revolving Trust Note, due January 1, 2028	80	84
3.45%, State Revolving Trust Note, due August 1, 2031	907	962
6.59%, Amortizing Secured Note, due April 20, 2029	3,691	3,953
7.05%, Amortizing Secured Note, due January 20, 2030	2,833	3,021
5.69%, Amortizing Secured Note, due January 20, 2030	5,812	6,197
4.45%, Amortizing Secured Note, due April 20, 2040	9,497	9,827
4.47%, Amortizing Secured Note, due April 20, 2040	3,524	3,646
3.75%, State Revolving Trust Note, due July 1, 2031	2,015	2,075
2.00%, State Revolving Trust Note, due February 1, 2036	1,064	1,115
3.75%, State Revolving Trust Note, due November 30, 2030	1,057	1,090
0.00% Construction Loans	3,698	3,874
First Mortgage Bonds:		
0.00%, Series X, due August 1, 2018	—	55
4.25% to 4.63%, Series Y, due August 1, 2018	—	61
0.00%, Series Z, due August 1, 2019	113	224
5.25% to 5.75%, Series AA, due August 1, 2019	155	300
0.00%, Series BB, due August 1, 2021	362	482
4.00% to 5.00%, Series CC, due August 1, 2021	489	636
0.00%, Series EE, due August 1, 2023	1,876	2,296
3.00% to 5.50%, Series FF, due August 1, 2024	2,980	3,495
0.00%, Series GG, due August 1, 2026	723	813
4.00% to 5.00%, Series HH, due August 1, 2026	795	880
0.00%, Series II, due August 1, 2024	520	610
3.40% to 5.00%, Series JJ, due August 1, 2027	671	750
0.00%, Series KK, due August 1, 2028	898	988
5.00% to 5.50%, Series LL, due August 1, 2028	1,010	1,095
0.00%, Series MM, due August 1, 2030	1,137	1,237
3.00% to 4.375%, Series NN, due August 1, 2030	1,415	1,505
0.00%, Series OO, due August 1, 2031	1,957	2,107
2.00% to 5.00%, Series PP, due August 1, 2031	700	740

5.00%, Series QQ, due October 1, 2023	9,915	9,915
3.80%, Series RR, due October 1, 2038	22,500	22,500
4.25%, Series SS, due October 1, 2047	23,000	23,000
0.00%, Series TT, due August 1, 2032	2,107	2,258
3.00% to 3.25%, Series UU, due August 1, 2032	800	845
0.00%, Series VV, due August 1, 2033	2,147	2,290
3.00% to 5.00%, Series WW, due August 1, 2033	795	830
0.00%, Series XX, due August 1, 2047	11,006	11,259
3.00% to 5.00%, Series YY, due August 1, 2047	3,860	3,860
0.00%, Series 2018A, due August 1, 2047	6,917	—
3.00% to 5.00%, Series 2018B, due August 1, 2047	2,365	—
SUBTOTAL LONG-TERM DEBT	151,104	147,852
Add: Premium on Issuance of Long-term Debt	1,314	1,367
Less: Unamortized Debt Expense	(4,008)	(3,309)
Less: Current Portion of Long-term Debt	(7,327)	(6,865)
TOTAL LONG-TERM DEBT	\$ 141,083	\$ 139,045

See Notes to Condensed Consolidated Financial Statements.

MIDDLESEX WATER COMPANY
NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

Note 1 – Basis of Presentation and Recent Developments

Middlesex Water Company (Middlesex or the Company) is the parent company and sole shareholder of Tidewater Utilities, Inc. (Tidewater), Tidewater Environmental Services, Inc. (TESI), Pinelands Water Company (Pinelands Water) and Pinelands Wastewater Company (Pinelands Wastewater) (collectively, Pinelands), Utility Service Affiliates, Inc. (USA), Utility Service Affiliates (Perth Amboy) Inc. (USA-PA), and Twin Lakes Utilities, Inc. (Twin Lakes). Southern Shores Water Company, LLC (Southern Shores) and White Marsh Environmental Systems, Inc. (White Marsh) are wholly-owned subsidiaries of Tidewater. The financial statements for Middlesex and its wholly-owned subsidiaries (the Company) are reported on a consolidated basis. All significant intercompany accounts and transactions have been eliminated.

The consolidated notes within the 2017 Annual Report on Form 10-K (the 2017 Form 10-K) are applicable to these financial statements and, in the opinion of the Company, the accompanying unaudited condensed consolidated financial statements contain all adjustments necessary (including normal recurring accruals) to present fairly the financial position as of September 30, 2018, the results of operations for the three and nine month periods ended September 30, 2018 and 2017 and cash flows for the nine month periods ended September 30, 2018 and 2017. Information included in the Condensed Consolidated Balance Sheet as of December 31, 2017, has been derived from the Company's audited financial statements for the year ended December 31, 2017 included in the 2017 Form 10-K.

Recent Developments

USA-PA currently operates the City of Perth Amboy, New Jersey's water and wastewater systems under a 20-year agreement, which expires in December 2018. In July 2018, through a competitive proposal process, USA-PA was awarded a \$67 million base professional services contract to continue to operate the water and wastewater systems through December 31, 2028.

Recent Accounting Guidance

Revenue Recognition - The Financial Accounting Standards Board (FASB) issued guidance, which replaces most of the existing guidance with a single set of principles for recognizing revenue from contracts with customers. The guidance became effective January 1, 2018 and did not have a material impact on the Company's financial statements. Disclosures related to Revenue Recognition are included in Note 9, *Revenue Recognition from Contracts with Customers*.

Recognition and Measurement of Financial Assets and Financial Liabilities - The FASB issued guidance which (i) requires all investments in equity securities, including other ownership interests such as partnerships, unincorporated joint ventures and limited liability companies, to be carried at fair value through net income, (ii) requires an incremental recognition and disclosure requirement related to the presentation of fair value changes of financial liabilities for which the fair value option has been elected, (iii) amends several disclosure requirements, including the methods and significant assumptions used to estimate fair value or a description of the changes in the methods and assumptions used to estimate fair value, and (iv) requires disclosure of the fair value of financial assets and liabilities measured at amortized cost at the amount that would be received to sell the asset or paid to transfer the liability. The guidance became effective January 1, 2018 and did not have a material impact on the Company's financial statements.

Statement of Cash Flows - The FASB issued guidance which amends the previous guidance on the classification of certain cash receipts and payments in the statement of cash flows. The primary purpose of the amendment is to reduce the diversity in practice that has resulted from the lack of consistent principles on this topic. The guidance became effective January 1, 2018 and did not have a material impact on the Company's financial statements.

Restricted Cash - The FASB issued guidance related to the classification and presentation of restricted cash in the statement of cash flows, which requires entities to a) include restricted cash balances in its cash and cash-equivalent balances in the statement of cash flows and b) include a reconciliation of cash and cash-equivalents per the statement of financial position as compared to the statement of cash flows. Changes in restricted cash and restricted cash equivalents that result from transfers between cash, cash equivalents, and restricted cash and restricted cash equivalents will not be presented as cash flow activities in the statement of cash flows. In addition, an entity with a material balance of amounts described as restricted cash and restricted cash equivalents must disclose information about the nature of the restrictions. The guidance became effective January 1, 2018 and did not have a material impact on the Company's financial statements. As a result of adopting this guidance, the consolidated statement of cash flows for the nine months ended September 30, 2017 was revised, which resulted in a \$0.4 million increase in Cash, Cash Equivalents and Restricted Cash at the Beginning and End of the Period.

Employee Benefit Plans-Net Periodic Benefit Cost –The FASB issued guidance which requires entities to (1) disaggregate the current-service-cost component from the other components of net benefit cost and present it with other current compensation costs for related employees in the income statement and (2) present the other components elsewhere in the income statement and outside of income from operations if that subtotal is presented. In addition, the guidance requires entities to disclose the income statement lines that contain the other components if they are not presented on appropriately described separate lines. The guidance became effective January 1, 2018 and did not have a material impact on the Company's financial statements. See Note 8, *Employee Benefit Plans* for more information. As a result of adopting this guidance, the consolidated statement of income for the three and nine months ended September 30, 2017 was revised, which resulted in increases in Operations and Maintenance expense and Other Income (Expense), net of \$0.2 million and \$0.6 million, respectively.

Leases - The FASB issued guidance related to leases which will require lessees to recognize a lease liability (a lessee's obligation to make lease payments arising from a lease, measured on a discounted basis) and a right-of-use asset (an asset that represents the lessee's right to use, or control the use of, a specified asset for the lease term). In January 2018, the FASB issued additional guidance related to leases which permits entities to forgo the evaluation of existing land easement arrangements to determine if they contain a lease as part of the adoption of this guidance. Land easement arrangements, or modifications to existing arrangements, entered into after adoption of this guidance will need to be evaluated to determine if they meet the definition of a lease. The guidance is effective for fiscal years beginning after December 15, 2018 with early adoption permitted. The Company is currently assessing the impact of this standard on its consolidated financial statements and footnote disclosures, but, based on the Company's current leasing activity, does not expect the adoption of this guidance to have a material impact on the Company's financial statements.

There are no other new adopted or proposed accounting guidance that the Company is aware of that could have a material impact on the Company's financial statements.

Note 2 – Rate and Regulatory Matters

Middlesex – In March 2018, Middlesex's petition to the New Jersey Board of Public Utilities (NJBP) seeking permission to increase its base water rates was concluded, based on a negotiated settlement, resulting in an increase in annual operating revenues of \$5.5 million. In its initial October 2017 filing with the NJBP, Middlesex had sought an increase of \$15.3 million to recover costs for capital infrastructure investments Middlesex has made, or has committed to make, to drinking water infrastructure since the last filing in New Jersey in 2015 as well as increased operations and maintenance costs. During the pendency of this rate matter, the Tax Cuts and Jobs Act of 2017 (the Tax Act) was signed into law. Under the Tax Act the maximum corporate income tax rate was reduced from 35% to 21% effective January 1, 2018. Because income tax is one of the cost components used to determine a regulated utility's revenue requirement, Middlesex was able to reduce its original rate increase request by \$4.9 million to \$10.4 million. The new base water rates are designed to recover the increased operating costs as well as a return on invested capital in rate base of \$245.5 million, based on an authorized return on equity of 9.6%. As part of the settlement, Middlesex received approval for regulatory accounting treatment of accumulated deferred income tax benefits associated with required adoption of tangible property regulations issued by the Internal Revenue Service (IRS). The settlement agreement allowed for a four-year amortization period for \$28.7 million of deferred income tax benefits as well as immediate and prospective recognition of the tangible property regulations tax benefits in future years. The rate increase became effective April 1, 2018.

[Index](#)

In August 2018, Middlesex filed a petition with the NJBPU seeking approval to set a tariff rate under a purchased water adjustment clause to recover additional costs of less than \$0.1 million for the purchase of treated water from a non-affiliated regulated water utility. We cannot predict whether the NJBPU will ultimately approve, deny or reduce the amount of our request.

Tidewater - Effective July 1, 2018, Tidewater revised its Delaware Public Service Commission (DEPSC)-approved Distribution System Improvement Charge (DSIC) rate, which is expected to generate \$0.2 million of revenues in 2018. A DSIC is a rate-mechanism that allows water utilities to recover investments in, and generate a return on, qualifying capital improvements to their water distribution system made between base rate proceedings.

Tax Act - On December 22, 2017, the Tax Act was signed into law making significant changes to the Internal Revenue Code, including a corporate tax rate decrease from 35% to 21% effective for tax years beginning after December 31, 2017. Tariff rates charged to customers in the Company's regulated companies include recovery of income taxes at the statutory rate in effect at the time those rates became effective. The conclusion of Middlesex's base rate case and the resulting rates implemented April 1, 2018 reflect the impact of the Tax Act on its revenue requirement.

In March 2018, the Company submitted compliance filings with the DEPSC proposing to reduce rates charged to its Delaware customers to reflect the impact of the Tax Act. It is uncertain at this time when the DEPSC will act upon the rate reduction proposals or whether it will accept the proposed methodologies.

As of September 30, 2018, the Company has recorded regulatory liabilities of \$32.5 million for excess income taxes collected through rates due to the lower income tax rate under the Tax Act. These regulatory liabilities are overwhelmingly related to accelerated tax depreciation deduction timing differences, which are subject to IRS normalization rules. The IRS rules limit how quickly the excess taxes attributable to accelerated tax depreciation can be returned to customers.

Note 3 – Capitalization

Common Stock - During the nine months ended September 30, 2018 and 2017, there were 21,001 shares (approximately \$0.9 million) and 24,154 common shares (approximately \$0.9 million), respectively, issued under the Middlesex Water Company Investment Plan.

In July 2018, Middlesex filed a petition with the NJBPU seeking approval of an employee incentive compensation plan, known as the 2018 Restricted Stock Plan. This plan, which was approved by shareholders at the Company's 2018 Annual Meeting, would allow for the issuance of up to a maximum of 300,000 shares of the Company's common stock through March 31, 2028. The Company expects the NJBPU to issue a decision by December 31, 2018.

Long-term Debt - In May 2018, Middlesex closed out its \$9.5 million RENEW 2017 construction loan by issuing to the NJIB first mortgage bonds designated as Series 2018A (\$7.1 million) and Series 2018B (\$2.4 million). The interest rate on the Series 2018A bond is zero and the interest rate on the Series 2018B bond ranges between 3.0% and 5.0%. Through September 30, 2018, Middlesex has drawn down a total of \$8.3 million and expects to draw down the remaining proceeds during the fourth quarter of 2018. The final maturity date for both bonds is August 1, 2047, with scheduled debt service payments over the life of the loans.

In April 2018, the NJBPU approved Middlesex's request to borrow up to \$57.0 million under the New Jersey Infrastructure Bank (NJIB) program to fund the construction of a large-diameter transmission pipeline from the Carl J. Olsen (CJO) water treatment plant and interconnect with our distribution system. Middlesex closed on a \$43.5 million NJIB construction loan in August 2018 with funding requisitions beginning in August 2018 and continuing through the end of 2019.

In April 2018, the NJBPU approved Middlesex's request to borrow up to \$55.0 million under the NJIB program to fund upgrades to the Company's CJO water treatment plant.

In March 2018, the NJBPU approved Middlesex's request to borrow up to \$14.0 million under the NJIB program to fund the 2018 RENEW Program, which is an ongoing initiative to eliminate all unlined water distribution mains in the Middlesex system. Middlesex closed on an \$8.7 million NJIB construction loan in September 2018 with funding requisitions beginning in September 2018 and continuing through early 2019.

In March 2018, the DEPSC approved Tidewater's request to borrow up to \$0.9 million under the Delaware State Revolving Fund (SRF) program to fund the replacement of an entire water distribution system of a small Delaware subdivision. Tidewater closed on the SRF loan in May 2018 and expects to complete the project in the fourth quarter of 2018.

In November 2017, Middlesex closed out three of its NJIB construction loans (booster station upgrade, RENEW 2015 and RENEW 2016 projects) by issuing to the NJIB first mortgage bonds designated as Series XX (\$11.3 million) and Series YY (\$3.9 million). The interest rate on the Series XX bond is zero and the interest rate on the Series YY bond range between 3.0% and 5.0%. Through September 30, 2018, Middlesex has drawn down \$14.9 million and expects to draw down the remaining proceeds during the fourth quarter of 2018. The final maturity date for both bonds is August 1, 2047, with scheduled debt service payments over the life of the loan.

Fair Value of Financial Instruments - The following methods and assumptions were used by the Company in estimating its fair value disclosure for financial instruments for which it is practicable to estimate that value. The carrying amounts reflected in the condensed consolidated balance sheets for cash and cash equivalents, trade receivables, accounts payable and notes payable approximate their respective fair values due to the short-term maturities of these instruments. The fair value of First Mortgage and State Revolving Fund Bonds (collectively, the Bonds) issued by Middlesex is based on quoted market prices for similar issues. Under the fair value hierarchy, the fair value of cash and cash equivalents is classified as a Level 1 measurement and the fair value of notes payable and the Bonds in the table below are classified as Level 2 measurements. The carrying amount and fair value of the Bonds were as follows:

	September 30, 2018		December 31, 2017	
	Carrying Amount	Fair Value	Carrying Amount	Fair Value
Bonds	\$ 101,411	\$ 101,741	\$ 95,322	\$ 98,036

For other long-term debt for which there was no quoted market price and there is not an active trading market, it was not practicable to estimate their fair value (for details, including carrying value, interest rate and due date on these series of long-term debt, please refer to those series noted as "Amortizing Secured Note", "State Revolving Trust Note" and "Construction Loans" on the Condensed Consolidated Statements of Capital Stock and Long-Term Debt). The carrying amount of these instruments was \$49.7 million and \$52.5 million at September 30, 2018 and December 31, 2017, respectively. Customer advances for construction have carrying amounts of \$22.1 million and \$21.4 million at September 30, 2018 and December 31, 2017, respectively. Their relative fair values cannot be accurately estimated since future refund payments depend on several variables, including new customer connections, customer consumption levels and future rate increases.

Note 4 – Earnings Per Share

Basic earnings per share (EPS) are computed on the basis of the weighted average number of shares outstanding during the period presented. Diluted EPS assumes the conversion of both the Convertible Preferred Stock \$7.00 Series and the Convertible Preferred Stock \$8.00 Series.

(In Thousands Except per Share Amounts)

Three Months Ended September 30,

2018

2017

Basic:	Income	Shares	Income	Shares
Net Income	\$ 12,290	16,394	\$ 7,642	16,340
Preferred Dividend	(36)		(36)	
Earnings Applicable to Common Stock	\$ 12,254	16,394	\$ 7,606	16,340
Basic EPS	\$ 0.75		\$ 0.47	

Diluted:

Earnings Applicable to Common Stock	\$ 12,254	16,394	\$ 7,606	16,340
\$7.00 Series Preferred Dividend	17	115	17	115
\$8.00 Series Preferred Dividend	6	41	6	41
Adjusted Earnings Applicable to Common Stock	\$ 12,277	16,550	\$ 7,629	16,496
Diluted EPS	\$ 0.74		\$ 0.46	

(In Thousands Except per Share Amounts)

Nine Months Ended September 30,

2018

2017

Basic:	Income	Shares	Income	Shares
Net Income	\$ 25,459	16,379	\$ 17,463	16,324
Preferred Dividend	(108)		(108)	
Earnings Applicable to Common Stock	\$ 25,351	16,379	\$ 17,355	16,324
Basic EPS	\$ 1.55		\$ 1.06	

Diluted:

Earnings Applicable to Common Stock	\$ 25,351	16,379	\$ 17,355	16,324
\$7.00 Series Preferred Dividend	50	115	50	115
\$8.00 Series Preferred Dividend	18	41	18	41
Adjusted Earnings Applicable to Common Stock	\$ 25,419	16,535	\$ 17,423	16,480
Diluted EPS	\$ 1.54		\$ 1.06	

Note 5 – Business Segment Data

The Company has identified two reportable segments. One is the regulated business of collecting, treating and distributing water on a retail and wholesale basis to residential, commercial, industrial and fire protection customers in parts of New Jersey, Delaware and Pennsylvania. This segment also includes regulated wastewater systems in New Jersey and Delaware. The Company is subject to regulations as to its rates, services and other matters by New Jersey, Delaware and Pennsylvania with respect to utility services within these states. The other segment is primarily comprised of non-regulated contract services for the operation and maintenance of municipal and private water and wastewater systems in New Jersey and Delaware. Inter-segment transactions relating to operational costs are treated as pass-through expenses. Finance charges on inter-segment loan activities are based on interest rates that are below what would normally be charged by a third party lender.

	(In Thousands)			
	Three Months Ended September 30,		Nine Months Ended September 30,	
	2018	2017	2018	2017
Operations by Segments:				
Revenues:				
Regulated	\$ 34,628	\$ 32,252	\$ 93,002	\$ 88,023
Non – Regulated	4,304	4,142	12,286	11,755
Inter-segment Elimination	(219)	(220)	(479)	(459)
Consolidated Revenues	\$ 38,713	\$ 36,174	\$ 104,809	\$ 99,319
Operating Income:				
Regulated	\$ 12,214	\$ 11,894	\$ 27,827	\$ 27,580
Non – Regulated	704	707	2,162	1,954
Consolidated Operating Income	\$ 12,918	\$ 12,601	\$ 29,989	\$ 29,534
Net Income:				
Regulated	\$ 11,770	\$ 7,232	\$ 23,904	\$ 16,341
Non – Regulated	520	410	1,555	1,122
Consolidated Net Income	\$ 12,290	\$ 7,642	\$ 25,459	\$ 17,463
Capital Expenditures:				
Regulated	\$ 21,141	\$ 13,998	\$ 49,469	\$ 35,157
Non – Regulated	—	7	49	13
Total Capital Expenditures	\$ 21,141	\$ 14,005	\$ 49,518	\$ 35,170
	As of	As of		
	September 30,	December 31,		
	2018	2017		
Assets:				
Regulated	\$ 754,309	\$ 661,816		
Non – Regulated	6,950	7,093		
Inter-segment Elimination	(8,461)	(7,769)		
Consolidated Assets	\$ 752,798	\$ 661,140		

Note 6 – Short-term Borrowings

As of September 30, 2018, the Company has established lines of credit aggregating \$92.0 million. At September 30, 2018, the outstanding borrowings under these credit lines were \$48.5 million at a weighted average interest rate of 3.23%.

The weighted average daily amounts of borrowings outstanding under the Company's credit lines and the weighted average interest rates on those amounts were as follows:

Three Months Ended		Nine Months Ended	
September 30,		September 30,	
2018	2017	2018	2017
\$ 43,402	\$ 21,055	\$ 34,332	\$ 16,447
3.24%	2.28%	3.09%	2.07%

The maturity dates for the \$48.5 million outstanding as of September 30, 2018 are in October 2018 through December 2018 and are extendable at the discretion of the Company.

Interest rates for short-term borrowings under the lines of credit are below the prime rate with no requirement for compensating balances.

Note 7 – Commitments and Contingent Liabilities

Water Supply - Middlesex has an agreement with the New Jersey Water Supply Authority (NJWSA) for the purchase of untreated water through November 30, 2023, which provides for an average purchase of 27.0 million gallons a day (mgd). Pricing is set annually by the NJWSA through a public rate making process. The agreement has provisions for additional pricing in the event Middlesex overdrafts or exceeds certain monthly and annual thresholds.

Middlesex also has an agreement with a non-affiliated regulated water utility for the purchase of treated water. This agreement, which expires February 27, 2021, provides for the minimum purchase of 3.0 mgd of treated water with provisions for additional purchases.

Tidewater contracts with the City of Dover, Delaware to purchase 15.0 million gallons of treated water annually.

Purchased water costs are shown below:

	(In Thousands)			
	Three Months Ended		Nine Months Ended	
	September 30,		September 30,	
	2018	2017	2018	2017
Treated	\$ 836	\$ 791	\$ 2,427	\$ 2,365
Untreated	948	673	2,728	1,905
Total Costs	\$ 1,784	\$ 1,464	\$ 5,155	\$ 4,270

Guarantees - As part of an agreement with the County of Monmouth, New Jersey (County), Middlesex serves as guarantor of the performance of Applied Water Management, Inc. (AWM), an unaffiliated wastewater treatment contractor, to operate a County-owned leachate pretreatment facility at the Monmouth County Reclamation Center in Tinton Falls, New Jersey. The performance guaranty is effective through 2028 unless another guarantor, acceptable to the County, replaces Middlesex before such date. Under agreements with AWM and Natural Systems Utilities, LLC (NSU), the parent company of AWM, Middlesex earns a fee for providing the performance guaranty. In addition, Middlesex may provide operational support to the facility, as needed, and AWM and NSU, serving as guarantor to Middlesex with respect to the performance of AWM, agree to indemnify Middlesex against any claims that may arise under the Middlesex guaranty to the County.

Index

If requested to perform under the guaranty to the County and, if AWM and NSU, as guarantor to Middlesex, do not fulfill their obligations to indemnify Middlesex against any claims that may arise under the Middlesex guaranty to the County, Middlesex would be required to fulfill the remaining operational commitment of AWM. As of both September 30, 2018 and December 31, 2017, the liability recognized in Other Non-Current Liabilities on the balance sheet for the guaranty is less than \$0.1 million.

Leases - The Company has entered into commercial office space operating leases. Rental expenses under these operating leases were \$0.3 million and \$0.1 million for the nine months ended September 30, 2018 and 2017, respectively. These operating leases continue through 2028.

Construction - The Company has forecasted to spend approximately \$73 million for its construction program in 2018. The actual timing and amount of capital expenditures is dependent on project scheduling and refinement of engineering estimates for certain projects. The Company has entered into several contractual construction agreements that in total obligate it to expend an estimated \$40 million in the future.

Litigation - The Company is a defendant in lawsuits in the normal course of business. We believe the resolution of pending claims and legal proceedings will not have a material adverse effect on the Company's consolidated financial statements.

Change in Control Agreements - The Company has Change in Control Agreements with certain of its officers that provide compensation and benefits in the event of termination of employment in connection with a change in control of the Company.

Note 8 – Employee Benefit Plans

Pension Benefits - The Company's Pension Plan covers all active employees hired prior to April 1, 2007. For the three months ended September 30, 2018 and 2017, the Company made Pension Plan cash contributions of \$1.1 million and \$1.0 million, respectively. For the nine months ended September 30, 2018 and 2017, the Company made Pension Plan cash contributions of \$2.3 million and \$2.5 million, respectively. The Company expects to make Pension Plan cash contributions of approximately \$1.0 million over the remainder of the current year. Employees hired after March 31, 2007 are not eligible to participate in this plan, but do participate in a defined contribution plan that provides an annual contribution at the discretion of the Company, based upon a percentage of the participants' eligible compensation. In order to be eligible for a contribution, the participant must be employed by the Company on December 31st of the year to which the contribution relates. The Company also maintains an unfunded supplemental retirement benefit plan for certain active and retired Company officers and currently pays \$0.3 million in annual benefits to the retired participants.

Other Postretirement Benefits - The Company's retirement plan other than pensions (Other Benefits Plan) covers substantially all of its current retired employees. Employees hired after March 31, 2007 are not eligible to participate in this plan. Coverage includes healthcare and life insurance. For each of the three months ended September 30, 2018 and 2017, the Company made Other Benefits Plan cash contributions of \$0.2 million, respectively. For the nine months ended September 30, 2018 and 2017, the Company made Other Benefits Plan cash contributions of \$0.5 million and \$0.7 million, respectively. The Company expects to make Other Benefits Plan cash contributions of approximately \$1.1 million over the remainder of the current year.

The following tables set forth information relating to the Company's periodic costs for its employee retirement benefit plans:

	(In Thousands)			
	Pension Benefits		Other Benefits	
	Three Months Ended September 30,			
	2018	2017	2018	2017
Service Cost	\$ 607	\$ 600	\$ 284	\$ 272
Interest Cost	765	786	474	491
Expected Return on Assets	(1,218)	(1,122)	(637)	(601)
Amortization of Unrecognized Losses	415	391	447	445
Amortization of Unrecognized Prior Service Cost (Credit)	—	—	(402)	(432)
Net Periodic Benefit Cost*	\$ 569	\$ 655	\$ 166	\$ 175

	(In Thousands)			
	Pension Benefits		Other Benefits	
	Nine Months Ended September 30,			
	2018	2017	2018	2017
Service Cost	\$ 1,820	\$ 1,799	\$ 851	\$ 817
Interest Cost	2,296	2,357	1,423	1,473
Expected Return on Assets	(3,653)	(3,367)	(1,912)	(1,804)
Amortization of Unrecognized Losses	1,244	1,174	1,340	1,336
Amortization of Unrecognized Prior Service Cost (Credit)	—	—	(1,205)	(1,296)
Net Periodic Benefit Cost*	\$ 1,707	\$ 1,963	\$ 497	\$ 526

*Service cost is included in Operations and Maintenance expense on Consolidated Statements of Income; all other amounts are included in Other Income/Expense, net.

Note 9 – Revenue Recognition from Contracts with Customers

The Company's revenues are primarily generated from regulated tariff-based sales of water and wastewater services and non-regulated operation and maintenance contracts for services on water and wastewater systems owned by others. Revenue from contracts with customers is recognized when control of a promised good or service is transferred to customers at an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods and services.

The Company's regulated revenue from contracts with customers is derived from tariff-based sales that result from the obligation to provide water and wastewater services to residential, industrial, commercial, fire-protection and wholesale customers. The Company's residential customers are billed quarterly while most of the Company's industrial, commercial, fire-protection and wholesale customers are billed monthly. Payments by customers are due between 15 to 30 days after the invoice date. The Company recognizes revenue as the water and wastewater services are delivered to customers as well as records unbilled revenues estimated from the last meter reading date to the end of the accounting period utilizing factors such as historical customer data, regional weather indicators and general economic conditions in its service territories. Unearned Revenues and Advance Service Fees include fixed service charge billings in advance to Tidewater customers that are recognized as service is provided to the customer.

[Index](#)

Non-regulated service contract revenues consist of base service fees as well as fees for additional billable services provided to customers, are billed monthly and are due within 30 days after the invoice date. The Company considers the amounts billed to represent the value of these services provided to customers. These contracts expire at various times through December 2028 and thus contain remaining performance obligations for which the Company expects to recognize revenue in the future. These contracts also contain customary termination provisions.

Almost all of the amounts included in operating revenues and accounts receivable are from contracts with customers. The Company records its allowance for doubtful accounts based on historical write-offs combined with an evaluation of current economic conditions within its service territories.

The Company's contracts do not contain any significant financing components.

The Company's operating revenues are comprised of the following:

	(In Thousands)			
	Three Months Ended September 30,		Nine Months Ended September 30,	
	2018	2017	2018	2017
Regulated Tariff Sales				
Residential	\$ 19,788	\$ 18,796	\$ 53,303	\$ 50,979
Commercial	4,418	4,074	11,298	10,521
Industrial	2,868	2,587	7,869	7,165
Fire Protection	3,084	3,010	9,045	8,834
Wholesale	4,319	3,634	11,211	10,265
Non-Regulated Contract Operations	4,203	4,041	11,983	11,452
Total Revenue from Contracts with Customers	\$ 38,680	\$ 36,142	\$ 104,709	\$ 99,216
Other Regulated Revenues	151	162	276	260
Other Non-Regulated Revenues	101	90	303	302
Inter-segment Elimination	(219)	(220)	(479)	(459)
Total Revenue	\$ 38,713	\$ 36,174	\$ 104,809	\$ 99,319

Note 10 – Income Taxes

As part of its 2014 Federal income tax return, the Company adopted the final IRS tangible property regulations and changed its accounting method for the tax treatment of expenditures that qualified as deductible repairs. The adoption resulted in a net reduction of \$17.6 million in taxes previously remitted to the IRS, for which the Company has already sought and received the tax refunds. While the Company believes that its treatment of qualifying tangible property repair costs is proper, a reserve provision against refunded taxes of \$2.3 million was recorded in 2015 at the time of filing its change in accounting method. This was based on a possible challenge by the IRS during an audit examination. The Company's 2014 federal income tax return was subsequently selected for examination by the IRS in 2016. During the second quarter of 2018, the Company received information from the IRS regarding certain aspects of the its adopted accounting method used to calculate qualifying tangible property repair cost deductions and determined that it should increase its reserve provision to \$3.7 million. As the IRS examination continues and pending its completion, the tax liability could be different than the recorded reserve provision. For the three and nine months ended September 30, 2018, the Company has recorded \$0.1 million and \$0.5 million, respectively, in interest expense due to this reserve provision.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

The following discussion and analysis should be read in conjunction with the unaudited condensed consolidated financial statements of Middlesex Water Company (Middlesex or the Company) included elsewhere herein and with the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2017.

Forward-Looking Statements

Certain statements contained in this periodic report and in the documents incorporated by reference constitute "forward-looking statements" within the meaning of Section 21E of the Securities Exchange Act of 1934 and Section 27A of the Securities Act of 1933. The Company intends that these statements be covered by the safe harbors created under those laws. They include, but are not limited to statements as to:

- expected financial condition, performance, prospects and earnings of the Company;
- strategic plans for growth;
- the amount and timing of rate increases and other regulatory matters, including the recovery of certain costs recorded as regulatory assets;
- the Company's expected liquidity needs during the upcoming fiscal year and beyond and the sources and availability of funds to meet its liquidity needs;
- expected customer rates, consumption volumes, service fees, revenues, margins, expenses and operating results;
- financial projections;
- the expected amount of cash contributions to fund the Company's retirement benefit plans, anticipated discount rates and rates of return on retirement benefit plan assets;
- the ability of the Company to pay dividends;
- the Company's compliance with environmental laws and regulations and estimations of the materiality of any related costs;
- the safety and reliability of the Company's equipment, facilities and operations;
- trends; and
- the availability and quality of our water supply.

These forward-looking statements are subject to risks, uncertainties and other factors that could cause actual results to differ materially from future results expressed or implied by the forward-looking statements. Important factors that could cause actual results to differ materially from anticipated results and outcomes include, but are not limited to:

- effects of general economic conditions;
- competition for growth in non-franchised markets to be potentially served by the Company;
- ability of the Company to adequately control selected operating expenses which are necessary to maintain safe and proper utility services, and which may be beyond the Company's control;
- availability of adequate supplies of water;
- actions taken by government regulators, including decisions on rate increase requests;
- new or modified water quality standards;
- weather variations and other natural phenomena impacting utility operations;
- financial and operating risks associated with acquisitions and/or privatizations;
- acts of war or terrorism;
- changes in the pace of housing development;
- availability and cost of capital resources; and
- other factors discussed elsewhere in this quarterly report.

Many of these factors are beyond the Company's ability to control or predict. Given these uncertainties, readers are cautioned not to place undue reliance on any forward-looking statements, which only speak to the Company's understanding as of the date of this report. The Company does not undertake any obligation to release publicly any revisions to these forward-looking statements to reflect events or circumstances after the date of this report or to reflect the occurrence of unanticipated events, except as may be required under applicable securities laws.

For an additional discussion of factors that may affect the Company's business and results of operations, see Item 1A. - Risk Factors in the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2017.

Overview

Middlesex Water Company (Middlesex or the Company) has operated as a water utility in New Jersey since 1897, in Delaware through our wholly-owned subsidiary, Tidewater Utilities, Inc. (Tidewater), since 1992 and in Pennsylvania through our wholly-owned subsidiary, Twin Lakes Utilities, Inc. (Twin Lakes), since 2009. We are in the business of collecting, treating and distributing water for domestic, commercial, municipal, industrial and fire protection purposes. We also operate two New Jersey municipal water and wastewater systems under contract and provide regulated wastewater services in New Jersey and Delaware through our subsidiaries. We are regulated as to rates charged to customers for water and wastewater services, as to the quality of water service we provide and as to certain other matters in New Jersey, Delaware and Pennsylvania. Only our Utility Service Affiliates, Inc. (USA), Utility Service Affiliates (Perth Amboy), Inc. (USA-PA) and White Marsh Environmental Services, Inc. (White Marsh) subsidiaries are not regulated utilities.

Our New Jersey water utility system (the Middlesex System) provides water services to approximately 61,000 retail customers, primarily in central New Jersey. The Middlesex System also provides water service under contract to municipalities in central New Jersey with a total population of approximately 219,000. Our Bayview system provides water services in Downe Township, New Jersey. Our other New Jersey subsidiaries, Pinelands Water Company (Pinelands Water) and Pinelands Wastewater Company (Pinelands Wastewater) (collectively, Pinelands), provide water and wastewater services to approximately 2,500 customers in Southampton Township, New Jersey.

USA-PA has operated the water supply system and wastewater system for the City of Perth Amboy, New Jersey (Perth Amboy) since 1998 and was recently awarded a new ten-year contract to provide similar services, except customer service and billing, through 2028.

USA operates the Borough of Avalon, New Jersey's (Avalon) water utility, sewer utility and storm water system under a ten-year operations and maintenance contract expiring in 2022. USA also provides unregulated water and wastewater services under contract with several New Jersey municipalities. Under a marketing agreement with HomeServe USA (HomeServe), our New Jersey and Delaware residential customers are offered a menu of water and wastewater related home maintenance service program contracts. HomeServe is a leading national provider of such home maintenance service programs. USA receives a service fee for the billing, cash collection and other administrative matters associated with HomeServe's service contracts. The agreement expires in 2021.

Our Delaware subsidiaries, Tidewater and Southern Shores Water Company, LLC (Southern Shores), provide water services to approximately 45,000 retail customers in New Castle, Kent and Sussex Counties, Delaware. Tidewater's subsidiary, White Marsh, services approximately 4,000 customers in Delaware and Maryland through various operations and maintenance contracts.

Our Tidewater Environmental Services, Inc. (TESI) subsidiary provides wastewater services to approximately 3,500 residential retail customers in Sussex County, Delaware.

Our Pennsylvania subsidiary, Twin Lakes, provides water services to approximately 120 retail customers in the Township of Shohola, Pike County, Pennsylvania.

The majority of our revenue is generated from retail and contract water services to customers in our franchised and contracted service areas. We record water service revenue as such service is rendered and include estimates for amounts unbilled at the end of each month for services provided after the last billing cycle to the end of the month. Fixed service charges are billed in advance by our subsidiary, Tidewater, and are recognized in revenue as the service is provided.

Recent Developments

Capital Construction Program - The Company's multi-year capital construction program encompasses numerous projects designed to upgrade and replace utility infrastructure as well as enhance the integrity and reliability of assets to better serve the current and future generations of water and wastewater customers. The Company plans to invest approximately \$73 million in 2018 in connection with this plan for projects that include, but are not limited to:

- Construction of a 4.6 mile water transmission pipeline to provide critical resiliency and redundancy to the Company's water transmission system in New Jersey;
- Replacement of five miles of distribution water mains including service lines, valves, fire hydrants and meters in Woodbridge Township, New Jersey;
- Enhanced treatment process at the Company's largest water treatment plant in Edison, New Jersey, to mitigate the formation of disinfection by-products that can develop during treatment;
- Additional elevated storage tanks to supplement water supply during emergencies and peak usage periods;
- Upgrades to water interconnections with neighboring utilities for greater resiliency and emergency response capability;
- Relocation of water meters from inside customers' premises to exterior meter pits to allow quicker access by crews in emergencies, enhanced customer safety and convenience and reduced unmetered water; and
- Additional standby emergency power generation.

Middlesex Base Water Rate Increase Approved - In March 2018, Middlesex's petition to the New Jersey Board of Public Utilities (NJBP) seeking permission to increase base water rates was concluded based on a negotiated settlement which resulted in an increase in annual operating revenues of \$5.5 million. The new base water rates became effective April 1, 2018 and are designed to recover increased operating costs as well as a return on invested capital in rate base of \$245.5 million, and reflect an authorized return on equity of 9.6%. Part of Middlesex's filing also included a request for regulatory accounting treatment for \$28.7 million of accumulated deferred tax benefits associated with required adoption of tangible property regulations issued by the Internal Revenue Service. The settlement agreement allowed for a four-year amortization period for the deferred tax benefits as well as immediate and prospective recognition of the tangible property regulations tax benefits in future years, which is expected to lower the Company's income tax expense and, consequently, its effective income tax rate.

Contract Operations - USA-PA operates Perth Amboy's water and wastewater collection systems under contract, which expires on December 31, 2018. In July 2018, through a competitive proposal process, USA-PA was awarded a \$67 million base professional services contract to continue to operate the water and wastewater systems through December 31, 2028.

Outlook

Our ability to increase operating income and net income is based significantly on four factors: weather, adequate and timely rate relief, effective cost management, and customer growth (which are evident in comparison discussions in the Results of Operations section below). Changes in customer water usage habits, as well as increases in capital expenditures and operating costs, are significant factors in determining the timing and extent of rate increase requests. As operating costs have increased in 2018 in a variety of categories, we continue to implement plans to further streamline operations and further reduce, and mitigate increases in, operating costs.

Organic residential customer growth for 2018 has been consistent with that experienced in recent years.

Our strategy for profitable growth is focused on five key areas:

- Timely and adequate recovery of prudent investments in utility plant required to maintain appropriate utility services;
- Operate municipal, commercial and industrial water and wastewater systems under contract;
- Prudent acquisitions of investor- and municipally-owned water and wastewater utilities;
- Invest in, and/or operate under contract, industrial and commercial treatment projects that are complementary to the provision of water and wastewater services and related competencies; and
- Invest in other products, services and opportunities that complement our core water and wastewater competencies.

Operating Results by Segment

The discussion of the Company's operating results is on a consolidated basis and includes significant factors by subsidiary. The Company has two operating segments, Regulated and Non-Regulated. The operations of the Regulated segment are subject to regulations promulgated by state public utility commissions as to rates and level of service. Rates and level service in the Non-Regulated segment are subject to the terms of individually-negotiated and executed contracts with municipal, industrial and other clients. Both segments are subject to federal and state environmental, water and wastewater quality and other associated legal and regulatory requirements.

The segment tables shown below consist of the following companies: Regulated-Middlesex, Tidewater, Pinelands, Southern Shores, TESI and Twin Lakes; Non-Regulated-USA, USA-PA, and White Marsh.

Results of Operations – Three Months Ended September 30, 2018

	(In Thousands)					
	Three Months Ended September 30,					
	2018			2017		
	Regulated	Non-Regulated	Total	Regulated	Non-Regulated	Total
Revenues	\$ 34,510	\$ 4,203	\$ 38,713	\$ 32,132	\$ 4,042	\$ 36,174
Operations and maintenance expenses	14,764	3,350	18,114	13,185	3,198	16,383
Depreciation expense	3,745	47	3,792	3,540	47	3,587
Other taxes	3,787	102	3,889	3,513	90	3,603
Operating income	12,214	704	12,918	11,894	707	12,601
Other income, net	772	61	833	402	20	422
Interest expense	1,723	—	1,723	1,493	—	1,493
Income taxes	(507)	245	(262)	3,571	317	3,888
Net income	\$ 11,770	\$ 520	\$ 12,290	\$ 7,232	\$ 410	\$ 7,642

Operating Revenues

Operating revenues for the three months ended September 30, 2018 increased \$2.5 million from the same period in 2017. This increase was related to the following factors:

- Middlesex System revenues increased \$2.0 million primarily due to the NJBPU-approved base rate increase effective April 1, 2018 (\$1.5 million) and higher water demand from Contract customers (\$0.6 million);
- Tidewater System revenues increased \$0.4 million due to additional customers; and

Index

- All other revenue categories increased \$0.1 million.

Operation and Maintenance Expense

Operation and maintenance expenses for the three months ended September 30, 2018 increased \$1.7 million from the same period in 2017. This increase was related to the following factors:

- Variable production costs increased \$0.4 million due to increased rates paid for purchased water and higher treatment costs due to weather-impacted changes in raw water quality;
- Higher retiree healthcare expenses of \$0.7 million due to lower insurance premium reimbursements;
- Higher rent expense of \$0.2 million due to an increase in the square footage of commercial office space under lease to accommodate various operational and administrative needs;
- Labor costs increased \$0.2 million due to an increase in headcount and average labor rates; and
- Employee healthcare and business liability insurance costs increased \$0.2 million due to higher net policy premiums.

Depreciation

Depreciation expense for the three months ended September 30, 2018 increased \$0.2 million from the same period in 2017 due to a higher level of utility plant in service.

Other Taxes

Other taxes for the three months ended September 30, 2018 increased \$0.3 million from the same period in 2017 primarily due to higher revenue related taxes on increased revenues in our Middlesex system.

Other Income, net

Other Income, net for the three months ended September 30, 2018 increased \$0.4 million from the same period in 2017 primarily due to higher Allowance for Funds Used During Construction resulting from a higher level of capital projects in progress.

Interest Charges

Interest charges for the three months ended September 30, 2018 increased \$0.2 million from the same period in 2017 due to higher average amounts of total debt outstanding and increased short-term debt interest rates.

Income Taxes

Income taxes for the three months ended September 30, 2018 decreased \$4.2 million from the same period in 2017, primarily due to regulatory accounting treatment of tangible property regulations tax deductions, which was approved in Middlesex's most recent base rate case (see "*Middlesex Base Water Rate Increase Approved*" in Recent Developments for further discussion of this matter) and a lower effective tax rate resulting from the Tax Cuts and Jobs Act of 2017, partially offset by higher pre-tax income.

Net Income and Earnings Per Share

Net income for the three months ended September 30, 2018 increased \$4.7 million as compared with the same period in 2017. Basic earnings per share were \$0.75 and \$0.47 for the three months ended September 30, 2018 and 2017, respectively. Diluted earnings per share were \$0.74 and \$0.46 for the three months ended September 30, 2018 and 2017, respectively.

Results of Operations – Nine Months Ended September 30, 2018

(In Thousands)
Nine Months Ended September 30,

	2018			2017		
	Regulated	Non-Regulated	Total	Regulated	Non-Regulated	Total
Revenues	\$ 92,826	\$ 11,983	\$ 104,809	\$ 87,866	\$ 11,453	\$ 99,319
Operations and maintenance expenses	43,390	9,383	52,773	40,091	9,087	49,178
Depreciation expense	10,999	138	11,137	10,136	144	10,280
Other taxes	10,610	300	10,910	10,059	268	10,327
Operating income	27,827	2,162	29,989	27,580	1,954	29,534
Other income, net	1,985	97	2,082	1,107	50	1,157
Interest expense	4,929	—	4,929	3,965	—	3,965
Income taxes	979	704	1,683	8,381	882	9,263
Net income	\$ 23,904	\$ 1,555	\$ 25,459	\$ 16,341	\$ 1,122	\$ 17,463

Operating Revenues

Operating revenues for the nine months ended September 30, 2018 increased \$5.5 million from the same period in 2017. This increase was related to the following factors:

- Middlesex System revenues increased \$3.9 million due to the following:
 - o Effective April 1, 2018, a NJBPU-approved base rate increase resulted in higher revenues of \$3.0 million;
 - o Higher water demand from Contract customers of \$0.6 million;
 - o Higher Purchased Water Adjustment Clause (PWAC) revenues of \$0.3 million due to the November 2017 implementation of an increased PWAC tariff rate. A PWAC is a rate mechanism that allows for the recovery of increased purchased water costs between base rate case filings. The PWAC tariff was reset to zero with the implementation of the April 2018 base rate increase; and
- Tidewater System revenues increased \$0.9 million due to additional customers; and
- Revenues in our unregulated companies increased \$0.5 million primarily due to new contracts to operate water and wastewater systems and higher billable supplemental services at our White Marsh subsidiary; and
- All other operating revenue categories increased \$0.2 million.

Operation and Maintenance Expense

Operation and maintenance expenses for the nine months ended September 30, 2018 increased \$3.6 million from the same period in 2017, primarily related to the following factors:

- Variable production costs increased \$0.9 million due to increased rates paid for purchased water and higher treatment costs due to weather-impacted changes in raw water quality;
- Labor costs increased \$0.8 million due to increases in headcount, average labor rates and overtime for weather related main break activity;
- Employee healthcare and business liability insurance costs increased \$0.8 million due to higher net policy premiums;
- Higher retiree healthcare expenses of \$0.3 million due to lower insurance premium reimbursements;
- Higher rent expense of \$0.2 million due to an increase in the square footage of commercial office space under lease to accommodate various operational and administrative needs;

Index

- Transportation expenses increased \$0.2 million primarily due to higher fuel prices;
- Higher water main break repair activity in our Middlesex system resulted in additional \$0.2 million of non-labor costs; and
- All other operation and Maintenance expense categories increased \$0.2 million.

Depreciation

Depreciation expense for the nine months ended September 30, 2018 increased \$0.9 million from the same period in 2017 due to a higher level of utility plant in service.

Other Taxes

Other taxes for the nine months ended September 30, 2018 increased \$0.6 million from the same period in 2017 primarily due to higher revenue related taxes on increased revenues in our Middlesex system.

Other Income, net

Other Income, net for the nine months ended September 30, 2018 increased \$0.9 million from the same period in 2017 primarily due to higher Allowance for Funds Used During Construction resulting from a higher level of capital projects in progress and the sale of wastewater franchise rights at our TESI subsidiary.

Interest Charges

Interest charges for the nine months ended September 30, 2018 increased \$1.0 million from the same period in 2017 due to accrued interest associated with the IRS examination of the Company's 2014 federal income tax return (see *Note 10 – Income Taxes* for further discussion of this matter), higher average amounts of total debt outstanding and increased short-term debt interest rates.

Income Taxes

Income taxes for the nine months ended September 30, 2018 decreased \$7.6 million from the same period in 2017, primarily due to regulatory accounting treatment of tangible property regulations tax deductions, which were approved in Middlesex's most recent base rate case (see "*Middlesex Base Water Rate Increase Approved*" in Recent Developments for further discussion of this matter) and a lower effective tax rate resulting from the Tax Cuts and Jobs Act of 2017, partially offset by higher pre-tax income.

Net Income and Earnings Per Share

Net income for the nine months ended September 30, 2018 increased \$8.0 million as compared with the same period in 2017. Basic earnings per share were \$1.55 and \$1.06 for the nine months ended September 30, 2018 and 2017, respectively. Diluted earnings per share were \$1.54 and \$1.06 for the nine months ended September 30, 2018 and 2017, respectively.

Liquidity and Capital Resources

Operating Cash Flows

Cash flows from operations are largely based on four factors: weather, adequate and timely rate increases, effective cost management and growth. The effect of those factors on net income is discussed in "Results of Operations."

For the nine months ended September 30, 2018, cash flows from operating activities increased \$4.2 million to \$32.9 million. The increase in cash flows from operating activities primarily resulted from the timing of vendor and income tax payments. The \$32.9 million of net cash flow from operations enabled us to fund approximately 41% of utility plant expenditures internally for the period.

Investing Cash Flows

For the nine months ended September 30, 2018, cash flows used in investing activities increased \$14.3 million to \$49.5 million. The increase in cash flows used in investing activities resulted from increased utility plant expenditures.

For further discussion on the Company's future capital expenditures and expected funding sources, see "*Capital Expenditures and Commitments*" below.

Financing Cash Flows

For the nine months ended September 30, 2018, cash flows from financing activities increased by \$10.5 million to \$15.8 million due primarily to increases in short-term and long-term debt funding.

Capital Expenditures and Commitments

To fund our capital program, we use internally generated funds, short-term and long-term debt borrowings, proceeds from sales of common stock under the Middlesex Water Company Investment Plan (the Investment Plan) and proceeds from sales offerings to the public of our common stock. See below for a more detailed discussion regarding the funding of our capital program.

The capital investment program for 2018 is currently estimated to be approximately \$73 million. Through September 30, 2018, we have expended \$50 million and expect to incur approximately \$23 million for capital projects for the remainder of 2018.

We currently project that we may expend approximately \$200 million for capital projects in 2019 and 2020. The actual amount and timing of capital expenditures is dependent on project scheduling and refinement of engineering estimates for certain capital projects.

To pay for our capital program for the remainder of 2018 we plan on utilizing:

- Internally generated funds;
- Proceeds from the Investment Plan;
- Proceeds from the New Jersey and Delaware State Revolving Fund (SRF) programs (approximately \$11 million for the remainder of 2018 depending on construction timing). SRF programs provide low cost financing for projects that meet certain water quality and system improvement benchmarks; and
- Short-term borrowings, if necessary, through \$92.0 million of active lines of credit with three financial institutions. As of September 30, 2018, there remains \$43.5 million of available credit under these lines.

Recent Accounting Pronouncements – See Note 1 of the Notes to Unaudited Condensed Consolidated Financial Statements for a discussion of recent accounting pronouncements.

Item 3. Quantitative and Qualitative Disclosures of Market Risk

We are exposed to market risk associated with changes in interest rates and commodity prices. The Company is subject to the risk of fluctuating interest rates in the normal course of business. Our policy is to manage interest rates through the use of fixed rate long-term debt and, to a lesser extent, short-term debt. The Company's interest rate risk related to existing fixed rate, long-term debt is not material due to the term of the majority of our First Mortgage Bonds, which have final maturity dates ranging from 2019 to 2047. Over the next twelve months, approximately \$7.3 million of the current portion of existing long-term debt instruments will mature. Applying a hypothetical change in the rate of interest charged by 10% on those borrowings, would not have a material effect on our earnings.

Our risks associated with commodity price increases for chemicals, electricity and other commodities are reduced through contractual arrangements and the ability to recover price increases through rates. Non-performance by these commodity suppliers could have a material adverse impact on our results of operations, financial position and cash flows.

We are exposed to credit risk for both our Regulated and Non-Regulated business segments. Our Regulated operations serve residential, commercial, industrial and municipal customers while our Non-Regulated operations engage in business activities with developers, government entities and other customers. Our primary credit risk is exposure to customer default on contractual obligations and the associated loss that may be incurred due to the non-payment of customer accounts receivable balances. Our credit risk is managed through established credit and collection policies which are in compliance with applicable regulatory requirements and involve monitoring of customer exposure and the use of credit risk mitigation measures such as letters of credit or prepayment arrangements. Our credit portfolio is diversified with no significant customer or industry concentrations. In addition, our Regulated businesses are generally able to recover all prudently incurred costs including uncollectible customer accounts receivable expenses and collection costs through rates.

The Company's retirement benefit plan assets are exposed to fluctuating market prices of debt and equity securities. Changes to the Company's retirement benefit plan asset values can impact the Company's retirement benefit plan expense, funded status and future minimum funding requirements. Our risk is mitigated by our ability to recover retirement benefit plan costs through rates for regulated utility services charged to our customers.

Item 4. Controls and Procedures

Disclosure Controls and Procedures

As required by Rule 13a-15 under the Securities and Exchange Act of 1934 (the Exchange Act), an evaluation of the effectiveness of the design and operation of the Company's disclosure controls and procedures was conducted by the Company's Chief Executive Officer along with the Company's Chief Financial Officer. Based upon that evaluation, the Company's Chief Executive Officer and the Company's Chief Financial Officer concluded that the Company's disclosure controls and procedures are effective as of the end of the period covered by this Report. There were no changes in our internal control over financial reporting that occurred during our most recent fiscal quarter that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Disclosure controls and procedures are controls and other procedures that are designed to ensure that information required to be disclosed in Company reports filed or submitted under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the Securities and Exchange Commission's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed in Company reports filed under the Exchange Act is accumulated and communicated to management, including the Company's Chief Executive Officer and Chief Financial Officer as appropriate, to allow timely decisions regarding disclosure.

PART II. OTHER INFORMATION

Item 1. Legal Proceedings

None.

Item 1A. Risk Factors

The information about risk factors does not differ materially from those set forth in Part I, Item 1A. of the Company's Annual Report on Form 10-K for the year ended December 31, 2017.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

None.

Item 3. Defaults Upon Senior Securities

None.

Item 4. Mine Safety Disclosures

Not applicable.

Item 5. Other Information

None.

Item 6.	Exhibits
10.16	<u>Operation, Maintenance and Management Services Agreement dated August 20, 2018 between Utility Service Affiliates (Perth Amboy), Inc. and the City of Perth Amboy.</u>
10.33(b)	<u>Amendment To and Extension of the Expiration Date of the Line of Credit included in the Amended and Restated Loan Agreement between registrant, registrant’s subsidiaries and Bank of America, N.A.</u>
10.48	<u>Copy of Construction Loan Agreement (CFP-19-1) By and Between New Jersey Environmental Infrastructure Trust and Middlesex Water Company</u>
10.49	<u>Copy of Construction Loan Agreement (CFP-1) By and Between New Jersey Environmental Infrastructure Trust and Middlesex Water Company</u>
31.1	<u>Section 302 Certification by Dennis W. Doll pursuant to Rules 13a-14 and 15d-14 of the Securities Exchange Act of 1934.</u>
31.2	<u>Section 302 Certification by A. Bruce O’Connor pursuant to Rules 13a-14 and 15d-14 of the Securities Exchange Act of 1934.</u>
32.1	<u>Section 906 Certification by Dennis W. Doll pursuant to 18 U.S.C. §1350, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</u>
32.2	<u>Section 906 Certification by A. Bruce O’Connor pursuant to 18 U.S.C. §1350, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</u>
101.INS	XBRL Instance Document
101.SCH	XBRL Schema Document
101.CAL	XBRL Calculation Linkbase Document
101.LAB	XBRL Labels Linkbase Document
101.PRE	XBRL Presentation Linkbase Document
101.DEF	XBRL Definition Linkbase Document

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

MIDDLESEX WATER COMPANY

By: /s/A. Bruce O'Connor
A. Bruce O'Connor
Vice President, Treasurer and
Chief Financial Officer
(Principal Accounting Officer)

Date: November 2, 2018

26

[\(Back To Top\)](#)

Section 2: EX-10.16 (EX-10.16)

Exhibit 10.16

**CONTRACT
BETWEEN
THE CITY OF PERTH AMBOY AND
UTILITY SERVICE AFFILIATES (PERTH AMBOY), INC.**

This Contract dated as of the 20th day of August, 2018 and effective as of the 1st day of January 2019 (the “**Contract**”), is between the **CITY OF PERTH AMBOY**, Middlesex County, New Jersey (the “**City**”), a municipal corporation organized and existing under the laws of the State of New Jersey and **UTILITY SERVICE AFFILIATES (PERTH AMBOY), INC.**, (the “**Company**”), a corporation organized under the laws of the State of New Jersey, a wholly-owned subsidiary of Middlesex Water Company, a public utility regulated by the New Jersey Board of Public Utilities.

WHEREAS, the City owns the Water System, the Wastewater System and the Stormwater System (all as defined herein and collectively, the “**Systems**”); and

WHEREAS, the Systems provide water production, storage, transmission and distribution and wastewater and stormwater collection services to the City's residents and customers; and

WHEREAS, the proper provision of such water production, storage, transmission and distribution and wastewater and stormwater collection services are necessary for the public health, safety and welfare of the City's residents and customers and the financial well-being of the City; and

WHEREAS, the City has determined that the officers and employees of the Company include engineers and operators that are licensed by the New Jersey Department of Environmental Protection and that are able to properly operate and manage the Systems in accordance with Federal, state and local laws and regulations; and

WHEREAS, the operation and management of the Systems as described in *N.J.S.A. 40A:11-15(37)* are appropriate purposes for which competitive contracting may be used as set forth in *N.J.S.A. 40A:11-4.1(b)(1)*; and

WHEREAS, the City has complied with the requirements for “competitive contracting” as set forth in *N.J.S.A. 40A:11-4.1* through 4.5; and

WHEREAS, the City has determined that the public health, safety and welfare of the residents of the City can best be protected by entering into an agreement to provide for the operation and management of the Systems;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the City and the Company agree as follows:

**ARTICLE I
DEFINITIONS**

Section 1.1. Definitions. Capitalized terms used in this Contract are defined below.

“**Additional Capital Improvements**” will have the meaning assigned to such term in Section 4.4(C).

“**Annual Fee**” will have the meaning assigned to such term in Section 4.1(A).

“**Authorized Representative**” means the City Administrator or his/her designee.

“**Authorized Subcontractors**” means a contractor holding a valid contractor's license hired by the Company and approved, in writing, by the City Business Administrator to provide any of the Services.

“**Capital Improvements and Major Repairs**” will mean those capital improvement items and all renewals, repairs, replacements, additions, improvements, materials or equipment related to the Systems, that: (i) have a five year or greater useful life; (ii) cost in excess of FIVE THOUSAND DOLLARS (\$5,000); (iii) are approved by the City as provided herein; and (iv) can be capitalized in accordance with the principles set forth in the Local Bond Law, *N.J.S.A. 40A:2-1 et seq.* and are otherwise consistent with the policies of the Local Finance Board within the Division of Local Government Services in the New Jersey Department of Community Affairs. This definition does not include those items defined specifically as “Maintenance Items” herein. Any uncertainty regarding improvement and/or repairs will be resolved by the Operations Committee established in Article IV herein.

“**Change in Law**” means the adoption, implementation, amendment, withdrawal, revision or modification of or in any federal, state, county, local, legislative or administrative or other governmental law, including any statute, ordinance, code or other legislation, regulation, rule or other promulgation or pronouncement, or any permit or approval issued thereunder, or any order, judgment, action, interpretation, and/or determination of any federal, state or local court, administrative agency or governmental body with jurisdiction in the City, that is applicable from time to time concerning the management or operation of the Systems as described herein, or to which the Systems, the Company or the City may otherwise be subject.

“**City**” means the City of Perth Amboy, a public body corporate and politic of the State of New Jersey, located in the County of Middlesex.

“**City Contracts**” mean all contracts executed by the City related to the Systems.

“**City Event of Default**” will have the meaning assigned to such term in Section 3.3.

“**Commencement Date**” means January 1, 2019.

“**Company**” means Utility Service Affiliates (Perth Amboy), Inc., a wholly-owned subsidiary of the Middlesex Water Company and its permitted successors or assignors.

“**Company Event of Default**” will have the meaning assigned to such term in Section 3.2 hereof.

“**Contract**” means this agreement as same may be amended from time to time.

“**Debt Service**” means the amount of money required, on an annual basis, to pay the principal and interest obligations of the City related to all debt issued to finance costs related to the Systems.

“**Force Majeure**” means those events set forth in Section 4.6 of this Contract.

“**Maintenance Items and Minor System Repairs**” means those items identified on *Exhibit A*.

“**MCUA**” means the Middlesex County Utility Authority.

“**MCUA Contract**” means the contract described in Section 4.3(X).

“**Minor System Repairs**” mean those repairs that (i) occur routinely in the operation of the Systems; and (ii) can not be capitalized in accordance with the principles set forth in the Local Bond Law, *N.J.S.A. 40A:2-1 et seq.* and are otherwise consistent with the policies of the Local Finance Board within the Division of Local Government Services in the New Jersey Department of Community Affairs. Any uncertainty regarding repairs will be resolved by the Operations Committee established in Article IV herein.

“Ongoing Capital Improvements” means those improvements described in *Exhibit C*.

“Operations Committee” means the committee as described in Section 4.5(D).

“Ordinances” means the municipal ordinances and/or resolutions governing the operation and management of the Systems.

“Permits” means permits, approvals and/or licenses issued by the United States Environmental Protection Agency, the New Jersey Department of Environmental Protection, or any other federal, state or local regulatory agency or private party that is necessary for the proper operation of the Systems.

“Services” mean all of the duties, obligations and services as described herein to be provided by the Company that are related to the management, operation and maintenance of the Systems.

“Six Year Capital Improvement Program” means the items identified in *Exhibit E* hereto.

“Stormwater System” means the infrastructure owned and/or used in the City, including but not limited to collection systems, gravity mains, outfalls, tide check valves, force mains and pump stations to collect and discharge stormwater generated from rain and tidal events.

“Systems” means all, or any part or combination of parts, of the Water System, Wastewater System and the Stormwater System.

“Term” will have the meaning assigned to such term in Section 3.1.

“Wastewater System” means the infrastructure owned and/or used in the City, including but not limited to collection systems, force mains and pump stations, to collect and transport wastewater generated in the City from its point of origin to the MCUA treatment facility. For purposes of this Contract, if not otherwise indicated, Wastewater System will also include the Stormwater System.

“Water System” means the infrastructure owned and/or used by the City, including but not limited to sources of storage; supply; treatment, transmission and distribution facilities; all properties, assets (tangible and intangible) and franchises of the City and all improvements, additions and extension thereto, purchased, constructed or otherwise acquired by the City which relate to the purposes of providing potable water service to residents and commercial and industrial establishments in the City.

“Woodbridge Contract” means the contract described in Section 4.3(X).

Section 1.2. Interpretation and Construction. In this Contract, unless the context otherwise requires:

- (a) All references to Articles, Sections or Exhibits will, unless otherwise indicated, refer to the Articles, Sections or Exhibits in this Contract.
- (b) Words importing a particular gender mean and include correlative words of every other gender and words importing the singular number mean and include the plural number and vice-a-versa.
- (c) Words importing persons mean and include firms, associations, partnerships (including limited partnerships), trusts, corporations, limited liability companies and other legal entities, including public or governmental bodies, as well as natural persons.
- (d) All notices to be given hereunder and responses thereto will be given, unless a certain number of days is specified, within reasonable time.
- (e) Unless otherwise indicated, any “fees and expenses” will be required to be customary and reasonable.

ARTICLE II
CONTRACT

Section 2.1. Appointment of the Company and Relationship Between the City and the Company. On and after the Commencement Date, the Company will operate and manage the Systems on the terms and conditions set forth in this Contract. The City hereby enters into this Contract with the Company and appoints it to operate and manage the Systems, to provide related maintenance, administrative and customer services to support the operation and management of the Systems and to perform all other duties that are set forth in this Contract to provide the Services. This Contract will not establish any relationship other than as set forth herein. Services will be provided by the Company to the City as an independent contractor. Notwithstanding the relationships established herein, the Company will maintain its independent operations.

ARTICLE III
TERM

Section 3.1. Term. The term of this Contract will commence on the Commencement Date and, unless earlier terminated in accordance herewith, will expire on December 31, 2028 (the “**Term**”).

Section 3.2. Termination of Contract by the City for Cause. (A) Upon the happening of any of the following events of default (each a “**Company Event of Default**”), and subject to the provisions set forth in Section 6.3 regarding the resolution of disputes by arbitration, the City will have the right to terminate this Contract and/or to pursue a cause of action for actual damages, as appropriate:

- (1) The failure by the Company to operate and/or manage the Systems in accordance with the terms and provisions of this Contract, the Ordinances and/or applicable law;
- (2) The failure of the Company to perform or observe any of its covenants, agreements, obligations and/or duties created by this Contract;
- (3) If any representation, warranty and/or covenant made by the Company is false and/or misleading in any material respect and the legality of this Contract or the ability of the Company to perform the Services is thereby adversely affected;
- (4) Commencement of any bankruptcy, insolvency, liquidation and/or similar proceeding against the Company, its parent corporation, and/or any of their subsidiaries and/or related companies which materially and adversely affects the Company's ability to perform the Services;
- (5) The consent by the Company, its parent corporation, and/or any of its subsidiaries and/or related companies to the appointment of a receiver, liquidator, assignee, trustee or custodian, or the making by any such parties of an assignment for the benefit of creditors which materially and adversely affects the Company's ability to perform the Services; and

(6) The failure on the part of the Company, its parent corporation, and/or any of their subsidiaries and/or related companies to generally pay their debts as they come due which materially and adversely affects the Company's ability to perform the Services.

(B) Upon the happening of any Company Event of Default, the City will provide written notice to the Company setting forth in detail the alleged Company Event of Default. The Company will have thirty (30) days after the receipt of such written notice from the City to cure and/or correct such Company Event of Default or to deliver to the City a written notice alleging that no such Company Event of Default has occurred and setting forth in detail its reasoning as to why no such Company Event of Default has occurred. If the Company does not cure or correct such Company Event of Default within the thirty (30) day period indicated, or does not deliver to the City the written notice described above within such thirty (30) day period, the City may immediately terminate this Contract. Notwithstanding the above, if there is a Company Event of Default as described in Section 3.2(A)(4) or (5), the City will have the right to immediately terminate the Contract upon written notice to the Company and to seek any remedies or damages available at law or in equity. If the City terminates this Contract in accordance with the above provisions, the City will be obligated to pay to the Company the proportionate share of the Annual Fee, or any other amounts, due for the Services provided by the Company to the date of termination of the Contract net of any amounts owed to the City due to such Company Event of Default.

Section 3.3. Termination of Contract by the Company for Cause. (A) Upon the happening of any of the following events of default (each a "City Event of Default"), and subject to the provisions set forth in Section 6.3 hereof regarding the resolution of disputes by arbitration, the Company will have the right to terminate this Contract:

(1) The failure by the City to pay the Annual Fee or make any other payment required to be made by the City pursuant to the terms hereof;

(2) If any representation, warranty and/or covenant made by the City is false and/or misleading in any material respect and the legality of this Contract or the ability of the City to carry out its duties or obligations hereunder is thereby adversely affected;

(3) Commencement of any bankruptcy, insolvency, liquidation and/or similar proceeding by or against the City which materially and adversely affects the City's ability to perform its duties or obligations hereunder;

(4) The consent by the City to the appointment of a receiver, liquidator, assignee, trustee or custodian, or the making by the City of an assignment for the benefit of creditors which materially and adversely affects the City's ability to perform its duties or obligations hereunder; and

(5) The failure on the part of the City to generally pay its debts as they come due which materially and adversely affects the City's ability to perform its duties or obligations hereunder.

(B) Upon the happening of any City Event of Default described above, the Company will provide written notice to the City setting forth in detail the alleged City Event of Default. The City will have thirty (30) days after the receipt of such written notice from the Company to cure and/or correct such City Event of Default or to deliver to the Company a written notice alleging that no such City Event of Default has occurred and setting forth in detail its reasoning as to why no such City Event of Default has occurred. If the City does not cure or correct such City Event of Default within the thirty (30) day period indicated, or does not deliver to the Company the written notice described above within such thirty (30) day period, the Company may immediately terminate this Contract. Notwithstanding the above, if there is a City Event of Default as described in Section 3.3(A)(3) or (4), the Company will have the right to immediately terminate the Contract upon written notice to the City. If the Company terminates this Contract in accordance with the above provisions, the City will be obligated to pay to the Company the proportionate share of the Annual Fee, or any other amounts, due for the Services provided by the Company to the date of termination of the Contract. Such payments will constitute total satisfaction of any right, claim, cause of action or entitlement that the Company has or may have against the City as a result of any City Event of Default.

Section 3.4 Termination of the Contract Due to Unenforceability. If any court, agency or other entity with competent jurisdiction will finally determine that this Contract is unenforceable and/or prohibited by law, then the Contract will be terminated. If this Contract is terminated in accordance with this Section 3.4, the City will be obligated to pay to the Company the proportionate share of the Annual Fee, or other amounts, due for the Services provided by the Company to the date of termination of the Contract.

Section 3.5 Transition. The Company will cooperate in good faith with the City, its agents, contractors, and subcontractors and will provide for the orderly transition of Services from the City and/or its contractors to the Company without interruption or disruption of Services and without adverse impact to the customers of the Systems or to the City. In the event of termination of this Contract, the parties will provide for continuity of the Services during the transition of operations back to the City or to another contract partner designated by the City. The Company agrees to cooperate in good faith during such transition and agrees, at the option of the City, to continue operating the Systems for at least ninety (90) days after termination on the terms in effect at the time of termination including the pro rata payment of the Annual Fee. The Company will make provisions that the Systems will not be shut down for any period of time due to strikes, lock-outs, or labor problems. In the event of a Company labor action, stoppage or dispute that disrupts or prevents the Company's employees or its subcontractors or employees from entering upon and working on any part of the Systems or any affected portion thereof, the Company will at its sole cost seek appropriate legal injunctions, remedies, or court orders. In any event, the Company will continue to operate the Systems or any affected portion thereof through the use of office personnel, management or other resources at its disposal. The Company will always maintain operation of the Systems to protect the health, welfare and safety of the customers of the Systems and the residents and customers of the City.

**ARTICLE IV
OPERATION AND MANAGEMENT OF AND CAPITAL IMPROVEMENTS
TO THE SYSTEMS**

Section 4.1. Annual Fee. (A) The Annual Fee paid to the Company by the City for each year will be as set forth in *Exhibit B* (the “Annual Fee”) and will not include payments made to the Company for Capital Improvements and Major Repairs and will be paid to the Company in arrears in twelve equal monthly installments on the last day of each month commencing on January 31, 2019.

(B) The Annual Fee is intended to cover all costs for all Services provided for in this Contract (including Maintenance Items and Minor System Repairs and other costs specifically identified herein) other than for Capital Improvements and Major Repairs or for costs otherwise specifically identified herein as being the responsibility of the City. It is the intent of the City and the Company that all Maintenance Items and Minor System Repairs are the responsibility of the Company as part of the Annual Fee.

(C) Any payments required to be made by the City to the Company pursuant to this Section 4.1 which are paid later than thirty (30) days from the required date will bear interest until paid at the rate of two percent per annum.

Section 4.2. City Responsibilities. The City will:

(A) Own the fixed assets including water treatment plant, well fields, real property, collection, transmission, storage and distribution systems and primary and secondary pumping stations.

(B) Control all finances including billing for and collection of rents, budgeting, capital improvement financing and payment of any fees and charges in connection with the MCUA Contract.

(C) Promptly procure and continually maintain in full force and effect and in accordance with their respective terms those Permits that it is responsible for under the terms of this Contract. *(The Company will manage compliance and act with the City's authorization in order to meet permit requirements.)*

(D) Adopt all resolutions and enact all ordinances necessary to carry out the provisions of this Contract and enforce all such resolutions and/or ordinances.

(E) Provide access to the Systems for the Company, its agents and employees at all times.

(F) Designate an Authorized Representative of the City to act as contract administrator and liaison with the Company in connection with the performance of Services by the Company.

(G) Refrain from enacting any ordinances and/or adopting any resolution that would impair the ability of the City or the Company from complying with this Contract.

(H) Promptly pay all debt service, when due on any bonds or notes or other obligations by or on behalf of the City issued with respect to the Systems.

(I) Establish all annual budgets, rents, rates, City fees and other charges to be collected from the customers of the Systems, which rents, Rates, City Fees and charges will be at least sufficient to pay all amounts due to the Company, other vendors and necessary for debt service hereunder. The City will provide the Company with space at a convenient location to conduct its operations if necessary. The Company will be responsible for the costs of all utilities associated with its use of all City facilities and indemnify the City for any liability the City might incur as a result of the use of such facilities by the Company. The equipment described in **Exhibit D** is owned by the City and is available for use by the Company. All other equipment is owned by the current operator, Middlesex Water Company, and would need to be replaced by the Company.

(J) Acquire and maintain all access, rights of way and easements necessary for the Company to operate, maintain and manage the Systems.

Section 4.3. Company Responsibilities. (A) The Company will read meters and transmit data in appropriate form to City's Division of Collections for billing of customers.

(B) The Company will manage, operate, maintain and repair the Systems at all times on behalf of the City in compliance with all Federal, State and Local laws, regulations and permits consistent with this Contract.

(C) At all times the Company will keep the Systems in good repair and working order, consistent with industry standards and will manage, operate, maintain and repair the Systems in an efficient and economical manner all in accordance with this Contract.

(D) The Company will develop and implement effective responses to water loss in the Systems, develop and implement an approach for renewal and replacement of infrastructure (to be designated as a Capital Improvement and Major Repair or Minor System Repair by the Operations Committee), ensure coordination of Systems operations with the City for system-wide optimal performance and minimization of CSO discharges as well as other services consistent with the pursuit of industry best practices.

(E) The Company is responsible for all costs of materials, equipment and supplies in the daily operation of the Systems (e.g. power, chemicals, communication services, paper, pencils, etc.).

(F) When performing repairs of water service lines, water mains, hydrants and replacement of water valves, these material costs will be purchased by the Company and the costs thereof with an appropriate accounting will be reimbursed by the City as a City cost responsibility, except, to the extent that it constitutes a Minor System Repair.

(G) All purchases that utilize City funds must comply with the provisions of the Local Public Contracts Law, the City's purchasing regulations, the Business Registration Certificate (BRC) requirements, and the IRS requirement for an executed W-9 all for submission to the City's Purchasing Agent.

(H) Materials, Labor, Vehicles. The Company will provide, at its cost and expense, all labor, materials, machinery, vehicles, equipment, office equipment, fuel, power, chemicals, supplies, materials, spare parts, expendables, consumables, testing and laboratory analysis and all else necessary therefor or incidental thereto which is necessary for the management, operation, maintenance or repair of the Systems in accordance with applicable laws, regulations and ordinances and the Contract.

(I) Hazardous Substances. If, while providing the Services and/or during the course of excavation work necessary to make repairs and/or improvements to the Systems, hazardous or toxic waste or materials (as defined in applicable Federal and/or State laws and regulations) are discovered by the Company, it will NOT be the obligation of the Company to remove and dispose of such hazardous substance. The Company will immediately notify the City upon becoming aware of the presence of such hazardous or toxic waste or materials, and will immediately notify such other governmental agencies as may be required by laws and will take such further actions to assist the City in protecting the Health, Safety and Welfare of the Public. The City will indemnify the Company for any and all costs or expenses it may incur in connection with this Section. If a hazardous substance impairs the operation of the Systems, the City will remediate the hazardous substance so as to permit the Company to operate the Systems pursuant to the Contract. The City will pay for all costs for the removal of the hazardous substance and any clean-up activities associated with such disposal, discharge, spill or leak. The City will have the right to pursue the parties legally responsible for the disposal, discharge, spill or leak for the costs of the removal of the offending materials and any clean-up activities. Water treatment plant residuals (e.g. iron and heavy metals) are to be removed and disposed of at the Company's sole expense.

(J) Response Requirements for Problems, Complaints and Inquiries. The Company's response time for various customer inquiries and Systems' problems under normal conditions will be as follows:

Condition	Initiate Contact with Complainants	Initiate Investigation and/or Works
Water or sewer main break or blockage	Not applicable	As soon as possible but not later than 1 hour
Water service complaint	2 business hours	1 business day
Utility mark out of sewer mains and the water system	Not applicable	3 business days (completion); less for emergencies

(K) Maintenance Management Program. The Company will maintain a comprehensive maintenance program for all functions of the Systems. The maintenance management program will:

- 1) Seek to ensure efficiency, long-term reliability and conservation of capital investment in accordance with industry standards, if any;
- 2) Be otherwise in accordance with industry standards; local, State and Federal codes; manufacturer's equipment recommendations;
- 3) Be documented; and

4) With the cooperation of the City, as applicable, provide enforcement of existing equipment warranties or guarantees and maintain all warranties on new equipment purchased after the Commencement Date of the Contract.

5) Any modifications or major maintenance affecting the appearance of the facilities in the Systems which are visible to the public will be performed only after receipt of the prior written approval of the City.

6) The obligations of the Company to maintain the Systems and to have a comprehensive maintenance program with respect to the Systems will not obligate the Company to improve the Systems beyond the condition of the Systems as of the Commencement Date. The Systems will be improved by the City's funded Ongoing Capital Improvement Program identified in *Exhibit C*.

7) The Company obligations with respect to having a comprehensive maintenance program for storm drain pipes and other pipes and mains will depend upon the ability of the Company to locate said pipes and mains by above-surface means. The responsibility for the cost to maintain and/or repair pipes from the main to the residence will be as is required by the current City ordinance as in effect on the Commencement Date.

(L) Testing and Laboratory Analysis. The Company, at its sole cost and expense, will perform, or cause to be performed, all laboratory sampling and analysis and reporting, as necessary for compliance with all Federal, State, local or other water distribution regulations and requirements having the force of law, as well as that which is customary for process (e.g. corrosion control) monitoring and control.

(1) Sampling and testing procedures will conform to the current edition of Standard Methods for the Examination of Water and Wastewater or be in accordance with the testing requirements of the applicable regulations or Permits. All testing, with the exception of process control testing, will be performed by a State certified laboratory and the Company will prepare from the data received from the testing laboratory for all applicable regulations or Permits monitoring and operating reports and will deliver such results to the appropriate State and regulatory agencies.

(2) Testing for the Water System (but not individual customers) will include, but not be limited to, coliform determinations, pH, color, sodium, hardness, iron, manganese, lead, copper, heavy metals, THMs, VOCs, corrosiveness, alkalinity, magnesium, calcium, turbidity, fluoride, cryptosporidium, and giardia lamblia cysts and all other tests required or to be required by the DEP or the EPA. The number, frequency and location of tests will be in accordance with the applicable provisions of the regulations, including the Lead and Copper Rule, 40 CFR 141, et seq., as the same may be amended or supplemented from time to time.

(M) Reporting Requirements.

(1) The Company will comply with all reporting requirements related to its operations and the operation, maintenance and management of the Systems, as mandated by Federal, State, and local laws, regulations, and Permits.

(2) The Company will provide comprehensive monthly, year-to-date and annual reports in a format reasonably satisfactory to the City and regulatory agencies for each function or activity of the Systems, including, but not limited to:

a) Operating parameters laboratory analysis, maintenance plans and activities including conditions of the Systems, water quality results, water produced or purchased vs. water sold, manpower utilization, repairs, service calls and responses and other relevant information; and safety reports regarding accidents, injuries, and damages to City property and other relevant information.

(3) The Company will maintain up-to-date financial records as they apply to the Services rendered under the terms of this Contract. All records will be kept in a manner that will enable the City to comply with State municipal accounting procedures.

(4) The Company will provide the City with its periodic financial reports as they apply to the Services rendered under the terms of this Contract. At a minimum, such reports will include the following:

a) Monthly reports on or before the twenty-fifth (25th) Day of each month with respect to the prior month and on or before twenty-fifth (25th) Day after the end of each Contract Year a cumulative report as of the end of each prior Contract

b) The Company will deliver a year-end report to the City consisting of a compilation of the monthly and quarterly reports set forth above

c) The Company will provide such other reports as may be reasonably requested from time to time by the City.

(N) Staffing.

(1) The Company will provide a staff of qualified and experienced employees who have direct experience in operating, maintaining and managing water, wastewater and storm water systems similar in nature and character to the Systems and will provide such additional third party support as may be needed to perform its duties and obligations hereunder. Said third parties will be equally qualified for the particular services to be performed and will not have any direct claim against the City whatsoever. The Company will at all times maintain the necessary number of employees, staff and/or third-party contractors to operate, maintain and manage the Systems in accordance with this Contract and to adequately maintain and operate the Systems in good repair and working order.

(2) The Company will provide:

(i) qualified and properly licensed management, supervisory, technical, laboratory, operating personnel and personnel with licenses as required by the State for the operation of the Systems;

(ii) a resident manager for Day-to-Day supervision;

(iii) specialists, as may be necessary, in water quality control, instrumentation, troubleshooting, emergency management and similar circumstances; and

(iv) office and clerical support staff as necessary.

(3) The Company will provide, or arrange for the Company to provide, technical support consisting of on-call backup advice and water quality expertise, control, management, maintenance and plant repair to assist the operational staff and ensure performance of the obligations hereunder.

(4) The Company will provide and maintain an organizational chart that lists job classification, the number of staff proposed for the transition phase and for the full time operation. The organization chart, which may be revised at the discretion of the Company consistent with the operation, maintenance and management of the Systems in accordance with this Contract, will indicate the staffing for the Systems, including laboratory/testing personnel and the licensed individuals/positions necessary to satisfy regulatory requirements and to provide operations and maintenance Services in a responsible professional manner. The Company will notify the City of any proposed material revisions to staffing and/or personnel for the Systems and the City will have the right to review and comment upon any such proposed revisions. The Company will in good faith consider any comments provided by the City, and will respond to the City in writing regarding any such comments. The City will forward all complaints about the Company's staff in writing to the Company, who will address such complaints with the offending employee or staff in an appropriate and timely manner. If the basis for any such complaint is not corrected to the reasonable satisfaction of the City, the City will have the right to request the Company to replace any such personnel interacting with City and/or City officials and/or the public.

(5) The Company will prepare an Operations and Maintenance Manual satisfactory to the NJDEP not later than forty-five (45) days following the Commencement Date. The Company will provide ongoing training programs for all personnel in operations and maintenance procedures, management, laboratory and process control, QA/QC, right-to-know, safety, etc. as required for proper performance of their duties and for professional development.

(6) The Company's technical support group will also provide assistance in the investigation, development and implementation of modifications in the water treatment processes as may be appropriate or necessary for regulatory compliance, worker safety or process improvement (i.e. corrosion control technologies, disinfections, substitutions for certain chemicals, etc.).

(O) Licenses. The Company, its employees and/or its contractors will acquire and hold, all required Federal, State and local approvals, licenses and certifications necessary to operate, maintain and manage the Systems required to be obtained by the Company in accordance with this Contract. In accordance with N.J.S.A. 58:11-64 et seq. and N.J.A.C. 7:10A-1.14, the minimum class of license required is a C-4 license for the Wastewater System and a T-4 and W-4 licenses for the Water System.

(P) Compliance with Laws, Regulations and Permits.

(1) After the Commencement Date, the Company will comply with SDWA, RCRA, CERCLA (as operator), OSHA, PEOSHA, WQAA, LPCL and any and all other applicable local, State and Federal laws, codes, ordinances and regulations as they pertain to the Systems. The Company will pay all regulatory fines and penalties, without limitation, assessed against the City, and/or the Company for the Company's non-compliance therewith.

(2) The Company will, where applicable, comply with, satisfy, and pay all costs or fees (but not remediation) associated with, all regulatory requirements pertaining to the above, including, but not limited to, public notification in the event of non-compliance with drinking water standards, including those associated with the Lead and Copper Rule and CSO overflows.

(3) All repairs and/or improvements to the Systems will be made by the Company in accordance with existing City ordinances for work in the City and other municipalities' ordinances as may be required for work outside the City.

(4) The Company will comply with the provisions of all City Contracts, including the payment of all City Contracts related to the City Systems, including the payment of all fees and charges associated therewith,(e.g. PSE&G, Verizon, etc.).

(5) The City is the named permittee for various Permits. The Company will be responsible for obtaining and maintaining all necessary existing and/or additionally required Federal, State and local Permits, licenses and other governmental or private party approvals for the operation of the Systems and the equipment owned by the City and used in connection with the Systems, including filling out required application forms, supplying required data and payment of required fees. All additional Permits and approvals will be in the name of the City as the permittee; however, the Company will comply with all requirements pertaining thereto in accordance with this Contract.

(6) The City will comply with SDWA, RCRA, CERCLA (as owner), OSHA, PEOSHA, WQAA, and any and all other applicable local, State and Federal laws, codes, ordinances and regulations as they pertain to the Systems. The City will pay all regulatory fines and penalties, without limitations, assessed against the Company and/or the City for the City's non-compliance therewith.

(Q) Land Development and Redevelopment. The Company will support, provide information and conduct development plan review services for all land development and redevelopment projects under review and/or consideration by and before the Administration, City Council, Planning Board, Zoning Board of Adjustment and/or Redevelopment Agency.

(R) Safety and Security. The Company will provide for and maintain security and safety for the Systems as it deems appropriate. Fences, when reasonably required, will be maintained in neat order and structural integrity. Gates, access points and doors, when reasonably required, will be kept locked, structures will be protected from unauthorized entry and security alarms, when reasonably required, will be maintained. The Company will conduct all operations, maintenance and management of any facilities in compliance with applicable health and safety regulations, including, but not limited to: OSHA, general industry regulations, including requirements for confined space entry, respiratory protection and hazard communication; EPA regulations (applicable to water and wastewater systems) or emergency planning and notification under CERCLA, 40 CFR 355; and EPA regulations or hazardous chemical reporting and community right-to-know, 40 CFR 370, and any other applicable regulations may be enacted during the term of this Contract.

(S) Continuity of Service.

(1) The Company and the City will cooperate in good faith with the City's agents, contractors and subcontractors and will provide for the orderly transition of Services between the City and/or its contractors and the Company without interruption or disruption of Services and without adverse impacts to the users of the Systems or to the City.

(2) The Company and the City will make such provisions as are necessary to ensure that no portion of the Systems will be shut down for any period of time due to strikes, lock-outs or labor problems.

(3) In the event of a labor action, stoppage or dispute that disrupts or prevents the Company's employees or its subcontractors' employee from entering upon and working on any part of the Systems, the Company will (subject to the following paragraph) at its sole cost, seek appropriate legal injunctions, remedies, or court orders. In any event, the Company will continue to operate the Systems through the use of office personnel, management or other resources at this disposal. The Company will always maintain operation of the Systems to protect the Health, Safety and Welfare of the users of the Systems and the residents of the City.

(T) Emergency Situations.

(1) Consistent with the other provisions of this Contract, the Company will promptly respond to all customer problems and (within two (2) hours) to all emergencies relating to the Systems and will maintain at all times during the term of this Contract a toll-free twenty-four (24) hour telephone number where users of the Systems can report any emergencies from anywhere within the City.

(2) The Company will notify the City as soon as reasonably possible of any activity, problem or circumstances that it becomes aware of that threatens the health, safety and welfare of the users of the Systems or the residents of the City. In an emergency affecting the safety of persons or property, the Company will act, at its discretion, to prevent or contain threatened damage, injury or loss and the Company will be reimbursed for any costs incurred in connection therewith.

(3) In the event of damage or destruction of the potable water facilities or any emergency which, in the reasonable judgement of the Company, is likely to result in material loss or damage to the Systems or constitute a material threat to human health or safety, the Company may suspend operation of the Systems. Emergency repairs as are necessary to mitigate, contain or reduce such loss, damage or threat to human health or safety will be done in consultation with the City. Notification of emergency/non-compliance events within the Systems will be in accordance with Permit requirements and an emergency plan to be developed by the Company and submitted to and approved by the City and the DEP and any subsequent amendments or modifications thereto.

(4) The Company will respond to emergencies and unusual circumstances in accordance with applicable regulations and requirements and with such personnel and equipment as necessary to maintain or restore the operations of the Systems in a timely manner with the least possible disruption or inconvenience to the users of the Systems. Decisions to expend City funds will be made following receipt of approvals from the Operations Committee depending on whether it constitutes a Capital Improvement and Major Repair or a Minor System Repair.

(U) Geographic Information System (GIS) Mapping. The City possesses GIS mapping of the Systems. The Company will maintain and update the GIS maps using the ArcGIS Desktop (Version 10.2) and ArcGIS for Server (Enterprise Edition(Version 10.2) or comparable software authorized by the City.

(V) Supervisory Control and Data Acquisition (SCADA) System. The Company shall maintain, improve and operate the City's SCADA System. The City shall not pay any additional fees associated with the connection of the SCADA System to the Company's network interface.

(W) Provisions Specific to Water System.

(1) General.

(a) The Company will operate and maintain the water treatment operation, plant and distribution system in accordance with all applicable laws and regulations. The Company will furnish complete and accurate records and regulatory reports in a format acceptable to the City and to the DEP.

(b) The Company will perform periodic testing of the Water System, including, without limitation, testing of the meters and AMR equipment installed in the Water System in accordance with prudent industry and utility practice. Process meters will be calibrated in accordance with manufacturer requirements. The Company will read, test, calibrate and repair all water meters. The Company will replace said meters in accordance with funding by the City for equipment in the capital program. All generators will be exercised at least on a weekly basis provided that the Company will use its best efforts to schedule such exercising at times to minimize inconvenience to residents of the City resulting from noise.

(c) The Company will dispose of, or will arrange for the disposition of, all sludge, scum, grit, screenings, trash and refuse generated by or resulting from the operations or maintenance of the Water System in accordance with applicable regulations pertaining thereto.

(d) The Company will monitor and control, or will arrange for the monitoring and control of, the levels of the storage reservoirs and storage tanks, if any, to ensure proper pressures for satisfactory service and firefighting capabilities within the Water System. The Company will cooperate with and assist police, emergency management and fire personnel in times of fire or other emergencies.

(e) All hydrants will be flushed at least once a year and the condition of, and maintenance performed on, the hydrants will be recorded. All hydrants found to be broken or inoperable will be bagged and will promptly be replaced or repaired.

(f) All water mains that become frozen or break will be repaired or replaced so as to minimize disruption of customer service.

(g) All inoperable, inaccurate or broken water meters will be promptly replaced upon discovery.

(h) Maintenance Items and Minor System Repairs of the Water System will include, but not be limited to,: routine painting and repairs of structures, both interior and exterior; locate, map and identify all valves; implement a valve exercising program to address those valves deemed to be critical to the Water System's operation in compliance with the WQAA; remove and replace broken or inoperable valves critical to the safe operation of the Water System and/or hydrants; repair of main and service breaks; calibration of instrumentation on a twice a year basis; hydrant flushing (once a year) and maintenance; periodic testing of hydrant flow rates (once every five years); reading of meters as required for billing purposes; disposal of all sludge, scums, screenings, grit, debris, trash, etc. from the Water System; sampling, testing analysis, reporting; and all else necessary therefor or incidental thereto to protect the health, safety and welfare of the users of the Water System and as required by industry standards and utility practices.

(2) Water Quality Standards. The Company will comply with the SDWA and all other Federal, State and local regulations concerning safe drinking water standards during the term of this Contract. The Company agrees to indemnify and hold the City harmless from any fines or penalties assessed by the applicable regulatory agencies during the term of the Contract for any and all violations committed by the Company, its agents, servants or employees and from any fees or costs incurred as a result of failure to comply with regulations concerning safe drinking water standards.

(3) Bulk Water Sales. The Company will seek to sell excess water from the Water System to the extent same is available on such terms and conditions as it deems appropriate with the consent of the City. Revenues gained therefrom are a revenue of the City.

(4) Water Meter Readings. The Company will perform all water meter readings and will follow up on erroneous readings or zero reads and on all requests of the City for an investigatory reading because of perceived irregularities in one or more readings.

(X) Provisions Specific to Wastewater System.

(1) All wastewater generated within the City is conveyed via interceptor sewer facilities and transmission lines in the Township of Woodbridge, New Jersey (“**Woodbridge**”), in accordance with an existing contract between the City and Woodbridge (the “**Woodbridge Contract**”) attached hereto as **Exhibit G**, to the wastewater treatment plant of MCUA where same is treated in accordance with an existing contract between the City and MCUA (the “**MCUA Contract**”) attached hereto as **Exhibit F**.

The Company will comply with all provisions of the MCUA Contract. The Company will also operate the Wastewater System in conformance with all requirements of the MCUA Contract, including prohibited discharges and sampling and laboratory analysis associated with industrial retreatment compliance and monitoring programs as required.

The MCUA Contract contains provisions for surcharges and penalties against industry for industrial pretreatment non-compliance. As included in the Maintenance Item and Minor System Repairs, the Company will provide for the testing of effluent from specific companies as determined by Company and supply the data to permit the City to issue the appropriate billing for suspended solids, BOD demand and chlorine demand. Existing municipal ordinances allow for the initiation of enforcement action against violations of said ordinances, which are tied to the MCUA regulations. The City will assist the Company in enforcement actions against such violators.

In addition to the base rates, the MCUA Contract contains a provision for a surcharge for increased loadings. The MCUA periodically increases its rates in order to meet the budgetary requirements. The City will direct MCUA to bill the City directly for all fees and charges incurred in connection with the MCUA Contract.

(2) All pumping stations will be inspected and maintained on a basis predicated on the manufacturer’s recommendations and field conditions unique to the individual facility. A log will be maintained of all inspections, services performed, problems encountered and other data as appropriate to the industry standards and regulations. The standby power for those stations so equipped will be exercised at least weekly.

(3) Subject to determination by the Operations Committee, the Company will develop and implement a program to be performed throughout the term of this Contract for the identification, isolation and, where cost-effective or required to protect the structural integrity of system components, correction of infiltration/inflow into the Wastewater System. Responsibility for the cost of implementation will be determined based on whether it is a Capital Improvement and Major Repair or a Minor System Repair.

(4) All sludge, scum, grit, screenings, trash and refuse generated by or resulting from the operations of the Wastewater System will be disposed of in accordance with applicable regulations pertaining thereto. The total annual cost per year of fifteen thousand dollars (\$15,000) will be deemed to be incorporated into the Annual Fee, provided that no additional amount may be expended without the written consent of an Authorized Representative of the City.

(5) All sewer mains will be inspected every three (3) years and jetted and/or otherwise cleaned as needed such that same are maintained free of blockages.

(6) All future pumping stations will be inspected and maintained on a daily basis predicated on the manufacturer's recommendations and field conditions unique to the individual facility. A log will be maintained of all inspections, services performed, problems encountered and other data as appropriate to the industry standards and regulations. The standby power for those stations so equipped will be exercised at least weekly.

(7) Maintenance, repair and replacement of facilities will also include, but not be limited to, the following: disposal of all sludge, sand, grit, screenings, grease, debris, trash, etc. resulting from maintenance and operation of facilities; periodic inspection of manholes and mains (once every three (3) years) and cleaning, as needed and catch basins (once every year) except in problem areas which will be on as-needed basis; identification, isolation and, where economical, correction of infiltration and inflow; routine painting and repairs of structures; repairs of main breaks, including bypass pumping as required; removal of system blockage; calibration of instrumentation and meters on a twice yearly basis; and sampling, testing, analysis, reporting; and all else necessary therefor or incidental thereto to protect the health, safety and welfare of the customers and as required by industry standards and utility practices.

(8) All improvement or repair items required for the Wastewater System will be charged, designed and performed as Capital Improvements and Major Repairs if they conform to the definition of same set forth herein.

(Y) Access to and Maintenance of Records. The Company will ensure the maintenance of all records of operating data and information relevant to the Systems. The Company will cause to be maintained a computerized recordkeeping system for all operation and maintenance functions performed, which will be backed up offsite at a secure facility. The Company shall maintain all documentation related to products, transactions or services under this contract for a period of five years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request.

(Z) Operations Review by City. The City will have the right to and intends to exercise its right to actively participate in the review of services performed by the Company and any subcontractor throughout the term of this Contract. The Operations Committee is the City's primary agent for performing this review.

4.4 Capital Improvements to the Systems.

(A) Systems Audit: The Company will conduct a preliminary system-wide audit within forty-five (45) days following the Commencement Date to establish the condition of the Systems at the start of the Contract period.

(B) Ongoing Capital Improvements. The Company will design and obtain permits for the Ongoing Capital Improvements (identified in *Exhibit C*, hereinafter referred to as the "Ongoing Capital Improvements") to the extent that they have not already been designed or permitted. The cost of the Ongoing Capital Improvements (including design, permitting, construction and financing) will be the responsibility of the City. The Ongoing Capital Improvements are expected to be completed and placed in service within three (3) Years from the Commencement Date pursuant to the existing contracts the City has for such projects. For any Ongoing Capital Improvements not currently under contract, the Company will provide the City with (a) a statement of work with sufficient detail to enable a third party to evaluate the cost thereof, (b) a firm price quotation for permit, design and construction (which firm price quotation will be in the case of contracts) determined, unless the Authorized Representative of the City specifies otherwise, by soliciting bids from qualified bidders, (c) an estimated completion schedule, and (d) a drawdown schedule. The City will have the right to review and approve the design and specifications and construction performed for the Ongoing Capital Improvements. The Company will be paid a fee to serve as general contractor for the Ongoing Capital Improvements equal to one tenth (.1) times the cost of construction. Such fee will be paid in the same manner as the Ongoing Capital Improvements.

(C) Additional Capital Improvements to the Systems. Additional Capital Improvements, in addition to the Ongoing Capital Improvements, may be necessary.

(1) The Company will initially, by the end of the first six (6) months following the Commencement Date, present to the Authorized Representative of the City a comprehensive recommendation for improvements to the Systems. This recommendation will be updated annually, or more often should conditions require. The objective of the recommendation is to set forth all necessary Capital Improvements and Major Repairs, the estimated cost of each such Capital Improvement and Major Repair and a schedule according to which the Capital Improvements and Major Repairs are to be initiated and completed. Collectively, these recommendations and projects will be known as "Additional Capital Improvements." These recommendations will constitute the basic input for the Six Year Capital Improvement Program for the Systems which at the time of the execution of this Contract is identified in *Exhibit E* hereto. As part of the Capital Improvement Program development process, the Company will present their annual proposed improvement report and defend said report before the Mayor and City Council for all proposed Capital Improvements and Major Repairs including estimated required budget amounts. Additional Capital Improvements shall be subject to approval by the City.

(2) The Company will employ a New Jersey licensed civil engineer to be responsible to provide these recommendations and input for the Six Year Capital Improvement Program preparation at no additional cost to the City. In addition, the Company will supply all civil engineering services for all construction projects, excluding those the City decides to place under contract to a consulting engineering firm, such as the hazard mitigation project at the Second Street Pumping Station, (including but not limited to

- (a) Preparation and submission of permit applications for capital projects,
- (b) Preparation and submission of permit application to the NJDEP including Professional Engineer (PE) seal on all required forms and signing off on necessary documents,
- (c) Interface with NJDEP, NJEIT, and any other regulatory agencies:

- 1) Revise specs and drawings to address comments from the DEP,
 - 2) Prepare loan application and submit to the DEP/NJEIT for approval,
- (d) prepare project cost estimation,
 - (e) Design: prepare drawings and specifications,
 - (f) Modification of design to comply with NJDEP directives,
 - (g) Professional Engineer seals and signs all necessary documents,
 - (h) Manage pre-bid meeting and bid opening services for capital projects,
 - (i) Review the bids for completeness, prepare a summary of the bids and report with recommendations in cooperation with the City Purchasing Agent for award by the City's Governing Body,
 - (j) Submit a copy of the bid to the DEP for their review and approval,
 - (k) Schedule, and manage coordination meeting(s) of all affected parties for each construction contract,
 - (l) Process contractor/vendor payment applications and submit to the City's Chief Accountant for payment,
 - (m) Submit required paperwork to close out capital projects in order to obtain approval for capital project cost reimbursement from NJEIT to NJDEP, and
 - (n) all other services necessary to complete capital improvements)

at no additional cost to the City.

3) As part of the project management function to be performed by the company for these capital improvements, the Company's representative will:

- a) Review all procurement submittals.

- b) Provide all project management and construction inspection services.
- c) Manage and resolve any disputes with the contractor.
- d) Review invoices.
- e) Prepare pay applications and get all required signatures.
- f) Prepare the required DEP documentation (employee interview, etc.).
- g) Prepare a punch list.
- h) Prepare the final DEP change order form.
- i) Prepare the change order form for City approvals.
- j) Attend the Council meeting and provide explanations for the need of the change order.
- l) Prepare final pay application to release retainage.
- m) Get maintenance Bond.
- n) Close out the project.
- p) File all DEP approved paperwork and project information for future reference.

4) Should other engineering services such as surveying or electrical engineering services be needed, these services may be sought from outside vendors, but subject to compliance with Local Public Contract Law (*N.J.S.A. 40A:11-1 et seq.*) requirements. The cost of these vendors will be a City cost. The City's Purchasing Agent will be responsible for overseeing the bid/proposal notification, receipt and award process.

5) The Company will receive payment of ten (10%) percent of the construction cost for construction inspection and administration following completion of the project. There will be no payment to the Company for outside engineering services. Any project for which construction inspection and/or construction administration is outsourced to another agency will not entitle the Company to the aforementioned 10% fee.

6) The City will finance such Additional Capital Improvements pursuant to the provisions of the Local Bond Law, *N.J.S.A. 40A:2-1 et seq.*, by issuing its bonds or notes. The Company will assist the City in making necessary applications, meeting with appropriate agencies or other parties and otherwise assisting the City as is necessary to secure said financing.

7) The City will have the right to review and approve the design, bid plans and specifications, bids received, construction performed and payments made for the Additional Capital Improvements. The City may engage a separate qualified engineer for purposes of fulfilling this need at the City's cost. In all cases, the City reserves the right to design and institute any and all Capital Improvements and Major Repairs and not to utilize the services of the Company for such purposes.

(D) Design and Performance Standards. All Capital Improvements and Major Repairs to the Systems will adhere to generally accepted water and sewer industry standards and practices, and the following design and performance standards:

1) A minimum design life of twenty (20) Years for above ground Capital Improvements and Major Repairs and fifty (50) Years for underground System components.

2) Reliability criteria as defined in EPA document "Design Criteria for Mechanical, Electrical and Fluid System and Component Reliability" published in 1974, and as updated, for the appropriate reliability class of treatment works.

(E) Capital Improvement Fund. All funds, and investment income thereon, held in the City's Capital Improvement Fund will be utilized by the City to pay for Capital Improvements and Major Repairs to the Systems in order to maintain the integrity of the Systems and, to the extent available, to provide for all or a portion of the cost of any Additional Capital Improvements or, to the extent necessary, any Ongoing Capital Improvements.

(F) Submission of Progress Reports; Procedures.

1) As payments are required for Capital Improvements and Major Repairs under this Contract, the Company will prepare and assemble the following Draw Papers and submit them to the City's Chief Accountant

2) The Company will provide the City's Chief Accountant, with appropriate progress reports to make payments to the contractors or other third parties for the Capital Improvements and Major Repairs or a portion thereof in the appropriate amount therefor from the Capital Improvement Fund, as applicable, upon acceptance of the Capital Improvements and Major Repairs or a portion thereof, as the case may be, but only after the Chief Accountant has received the Progress Report.

(3) For any final payment of the costs relating to the Ongoing Capital Improvements, the Company will submit a certificate of completion and acceptance signed by the Company with the Progress Report. Notwithstanding the foregoing, any such certificate of completion and acceptance will state that it is given without prejudice to any rights against third parties that exist at the date of any such certificate of completion and acceptance or that may subsequently come into being.

G. Other Engineering and Related Services to be Supplied by the Company.

- 1) Complete Minor System Repairs to the collection and distribution systems using the Company staff,
- 2) Secure for the City, NJEIT emergency bridge loans for emergency repairs,
- 3) Provide engineering expertise for City and private developer projects,
- 4) Propose and draft revisions to the City's Water and Sewer Ordinances,
- 5) Prepare Requests for Proposals for Consulting Engineering Services, when work cannot be performed in house,
- 6) Work with and manage Consulting Engineering firms to help them complete their work.
- 7) Review plans and specifications from private developers and provide comments/advice related to water and sewer utilities,
- 8) Calculate and provide to private developers the cost of the required water and sewer connection fees for the project,
- 9) Provide construction inspection for water/wastewater related projects being performed by developers,
- 10) Report before City Council on special investigations and customer complaints,

- 11) Advise, on behalf of the City, customers and provide information or review special requests,
- 12) Work with the City Administration in resolving customer complaints,
- 13) Appear before the City Council to discuss or clarify any items on the Agenda pertaining to projects or any matter related to the Systems,
- 14) Calculate firm capacity and peak demands and complete all DEP forms and provide the information to developers or their engineer so they can apply to the NJDEP Bureau of Safe Drinking Water for permit to install or extend water mains,
- 15) Complete and submit to the NJDEP all required forms, drawings and reports for modification to existing water allocation permit,
- 16) Work with City Administration, legal department and the DEP on matters related to potential or actual contamination at or near the Runyon Watershed,
- 17) Provide the legal department with information on System related matters,
- 18) Assist the City Administration and legal department with law suits involving the Systems,
- 19) Go to the schools and give talks to kids about the process of producing water and the importance of saving water,
- 20) Attend outside meetings on behalf of the City (e.g. Lower Raritan Watershed Resources Association, Jersey Works, SWIM, etc.),
- 21) Meet with other municipalities and/or authorities on behalf of the City to discuss issues of mutual interest (trunk sewer main, CSO compliance, etc.),
- 22) Represent the City in negotiations with new commercial, industrial and residential customers to provide information and/or review special requests
- 23) Provide Geographic Information System (GIS) mapping service

- 24) Cooperate with City Bond Counsel and complete, sign and submit required forms needed by Bond Counsel
- 25) Prepare and Submit NJEIT loan applications for Capital Projects and manage of the loan process through the NJDEP system
- 27) Recommend initiatives to be implemented by City and/or Company whereby, the cost-savings will all inure to the Systems.

Section 4.5. Joint Obligations of the Parties. (A) The City and the Company agree to cooperate to review existing planning, management and operations practices for the Systems, including energy consumption and usage patterns, and to attempt to devise strategies to increase efficiencies and reduce costs.

(B) The City and the Company agree to cooperate to review the City's capital investment needs, infrastructure requirements and methods of evaluating the Systems to attempt to increase efficiencies and reduce costs for Capital Improvements and Major Repairs.

(C) The City and the Company agree to cooperate in a review of the City's tariff design to determine its effectiveness in equitably charging customers for their usage.

(D) The City and the Company will establish a formal Operations Committee, consisting of the Authorized Representative of the City, Systems Director(s) and two (2) added employees of the Company or its affiliated companies (at least one of whom must be an officer of the Company), which will meet, with a frequency to be determined by the parties (e.g. monthly), to discuss issues related to the operation, maintenance and management of the Systems; to receive and review reports; and to confer generally as a means of enhancing communication between the City and the Company. In addition to such meetings, representatives of the Company will be available to meet with the Mayor, City Business Administrator and members of the governing body of the City or their authorized representatives, as reasonably requested by the City.

Section 4.6. Force Majeure. Any one or more of the duties and obligations of the City and/or the Company will be suspended so long as, and only to the extent that, performance thereof is prevented or impeded by an Act of God, civil disturbance, act of terrorism, governmental action (including, without limitation, any Change in Law), severe and unusual weather or any other act or event that has had, or may reasonably be expected to have, a material adverse effect upon either party in its ability to perform its obligations under this Contract, if such acts or events are beyond the control of that party.

Section 4.7. Pursuit of Financing and Grants. The City, from time to time, may apply for certain grants and government-sponsored or partially government-sponsored financing. The Company agrees to assist the City in its pursuit of such grants and/or financings and, notwithstanding any other provision of this Contract, will comply with any requirements of such grants and/or financings, including any applicable fee caps.

**ARTICLE V
REPRESENTATIONS AND WARRANTIES**

Section 5.1. Representations of the City. The City makes the following representations and warranties to and for the benefit of the Company:

(A) The City is a municipal corporation organized, existing and in good standing under the laws of the State of New Jersey, with full legal right, power and authority to enter into and perform its obligations under this Contract.

(B) The City has duly authorized the execution and delivery of this Contract and this Contract has been duly executed and delivered by the City and constitutes a legal, valid and binding obligation of the City, enforceable against the City in accordance with its terms.

(C) Neither the execution and delivery by the City of this Contract, nor the performance by the City of its obligations in connection with the transactions contemplated hereby, or the fulfillment by the City of the terms and conditions hereof (i) conflicts with, violates or results in a breach of any constitution, law or governmental regulation applicable to the City, (ii) conflicts with, violates or results in a breach of any term or condition of, or constitutes a default under any judgment or decree, or any agreement or instrument to which the City is a party or by which the City or any of its properties or assets is bound, (iii) will result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the revenues, properties or assets of the City, or (iv) will result in the acceleration of any obligation by which the City is bound or to which the City is a party.

(D) The City is in compliance with all applicable laws, rules and regulations concerning the management, operation or maintenance of the Systems.

(E) All requisite approvals, authorizations, orders, consents of, registrations or filings with, all governmental authorities necessary as of the date hereof for the management, operation and maintenance of the Systems have been obtained or made by or on behalf of the City and are in full force and effect.

Section 5.2. Representations of the Company. The Company hereby makes the following representations and warranties to and for the benefit of the City:

(A) The Company is a corporation duly organized and existing under the laws of the State of New Jersey and has full legal right, power and authority to enter into and perform its obligations under this Contract.

(B) The Company has duly authorized the execution and delivery of this Contract and this Contract has been duly executed and delivered by the Company and constitutes a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms.

(C) Neither the execution and delivery by the Company of this Contract, nor the performance by the Company of its obligations in connection with the transactions contemplated hereby, or the fulfillment by the Company of the terms and conditions hereof (i) conflicts with, violates or results in a breach of any constitution, law or governmental regulation applicable to the Company, (ii) conflicts with, violates or results in a breach of any term or condition of, or constitutes a default under, any judgment or decree, or any agreement or instrument to which the Company is a party or by which the Company or any of its properties or assets is bound, (iii) will result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the revenues, properties or assets of the Company, or (iv) will result in the acceleration of any obligation by which the Company is bound or to which the Company is a party.

(D) The Company has sufficient experience and expertise to provide the Services in accordance with this Contract.

(E) The Company is not in breach of any applicable Law that could have a material adverse effect on the ability of the Company to comply with its obligations under this Contract. Neither the Company nor, to its knowledge, any Affiliate of the Company is listed on any of the following lists maintained by the Office of Foreign Assets Control of the United States Department of the Treasury, the Bureau of Industry and Security of the United States Department of Commerce or their successors: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List or the Debarred List, list of persons engaging in investment activities in Iran, or on any other publicly available list of Persons with which the State may not do business under applicable Law.

(F) The Company will use products manufactured in the United States of America wherever available for repairs and improvements to the Systems.

Section 6.3. Arbitration. (A) It is the stated intent and purpose of both parties at all times to reach agreement by negotiation between the City and the Company, without recourse to arbitration. In the event, however, that such dispute or difference is not settled, either party may request that the matter be referred to arbitration. The demand for arbitration must be submitted to the American Arbitration Association within sixty (60) calendar days after the date of such request, in which case the arbitration will resolve any then existing controversy or claim between the parties hereto which directly or indirectly arises out of or relates to this Contract.

(B) The arbitration will be conducted in New Jersey in accordance with the rules and procedures then existing under the Commercial Arbitration Rules of the American Arbitration Association, provided that notwithstanding anything to the contrary contained in such rules the following will apply: The arbitration board will consist of three arbitrators. The City will choose one arbitrator and the Company will choose one arbitrator. If the two arbitrators appointed by the parties fail to agree within five (5) business days upon the selection of a third arbitrator, the third arbitrator will be selected from a list of arbitrators supplied by the American Arbitration Association or otherwise in accordance Commercial Arbitration Rules.

(C) After the appointments of the third arbitrator, the arbitration board will meet as necessary for the purpose of reaching a determination in the dispute or difference, and the decision of the majority of the board, submitted in writing, to the City and the Company will be final and binding upon both parties. Judgment upon any decision rendered by such arbitration board may be entered in any court having jurisdiction.

(D) Each party will bear the expense of its own arbitrators and witnesses, and the expenses of the third arbitrator and any general expenses of the arbitration will be born equally by both parties.

Section 6.5. No Waiver. The failure of a party to insist on strict performance of any or all of the terms of this Contract, or to exercise any right or remedy under this Contract, will not constitute a waiver or relinquishment of any nature regarding such right or remedy or any other right or remedy. No waiver of any breach or default hereunder will be considered valid unless in writing and signed by the party giving such waiver, and no such waiver will be deemed a waiver of any subsequent breach or default of the same or similar nature.

Section 6.6. Severability. In case one or more of the covenants, terms or provisions contained in this Contract will be held invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, terms and provisions contained herein will be in no way affected, prejudiced or disturbed and the remaining covenants, terms and provisions will remain in full force and effect.

Section 6.7. No Third-Party Beneficiaries. No employees of the City or any other third party will be deemed a third-party beneficiary of this Contract.

Section 6.8. Assignment. This Contract will be binding upon the parties' respective successors and permitted assigns. Neither of the parties may assign this Contract or any rights or obligations hereunder without the prior written consent of the other party (which consent will not be unreasonably withheld), and any such attempted assignment will be void, except that the Company may assign this Contract, or any of its rights or obligations hereunder, to a subsidiary or affiliate of the Company, so long as such assignment does not relieve the Company of its obligations to the City as set forth herein, and the Company will give prompt notice to the City of any such assignment and that assignee should assume all of the Company obligations under the Contract.

Section 6.9. Indemnification. (A) The City will indemnify, defend and hold harmless the Company, its employees, officers and directors, from and against all liabilities, actions, damages, fines, penalties, claims, demands, judgments, losses, costs, expenses, suits and actions (including reasonable attorney's fees), (i) in connection with or arising out of the Systems, except to the extent caused by negligence on the part of the Company, or (ii) arising out of the condition (known or unknown) of the Systems prior to the Commencement Date.

(B) The Company will indemnify, defend and hold harmless the City, its officers, elected officials and employees, from and against all liabilities, actions, damages, fines, penalties, claims, demands, judgments, losses, costs, expenses, suits and actions (including reasonable attorney's fees), to the extent caused by negligence on the part of the Company in connection with the Company's management, operation and maintenance of the Systems during the Term of this Contract, except where the basis for such liability, actions, damages or claims arise out of or relate to the City's negligence as it relates to the Systems.

Section 6.10. Complete Contract. This Contract sets forth the entire understanding of the parties, which supersedes and merges all prior proposals, understandings and all other agreements, oral and written, between the parties relating to the subject matter hereof and may not be modified except in a writing executed by both parties.

Section 6.11. Titles and Headings. Titles and headings to sections or paragraphs herein are inserted merely for convenience of reference and are not intended to be a part of or to affect the meaning or interpretation of this Contract.

Section 6.12. Counterparts. This Contract may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

Section 6.13. Governing Law. This Contract and all amendments hereof will be governed by and construed in accordance with the internal laws of the State of New Jersey applicable to contracts made and to be performed therein.

Section 6.14 Insurance. The Company shall not commence the performance of the Services under this Contract until it has provided insurance of the types and in such amounts as set forth herein and such other insurance as shall be reasonably requested by the City provided such insurance is commercially reasonably available and such insurance has been approved by the City, such approval shall not be unreasonably withheld, nor shall the Company allow any subcontractor to work on its subcontract until all similar insurance required of the subcontractor has been so obtained and approved or the Company has determined that the Company's insurance is sufficient to cover the actions of the subcontractor. The Company shall maintain such insurance in full force and effect for the Term of this Contract.

The insurance policies provided by the Company at its expense and more particularly described hereafter shall specifically designate the City as additional insured to the extent of the negligent acts, errors or omissions of the Company and shall further contain such provisions and shall insure the City and City officials, officers, employees, consultants and agents, pursuant to the terms and requirements set forth herein and to the fullest extent allowed by the law.

The Company shall be solely responsible for all injuries to persons or property (other than to the extent such costs are paid by worker's compensation insurance) occurring on account of the performance of Services hereunder, regardless who is performing the Services.

Certificates from the insurance carrier, stating the limits of liability and the expiration date for each policy and type of coverage shall be filed with the City before the execution of the Contract. The certificates shall contain the following express obligation:

"This is to certify that the policies of insurance described herein have been issued to the insured for whom this certificate is executed and are in force at this time. In the event of cancellation, non-renewal or material change in a policy affecting the certificate holder, thirty (30) Days prior written notice shall be given the certificate holder except in the event of a cancellation for failure to pay the insurance premium wherein ten (10) days prior written notice shall be given to the certificate holder"

Such certificates shall specifically refer to this Contract and article, and the following paragraphs in accordance with which the insurance is being furnished, and state that such insurance is as required by such paragraphs of this Contract.

All insurance coverage shall be with acceptable insurance companies only which possess an A.M. Best Company rating of at least A+. All insurance policies herein required of the Company shall be written by a company duly authorized and licensed to do business in the State and be executed by some agent therein duly licensed as an agent in said State.

Insurance shall include the type of insurance specified below in not less than the amounts stated. Neither approval by the City nor a failure to disapprove insurance furnished by the Company, shall release the Company from full responsibility for liability, damages and accidents as set forth herein.

The Company shall take out and maintain during the Term of this Contract the following types of insurance in an amount, for each policy, not less than the amounts stated:

(a) Commercial General Liability Insurance (i) The Company shall maintain during the Term of this Contract such commercial general liability insurance as shall protect it against claims for damages resulting from bodily injury, including wrongful death and property damages, which may arise from the performance of Services hereunder regardless of by whom performed. The minimum acceptable limits of liability to be provided by such insurance shall be as follows:

Bodily Injury Limits and Property Damage - \$1,000,000 each occurrence/\$2,000,000 aggregate.

Products liability and completed operations - \$2,000,000 aggregate.

Personal injury liability - \$2,000,000 aggregate.

(ii) The commercial general liability insurance required by the preceding subparagraph shall include the following extensions of coverage:

(A) The coverage shall be provided under a commercial general liability form of policy or similar thereto.

(B) XCU Coverage - If the Contract requires any work procedures involving blasting, excavating, tunneling or other underground work, the liability coverage shall include standard blasting or explosion coverage, standard collapse coverage and standard underground coverage, commonly referred to as XCU property damage liability coverage with limits of \$1,000,000 CSL.

(C) Contractual liability coverage shall be included.

(D) Protective liability coverage shall be included to protect the Company against claims arising out of operations performed by others and contractors protective liability coverage for its subcontractors.

(b) Worker's Compensation and Employer's Liability Insurance in accordance with the requirements of the laws of the State and all other applicable laws and regulations. If any class of employees engaged in hazardous work cannot be protected by workmen's compensation and liability insurance, the Company shall provide adequate insurance for each class of employees.

The Company shall take out and maintain during the Term of this Agreement the applicable statutory Worker's Compensation Insurance with an insurance company authorized to write such insurance covering all of its employees, and in the case of any work sublet, the Company shall require the subcontractor similarly to provide statutory Worker's Compensation Insurance for the latter's employees. The Company shall take out and maintain during the Term of this Contract, Employer's Liability Insurance with a minimum limit of \$1,000,000 with an insurance company authorized to write such insurance and the Company shall require each of its subcontracts similarly to maintain Employer's Liability Insurance on its employees.

(c) Automobile Liability and Property Damage Insurance The Company shall take out and maintain during the Term of the Contract such Automobile Liability Insurance as shall protect it against claims for damages resulting from bodily injury, including wrongful death and property damage, which may arise from the operations of any owned, hired or non-owned automobiles used by or for it in any capacity in connection with the performance of Services hereunder. The minimum acceptable limits of liability to be provided by such Automobile Liability Insurance shall be as follows:

Bodily Injury Limits and Property Damage - \$5,000,000 each occurrence/annual aggregate by the Company (or \$1,000,000 each occurrence/annual aggregate by each subcontractor).

(d) Excess Liability Insurance - \$10,000,000.

(e) Professional Liability Insurance in the case of any consulting engineering firm hired by the Company or any engineers, architects or other professionals to the extent the coverage is not provided by the comprehensive general liability insurance, in an amount not less than \$2,000,000.

The Company shall require each of its subcontractors to take out and maintain during the life of its subcontracts the same insurance coverage required of the Company under Section 6.14(a), (b) and (c), including the extensions of coverage required under Section 6.14(a)(ii) naming the City as additional insureds thereon unless the Company has determined that its insurance coverage is sufficient to cover the actions of the subcontractor. Each subcontractor shall furnish to the Company (2) copies of a certificate of insurance and such certificate shall contain the same information required hereinabove. The Company shall furnish one (1) copy of the certificate to the City.

All insurance policies shall have a maximum deductible of \$10,000 unless otherwise approved by the City which approval shall not be unreasonably withheld.

If the Company derives insurance proceeds to cover any liabilities under this Contract, the Company shall have no claim against the City for such amounts provided that the City did not cause the events that result in the claim against the applicable insurance company.

If at any time the Company fails to maintain any of the foregoing policies, or if a company issuing any such policy shall become unsatisfactory to any of the City, the Company shall, upon notice to that effect from such party, promptly obtain a new policy, submit the same to the City for its approval and submit a certificate of insurance as described above. Failure of the Company to take out and/or maintain or the taking out and/or maintenance of any required insurance, shall not relieve the Company of any liability under the Contract.

The City shall maintain insurance on the City Systems during the Term of this Contract substantially similar in kind, scope and amount as that maintained by the Company as of the Commencement Date. If any damage occurs to the City Systems during the Term of this Agreement that is an insured risk under the policies described in this Section 6.14, the Company agrees that its policies provide coverage on a primary and non-contributory basis and should be used as the first basis of recovery. The Company, however, may request the City to file a claim under its insurance policy or policies for any amounts not covered under the policies maintained by the Company, and if insurance proceeds are paid to the City for such amounts, the City shall reimburse the Company but solely from such proceeds for the actual, documented cost it incurs to repair the damage to the City Systems in an amount not to exceed such insurance proceeds.

IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed by their duly authorized representatives, as of the day and year first above written.

WITNESS:

CITY OF PERTH AMBOY

By: /s/Victoria Ann Kupsch
Victoria Ann Kupsch, Clerk

By: /s/Wilda Diaz, Mayor
Wilda Diaz, Mayor

WITNESS:

**UTILITY SERVICE AFFILIATES,
(PERTH AMBOY)INC.**

By: /s/Jay L. Kooper
Jay L. Kooper, Secretary

By: /s/Dennis W. Doll
Dennis W. Doll, Chairman

EXHIBIT A TO SERVICE CONTRACT
MAINTENANCE ITEMS AND MAJOR SYSTEM REPAIRS

Those items set forth in Article IV hereof or otherwise identified in the Contract.

EXHIBIT B TO SERVICE CONTRACT
ANNUAL FEE

<u>YEAR</u>	<u>AMOUNT</u>
1	\$6,700,000
2	\$6,700,000
3	\$6,700,000
4	\$6,700,000
5	\$6,700,000
6	\$6,700,000
7	\$6,700,000
8	\$6,700,000
9	\$6,700,000
10	\$6,700,000

**EXHIBIT C TO SERVICE CONTRACT
ONGOING CAPITAL IMPROVEMENTS**

Description	Vendor	Amount	Estimated Completion
Rehabilitation of High Lift Pump	Municipal Maintenance Co., R-17-1/18	46,600	End of February
Purchase of Flow Meter		22,000	Waiting for BASF response
Water Main Extension - Convery Blvd		198,000	Not determined
Florida Grove Road Reservoir - Repairs to concrete wall			
Hurricane Sandy Recovery - 2nd St. Pump Station	Allied Construction Co., C1700049	2,396,000	June, 2018
2nd St. Pump Station - Engineering	CDM Smith, C1700083	112,402.46	June, 2018
Replacement of Water Meters		735,000	December, 2018
Inspection/Refurbishment of Well Pumps		50,000	As needed
Painting of Major Components - Runyon	Bonding Company	763,345	February , 2018
Sewer System Feasibility Study		100,000	Not determined
Sewer Separation & Construction	Center State Engineering, C1600027	107,000	December, 2018
Replacement of Catch Basins		275,000	December, 2018
Cleaning/refurbishment of Interceptor Lines		200,000	December, 2018
Updating State Reporting		100,000	Determined by permit requirements
Green Infrastructure (Parking Lots)	Z Brothers, C1700063	318,631.32	April, 2018
Replacement of Water Meters		382,500	December, 2018
Inspection/Refurbishment of Well Pumps		50,000	As needed
Manhole Replacement		210,120	December, 2018
Catch Basin Replacement		357,000	December, 2018
Update State Reports as per NJDEP Permit Requirements		612,000	Determined by permit requirements
Sewer Main Lining: State St - Smith St to Sadowski Pkwy		785,400	December, 2018

Sewer Lining - Cortlandt St. - Entire Length		224,400	December, 2018
Sewer Main Lining Projects		1,020,000	December, 2018
Cleaning of Interceptor Mains		150,000	December, 2018
Green Infrastructure Project - Reduce Wet Weather CSO Overflows		51,000	Not Determined
Woodbridge Trunk Sewer Line - City Proportionate Share		1,275,000	2020
Passaic Valley Sewer Commission - Monitoring & Modeling	Passaic Valley Sewer Commission	135,660	Not determined
Cleaning of Interceptor Lines		345,000	December, 2018
Replacement of 4" Water Mains		1,632,000	December, 2018
Convery Boulevard Water Main Project		448,800	Not determined
Replacement of Residential Water Meters		420,750	December, 2018
Painting of the Backwash Tank and the Stand Pipe		1,020,000	December, 2018
Install Generator at Runyon Water Treatment Plant		1,009,800	December, 2018
Replace Catch Basins		392,700	December, 2018
Sewer Cleaning & Lining Project - Various Mains		1,040,400	December, 2018
Sewer Separation		2,550,000	2019
Replacement of Existing Camera used for Sewer Main Insp.		240,550	December, 2018

EXHIBIT D TO SERVICE CONTRACT

CITY EQUIPMENT AVAILABLE FOR COMPANY'S USE WITHIN THE CITY

Department	Year	Make	Model	License Plate	VIN#
Wastewater	1995	Ford	F350 Dump Truck	MG55021	2FDKF38G3SCA51266
Wastewater	1995	Ford	F-Super Duty Crane Truck	MG55020	1FDLF47G7SEA50661
Wastewater	1996	Ford	F350 Pick Up 4 Door	MG47886	1FDJW35HITEB29872
Wastewater	2002	Crane	Dump Truck Vactor 2100 Series	MG51972	1FVABTAK82HJ76092
Wastewater	2004	Sterling	TR3000 T.V.	MG60016	2F2AATAK14AM97933
Wastewater	2004		Camera	N/A	XT03102101
Water			Hydrastop		
Water			Light Tower		
Water			Tapping Machine		
Water			Army Surplus- Dump Truck		
Water			Army Surplus- Crane Truck		
Water			Backhoe (not functioning)		
Water			Mud Pump		

EXHIBIT E TO SERVICE CONTRACT
SIX YEAR CAPITAL IMPROVEMENT PROGRAM FOR THE WATER AND WASTE WATER SYSTEMS
EXHIBIT F TO THE SERVICE CONTRACT
MCUA CONTRACT

**EXHIBIT G TO THE SERVICE CONTRACT
WOODBRIIDGE CONTRACT**

53

[\(Back To Top\)](#)

Section 3: EX-10.33B (EX-10.33B)

Exhibit 10.33(b)



AMENDMENT

This Amendment (the "Amendment"), dated as of September 14, 2018, is between Bank of America, N.A., a national banking association (the "Bank") and Middlesex Water Company, a New Jersey corporation, and its subsidiaries, Tidewater Utilities, Inc., a Delaware corporation, White Marsh Environmental Systems, Inc., a Delaware corporation, Pinelands Water Company, a New Jersey corporation, Pinelands Wastewater Company, a New Jersey corporation, Utility Service Affiliates, Inc., a New Jersey corporation, Utility Service Affiliates (Perth Amboy) Inc., a New Jersey corporation, and Tidewater Environmental Services, Inc., a Delaware corporation, as joint and several co-borrowers (parent and subsidiary corporations individually and collectively referred to herein as "Borrower").

RECITALS

A. The Bank and the Borrower entered into a certain Letter Agreement ("Letter Agreement") and Master Promissory Note ("Note"), each dated September 25, 2015, evidencing an uncommitted line of credit in the maximum amount of Twenty Eight Million Dollars (\$28,000,000), increased by Amendment dated as of September 19, 2017 to maximum amount Forty Million Dollars (\$40,000,000) (The Letter Agreement and the Note as amended and extended from time to time are referred to herein as the "Loan Documents").

B. The Bank and the Borrower desire to amend the Loan Documents to extend the Expiration Date and to address other changes to the Loan Documents.

AGREEMENT

1. Definitions. Capitalized terms used but not defined in this Amendment shall have the meaning given to them in the Loan Documents.

2. Amendments.

(a) The Letter Agreement is hereby amended as follows:

(i) "September 20, 2019" is hereby substituted for "September 21, 2018" in the section entitled "Expiration Date" on page one of the Letter Agreement.

(ii) The following section is added after "Integration" section of the Letter Agreement:

"Patriot Act; Beneficial Ownership Regulation.

Promptly following any request therefor, Borrower shall provide information and documentation reasonably requested by the Bank for purposes of compliance with applicable "know your customer" and anti-

money-laundering rules and regulations, including, without limitation, the PATRIOT Act and the Beneficial Ownership Regulation. If the Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, it shall deliver a Beneficial Ownership Certification to the Bank if so requested. For purposes hereof, (a) "Beneficial Ownership Certification" means a certification regarding beneficial ownership required by the Beneficial Ownership Regulation and (b) "Beneficial Ownership Regulation" means 31 C.F.R. § 1010.230."

(b) The Note is hereby amended as follows:

- (i) "September 21, 2018" in subsection (b) of the second paragraph of the Note is hereby deleted and "September 20, 2019" is substituted in its place.
- (ii) The following sentence is added at the end of the second full paragraph on page one of the Note.

"In the event London Interbank Offered Rate (LIBOR) or similar index rate is used as a reference rate for any borrowings under this Note and such reference rate is less than zero at any time, such reference rate shall be deemed to be zero for the purposes of the interest rate calculation hereunder."

3. Representations and Warranties. When the Borrower signs this Amendment, the Borrower represents and warrants to the Bank that: (a) there is no event which is, or with notice or lapse of time or both would be, a Notice Event under the Loan Documents, (b) this Amendment does not conflict with any law, agreement, or obligation by which the Borrower is bound, (c) this Amendment is within the Borrower's powers, has been duly authorized, and does not conflict with any of the Borrower's organizational papers, and (d) representations and warranties set forth in the Note are confirmed as of the date hereof.

4. Effect of Amendment. This Amendment is effective as of September 21, 2018. Except as provided in this Amendment, all of the terms and conditions of the Loan Documents shall remain in full force and effect.

5. Counterparts. This Amendment may be executed in counterparts, each of which when so executed shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.

6. **FINAL AGREEMENT. BY SIGNING THIS DOCUMENT, EACH PARTY REPRESENTS AND AGREES THAT: (A) THIS DOCUMENT REPRESENTS THE FINAL AGREEMENT BETWEEN PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF, (B) THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES, AND (C) THIS DOCUMENT MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OR UNDERSTANDINGS OF THE PARTIES.**

The parties executed this Amendment as of the date stated at the beginning of this Amendment, intending to create an instrument executed under seal.

BANK OF AMERICA, N.A.

By: /s/Dilcia P. Hill
Name: Dilcia P. Hill
Title: Senior Vice President

Acknowledged and Agreed:

Middlesex Water Company

By: /s/A. Bruce O'Connor
Name/Title: A. Bruce O'Connor, VP, Treasurer and CFO

Tidewater Utilities, Inc.

By: /s/A. Bruce O'Connor
Name/Title: A. Bruce O'Connor, Treasurer

White Marsh Environmental Systems, Inc.

By: /s/A. Bruce O'Connor
Name/Title: A. Bruce O'Connor, Treasurer

Pinelands Water Company

By: /s/A. Bruce O'Connor
Name/Title: A. Bruce O'Connor, VP & Treasurer

Pinelands Wastewater Company

By: /s/A. Bruce O'Connor
Name/Title: A. Bruce O'Connor, VP & Treasurer

Utility Service Affiliates, Inc.

By: /s/A. Bruce O'Connor
Name/Title: A. Bruce O'Connor, Treasurer

Utility Service Affiliates (Perth Amboy) Inc.

By: /s/A. Bruce O'Connor
Name/Title: A. Bruce O'Connor, VP & Treasurer

Tidewater Environmental Services, Inc.

By: /s/A. Bruce O'Connor
Name/Title: A. Bruce O'Connor, Treasurer

[\(Back To Top\)](#)

Section 4: EX-10.48 (EX-10.48)

MIDDLESEX WATER COMPANY
NOTE
RELATING TO:
THE CONSTRUCTION FINANCING LOAN PROGRAM
OF THE NEW JERSEY INFRASTRUCTURE BANK
(f/k/a NEW JERSEY ENVIRONMENTAL INFRASTRUCTURE TRUST)

\$43,474,714

August 1, 2018

CFP-19-1

FOR VALUE RECEIVED, MIDDLESEX WATER COMPANY, a corporation duly created and validly existing pursuant to the laws of the State (as hereinafter defined), and its successors and assigns (the “Borrower”), hereby promises to pay to the order of the **NEW JERSEY INFRASTRUCTURE BANK (f/k/a NEW JERSEY ENVIRONMENTAL INFRASTRUCTURE TRUST)**, a public body corporate and politic with corporate succession, duly created and validly existing under and by virtue of the Act (as hereinafter defined) (the “I-Bank”), the Principal (as hereinafter defined), together with all unpaid accrued Interest (as hereinafter defined), fees, late charges and other sums due hereunder, if any, in lawful money of the United States of America, on the Maturity Date (as hereinafter defined) or the date of any optional prepayment or acceleration in accordance with the provisions of this note (this “Note”).

SECTION 1. Definitions. As used in this Note, unless the context requires otherwise, the following terms shall have the following meanings:

“**Act**” means the “New Jersey Infrastructure Trust Act”, constituting Chapter 334 of the Pamphlet Laws of 1985 of the State (codified at N.J.S.A. 58:11B-1 *et seq.*), as the same may from time to time be amended and supplemented.

“**Administrative Fee**” means a fee of up to four-tenths of one percent (.40%) of that portion of the Principal identified in clause (i) of the definition thereof (as set forth in this Section 1), or such lesser amount, if any, as the I-Bank may determine from time to time.

“**Anticipated Financing Program**” means the financing program of the I-Bank, pursuant to which the I-Bank will issue its I-Bank Bonds for the purpose of financing, on a long term basis, the Project and other projects of certain qualifying borrowers.

“**Anticipated Long Term Loan**” means the long term loan made by the I-Bank to the Borrower from the proceeds of its I-Bank Bonds, as part of the Anticipated Financing Program.

“**Appropriation Condition**” means the procedural appropriation by the State for the Project through the inclusion of the Project on the Project Priority List (which Project Priority List is required pursuant to the Act) in an appropriation amount equal to or greater than the Principal amount of the Loan then due and payable by the Borrower pursuant to the terms hereof.

“Authorized Officer” means any person authorized by the Borrower or the I-Bank, as the case may be, to perform any act or execute any document relating to the Loan or this Note.

“Borrower Note Resolution” means the resolution of the Borrower’s Board of Directors adopted on April 24, 2018, as amended and supplemented from time to time, pursuant to which this Note has been issued, and entitled:

RESOLUTION OF MIDDLESEX WATER COMPANY, DETERMINING THE FORM AND OTHER DETAILS OF ITS “NOTE RELATING TO THE CONSTRUCTION FINANCING PROGRAM OF THE NEW JERSEY INFRASTRUCTURE BANK”, TO BE ISSUED IN THE PRINCIPAL AMOUNT OF UP TO \$57.0 MILLION, AND PROVIDING FOR THE ISSUANCE AND SALE OF SUCH NOTE TO THE NEW JERSEY INFRASTRUCTURE BANK, AND AUTHORIZING THE EXECUTION AND DELIVERY OF SUCH NOTE BY MIDDLESEX WATER COMPANY IN FAVOR OF THE NEW JERSEY INFRASTRUCTURE BANK, ALL PURSUANT TO THE NEW JERSEY INFRASTRUCTURE BANK CONSTRUCTION FINANCING PROGRAM.

“Business Corporation Law” means the “New Jersey Business Corporation Act”, constituting Chapter 263 of the Pamphlet Laws of 1968 of the State (codified at N.J.S.A. 14A:1-1 *et seq.*), as the same may from time to time be amended and supplemented.

“Code” means the Internal Revenue Code of 1986, as the same may from time to time be amended and supplemented, including any regulations promulgated thereunder, any successor code thereto and any administrative or judicial interpretations thereof.

“Cost” means those costs that are allocable to the Project, as shall be determined on a project-specific basis in accordance with the Regulations, as further set forth in Exhibit B hereto, (i) as such Exhibit B shall be supplemented by an Authorized Officer of the I-Bank by means of either a substitute Exhibit B or an additional Exhibit B, such supplement to be implemented concurrently with the supplement to Exhibit A-1 hereto (as provided in the definition of “Project” as set forth herein), and (ii) as the then-current Exhibit B may be amended by subsequent changes to eligible costs as evidenced by a certificate of an Authorized Officer of the I-Bank.

“Environmental Infrastructure Facilities” means Wastewater Treatment Facilities, Stormwater Management Facilities or Water Supply Facilities (as such terms are defined in the Regulations).

“Environmental Infrastructure System” means the Environmental Infrastructure Facilities of the Borrower, including the Project, for which the Borrower is receiving the Loan.

“Event of Default” means any occurrence or event specified in Section 6 hereof.

“Fund Portion” means, on any date, an amount equal to seventy-five percent (75%) of the Principal of the Loan on such date, exclusive of that portion of the Principal of the Loan that is allocable to the NJDEP Loan Origination Fee, which NJDEP Loan Origination Fee shall be financed exclusively from the I-Bank Portion.

“I-Bank Bonds” means the revenue bonds of the I-Bank to be issued, as part of the Anticipated Financing Program.

“I-Bank Portion” means, on any date, an amount equal to the aggregate of (i) twenty-five percent (25%) of the Principal of the Loan on such date, exclusive of that portion of the Principal of the Loan that is allocable to the NJDEP Loan Origination Fee, plus (ii) one hundred percent (100%) of that portion of the Principal of the Loan that is allocable to the NJDEP Loan Origination Fee.

“I-Bank Portion Interest Rate” means, with respect to each disbursement of proceeds of the I-Bank Portion of the Loan, (a) to the extent that such disbursement is funded from moneys appropriated to the I-Bank, for the Construction Financing Loan Program of the I-Bank, pursuant to an appropriations act of the State, the I-Bank Portion Interest Rate shall equal 0.00%, (b) to the extent that such disbursement is funded from available moneys of the I-Bank that are neither (i) appropriated to the I-Bank as provided by the preceding clause (a), nor (ii) borrowed from a financial institution pursuant to a line of credit or other similar financial instrument as provided by the succeeding clause (c), the I-Bank Portion Interest Rate shall equal the interest rate that is published as either the Thompson Financial TM3 “AAA” Municipal Market Data General Obligation Index (AMT) or the “BVAL” Index (relating to alternative minimum tax credits) of Bloomberg L.P. (or any subsidiary thereof), (with the particular index that is used by the I-Bank to be selected by an Authorized Officer of the I-Bank) or, if such indexes are no longer published on such date, such successor index as may be selected by an Authorized Officer of the I-Bank, in each case for the number of years that corresponds to the length of time from the date such disbursement is made available to the Borrower by the I-Bank to the Maturity Date, rounding up to the nearest year, or (c) to the extent that such disbursement is funded from available moneys of the I-Bank borrowed from a financial institution pursuant to a line of credit or other similar financial instrument, the I-Bank Portion Interest Rate shall equal the actual rate of interest established by the applicable financial institution pursuant to a competitive or negotiated solicitation by the I-Bank with respect to such line of credit or other financial instrument.

“Interest” means the interest charged on the outstanding Principal of the Loan at a rate of (a) with respect to the I-Bank Portion of the Principal, the applicable I-Bank Portion Interest Rate and (b) with respect to the Fund Portion of the Principal, 0.00%, and payable by the Borrower to the I-Bank (i) on the Maturity Date or (ii) with respect to any optional prepayment or acceleration of the Loan pursuant to the terms of this Note, on the date of such optional prepayment or acceleration, as the case may be.

“Loan” means the loan of the Principal, made by the I-Bank to the Borrower to finance or refinance a portion of the Cost of the Project, as evidenced by this Note.

“Loan Disbursement Requisition” means the requisition, to be executed by an Authorized Officer of the Borrower and approved by the NJDEP, in a form to be determined by the I-Bank and the NJDEP.

“Maturity Date” means December 31, 2021, or (i) such earlier date as shall be determined by an Authorized Officer of the I-Bank in his or her sole discretion, which date shall be determined by such Authorized Officer of the I-Bank to be the date of the closing for the Anticipated Financing Program (subject, in all events, to the rights and remedies of the I-Bank pursuant to, respectively, the provisions of Section 6 hereof and the provisions of Section 7 hereof in furtherance of the enforcement by the I-Bank of all covenants obligations of the Borrower hereunder, including, without limitation and in particular, the covenant obligation of the Borrower set forth in Section 3(a) hereof), or (ii) such later date (subject to the then-applicable limits of the Act) to be determined by an Authorized Officer of the I-Bank in his or her sole discretion, pursuant to a written certification thereof, as acknowledged and approved by an Authorized Officer of the Borrower.

“NJDEP” means the New Jersey Department of Environmental Protection.

“NJDEP Loan Origination Fee” means the “NJDEP Fee” as referenced and defined in Exhibit B hereto, which NJDEP Fee is an administrative fee that is payable by the Borrower to the NJDEP as a portion of the Cost of the Project that has been incurred by the Borrower for engineering and environmental services provided to the Borrower by the NJDEP.

“Principal” means the principal amount of the Loan, at any time being the lesser of (i) Forty Three Million Four Hundred Seventy Four Thousand Seven Hundred Fourteen Dollars (\$43,474,714), or (ii) the aggregate outstanding amount as shall actually be disbursed to the Borrower by the I-Bank pursuant to one or more Loan Disbursement Requisitions, which Principal shall be payable by the Borrower to the I-Bank (i) on the Maturity Date or (ii) with respect to any optional prepayment or acceleration of the Loan pursuant to the terms of this Note, on the date of such optional prepayment or acceleration, as the case may be.

“Project” means the Environmental Infrastructure Facilities of the Borrower which constitutes a project for which the I-Bank is making the Loan to the Borrower, as further described in Exhibit A-1 hereto; provided, however, that the description of the Project, as set forth in Exhibit A-1 attached hereto, shall be supplemented by means of either (i) the substitution of a revised and updated Exhibit A-1 for the current Exhibit A-1 or (ii) the inclusion of an additional Exhibit A-1, in either case, promptly following the certification for funding by the NJDEP of the remaining components of the Project, as applicable, such supplement to be undertaken by an Authorized Officer of the I-Bank.

“Regulations” means the rules and regulations, as applicable, now or hereafter promulgated pursuant to N.J.A.C. 7:22-3 *et seq.*, 7:22-4 *et seq.*, 7:22-5 *et seq.*, 7:22-6 *et seq.*, 7:22-7 *et seq.*, 7:22-8 *et seq.*, 7:22-9 *et seq.* and 7:22-10 *et seq.*, as the same may from time to time be amended and supplemented.

“State” means the State of New Jersey.

SECTION 2. Representations of the Borrower. The Borrower represents and warrants to the I-Bank:

(a) Organization. The Borrower: (i) is a corporation duly created and validly existing under and pursuant to the Constitution and laws of the State, including the Business Corporation Law; (ii) has full legal right and authority to execute, attest and deliver this Note, to authorize the authentication of this Note, to sell this Note to the I-Bank, and to perform its obligations hereunder, and (iii) has duly authorized, approved and consented to all necessary action to be taken by the Borrower for: (A) the issuance of this Note, the authentication of this Note, the sale thereof to the I-Bank and the due performance of its obligations hereunder and (B) the execution, delivery and due performance of all certificates and other instruments that may be required to be executed, delivered and performed by the Borrower in order to carry out and give effect to this Note.

(b) Authority. This Note has been duly authorized by the Borrower, and duly executed, attested and delivered by Authorized Officers of the Borrower, and duly authenticated by the trustee or the paying agent pursuant to the Borrower Note Resolution. This Note has been duly sold by the Borrower to the I-Bank and duly issued by the Borrower and constitutes a legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its terms, except as the enforcement thereof may be affected by bankruptcy, insolvency or other laws or the application by a court of legal or equitable principles affecting creditors' rights.

(c) Pending Litigation. There are no proceedings pending or, to the knowledge of the Borrower, threatened against or affecting the Borrower that, if adversely determined, would adversely affect (i) the condition (financial or otherwise) of the Borrower, (ii) the adoption of the Borrower Note Resolution, (iii) the ability of the Borrower to satisfy all of its Loan repayment obligations hereunder, (iv) the authorization, execution, attestation, authentication or delivery of this Note, (v) the issuance of this Note and the sale thereof to the I-Bank, and (vi) the Borrower's ability otherwise to observe and perform its duties, covenants, obligations and agreements under this Note.

(d) Compliance with Existing Laws and Agreements; Governmental Consent. (i) The authorization, execution, attestation and delivery of this Note by the Borrower, (ii) the authentication of this Note by the trustee or paying agent pursuant to the Borrower Note Resolution, (iii) the adoption of the Borrower Note Resolution, (iv) the sale of this Note to the I-Bank, (v) the observation and performance by the Borrower of its duties, covenants, obligations and agreements hereunder, including, without limitation, the repayment of the Loan and all other amounts due hereunder, and (vi) the undertaking and completion of the Project, will not (A) result in the creation or imposition of any lien, charge or encumbrance upon any properties or assets of the Borrower pursuant to, (B) result in any breach of any of the terms, conditions or provisions of, or (C) constitute a default under, any existing ordinance or resolution, outstanding debt or lease obligation, trust agreement, indenture, mortgage, deed of trust, loan agreement or other instrument to which the Borrower is a party or by which the Borrower, its Environmental Infrastructure System or any of its properties or assets may be bound, nor will such action result in any violation of the provisions of the charter or other document pursuant to which the

Borrower was established or any laws, ordinances, injunctions, judgments, decrees, rules, regulations or existing orders of any court or governmental or administrative agency, authority or person to which the Borrower, its Environmental Infrastructure System or its properties or operations are subject. The Borrower has obtained all permits and approvals required to date by any governmental body or officer for the authorization, execution, attestation, authentication and delivery of this Note, for the sale of this Note to the I-Bank, for the making, observance and performance by the Borrower of its duties, covenants, obligations and agreements under this Note, and for the undertaking and completion of the Project.

(e) Reliance. The Borrower hereby acknowledges that the I-Bank is making the Loan to the Borrower pursuant to the terms hereof in reliance upon each of the representations of the Borrower set forth in this Section 2.

SECTION 3. Covenants of the Borrower.

(a) Participation in the Anticipated Financing Program. The Borrower covenants and agrees that it shall undertake and complete in a timely manner all conditions precedent identified by the I-Bank relating to (i) the participation by the Borrower in the Anticipated Financing Program and (ii) the qualification by the Borrower for receipt of the Anticipated Long Term Loan.

(b) Pledge. The Borrower unconditionally and irrevocably promises to make the Loan repayments in accordance with the terms of, and to the extent provided in, the Borrower Note Resolution for the punctual repayment of the Loan and all other amounts due pursuant to this terms of this Note.

(c) Disposition of Environmental Infrastructure System. The Borrower covenants and agrees that it shall not sell, lease, abandon or otherwise dispose of all or substantially all of its Environmental Infrastructure System without the express written consent of the I-Bank, which consent may or may not be granted by the I-Bank in its sole discretion.

(d) Financing With Tax-Exempt Bonds. The Borrower acknowledges, covenants and agrees that it is the intention of the Borrower to finance the Project on a long term basis with proceeds of I-Bank Bonds now or hereinafter issued, the interest on which is excluded from gross income for purposes of federal income taxation pursuant to Section 103(a) of the Code (“tax-exempt bonds”). In furtherance of such long term financing with tax-exempt bonds, the Borrower covenants that, except to the extent expressly permitted in writing by the I-Bank, the Borrower will not take any action or permit any action to be taken which would result in any of the proceeds of the Loan being used (directly or indirectly) to make or finance loans to persons other than the Borrower. In addition, the Borrower covenants and agrees that (i) all of the proceeds of the Loan will be used to pay costs of an exempt facility, within the meaning of Section 142 of the Code, which were paid and incurred by the Borrower no more than 60 days before the date on which the I-Bank adopted a declaration of intent with respect to the Project, and (ii) no portion of the Project will be investment property, within the meaning of Section 148(b) of the Code. The Borrower covenants and agrees that any Costs to be paid or reimbursed with proceeds of the Loan will result in the expenditure of proceeds under Treasury Regulations

§1.148-6(d) and Treasury Regulations §1.150-2, for costs subject to the allowance for depreciation provided in Section 167 of the Code which are chargeable to the capital account of the Borrower with respect to such exempt facility.

(e) Operation and Maintenance of Environmental Infrastructure System. The Borrower covenants and agrees that it shall maintain its Environmental Infrastructure System in good repair, working order and operating condition, and make all necessary and proper repairs and improvements with respect thereto.

(f) Records and Accounts; Inspections. The Borrower covenants and agrees that it shall keep accurate records and accounts for its Environmental Infrastructure System, separate and distinct from its other records and accounts, which shall be audited annually by an independent registered certified public accountant and shall be made available for inspection by the I-Bank upon prior written notice. The Borrower shall permit the I-Bank to inspect the Environmental Infrastructure System.

(g) Insurance. The Borrower covenants and agrees that it shall maintain insurance policies providing against risk of direct physical loss, damage or destruction of its Environmental Infrastructure System, in an amount that will satisfy all applicable regulatory requirements. The Borrower covenants and agrees that it shall include, or cause to be included, the I-Bank as an additional “named insured” on any certificate of liability insurance procured by the Borrower and by any contractor or subcontractor for the Project.

(h) Reliance. The Borrower hereby acknowledges that the I-Bank is making the Loan to the Borrower pursuant to the terms hereof in reliance upon each of the covenants of the Borrower set forth in this Section 3.

SECTION 4. Disbursement of the Loan Proceeds; Amounts Payable; Prepayment; and Late Fee.

(a) The I-Bank shall effectuate the Loan to the Borrower by making one or more disbursements to the Borrower promptly after receipt by the I-Bank of a Loan Disbursement Requisition and the approval of such Loan Disbursement Requisition by an Authorized Officer of the I-Bank or designee thereof, each such disbursement and the date thereof to be recorded by an Authorized Officer of the I-Bank on the table attached as Exhibit A-2 hereto; provided, however, that the approval by the I-Bank of any Loan Disbursement Requisition for disbursement pursuant to the terms hereof shall be subject to the terms, conditions and limitations as set forth in Section 4(b) of this Note. It is expected that the proceeds of the Loan will be disbursed to the Borrower in accordance with Exhibit C hereto, as Exhibit C shall be supplemented by an Authorized Officer of the I-Bank by means of either a substitute Exhibit C or an additional Exhibit C, such supplement to be implemented concurrently with the supplement to Exhibit A-1 hereto (as provided in the definition of “Project” as set forth herein). The latest date upon which the Borrower may submit to the I-Bank a Loan Disbursement Requisition is the business day immediately preceding the date fixed by the I-Bank for the sale of its bonds in connection with the Anticipated Financing Program, or such alternative date as shall be identified by the I-Bank for the Borrower in writing. On the Maturity Date, the Borrower shall

repay the Loan to the I-Bank in an amount equal to: (i) the Principal; (ii) the Interest; (iii) the Administrative Fee, if any; and (iv) any other amounts due and owing pursuant to the provisions of this Note. The Borrower may prepay the Loan obligations hereunder, in whole or in part, upon receipt of the prior written consent of an Authorized Officer of the I-Bank. Each payment made to the I-Bank shall be applied to the payment of, first, the Interest then due and payable, second, the Principal, third, the Administrative Fee, if any, fourth, any late charges, and, finally, any other amount due pursuant to the provisions of this Note. In the event that the repayment obligation set forth in this Note is received by the I-Bank later than the Maturity Date, a late fee shall be payable to the I-Bank in an amount equal to the greater of twelve percent (12%) per annum or the prime rate as published in the Wall Street Journal on the Maturity Date plus one half of one percent per annum on such late payment from the Maturity Date to the date it is actually paid; provided, however, that any late payment charges incurred hereunder shall not exceed the maximum interest rate permitted by law. Notwithstanding the provisions of this Section 4(a) to the contrary, the Borrower hereby acknowledges and agrees that, on the date of issuance of this Note, a disbursement shall be made and shall be recorded by an Authorized Officer of the I-Bank on the table attached as Exhibit A-2 hereto in the amount recorded thereon. Such disbursement shall be made for the purpose of funding fifty percent (50%) of the NJDEP Loan Origination Fee. Such disbursement shall be paid by the I-Bank on behalf of the Borrower directly to the NJDEP in satisfaction of the provisions hereof.

(b) Notwithstanding the provisions of this Note to the contrary with respect to the funding, pursuant to this Section 4, of any Loan Disbursement Requisition relating to all or any portion of the Project: (i) the Borrower hereby acknowledges and agrees that the I-Bank shall not, and shall not be required to, commit funds, pursuant to the Construction Financing Loan Program of the I-Bank, to any portion of the Project until such time as the particular portion of the Project in question has been certified for funding by the NJDEP; (ii) no Loan Disbursement Requisition shall be approved by the I-Bank for disbursement pursuant to this Section 4 unless and until the portion of the Project to which such Loan Disbursement Requisition relates has been certified for funding by the NJDEP; (iii) no Loan Disbursement Requisition shall be approved by the I-Bank for disbursement pursuant to this Section 4 unless and until the Appropriation Condition has been satisfied to an extent and in an amount that is sufficient to fund, in the aggregate, the particular Loan Disbursement Requisition in question and all prior Loan Disbursement Requisitions; and (iv) the I-Bank has no obligation pursuant to this Note to make all or any portion of any Loan Disbursement Requisition disbursement pursuant to the provisions of this Section 4 if the Borrower lacks the authority to pay interest on this Note in an amount equal to the I-Bank Portion Interest Rate.

SECTION 5. Unconditional Obligations. The obligation of the Borrower to make the Loan repayments and all other payments required hereunder and the obligation to perform and observe the other duties, covenants, obligations and agreements on its part contained herein shall be absolute and unconditional, and shall not be abated, rebated, set-off, reduced, abrogated, terminated, waived, diminished, postponed or otherwise modified in any manner whatsoever while any Loan repayments, or any other payments due hereunder, remain unpaid, regardless of any contingency, act of God, event or cause whatsoever, including (without limitation) any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, the taking by eminent domain or destruction of or damage to the Project or Environmental Infrastructure System, commercial frustration of the purpose, any change in the laws of the United States of America or of the State or any political subdivision of either or in the rules or regulations of any governmental authority, any failure of the I-Bank to perform and observe any agreement or any duty, liability or obligation arising out of this Note, or any rights of set-off, recoupment, abatement or counterclaim that the Borrower might have against the I-Bank or any other party; provided, however, that payments hereunder shall not constitute a waiver of any such rights.

SECTION 6. Events of Default. The following events shall constitute an “Event of Default” hereunder: (i) failure by the Borrower to pay, when due, any and all of its Loan repayment obligations hereunder, and any other payment obligations due hereunder; (ii) failure by the Borrower to observe and perform any duty, covenant, obligation or agreement on its part to be observed or performed pursuant to the terms of this Note; (iii) any representation made by the Borrower contained in this Note or in any instrument furnished in compliance with or with reference to this Note is false or misleading in any material respect; and (iv) a petition is filed by or against the Borrower under any federal or state bankruptcy or insolvency law or other similar law in effect on the date of this Note or thereafter enacted, unless in the case of any such petition filed against the Borrower such petition shall be dismissed within thirty (30) days after such filing and such dismissal shall be final and not subject to appeal, or the Borrower shall become insolvent or bankrupt or shall make an assignment for the benefit of its creditors, or a custodian of the Borrower or any of its property shall be appointed by court order or take possession of the Borrower or its property or assets if such order remains in effect or such possession continues for more than thirty (30) days.

SECTION 7. Remedies upon Event of Default. Whenever an Event of Default shall have occurred and be continuing pursuant to the terms hereof, the Borrower hereby acknowledges and agrees to the rights of the I-Bank to take any action permitted or required at law or in equity to collect the amounts then due and thereafter to become due hereunder or to enforce the observance and performance of any duty, covenant, obligation or agreement of the Borrower hereunder. If an Event of Default shall have occurred, the Borrower hereby acknowledges and agrees that the I-Bank shall have the right to (i) immediately cease disbursements of the proceeds of the Loan, and/or (ii) declare all Loan repayments and all other amounts due hereunder to be due and payable immediately without further notice or demand. The Borrower hereby acknowledges and agrees that no remedy herein is intended to be exclusive, and every remedy shall be cumulative and in addition to every other remedy given under this Note or now or hereafter existing at law or in equity. The Borrower hereby further acknowledges and agrees that no delay or omission by the I-Bank to exercise any remedy or right accruing upon any Event of Default shall impair any such remedy or right or shall be construed to be a waiver thereof, but any such remedy or right may be exercised as often as may be deemed expedient. The Borrower hereby further acknowledges and agrees that, pursuant to the “New Jersey Infrastructure Bank Credit Policy”, adopted by the Board of Directors of the I-Bank, and as further amended and supplemented from time to time (the “Credit Policy”), during such time as an Event of Default has occurred and is continuing hereunder, the Borrower shall be ineligible for additional financial assistance from the I-Bank, in addition to certain other consequences set forth in the Credit Policy. The Borrower hereby agrees that upon demand it shall pay to the I-Bank the reasonable fees and expenses of attorneys and other reasonable expenses (including, without limitation, the reasonably allocated costs of in-house counsel and legal staff) incurred in the collection of Loan repayments or any sum due hereunder or in the enforcement of the observation or performance of any obligations or agreements of the Borrower upon an Event of Default. Any moneys collected by the I-Bank pursuant to this Section 7 shall be applied first to pay any attorneys’ fees or other fees and expenses owed by the Borrower.

SECTION 8. Certain Miscellaneous Provisions. The Borrower hereby acknowledges and agrees as follows: (a) all notices hereunder shall be deemed given when hand delivered or when mailed by registered or certified mail, postage prepaid, to the Borrower at the following address: Middlesex Water Company, 1500 Ronson Road, Iselin, New Jersey 08830-0452, Attention: A. Bruce O'Connor, Vice President, Treasurer and Chief Financial Officer;; and to the I-Bank at the following address: New Jersey Infrastructure Bank, 3131 Princeton Pike, Building 4, Suite 216, Lawrenceville, New Jersey 08648-2201, Attention: Executive Director; (b) this Note shall be binding upon the Borrower and its successors and assigns; (c) in the event any provision of this Note is held illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable or otherwise affect any other provision hereof; (d) the obligations of the Borrower pursuant to the terms of this Note may not be assigned by the Borrower for any reason, unless the I-Bank shall have approved said assignment in writing; (e) this Note may not be amended, supplemented or modified without the prior written consent of the I-Bank; (f) this Note shall be governed by and construed in accordance with the laws of the State; (g) the Borrower shall, at the request of the I-Bank, execute and deliver such further instruments as may be necessary or desirable for better assuring, conveying, granting, assigning and confirming the rights, security interests and agreements granted or intended to be granted by this Note; and (h) whenever the Borrower is required to obtain the determination, approval or consent of the I-Bank pursuant to the terms hereof, such determination, approval or consent may be either granted or withheld by the I-Bank in its sole and absolute discretion.

[The remainder of this page has been left blank intentionally.]

IN WITNESS WHEREOF, the Borrower has caused this Note to be duly executed, sealed and delivered on the date first above written.

MIDDLESEX WATER COMPANY

[SEAL]

ATTEST:

By: /s/ A. Bruce O'Connor
A. Bruce O'Connor
Vice President, Treasurer
And Chief Financial Officer

/s/ Jay L. Kooper
Jay L. Kooper, Esq.
Vice President, General
Counsel and Secretary

EXHIBIT A-1

1) Name and Address of Local Unit:

Middlesex Water Company
500 Ronson Road
Iselin, New Jersey 08830

Attention: Richard M. Risoldi, Vice President Operations

2) Description of and Rationale for the Project:

The project consists of the installation of a 42 inch diameter cement-lined ductile iron (CLDIP) pipe transmission main beginning at the Carl J. Olsen Water Treatment Plant within the Township of Edison and terminating at the intersection of Jersey and Durham Avenues within the Borough of Metuchen. This main will consist of the provision of ~24,512 linear feet of CLDIP and the retention of ~1915 linear feet of existing 42 inch diameter ductile iron pipe (DIP). The project also includes the installation of two proposed flow control structures comprising 440 linear feet of 30-inch and 170 linear feet of 48-inch DIP at the Water Treatment Plant, and the provision of valves and appurtenances ancillary to the construction of the transmission main.

The existing 48-inch diameter transmission main from the Water Treatment Plant is the only feed presently capable of supplying potable water to the distribution system. Any disruption of this transmission main would severely impact the ability to deliver sufficient potable water supply. This project would create a redundant feed from the plant to the distribution system.

The overall project consists of three (3) building contracts. Zero (0) contracts have previously received authorization to award. This exhibit pertains to contracts 1, 2 and 3 of 3.

3) Description of the Water Distribution System:

The Middlesex Water Company is a publicly-owned water utility that provides water service to retail customers primarily in eastern Middlesex County. Water services are furnished to approximately 59,000 retail customers located in an area of approximately 55 square miles of New Jersey in Woodbridge Township, the Boroughs of Metuchen and Carteret, portions of Edison Township, Borough of South Plainfield, and the City of South Amboy in Middlesex County; and a small portion of the Township of Clark in Union County.

The Company obtains water from both surface and groundwater sources; however, the principal source of supply is the Delaware and Raritan Canal (owned by the State of New Jersey and operated as a water resource by the New Jersey Water Supply Authority).

EXHIBIT A-2

Loan Disbursements

Date of Loan Disbursement	Amount of Disbursement: I-Bank Portion	Amount of Disbursement: Fund Portion

EXHIBIT B

Basis for the Determination of Allowable Costs

The determination of the costs allowable for assistance from the New Jersey Water Bank is presented below:

Cost Classification	Application Amount	Allowable Amount	CLP Allowable Amount
1. Administrative Expenses	\$ 915,000	\$ 1,151,531	\$ 1,151,531
2. Other Costs	\$ 0	\$ 0	\$ 0
3. Engineering Fees	\$ 3,660,000	\$ 753,710	\$ 753,710
4. Building Costs	\$ 30,500,000	\$ 38,384,350	\$ 38,384,350
5. Contingencies	\$ 1,525,000	\$ 1,919,218	\$ 1,919,218
6. Planning and Design	\$ 400,000	\$ 835,462	\$ 835,462
7. Sub-Total	\$ 37,000,000	\$ 43,044,271	\$ 43,044,271
8. DEP Fee (Financed Portion (50%))		\$ 430,443	\$ 430,443
9. Total Project Costs	\$ 37,000,000	\$ 43,474,714	\$ 43,474,714
10. CLP Loan Amount			\$ 43,474,714

As a result of the review by the New Jersey Department of Environmental Protection (“DEP”), various line items may have been revised resulting in a change of the allowable costs for this project. The basis for the determination of the allowable costs is as follows:

1. Administrative Expenses:

The total amount requested for this line item on the application was \$915,000. The allowable administrative expense is authorized to be 3% of the total allowable building costs (Line Item No. 4). Therefore, the amount for the administrative line item is $\$38,384,350 \times 0.03 = \$1,151,531$.

Allowable Administrative Expenses are \$1,151,531.

2. Other Costs:

The amount requested for this line item on the application was \$0. Therefore, the total allowable amount for this line item is \$0.

Allowable Other Costs are \$0.

3. Engineering Fees:

The amount requested for this line item on the application was \$3,660,000. Middlesex Water Company will utilize both the services of CDM Smith, Inc. and “in house” (Force Account) engineering and inspection personnel. The scope of work and costs for CDM Smith’s services are stipulated within Professional Services Agreement dated March 17, 2014 and subsequent amendments between the Company and CDM Smith through Change Order No. 6 not to exceed \$1,227,560. Work in phases 2 and 3 in the amount of \$45,035 and \$790,427 are allocated to the Planning and Design Line Item \$835,462 (\$45,035 + \$790,427). The remaining costs for phases 4, 5 and 6 in the amount of \$392,098 (\$1,227,560 - \$835,462) are allocated to the Engineering Fees Line Item. In addition, the estimated costs for Force Account engineering services are \$361,612. The sum of these two (2) amounts is \$753,710 (\$392,098 + \$361,612). Documentation regarding both CDM Smith and Force Account services have been reviewed and approved by the DEP. Therefore,

Allowable Engineering Fees are \$753,710.

4. Building Costs:

The amount requested for this line item on the application was \$30,500,000. The allowable amount based upon the low bid received is \$10,634,500 for Contract 1 of 3, \$13,825,000 for Contract 2 of 3, \$13,924,850 for Contract 3 of 3. The sum of these three (3) contracts is \$38,384,350. Therefore,

Green Project Reserve (GPR) Funding: Green Infrastructure - \$0.
Energy Efficiency- \$0.
Water Efficiency - \$0.
Green Innovative - \$0.

Allowable Building Costs are \$38,384,350.

5. Contingencies:

The amount requested for this line item on the application was \$1,525,000. The allowable amount is authorized to be 5% of the allowable building cost. Therefore, the allowable amount for this line item is $\$38,384,350 \times 0.05 = \$1,919,218$.

Allowable Contingencies are \$1,919,218.

6. Planning and Design:

The amount requested for this line item on the application was \$400,000. The Agreement for Professional Services between Middlesex Water Company and CDM Smith Inc. dated March 17, 2014 and subsequent amendments in the amount of \$835,462 for phases nos. 2 and 3 have been found acceptable by the DEP.

Costs for this line item will be reimbursed based on DEP approval of actual documented project expenses for planning and design services.
Therefore,

Planning and Design Line Item is \$835,462.

7. Sub-Total:

The total amount applied for was \$37,000,000. The Sub-Total amount based on the low bid received is \$43,044,271.

8. Department Loan Surcharge or Loan Origination Fee:

This item represents the DEP Loan Surcharge or Loan Origination Fee imposed by DEP as a portion of the cost of the project of the borrower. This DEP Loan Surcharge or Loan Origination Fee is a portion of the cost of the project that has been incurred for engineering and environmental services provided by DEP for the borrower in connection with, and as a condition precedent to, the inclusion of the project of the borrower in the SFY2019 New Jersey Water Bank of the New Jersey Infrastructure Bank (the "I-Bank"), 50% of which will be financed for the Borrower as part of the I-Bank Construction Loan.

DEP Fee = \$43,044,271 x 2% = \$860,886.

\$860,886 x .50 = \$430,443 (financed through the Construction Loan and paid to DEP upon closing of the Construction Loan).

9. Total Project Costs:

The total project costs are (loan amount + Department Fee) \$43,474,714.

10. CLP Loan Amount:

The CLP Loan Amount is \$43,474,714.

Exhibit C

1. Disbursement Schedule

The following is a schedule of the estimated disbursements for this loan. Disbursements to the Borrower for any given month shall not exceed the amounts indicated below plus any undisbursed from the previous months.

Year	Month	DEP Fee (I-Bank to make payment)	Total
2018	August	*430,443	
	August		\$4,000,000
	September		\$4,000,000
	October		\$4,000,000
	November		\$3,000,000
	December		\$3,000,000
2019	January		\$3,000,000
	February		\$3,000,000
	March		\$3,000,000
	April		\$3,000,000
	May		\$2,000,000
	June		\$2,000,000
	July		\$2,000,000
	August		\$2,000,000
	September		\$2,000,000
	October		\$1,000,000
	November		\$1,000,000
	December		\$1,000,000
2020	January		\$44,271
Total		\$430,443	\$43,044,271

* This represents that portion (50%) of the DEP Loan Surcharge or Loan Origination Fee that has been financed for the Borrower through the I-Bank Loan. No action is required on the part of the borrower with respect to the payment to DEP of the DEP Loan Surcharge or Loan Origination Fee. The I-Bank will address, or already has addressed, the implementation of this disbursement.

2. Project Schedule

The Borrower shall expeditiously initiate and complete the project in accordance with the project schedule which was submitted as part of the loan application repeated below. Failure to promptly initiate and complete the Project may result in the imposition of sanctions under N.J.A.C. 7:22-3.40 through 3.44 and N.J.A.C. 7:22-4.40 through 4.44. In addition, failure to promptly award all subagreement(s) for building the Project within 12 months of the date of this loan may result in a limitation on allowable costs as provided by N.J.A.C. 7:22-5.4(d) 4. This limitation provides that costs incurred under contracts awarded after 12 months from the date of this loan are unallowable unless a specific extension has been granted by DEP, in the case of a Fund Loan, and the I-Bank, in the case of an I-Bank Loan.

<u>EVENT</u>	<u>DATE</u>
<u>Advertisement:</u>	
Western Transmission Main Contract 01P-13-308-A	December 20, 2017
Western Transmission Main Contract 01P-13-308-B	December 20, 2017
Western Transmission Main Contract 01P-13-308-C	December 20, 2017
<u>Bid Receipt:</u>	
Western Transmission Main Contract 01P-13-308-A	February 2, 2018
Western Transmission Main Contract 01P-13-308-B	February 2, 2018
Western Transmission Main Contract 01P-13-308-C	February 2, 2018
<u>Award:</u>	
Western Transmission Main Contract 01P-13-308-A	March 6, 2018
Western Transmission Main Contract 01P-13-308-B	March 6, 2018
Western Transmission Main Contract 01P-13-308-C	March 6, 2018
<u>Issuance of Notice to Proceed:</u>	
Western Transmission Main Contract 01P-13-308-A	March 29, 2018
Western Transmission Main Contract 01P-13-308-B	March 29, 2018
Western Transmission Main Contract 01P-13-308-C	March 29, 2018
<u>Completion of Construction:</u>	
Western Transmission Main Contract 01P-13-308-A	January 18, 2020
Western Transmission Main Contract 01P-13-308-B	January 18, 2020
Western Transmission Main Contract 01P-13-308-C	January 18, 2020
<u>Initiation of Operation:</u>	
Western Transmission Main Contract 01P-13-308-A	January 18, 2020
Western Transmission Main Contract 01P-13-308-B	January 18, 2020
Western Transmission Main Contract 01P-13-308-C	January 18, 2020
<u>Project Performance Certification:</u>	
Western Transmission Main Contract 01P-13-308-A	January 18, 2021
Western Transmission Main Contract 01P-13-308-B	January 18, 2021
Western Transmission Main Contract 01P-13-308-C	January 18, 2021

[\(Back To Top\)](#)

Section 5: EX-10.49 (EX-10.49)

Exhibit 10.49

MIDDLESEX WATER COMPANY
NOTE
RELATING TO:
THE CONSTRUCTION FINANCING LOAN PROGRAM
OF THE NEW JERSEY INFRASTRUCTURE BANK
(f/k/a NEW JERSEY ENVIRONMENTAL INFRASTRUCTURE TRUST)

FOR VALUE RECEIVED, MIDDLESEX WATER COMPANY, a corporation duly created and validly existing pursuant to the laws of the State (as hereinafter defined), and its successors and assigns (the “Borrower”), hereby promises to pay to the order of the **NEW JERSEY INFRASTRUCTURE BANK (f/k/a NEW JERSEY ENVIRONMENTAL INFRASTRUCTURE TRUST)**, a public body corporate and politic with corporate succession, duly created and validly existing under and by virtue of the Act (as hereinafter defined) (the “I-Bank”), the Principal (as hereinafter defined), together with all unpaid accrued Interest (as hereinafter defined), fees, late charges and other sums due hereunder, if any, in lawful money of the United States of America, on the Maturity Date (as hereinafter defined) or the date of any optional prepayment or acceleration in accordance with the provisions of this note (this “Note”).

SECTION 1. Definitions. As used in this Note, unless the context requires otherwise, the following terms shall have the following meanings:

“**Act**” means the “New Jersey Infrastructure Trust Act”, constituting Chapter 334 of the Pamphlet Laws of 1985 of the State (codified at N.J.S.A. 58:11B-1 *et seq.*), as the same may from time to time be amended and supplemented.

“**Administrative Fee**” means a fee of up to four-tenths of one percent (.40%) of that portion of the Principal identified in clause (i) of the definition thereof (as set forth in this Section 1), or such lesser amount, if any, as the I-Bank may determine from time to time.

“**Anticipated Financing Program**” means the financing program of the I-Bank, pursuant to which the I-Bank will issue its I-Bank Bonds for the purpose of financing, on a long term basis, the Project and other projects of certain qualifying borrowers.

“**Anticipated Long Term Loan**” means the long term loan made by the I-Bank to the Borrower from the proceeds of its I-Bank Bonds, as part of the Anticipated Financing Program.

“**Appropriation Condition**” means the procedural appropriation by the State for the Project through the inclusion of the Project on the Project Priority List (which Project Priority List is required pursuant to the Act) in an appropriation amount equal to or greater than the Principal amount of the Loan then due and payable by the Borrower pursuant to the terms hereof.

“Authorized Officer” means any person authorized by the Borrower or the I-Bank, as the case may be, to perform any act or execute any document relating to the Loan or this Note.

“Borrower Note Resolution” means the resolution of the Borrower’s Board of Directors adopted on January 23, 2018, as amended and supplemented from time to time, pursuant to which this Note has been issued, and entitled:

RESOLUTION OF MIDDLESEX WATER COMPANY, DETERMINING THE FORM AND OTHER DETAILS OF ITS “NOTE RELATING TO THE CONSTRUCTION FINANCING PROGRAM OF THE NEW JERSEY INFRASTRUCTURE BANK”, TO BE ISSUED IN THE PRINCIPAL AMOUNT OF UP TO \$14.0 MILLION, AND PROVIDING FOR THE ISSUANCE AND SALE OF SUCH NOTE TO THE NEW JERSEY INFRASTRUCTURE BANK, AND AUTHORIZING THE EXECUTION AND DELIVERY OF SUCH NOTE BY MIDDLESEX WATER COMPANY IN FAVOR OF THE NEW JERSEY INFRASTRUCTURE BANK, ALL PURSUANT TO THE NEW JERSEY INFRASTRUCTURE BANK CONSTRUCTION FINANCING PROGRAM.

“Business Corporation Law” means the “New Jersey Business Corporation Act”, constituting Chapter 263 of the Pamphlet Laws of 1968 of the State (codified at N.J.S.A. 14A:1-1 *et seq.*), as the same may from time to time be amended and supplemented.

“Code” means the Internal Revenue Code of 1986, as the same may from time to time be amended and supplemented, including any regulations promulgated thereunder, any successor code thereto and any administrative or judicial interpretations thereof.

“Cost” means those costs that are allocable to the Project, as shall be determined on a project-specific basis in accordance with the Regulations, as further set forth in Exhibit B hereto, (i) as such Exhibit B shall be supplemented by an Authorized Officer of the I-Bank by means of either a substitute Exhibit B or an additional Exhibit B, such supplement to be implemented concurrently with the supplement to Exhibit A-1 hereto (as provided in the definition of “Project” as set forth herein), and (ii) as the then-current Exhibit B may be amended by subsequent changes to eligible costs as evidenced by a certificate of an Authorized Officer of the I-Bank.

“Environmental Infrastructure Facilities” means Wastewater Treatment Facilities, Stormwater Management Facilities or Water Supply Facilities (as such terms are defined in the Regulations).

“Environmental Infrastructure System” means the Environmental Infrastructure Facilities of the Borrower, including the Project, for which the Borrower is receiving the Loan.

“Event of Default” means any occurrence or event specified in Section 6 hereof.

“Fund Portion” means, on any date, an amount equal to seventy-five percent (75%) of the Principal of the Loan on such date, exclusive of that portion of the Principal of the Loan that is allocable to the NJDEP Loan Origination Fee, which NJDEP Loan Origination Fee shall be financed exclusively from the I-Bank Portion.

“I-Bank Bonds” means the revenue bonds of the I-Bank to be issued, as part of the Anticipated Financing Program.

“I-Bank Portion” means, on any date, an amount equal to the aggregate of (i) twenty-five percent (25%) of the Principal of the Loan on such date, exclusive of that portion of the Principal of the Loan that is allocable to the NJDEP Loan Origination Fee, plus (ii) one hundred percent (100%) of that portion of the Principal of the Loan that is allocable to the NJDEP Loan Origination Fee.

“I-Bank Portion Interest Rate” means, with respect to each disbursement of proceeds of the I-Bank Portion of the Loan, (a) to the extent that such disbursement is funded from moneys appropriated to the I-Bank, for the Construction Financing Loan Program of the I-Bank, pursuant to an appropriations act of the State, the I-Bank Portion Interest Rate shall equal 0.00%, (b) to the extent that such disbursement is funded from available moneys of the I-Bank that are neither (i) appropriated to the I-Bank as provided by the preceding clause (a), nor (ii) borrowed from a financial institution pursuant to a line of credit or other similar financial instrument as provided by the succeeding clause (c), the I-Bank Portion Interest Rate shall equal the interest rate that is published as either the Thompson Financial TM3 “AAA” Municipal Market Data General Obligation Index (AMT) or the “BVAL” Index (relating to alternative minimum tax credits) of Bloomberg L.P. (or any subsidiary thereof), (with the particular index that is used by the I-Bank to be selected by an Authorized Officer of the I-Bank) or, if such indexes are no longer published on such date, such successor index as may be selected by an Authorized Officer of the I-Bank, in each case for the number of years that corresponds to the length of time from the date such disbursement is made available to the Borrower by the I-Bank to the Maturity Date, rounding up to the nearest year, or (c) to the extent that such disbursement is funded from available moneys of the I-Bank borrowed from a financial institution pursuant to a line of credit or other similar financial instrument, the I-Bank Portion Interest Rate shall equal the actual rate of interest established by the applicable financial institution pursuant to a competitive or negotiated solicitation by the I-Bank with respect to such line of credit or other financial instrument.

“Interest” means the interest charged on the outstanding Principal of the Loan at a rate of (a) with respect to the I-Bank Portion of the Principal, the applicable I-Bank Portion Interest Rate and (b) with respect to the Fund Portion of the Principal, 0.00%, and payable by the Borrower to the I-Bank (i) on the Maturity Date or (ii) with respect to any optional prepayment or acceleration of the Loan pursuant to the terms of this Note, on the date of such optional prepayment or acceleration, as the case may be.

“Loan” means the loan of the Principal, made by the I-Bank to the Borrower to finance or refinance a portion of the Cost of the Project, as evidenced by this Note.

“Loan Disbursement Requisition” means the requisition, to be executed by an Authorized Officer of the Borrower and approved by the NJDEP, in a form to be determined by the I-Bank and the NJDEP.

“Maturity Date” means June 30, 2022, or (i) such earlier date as shall be determined by an Authorized Officer of the I-Bank in his or her sole discretion, which date shall be determined by such Authorized Officer of the I-Bank to be the date of the closing for the Anticipated Financing Program (subject, in all events, to the rights and remedies of the I-Bank pursuant to, respectively, the provisions of Section 6 hereof and the provisions of Section 7 hereof in furtherance of the enforcement by the I-Bank of all covenants obligations of the Borrower hereunder, including, without limitation and in particular, the covenant obligation of the Borrower set forth in Section 3(a) hereof), or (ii) such later date (subject to the then-applicable limits of the Act) to be determined by an Authorized Officer of the I-Bank in his or her sole discretion, pursuant to a written certification thereof, as acknowledged and approved by an Authorized Officer of the Borrower.

“NJDEP” means the New Jersey Department of Environmental Protection.

“NJDEP Loan Origination Fee” means the “NJDEP Fee” as referenced and defined in Exhibit B hereto, which NJDEP Fee is an administrative fee that is payable by the Borrower to the NJDEP as a portion of the Cost of the Project that has been incurred by the Borrower for engineering and environmental services provided to the Borrower by the NJDEP.

“Principal” means the principal amount of the Loan, at any time being the lesser of (i) Eight Million Six Hundred Fifty Six Thousand Seven Hundred Forty Seven Dollars (\$8,656,747), or (ii) the aggregate outstanding amount as shall actually be disbursed to the Borrower by the I-Bank pursuant to one or more Loan Disbursement Requisitions, which Principal shall be payable by the Borrower to the I-Bank (i) on the Maturity Date or (ii) with respect to any optional prepayment or acceleration of the Loan pursuant to the terms of this Note, on the date of such optional prepayment or acceleration, as the case may be.

“Project” means the Environmental Infrastructure Facilities of the Borrower which constitutes a project for which the I-Bank is making the Loan to the Borrower, as further described in Exhibit A-1 hereto; provided, however, that the description of the Project, as set forth in Exhibit A-1 attached hereto, shall be supplemented by means of either (i) the substitution of a revised and updated Exhibit A-1 for the current Exhibit A-1 or (ii) the inclusion of an additional Exhibit A-1, in either case, promptly following the certification for funding by the NJDEP of the remaining components of the Project, as applicable, such supplement to be undertaken by an Authorized Officer of the I-Bank.

“Regulations” means the rules and regulations, as applicable, now or hereafter promulgated pursuant to N.J.A.C. 7:22-3 *et seq.*, 7:22-4 *et seq.*, 7:22-5 *et seq.*, 7:22-6 *et seq.*, 7:22-7 *et seq.*, 7:22-8 *et seq.*, 7:22-9 *et seq.* and 7:22-10 *et seq.*, as the same may from time to time be amended and supplemented.

“State” means the State of New Jersey.

SECTION 2. Representations of the Borrower. The Borrower represents and warrants to the I-Bank:

(a) Organization. The Borrower: (i) is a corporation duly created and validly existing under and pursuant to the Constitution and laws of the State, including the Business Corporation Law; (ii) has full legal right and authority to execute, attest and deliver this Note, to authorize the authentication of this Note, to sell this Note to the I-Bank, and to perform its obligations hereunder, and (iii) has duly authorized, approved and consented to all necessary action to be taken by the Borrower for: (A) the issuance of this Note, the authentication of this Note, the sale thereof to the I-Bank and the due performance of its obligations hereunder and (B) the execution, delivery and due performance of all certificates and other instruments that may be required to be executed, delivered and performed by the Borrower in order to carry out and give effect to this Note.

(b) Authority. This Note has been duly authorized by the Borrower, and duly executed, attested and delivered by Authorized Officers of the Borrower, and duly authenticated by the trustee or the paying agent pursuant to the Borrower Note Resolution. This Note has been duly sold by the Borrower to the I-Bank and duly issued by the Borrower and constitutes a legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its terms, except as the enforcement thereof may be affected by bankruptcy, insolvency or other laws or the application by a court of legal or equitable principles affecting creditors' rights.

(c) Pending Litigation. There are no proceedings pending or, to the knowledge of the Borrower, threatened against or affecting the Borrower that, if adversely determined, would adversely affect (i) the condition (financial or otherwise) of the Borrower, (ii) the adoption of the Borrower Note Resolution, (iii) the ability of the Borrower to satisfy all of its Loan repayment obligations hereunder, (iv) the authorization, execution, attestation, authentication or delivery of this Note, (v) the issuance of this Note and the sale thereof to the I-Bank, and (vi) the Borrower's ability otherwise to observe and perform its duties, covenants, obligations and agreements under this Note.

(d) Compliance with Existing Laws and Agreements; Governmental Consent. (i) The authorization, execution, attestation and delivery of this Note by the Borrower, (ii) the authentication of this Note by the trustee or paying agent pursuant to the Borrower Note Resolution, (iii) the adoption of the Borrower Note Resolution, (iv) the sale of this Note to the I-Bank, (v) the observation and performance by the Borrower of its duties, covenants, obligations and agreements hereunder, including, without limitation, the repayment of the Loan and all other amounts due hereunder, and (vi) the undertaking and completion of the Project, will not (A) result in the creation or imposition of any lien, charge or encumbrance upon any properties or assets of the Borrower pursuant to, (B) result in any breach of any of the terms, conditions or provisions of, or (C) constitute a default under, any existing ordinance or resolution, outstanding debt or lease obligation, trust agreement, indenture, mortgage, deed of trust, loan agreement or other instrument to which the Borrower is a party or by which the Borrower, its Environmental Infrastructure System or any of its properties or assets may be bound, nor will such action result in any violation of the provisions of the charter or other document pursuant to which the Borrower was established or any laws, ordinances, injunctions, judgments, decrees, rules, regulations or existing orders of any court or governmental or administrative agency, authority or person to which the Borrower, its Environmental Infrastructure System or its properties or operations are subject. The Borrower has obtained all permits and approvals required to date by any governmental body or officer for the authorization, execution, attestation, authentication and delivery of this Note, for the sale of this Note to the I-Bank, for the making, observance and performance by the Borrower of its duties, covenants, obligations and agreements under this Note, and for the undertaking and completion of the Project.

(e) Reliance. The Borrower hereby acknowledges that the I-Bank is making the Loan to the Borrower pursuant to the terms hereof in reliance upon each of the representations of the Borrower set forth in this Section 2.

SECTION 3. Covenants of the Borrower.

(a) Participation in the Anticipated Financing Program. The Borrower covenants and agrees that it shall undertake and complete in a timely manner all conditions precedent identified by the I-Bank relating to (i) the participation by the Borrower in the Anticipated Financing Program and (ii) the qualification by the Borrower for receipt of the Anticipated Long Term Loan.

(b) Pledge. The Borrower unconditionally and irrevocably promises to make the Loan repayments in accordance with the terms of, and to the extent provided in, the Borrower Note Resolution for the punctual repayment of the Loan and all other amounts due pursuant to the terms of this Note.

(c) Disposition of Environmental Infrastructure System. The Borrower covenants and agrees that it shall not sell, lease, abandon or otherwise dispose of all or substantially all of its Environmental Infrastructure System without the express written consent of the I-Bank, which consent may or may not be granted by the I-Bank in its sole discretion.

(d) Financing With Tax-Exempt Bonds. The Borrower acknowledges, covenants and agrees that it is the intention of the Borrower to finance the Project on a long term basis with proceeds of I-Bank Bonds now or hereinafter issued, the interest on which is excluded from gross income for purposes of federal income taxation pursuant to Section 103(a) of the Code ("tax-exempt bonds"). In furtherance of such long term financing with tax-exempt bonds, the Borrower covenants that, except to the extent expressly permitted in writing by the I-Bank, the Borrower will not take any action or permit any action to be taken which would result in any of the proceeds of the Loan being used (directly or indirectly) to make or finance loans to persons other than the Borrower. In addition, the Borrower covenants and agrees that (i) all of the proceeds of the Loan will be used to pay costs of an exempt facility, within the meaning of Section 142 of the Code, which were paid and incurred by the Borrower no more than 60 days before the date on which the I-Bank adopted a declaration of intent with respect to the Project, and (ii) no portion of the Project will be investment property, within the meaning of Section 148(b) of the Code. The Borrower covenants and agrees that any Costs to be paid or reimbursed with proceeds of the Loan will result in the expenditure of proceeds under Treasury Regulations §1.148-6(d) and Treasury Regulations §1.150-2, for costs subject to the allowance for depreciation provided in Section 167 of the Code which are chargeable to the capital account of the Borrower with respect to such exempt facility.

(e) Operation and Maintenance of Environmental Infrastructure System. The Borrower covenants and agrees that it shall maintain its Environmental Infrastructure System in good repair, working order and operating condition, and make all necessary and proper repairs and improvements with respect thereto.

(f) Records and Accounts; Inspections. The Borrower covenants and agrees that it shall keep accurate records and accounts for its Environmental Infrastructure System, separate and distinct from its other records and accounts, which shall be audited annually by an independent registered certified public accountant and shall be made available for inspection by the I-Bank upon prior written notice. The Borrower shall permit the I-Bank to inspect the Environmental Infrastructure System.

(g) Insurance. The Borrower covenants and agrees that it shall maintain insurance policies providing against risk of direct physical loss, damage or destruction of its Environmental Infrastructure System, in an amount that will satisfy all applicable regulatory requirements. The Borrower covenants and agrees that it shall include, or cause to be included, the I-Bank as an additional “named insured” on any certificate of liability insurance procured by the Borrower and by any contractor or subcontractor for the Project.

(h) Reliance. The Borrower hereby acknowledges that the I-Bank is making the Loan to the Borrower pursuant to the terms hereof in reliance upon each of the covenants of the Borrower set forth in this Section 3.

SECTION 4. Disbursement of the Loan Proceeds; Amounts Payable; Prepayment; and Late Fee.

(a) The I-Bank shall effectuate the Loan to the Borrower by making one or more disbursements to the Borrower promptly after receipt by the I-Bank of a Loan Disbursement Requisition and the approval of such Loan Disbursement Requisition by an Authorized Officer of the I-Bank or designee thereof, each such disbursement and the date thereof to be recorded by an Authorized Officer of the I-Bank on the table attached as Exhibit A-2 hereto; provided, however, that the approval by the I-Bank of any Loan Disbursement Requisition for disbursement pursuant to the terms hereof shall be subject to the terms, conditions and limitations as set forth in Section 4(b) of this Note. It is expected that the proceeds of the Loan will be disbursed to the Borrower in accordance with Exhibit C hereto, as Exhibit C shall be supplemented by an Authorized Officer of the I-Bank by means of either a substitute Exhibit C or an additional Exhibit C, such supplement to be implemented concurrently with the supplement to Exhibit A-1 hereto (as provided in the definition of “Project” as set forth herein). The latest date upon which the Borrower may submit to the I-Bank a Loan Disbursement Requisition is the business day immediately preceding the date fixed by the I-Bank for the sale of its bonds in connection with the Anticipated Financing Program, or such alternative date as shall be identified by the I-Bank for the Borrower in writing. On the Maturity Date, the Borrower shall repay the Loan to the I-Bank in an amount equal to: (i) the Principal; (ii) the Interest; (iii) the Administrative Fee, if any; and (iv) any other amounts due and owing pursuant to the provisions of this Note. The Borrower may prepay the Loan obligations hereunder, in whole or in part, upon receipt of the prior written consent of an Authorized Officer of the I-Bank. Each payment made to the I-Bank shall be applied to the payment of, first, the Interest then due and payable, second, the Principal, third, the Administrative Fee, if any, fourth, any late charges, and, finally, any other amount due pursuant to the provisions of this Note. In the event that the repayment obligation set forth in this Note is received by the I-Bank later than the Maturity Date, a late fee shall be payable to the I-Bank in an amount equal to the greater of twelve percent (12%) per annum or the prime rate as published in the Wall Street Journal on the Maturity Date plus one half of one percent per annum on such late payment from the Maturity Date to the date it is actually paid; provided, however, that any late payment charges incurred hereunder shall not exceed the maximum interest rate permitted by law. Notwithstanding the provisions of this Section 4(a) to the contrary, the Borrower hereby acknowledges and agrees that, on the date of issuance of this Note, a disbursement shall be made and shall be recorded by an Authorized Officer of the I-Bank on the table attached as Exhibit A-2 hereto in the amount recorded thereon. Such disbursement shall be made for the purpose of funding fifty percent (50%) of the NJDEP Loan Origination Fee. Such disbursement shall be paid by the I-Bank on behalf of the Borrower directly to the NJDEP in satisfaction of the provisions hereof.

(b) Notwithstanding the provisions of this Note to the contrary with respect to the funding, pursuant to this Section 4, of any Loan Disbursement Requisition relating to all or any portion of the Project: (i) the Borrower hereby acknowledges and agrees that the I-Bank shall not, and shall not be required to, commit funds, pursuant to the Construction Financing Loan Program of the I-Bank, to any portion of the Project until such time as the particular portion of the Project in question has been certified for funding by the NJDEP; (ii) no Loan Disbursement Requisition shall be approved by the I-Bank for disbursement pursuant to this Section 4 unless and until the portion of the Project to which such Loan Disbursement Requisition relates has been certified for funding by the NJDEP; (iii) no Loan Disbursement Requisition shall be approved by the I-Bank for disbursement pursuant to this Section 4 unless and until the Appropriation Condition has been satisfied to an extent and in an amount that is sufficient to fund, in the aggregate, the particular Loan Disbursement Requisition in question and all prior Loan Disbursement Requisitions; and (iv) the I-Bank has no obligation pursuant to this Note to make all or any portion of any Loan Disbursement Requisition disbursement pursuant to the provisions of this Section 4 if the Borrower lacks the authority to pay interest on this Note in an amount equal to the I-Bank Portion Interest Rate.

SECTION 5. Unconditional Obligations. The obligation of the Borrower to make the Loan repayments and all other payments required hereunder and the obligation to perform and observe the other duties, covenants, obligations and agreements on its part contained herein shall be absolute and unconditional, and shall not be abated, rebated, set-off, reduced, abrogated, terminated, waived, diminished, postponed or otherwise modified in any manner whatsoever while any Loan repayments, or any other payments due hereunder, remain unpaid, regardless of any contingency, act of God, event or cause whatsoever, including (without limitation) any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, the taking by eminent domain or destruction of or damage to the Project or Environmental Infrastructure System, commercial frustration of the purpose, any change in the laws of the United States of America or of the State or any political subdivision of either or in the rules or regulations of any governmental authority, any failure of the I-Bank to perform and observe any agreement or any duty, liability or obligation arising out of this Note, or any rights of set-off, recoupment, abatement or counterclaim that the Borrower might have against the I-Bank or any other party; provided, however, that payments hereunder shall not constitute a waiver of any such rights.

SECTION 6. Events of Default. The following events shall constitute an “Event of Default” hereunder: (i) failure by the Borrower to pay, when due, any and all of its Loan repayment obligations hereunder, and any other payment obligations due hereunder; (ii) failure by the Borrower to observe and perform any duty, covenant, obligation or agreement on its part to be observed or performed pursuant to the terms of this Note; (iii) any representation made by the Borrower contained in this Note or in any instrument furnished in compliance with or with reference to this Note is false or misleading in any material respect; and (iv) a petition is filed by or against the Borrower under any federal or state bankruptcy or insolvency law or other similar law in effect on the date of this Note or thereafter enacted, unless in the case of any such petition filed against the Borrower such petition shall be dismissed within thirty (30) days after such filing and such dismissal shall be final and not subject to appeal, or the Borrower shall become insolvent or bankrupt or shall make an assignment for the benefit of its creditors, or a custodian of the Borrower or any of its property shall be appointed by court order or take possession of the Borrower or its property or assets if such order remains in effect or such possession continues for more than thirty (30) days.

SECTION 7. Remedies upon Event of Default. Whenever an Event of Default shall have occurred and be continuing pursuant to the terms hereof, the Borrower hereby acknowledges and agrees to the rights of the I-Bank to take any action permitted or required at law or in equity to collect the amounts then due and thereafter to become due hereunder or to enforce the observance and performance of any duty, covenant, obligation or agreement of the Borrower hereunder. If an Event of Default shall have occurred, the Borrower hereby acknowledges and agrees that the I-Bank shall have the right to (i) immediately cease disbursements of the proceeds of the Loan, and/or (ii) declare all Loan repayments and all other amounts due hereunder to be due and payable immediately without further notice or demand. The Borrower hereby acknowledges and agrees that no remedy herein is intended to be exclusive, and every remedy shall be cumulative and in addition to every other remedy given under this Note or now or hereafter existing at law or in equity. The Borrower hereby further acknowledges and agrees that no delay or omission by the I-Bank to exercise any remedy or right accruing upon any Event of Default shall impair any such remedy or right or shall be construed to be a waiver thereof, but any such remedy or right may be exercised as often as may be deemed expedient. The Borrower hereby further acknowledges and agrees that, pursuant to the “New Jersey Infrastructure Bank Credit Policy”, adopted by the Board of Directors of the I-Bank, and as further amended and supplemented from time to time (the “Credit Policy”), during such time as an Event of Default has occurred and is continuing hereunder, the Borrower shall be ineligible for additional financial assistance from the I-Bank, in addition to certain other consequences set forth in the Credit Policy. The Borrower hereby agrees that upon demand it shall pay to the I-Bank the reasonable fees and expenses of attorneys and other reasonable expenses (including, without limitation, the reasonably allocated costs of in-house counsel and legal staff) incurred in the collection of Loan repayments or any sum due hereunder or in the enforcement of the observation or performance of any obligations or agreements of the Borrower upon an Event of Default. Any moneys collected by the I-Bank pursuant to this Section 7 shall be applied first to pay any attorneys’ fees or other fees and expenses owed by the Borrower.

SECTION 8. Certain Miscellaneous Provisions. The Borrower hereby acknowledges and agrees as follows: (a) all notices hereunder shall be deemed given when hand delivered or when mailed by registered or certified mail, postage prepaid, to the Borrower at the following address: Middlesex Water Company, 1500 Ronson Road, Iselin, New Jersey 08830-0452, Attention: A. Bruce O'Connor, Vice President, Treasurer and Chief Financial Officer; and to the I-Bank at the following address: New Jersey Infrastructure Bank, 3131 Princeton Pike, Building 4, Suite 216, Lawrenceville, New Jersey 08648-2201, Attention: Executive Director; (b) this Note shall be binding upon the Borrower and its successors and assigns; (c) in the event any provision of this Note is held illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable or otherwise affect any other provision hereof; (d) the obligations of the Borrower pursuant to the terms of this Note may not be assigned by the Borrower for any reason, unless the I-Bank shall have approved said assignment in writing; (e) this Note may not be amended, supplemented or modified without the prior written consent of the I-Bank; (f) this Note shall be governed by and construed in accordance with the laws of the State; (g) the Borrower shall, at the request of the I-Bank, execute and deliver such further instruments as may be necessary or desirable for better assuring, conveying, granting, assigning and confirming the rights, security interests and agreements granted or intended to be granted by this Note; and (h) whenever the Borrower is required to obtain the determination, approval or consent of the I-Bank pursuant to the terms hereof, such determination, approval or consent may be either granted or withheld by the I-Bank in its sole and absolute discretion.

[The remainder of this page has been left blank intentionally.]

IN WITNESS WHEREOF, the Borrower has caused this Note to be duly executed, sealed and delivered on the date first above written.

MIDDLESEX WATER COMPANY

[SEAL]

ATTEST:

By: /s/ A. Bruce O'Connor
A. Bruce O'Connor
Vice President, Treasurer
And Chief Financial Officer

/s/ Jay L. Kooper
Jay L. Kooper, Esq.
Vice President, General
Counsel and Secretary

EXHIBIT A-1

1) Name and Address of Local Unit:

Middlesex Water Company
500 Ronson Road
Iselin, New Jersey 08830

Attention: Richard M. Risoldi, Vice President Operations

2) Description of the Project:

The project consists of replacing 18,300 LF 8-inch diameter cast iron mains with cement mortar-lined ductile iron pipe, replacing 536 service lines, installing 616 meter pits and associated fittings and appurtenances. The project area is within the Avenel section of Woodbridge Township. Cement mortar lining of the pipe interior is intended to inhibit the corrosive effects of the conveyed water on the piping systems. On the other hand, unlined pipe is subject to tuberculation (an accumulation of ferric oxide) which would manifest as reduction of the carrying capacity of the pipe and reduced pressure and volume. Customers would be impacted by a reduction of the system's ability to deliver sufficient water to fight fires and the concomitant increase in pumping costs in order to overcome the resistance to flow presented by the aforementioned accumulations. Water quality would suffer, as the increase in ferric oxide will manifest as aesthetic degradation of the water at "end-of-tap" and at high enough levels, may cause a threat to public health.

The overall project consists of one (1) building contract. Zero (0) contracts have previously received authorization to award. This exhibit pertains to contract 1 of 1.

3) Description of the Water Distribution System:

The Middlesex Water Company is a publicly-owned water utility that provides water service to retail customers primarily in eastern Middlesex County. Water services are furnished to approximately 59,000 retail customers located in an area of approximately 55 square miles of New Jersey in Woodbridge Township, the Boroughs of Metuchen and Carteret; portions of Edison Township, Borough of South Plainfield, and the City of South Amboy in Middlesex County; and a small portion of the Township of Clark in Union County.

EXHIBIT A-2

Loan Disbursements

Date of Loan Disbursement	Amount of Disbursement: I-Bank Portion	Amount of Disbursement: Fund Portion

EXHIBIT B

Basis for the Determination of Allowable Costs

The determination of the costs allowable for assistance from the New Jersey Water Bank is presented below:

Cost Classification	Application Amount	Allowable Amount	CLP Allowable Amount
1. Administrative Expenses	\$ 258,000	\$ 224,088	\$ 224,088
2. Other Costs	\$ 0	\$ 0	\$ 0
3. Engineering Fees	\$ 1,032,000	\$ 424,622	\$ 424,622
4. Building Costs	\$ 8,600,000	\$ 7,469,590	\$ 7,469,590
5. Contingencies	\$ 430,000	\$ 373,480	\$ 373,480
6. Planning and Design	\$ 880,000	\$ 79,257	\$ 79,257
7. Sub-Total	\$ 11,200,000	\$ 8,571,037	\$ 8,571,037
8. DEP Fee (Financed Portion (50%))		\$ 85,710	\$ 85,710
9. Total Project Costs	\$ 11,200,000	\$ 8,656,747	\$ 8,656,747
10. CLP Loan Amount			\$ 8,656,747

As a result of the review by the New Jersey Department of Environmental Protection (“DEP”), various line items may have been revised resulting in a change of the allowable costs for this project. The basis for the determination of the allowable costs is as follows:

1. Administrative Expenses:

The total amount requested for this line item on the application was \$258,000. The allowable administrative expense is authorized to be 3% of the total allowable building costs (Line Item No. 4). Therefore, the amount for the administrative line item is $\$7,469,590 \times 0.03 = \$224,088$.

Allowable Administrative Expenses are \$224,088.

2. Other Costs:

The amount requested for this line item on the application was \$0. Therefore, the total allowable amount for this line item is \$0.

Allowable Other Costs are \$0.

3. Engineering Fees:

The amount requested for this line item on the application was \$1,032,000. Middlesex Water Company will utilize both the services of Gannett Fleming and Middlesex Water Company's engineering and inspection personnel (force account). The contractual costs for Gannett Fleming's services are \$166,622.48 (includes Change Order No. 1 issued 27 November 2017). The costs for Middlesex Water Company's force account work was estimated at \$258,000. The scope of work and costs for utilizing these services has been reviewed and approved. Therefore,

Allowable Engineering Fees are \$424,622.

4. Building Costs:

The amount requested for this line item on the application was \$8,600,000. The total allowable building costs based upon the low bid received is \$5,719,590 and an additional \$1,750,000 for materials. Therefore, the total building costs are \$5,719,590 + \$1,750,000 = \$7,469,590. Therefore,

Green Project Reserve (GPR) Funding: Green Infrastructure - \$0.
Energy Efficiency - \$0.
Water Efficiency - \$0.
Green Innovative - \$0.

Allowable Building Costs are \$7,469,590.

5. Contingencies:

The amount requested for this line item on the application was \$430,900. The allowable amount is authorized to be 5% of the allowable building cost. Therefore, the allowable amount for this line item is \$7,469,590 x 0.05 = \$373,480.

Allowable Contingencies are \$373,480.

6. Planning and Design:

The amount requested for this line item on the application was \$880,000. The Department has reviewed the Agreement dated April 21, 2017 between Middlesex Water Company and Gannett Fleming for 'Survey and Design Plans' stipulating the amount of \$79,257, which has been found to be acceptable.

Costs for this line item will be reimbursed based on DEP approval of actual documented project expenses for planning and design services.
Therefore

Planning and Design Line Item is \$79,257.

7. Sub-Total:

The total amount applied for was \$11,200,000. The subtotal line item amount based upon the low bid award is \$8,571,037.

8. DEP Loan Surcharge or Loan Origination Fee:

This item represents the DEP Loan Surcharge or Loan Origination Fee imposed by DEP as a portion of the cost of the project of the borrower. This DEP Loan Surcharge or Loan Origination Fee is a portion of the cost of the project that has been incurred for engineering and environmental services provided by DEP for the borrower in connection with, and as a condition precedent to, the inclusion of the project of the borrower in the SFY2019 Financing Program of the Trust, 50% of which will be financed for the Borrower as part of the Trust Construction Loan.

DEP Fee = \$8,571,037 x 2% = \$171,420

\$171,420 x 0.50 = \$85,710, (financed through the Construction Loan and paid to DEP upon closing of the Construction Loan)

9. Total Project Costs:

The total project costs are (loan amount + DEP Fee) \$8,656,747.

10. The CLP Loan Amount:

The CLP Loan Amount is \$8,656,747.

2. Project Schedule

The Borrower shall expeditiously initiate and complete the project in accordance with the project schedule which was submitted as part of the loan application repeated below. Failure to promptly initiate and complete the Project may result in the imposition of sanctions under N.J.A.C. 7:22-3.40 through 3.44 and N.J.A.C. 7:22-4.40 through 4.44. In addition, failure to promptly award all subagreement(s) for building the Project within 12 months of the date of this loan may result in a limitation on allowable costs as provided by N.J.A.C. 7:22-5.4(d) 4. This limitation provides that costs incurred under contracts awarded after 12 months from the date of this loan are unallowable unless a specific extension has been granted by DEP, in the case of a Fund Loan, and the I-Bank, in the case of an I-Bank Loan.

<u>EVENT</u>	<u>DATE</u>
<u>Advertisement:</u> 1225001-028	April 17, 2018
<u>Bid Receipt:</u> 1225001-028	May 30, 2018
<u>Award:</u> 1225001-028	June 18, 2018
<u>Issuance of Notice to Proceed:</u> 1225001-028	June 26, 2018
<u>Completion of Construction:</u> 1225001-028	April 30, 2019
<u>Initiation of Operation:</u> 1225001-028	April 30, 2019
<u>Project Performance Certification:</u> 1225001-028	April 30, 2020

[\(Back To Top\)](#)

Section 6: EX-31.1 (EX-31.1)

Exhibit 31.1

SECTION 302 CERTIFICATION PURSUANT TO RULES 13a-14 AND 15d-14 OF THE SECURITIES EXCHANGE ACT OF 1934

I, Dennis W. Doll, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Middlesex Water Company;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have;

- a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any changes in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):
- a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ Dennis W. Doll
Dennis W. Doll
Chief Executive Officer

Date: November 2, 2018

[\(Back To Top\)](#)

Section 7: EX-31.2 (EX-31.2)

Exhibit 31.2

SECTION 302 CERTIFICATION PURSUANT TO RULES 13a-14 AND 15d-14 OF THE SECURITIES EXCHANGE ACT OF 1934

I, A. Bruce O'Connor, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Middlesex Water Company;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

- d. Disclosed in this report any changes in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ A. Bruce O'Connor
A. Bruce O'Connor
Chief Financial Officer

Date: November 2, 2018

[\(Back To Top\)](#)

Section 8: EX-32.1 (EX-32.1)

Exhibit 32.1

SECTION 906 CERTIFICATION PURSUANT TO 18 U.S.C. §1350

I, Dennis W. Doll, hereby certify that, to the best of my knowledge, the periodic report being filed herewith containing financial statements fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) or 78o(d)) and that information contained in said periodic report fairly presents, in all material respects, the financial condition and results of operations of Middlesex Water Company for the period covered by said periodic report.

/s/ Dennis W. Doll
Dennis W. Doll
Chief Executive Officer

Date: November 2, 2018

A signed original of this written statement required by Section 906 has been provided to Middlesex Water Company and will be retained by Middlesex Water Company and furnished to the Securities and Exchange Commission or its staff upon request.

[\(Back To Top\)](#)

Section 9: EX-32.2 (EX-32.2)

Exhibit 32.2

SECTION 906 CERTIFICATION PURSUANT TO 18 U.S.C. §1350

I, A. Bruce O'Connor, hereby certify that, to the best of my knowledge, the periodic report being filed herewith containing financial statements fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) or 78o(d)) and that information contained in said periodic report fairly presents, in all material respects, the financial condition and results of operations of Middlesex Water Company for the period covered by said periodic report.

/s/ A. Bruce O'Connor
A. Bruce O'Connor
Chief Financial Officer

Date: November 2, 2018

A signed original of this written statement required by Section 906 has been provided to Middlesex Water Company and will be retained by Middlesex Water Company and furnished to the Securities and Exchange Commission or its staff upon request.

[\(Back To Top\)](#)