

UNITED STATES SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549  
FORM 10-K

(Mark One)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934  
For the fiscal year ended December 31, 2008

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 NJ 08830**  
(Address of principal executive offices, including zip code)  
**(732) 634-1500**  
(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

Title of Each Class:  
None

Name of each exchange on which registered:  
None

Securities registered pursuant to Section 12(g) of the Act:

Common Stock, No par Value  
(Title of Class)

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes  No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes  No

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 if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of the registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company.  
Large accelerated filer  Accelerated filer  Non-accelerated filer  Smaller reporting company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes  No

The aggregate market value of the voting stock held by non-affiliates of the registrant at June 30, 2008 was \$211,963,578 based on the closing market price of \$16.59 per share.

The number of shares outstanding for each of the registrant's classes of common stock, as of March 13, 2009:  
Common Stock, No par Value 13,419,619 shares outstanding

Documents Incorporated by Reference

Proxy Statement to be filed in connection with the Registrant's Annual Meeting of Shareholders to be held on May 20, 2009, which will be filed with the Securities and Exchange Commission within 120 days, is incorporated as to Part III.

**MIDDLESEX WATER COMPANY  
FORM 10-K**

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## Forward-Looking Statements

Certain statements contained in this annual 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. These statements include, but are not limited to:

- statements as to expected financial condition, performance, prospects and earnings of the Company;
- statements regarding strategic plans for growth;
- statements regarding the amount and timing of rate increases and other regulatory matters;
- statements as to the Company’s expected liquidity needs during the upcoming fiscal year and beyond and statements as to the sources and availability of funds to meet its liquidity needs;
- statements as to expected rates, consumption volumes, service fees, revenues, margins, expenses and operating results;
- statements as to the Company’s compliance with environmental laws and regulations and estimations of the materiality of any related costs;
- statements as to the safety and reliability of the Company’s equipment, facilities and operations;
- statements as to financial projections;
- statements as to the ability of the Company to pay dividends;
- statements as to the Company’s plans to renew municipal franchises and consents in the territories it serves;
- expectations as to the amount of cash contributions to fund the Company’s retirement benefit plans, including statements as to anticipated discount rates and rates of return on plan assets;
- statements as to trends; and
- statements regarding 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:

- the effects of general economic conditions;
- increases in competition in the markets served by the Company;
- the ability of the Company to control operating expenses and to achieve efficiencies in its operations;
- the availability of adequate supplies of water;
- actions taken by government regulators, including decisions on rate increase requests;
- new or additional water quality standards;
- weather variations and other natural phenomena;
- the existence of financially attractive acquisition candidates and the risks involved in pursuing those acquisitions;
- acts of war or terrorism;
- significant changes in the housing starts in Delaware;
- the availability and cost of capital resources; and
- other factors discussed elsewhere in this annual 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 prospectus 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.

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## PART I

### Item 1. Business.

#### Overview

Middlesex Water Company (“Middlesex”) was incorporated as a water utility company in 1897 and owns and operates regulated water utility and wastewater systems in New Jersey and Delaware. The Company also operates water and wastewater systems under contract on behalf of municipal and private clients in New Jersey and Delaware.

The terms “the Company,” “we,” “our,” and “us” refer to Middlesex Water Company and its subsidiaries, including Tidewater Utilities, Inc. (Tidewater) and Tidewater’s wholly-owned subsidiaries, Southern Shores Water Company, LLC (Southern Shores) and White Marsh Environmental Systems, Inc. (White Marsh). The Company’s other subsidiaries are 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 Tidewater Environmental Services, Inc. (TESI).

Middlesex principal executive offices are located at 1500 Ronson Road, Iselin, New Jersey 08830. Our telephone number is (732) 634-1500. Our internet website address is <http://www.middlesexwater.com>. We make available, free of charge through our internet website, reports and amendments filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, after such material is electronically filed with or furnished to the Securities and Exchange Commission (SEC).

#### *Middlesex System*

The Middlesex System in New Jersey provides water services to approximately 59,700 retail customers, primarily in eastern Middlesex County, New Jersey and provides water under wholesale contracts to the City of Rahway, Township of Edison, the Boroughs of Highland Park and Sayreville and both the Old Bridge and the Marlboro Township Municipal Utilities Authorities. The Middlesex System treats, stores and distributes water for residential, commercial, industrial and fire prevention purposes. The Middlesex System also provides water treatment and pumping services to the Township of East Brunswick under contract. The Middlesex System, through its retail and contract sales, produced approximately 64% of 2008 revenue.

The Middlesex System’s retail customers are located in an area of approximately 55 square miles in Woodbridge Township, the City of South Amboy, the Boroughs of Metuchen and Carteret, portions of the Township of Edison and the Borough of South Plainfield in Middlesex County and, to a minor extent, a portion of the Township of Clark in Union County. Retail customers include a mix of residential customers, large industrial concerns and commercial and light industrial facilities. These customers are located in generally well-developed areas of central New Jersey. The contract customers of the Middlesex System comprise an area of approximately 146 square miles with a population of approximately 303,000. Contract sales to Edison, Sayreville, Old Bridge, Marlboro and Rahway are supplemental to the existing water systems of these customers. The State of New Jersey in the mid-1980’s approved plans to increase available surface water supply to the South River Basin area of the state to facilitate a reduction in groundwater use in this area. The Middlesex System provides treated surface water under long-term agreements to East Brunswick, Marlboro, Old Bridge and Sayreville consistent with the state-approved plan.

Middlesex provides water service to approximately 300 customers in Cumberland County, New Jersey. This system is referred to as Bayview and is not physically interconnected with the Middlesex system. Bayview produced less than 1% of our total revenue in 2008.

### *Tidewater System*

Tidewater, together with its wholly-owned subsidiary, Southern Shores, provides water services to approximately 35,500 retail customers for domestic, commercial and fire protection purposes in over 300 separate community water systems in New Castle, Kent and Sussex Counties, Delaware. An additional wholly-owned subsidiary, White Marsh, operates water and wastewater systems under contract for approximately 7,200 residential customers and also owns the office buildings that Tidewater uses as its central business office campus. White Marsh's rates for water and wastewater operations are not regulated by the Delaware Public Service Commission (PSC). The Tidewater System produced approximately 24% of total revenue in 2008.

### *Utility Service Affiliates-Perth Amboy*

USA-PA operates the City of Perth Amboy, NJ's water and wastewater systems under a 20-year agreement, which expires in 2018. USA-PA serves approximately 9,700 customers, most of whom are served by both systems. The agreement was effected under New Jersey's Water Supply Public-Private Contracting Act and the New Jersey Wastewater Public/Private Contracting Act and requires USA-PA to lease from Perth Amboy all of its employees who currently work on the Perth Amboy water and wastewater systems. Under the agreement, USA-PA receives both fixed and variable fees. The variable position is based on customer billing. Fixed fee revenues were \$8.0 million in 2008 and are to increase over the term of the 20-year contract to \$10.2 million based upon a schedule of rates. USA-PA produced approximately 9% of total revenue in 2008.

In connection with the agreement, Middlesex guaranteed a series of Perth Amboy's municipal bonds in the principal amount of approximately \$26.3 million, of which approximately \$21.4 million remains outstanding. In connection with the agreement with Perth Amboy, USA-PA entered into a 20-year subcontract with a wastewater operating company for the operation and maintenance of the Perth Amboy wastewater system. The subcontract provides for the sharing of certain fixed and variable fees and operating expenses.

### *Pinelands System*

Pinelands Water provides water services to approximately 2,500 residential customers in Burlington County, New Jersey. Pinelands Water produced less than 1% of total revenue in 2008. Pinelands Water is not physically interconnected with the Middlesex System.

Pinelands Wastewater provides wastewater services to approximately 2,500 primarily residential retail customers. Under contract, it also services one municipal wastewater system in Burlington County, New Jersey with about 200 residential customers. Pinelands Wastewater produced approximately 1% of total revenue in 2008.

### *Utility Service Affiliates, Inc.*

USA provides residential customers in New Jersey and Delaware a water service line and sewer lateral maintenance program called LineCare<sup>SM</sup> and LineCare+<sup>SM</sup>, respectively. These are affordable maintenance programs that covers all parts, material and labor required to repair or replace specific elements of the customer's water service line, customer shut-off valve and sewer lateral in the event of a failure. USA produced less than 1% of total revenue in 2008.

### *TESI System*

TESI provides wastewater services to approximately 1,800 residential retail customers in Delaware. TESI produced less than 1% of our total revenue in 2008.

## Financial Information

Consolidated operating revenues and operating income are as follows:

|                    | Years Ended December 31, |           |           |
|--------------------|--------------------------|-----------|-----------|
|                    | (Thousands of Dollars)   |           |           |
|                    | 2008                     | 2007      | 2006      |
| Operating Revenues | \$ 91,038                | \$ 86,114 | \$ 81,061 |
| Operating Income   | \$ 24,019                | \$ 22,671 | \$ 21,318 |

Operating revenues were earned from the following sources:

|                     | Years Ended December 31, |               |               |
|---------------------|--------------------------|---------------|---------------|
|                     | 2008                     | 2007          | 2006          |
| Residential         | 45.1%                    | 45.0%         | 42.6%         |
| Commercial          | 9.6                      | 9.7           | 10.0          |
| Industrial          | 9.3                      | 9.9           | 10.7          |
| Fire Protection     | 10.4                     | 10.3          | 10.7          |
| Contract Sales      | 13.1                     | 12.5          | 12.3          |
| Contract Operations | 10.5                     | 10.3          | 11.0          |
| Other               | 2.0                      | 2.3           | 2.7           |
| <b>TOTAL</b>        | <b>100.0%</b>            | <b>100.0%</b> | <b>100.0%</b> |

**Water Supplies and Contracts**

Our New Jersey and Delaware water supply systems are physically separate and are not interconnected. In New Jersey, the Pinelands System and Bayview System are not interconnected with the Middlesex System or each other. We believe that we have adequate sources of water supply to meet the current service requirements of our present customers in New Jersey and Delaware.

*Middlesex System*

Our Middlesex System, which produced approximately 16.8 billion gallons in 2008, obtains water from surface sources and wells, or groundwater sources. In 2008, surface sources of water provided approximately 71% of the Middlesex System's water supply, groundwater sources provided approximately 23% from 31 wells and the balance was purchased from a non-affiliated water utility. Middlesex System's distribution storage facilities are used to supply water to customers at times of peak demand, outages and emergencies.

The principal source of surface water for the Middlesex System is the Delaware & Raritan Canal, which is owned by the State of New Jersey and operated as a water resource by the New Jersey Water Supply Authority. Middlesex is under contract with the New Jersey Water Supply Authority, which expires November 30, 2023. The contract provides for average purchases of 27 million gallons per day (mgd) of untreated water from the Delaware & Raritan Canal, augmented by the Round Valley/Spruce Run Reservoir System. Surface water is pumped to, and treated, at the Middlesex Carl J. Olsen (CJO) Plant. Middlesex also has an agreement with a non-affiliated regulated water utility for the purchase of treated water. This long-term agreement, which expires February 27, 2011, provides for minimum purchase of 3 mgd of treated water with provisions for additional purchases.

### *Tidewater System*

Our Tidewater System, which produced approximately 2.0 billion gallons in 2008, obtains 100% of its groundwater sources from 176 wells. In 2008, 13 new wells were placed into service. We deactivated, sealed and abandoned 29 wells for either water quality reasons or for the purpose of consolidating production facilities for more cost-efficient operation. Tidewater continues to submit applications to Delaware regulatory authorities for the approval of additional wells as growth, demand and water quality warrants. The Tidewater System does not have a central treatment facility but has several regional treatment plants. Several of its water systems in New Castle, Kent and Sussex Counties, Delaware have interconnected transmission systems.

### *Pinelands System*

Water supply to our Pinelands System is derived from groundwater sources from four wells which provided overall system delivery of 194 million gallons in 2008. The pumping capacity of the four wells is 2.2 million gallons per day.

### *Bayview System*

Water supply to Bayview customers is derived from groundwater water sources from two wells, which delivered approximately 10 million gallons in 2008.

### *Pinelands Wastewater System*

The Pinelands Wastewater System discharges into the South Branch of the Rancocas Creek through a tertiary treatment plant that provides clarification, sedimentation, filtration and disinfection. The total capacity of the plant is 0.5 mgd, and the system provided overall treatment to 105 million gallons in 2008.

### *TESI System*

The TESI System owns and operates six wastewater treatment systems in Southern Delaware. The treatment plants provide clarification, sedimentation, and disinfection. The combined total treatment capacity of the plants is 0.6 mgd. Current average flow is approximately 0.2 mgd.

## **Employees**

As of December 31, 2008, we had a total of 269 employees. In addition, we lease 18 full-time employees under the USA-PA contract with the City of Perth Amboy, New Jersey. No employees are represented by a union except the leased employees who are subject to a collective bargaining agreement with the City of Perth Amboy. We believe our employee relations are good. Wages and benefits, other than for leased employees, are reviewed annually and are considered competitive within both the industry and the regions where we operate.

## **Competition**

Our business in our franchised service area is substantially free from direct competition with other public utilities, municipalities and other entities. However, our ability to provide contract water supply and wastewater services and operations and maintenance services is subject to competition from other public utilities, municipalities and other entities. Although Tidewater has been granted an exclusive franchise for each of its existing community water systems, its ability to expand service areas can be affected by the PSC awarding franchises to other regulated water utilities with whom we compete for such franchises and for projects.

**Regulation**

We are regulated as to rates charged to customers for water and wastewater services in New Jersey and Delaware, as to the quality of the services we provide and as to certain other matters. Our USA, USA-PA and White Marsh subsidiaries are not regulated utilities. We are subject to environmental and water quality regulation by the United States Environmental Protection Agency (EPA), and the New Jersey Department of Environmental Protection (DEP) with respect to operations in New Jersey and by Department of Natural Resources and Environmental Control (DNREC), the Delaware Department of Health and Social Services-Division of Public Health (DPH), and the Delaware River Basin Commission (DRBC) with respect to operations in Delaware. In addition, our issuances of securities are subject to the prior approval of the SEC and the New Jersey Board of Public Utilities (BPU) or the PSC.

*Regulation of Rates and Services*

New Jersey water and wastewater service operations (excluding the operations of USA and USA-PA) are subject to regulation by the BPU. Similarly, our Delaware water and wastewater operations (excluding the operations of White Marsh) are subject to regulation by the PSC. These regulatory authorities have jurisdiction with respect to rates, service, the issuance of securities and other matters of utility companies operating within the States of New Jersey and Delaware, respectively. For ratemaking purposes, we account separately for operations in New Jersey and Delaware to facilitate independent ratemaking by the BPU for New Jersey operations and the PSC for Delaware operations.

In determining our rates, the BPU and the PSC consider the income, expenses, rate base of property used and useful in providing service to the public and a fair rate of return on investments within their separate jurisdictions. Rate determinations by the BPU do not guarantee particular rates of return to us for our New Jersey operations nor do rate determinations by the PSC guarantee particular rates of return for our Delaware operations. Thus, we may not achieve the rates of return permitted by the BPU or the PSC.

On January 26, 2009 Tidewater filed an application with the PSC seeking permission to increase its base rates by 32.54%. Approximately 5.25% of the requested increase is already collected from customers through a separately PSC approved rate called a Distribution System Improvement Charge (DSIC). The request was made necessary by increased costs of operations, maintenance and taxes, as well as capital investment of approximately \$26.7 million since its last rate filing in April of 2006. We cannot predict whether the PSC will ultimately approve, deny, or reduce the amount of the request. Concurrent with the rate filing, Tidewater also submitted a request for a 12.79% interim rate increase subject to refund as allowed under PSC regulations. The interim rate increase includes the 5.25% DSIC rate. If approved by the PSC, the interim rates of 12.79% will go into effect on March 27, 2009 and the DSIC rate will be set to zero.

The following table shows the DSIC increases approved by the PSC from January 1, 2008 through January 1, 2009:

| Date         | January 1, 2008 | July 1, 2008 | January 1, 2009 |
|--------------|-----------------|--------------|-----------------|
| % Increase   | 1.45%           | 1.32%        | 2.31%           |
| Cumulative % | 1.62%           | 2.94%        | 5.25%           |



On January 12, 2009, Middlesex filed an application with the BPU seeking permission to establish a Purchased Water Adjustment Clause (PWAC) and implement a tariff rate sufficient to recover increased costs of \$1.0 million to purchase untreated water from the New Jersey Water Supply Authority and treated water from a non-affiliated regulated water utility. We cannot predict whether the BPU will ultimately approve, deny, or reduce the amount of the request.

Effective December 18, 2008, Pinelands Water and Pinelands Wastewater implemented New Jersey Board of Public Utilities (BPU) approved base rate increases of 5.53% and 18.30%, respectively. These increases represent a total base rate increase of approximately \$0.2 million for Pinelands to offset increased costs associated with the operation and maintenance of their systems.

In accordance with the tariff established for Southern Shores, an annual rate increase of 3% was implemented on January 1, 2009. Under the terms of a contract with Southern Shores Homeowners Association, the increase cannot exceed the lesser of the regional Consumer Price Index or 3%.

There can be no assurance that any future rate increases will be granted or, if granted, that they will be in the amounts requested.

#### *Water Quality and Environmental Regulations*

Both the EPA and the DEP regulate our operations in New Jersey with respect to water supply, treatment and distribution systems and the quality of the water, as do the EPA, DNREC, DPH and DRBC with respect to operations in Delaware.

Federal, New Jersey and Delaware regulations adopted relating to water quality require us to perform expanded types of testing to ensure that our water meets state and federal water quality requirements. In addition, environmental regulatory agencies are reviewing current regulations governing the limits of certain organic compounds found in the water as byproducts of treatment. We participate in industry-related research to identify the various types of technology that might reduce the level of organic, inorganic and synthetic compounds found in the water. The cost to water companies of complying with the proposed water quality standards depends in part on the limits set in the regulations and on the method selected to implement such reduction. We believe the CJO Plant capabilities put us in a strong position to meet any such future standards with regard to our Middlesex System. We regularly test our water to determine compliance with existing federal, New Jersey and Delaware primary water quality standards.

Well water treatment in our Tidewater System is by chlorination for disinfection purposes and, in some cases, pH correction and filtration for nitrate and iron removal.

Well water treatment in the Pinelands and Bayview Systems (disinfection only) is done at individual well sites.

The DEP and the DPH monitor our activities and review the results of water quality tests that are performed for adherence to applicable regulations. Other regulations applicable to us include the Lead and Copper Rule, the maximum contaminant levels established for various volatile organic compounds, the Federal Surface Water Treatment Rule and the Total Coliform Rule.

**Management**

This table lists information concerning our executive management team:

| <b>Name</b>          | <b>Age</b> | <b>Principal Position(s)</b>                            |
|----------------------|------------|---|
| Dennis W. Doll       | 50         | President and Chief Executive Officer                   |
| A. Bruce O'Connor    | 50         | Vice President and Chief Financial Officer              |
| Ronald F. Williams   | 59         | Vice President-Operations and Chief Operating Officer   |
| Kenneth J. Quinn     | 61         | Vice President-General Counsel, Secretary and Treasurer |
| James P. Garrett     | 62         | Vice President-Human Resources                          |
| Richard M. Risoldi   | 52         | Vice President-Subsidiary Operations                    |
| Bernadette M. Sohler | 48         | Vice President-Corporate Affairs                        |
| Gerard L. Esposito   | 57         | President, Tidewater Utilities, Inc.                    |

*Dennis W. Doll* – Mr. Doll joined the Company in November 2004 as Executive Vice President. He was elected President and Chief Executive Officer and became a Director of Middlesex effective January 1, 2006. Prior to joining the Company, Mr. Doll was employed by Elizabethtown Water Company since 1985, serving most recently as a member of the senior leadership team of the Northeast Region of American Water, comprised of various regulated utilities and other non-regulated subsidiaries in the water and wastewater fields. Mr. Doll is Chairman of the Board of Directors of the New Jersey Utilities Association and is a Director of the National Association of Water Companies.

*A. Bruce O'Connor* – Mr. O'Connor, a Certified Public Accountant, joined the Company in 1990 as Assistant Controller and was elected Controller in 1992 and Vice President in 1995. He was elected Vice President and Chief Financial Officer in 1996. He is responsible for financial reporting, customer service, rate cases, cash management and financings. He is Treasurer and a Director of Tidewater Utilities, Inc., Tidewater Environmental Services, Inc., Utility Service Affiliates, Inc., and White Marsh Environmental Systems, Inc. He is Vice President, Treasurer and a Director of Utility Service Affiliates (Perth Amboy) Inc., Pinelands Water Company and Pinelands Wastewater Company.

*Ronald F. Williams* – Mr. Williams joined the Company in 1995 as Assistant Vice President-Operations, responsible for the Company's Engineering and Distribution Departments. He was elected Vice President-Operations in October 1995 and designated Chief Operating Officer in 2004. Mr. Williams was elected to the additional posts of Assistant Secretary and Assistant Treasurer for Middlesex in 2004. He was formerly employed by Garden State Water Company as President and Chief Executive Officer. He is a Director and President of Utility Service Affiliates (Perth Amboy) Inc.

*Kenneth J. Quinn* – Mr. Quinn joined the Company in 2002 as General Counsel and was elected Assistant Secretary in 2003. In 2004, Mr. Quinn was elected Vice President, Secretary and Treasurer for Middlesex and Secretary and Assistant Treasurer for all subsidiaries of Middlesex. Prior to joining the Company he had been employed in private law practice. Prior to that, Mr. Quinn spent 10 years as in-house counsel to two major banking institutions located in New Jersey. In May 2003, he was elected Assistant Secretary of Tidewater Utilities, Inc., Pinelands Water Company, Pinelands Wastewater Company, Utility Service Affiliates (Perth Amboy) Inc., Bayview Water Company and White Marsh Environmental Systems, Inc. He is a member of the New Jersey State Bar Association and is also a member of the Public Utility Law Section of the Bar. He currently serves as Chairman of the Section.

*James P. Garrett* – Mr. Garrett, a licensed attorney, joined the Company in 2003 as Assistant Vice President-Human Resources. In May 2004, he was elected Vice President- Human Resources and is responsible for all human resources and information technology throughout the Company. Prior to his hire, Mr. Garrett was employed by a national retail chain as Director of Organizational Development.

*Richard M. Risoldi* – Mr. Risoldi joined the Company in 1989 as Director of Production, responsible for the operation and maintenance of the Company’s treatment and pumping facilities. He was appointed Assistant Vice President of Operations in 2003. He was elected Vice President in May 2004-Subsidiary Operations, responsible for regulated subsidiary operations and business development. He is a Director of Tidewater Utilities, Inc., Tidewater Environmental Services, Inc., White Marsh Environmental Systems Inc and USA-PA. He also serves as Director and President of Pinelands Water Company, Pinelands Wastewater Company and Utility Service Affiliates, Inc.

*Bernadette M. Sohler* – Ms. Sohler joined the Company in 1994 and was named Director of Communications in 2003 and promoted to Vice President-Corporate Affairs in March 2007 with responsibilities for corporate, investor and employee communications, media and government relations, marketing, community affairs and corporate philanthropic activities. She also serves as Vice President of Utility Service Affiliates, Inc.

*Gerard L. Esposito* – Mr. Esposito joined Tidewater Utilities, Inc. in 1998 as Executive Vice President. He was elected President of Tidewater and White Marsh Environmental Systems, Inc. in 2003 and elected President of Tidewater Environmental Services, Inc. in January 2005. Prior to joining the Company he worked in various executive positions for Delaware environmental protection and water quality governmental agencies. He is a Director of Tidewater Utilities, Inc., Tidewater Environmental Services, Inc., and White Marsh Environmental Systems, Inc.

**Item 1A. Risk Factors.**

**Our revenue and earnings depend on the rates we charge our customers. We cannot raise utility rates in our regulated businesses without filing a petition with the appropriate governmental agency. If these agencies modify, delay, or deny our petition, our revenues will not increase and our earnings will decline unless we are able to reduce costs.**

The BPU regulates our public utility companies in New Jersey with respect to rates and charges for service, classification of accounts, awards of new service territory, acquisitions, financings and other matters. That means, for example, that we cannot raise the utility rates we charge to our customers without first filing a petition with the BPU and going through a lengthy administrative process. In much the same way, the PSC regulates our public utility companies in Delaware. We cannot give assurance of when we will request approval for any such matter, nor can we predict whether the BPU or PSC will approve, deny or reduce the amount of such requests.

Certain costs of doing business are not completely within our control. The failure to obtain any rate increase would prevent us from increasing our revenues and, unless we are able to reduce costs, would result in reduced earnings.

**We are subject to environmental laws and regulations, including water quality and wastewater effluent quality regulations, as well as other state and local regulations. Compliance with those laws and regulations requires us to incur costs and we are subject to fines or other sanctions for non-compliance**

The EPA and DEP regulate our operations in New Jersey with respect to water supply, treatment and distribution systems and the quality of the water. Our operations in Delaware are regulated by the EPA, DNREC, DPH, and DRBC with respect to water supply, treatment and distribution systems and the quality of water. Federal, New Jersey and Delaware regulations relating to water quality require us to perform expanded types of testing to ensure that our water meets state and federal water quality requirements. We are subject to EPA regulations under the Federal Safe Drinking Water Act, which include the Lead and Copper Rule, the maximum contaminant levels established for various volatile organic compounds, the Federal Surface Water Treatment Rule and the Total Coliform Rule. There are also similar state regulations by the DEP in New Jersey. The DEP and DPH monitor our activities and review the results of water quality tests that we perform for adherence to applicable regulations. In addition, environmental regulatory agencies are continually reviewing regulations governing the limits of certain organic compounds found in the water as byproducts of treatment.

We are also subject to regulations related to fire protection services. In Delaware, fire protection is regulated statewide by the Office of State Fire Marshal. In New Jersey there is no state-wide fire protection regulatory agency. However, state regulations exist as to the size of piping required regarding the provision of fire protection services.

The cost of compliance with the water and wastewater effluent quality standards depends in part on the limits set in the regulations and on the method selected to implement them. If new or more restrictive standards are imposed, the cost of compliance could be very high and have an adverse impact on our revenues and results of operations if we cannot recover those costs through our rates that we charge our customers. The cost of compliance with fire protection requirements could also be high and make us less profitable if we cannot recover those costs through our rates charged to our customers.

In addition, if we fail to comply with environmental or other laws and regulations to which our business is subject, we could be fined or subject to other sanctions, which could adversely impact our business or results of operations.

**We depend upon our ability to raise money in the capital markets to finance some of the costs of complying with laws and regulations, including environmental laws and regulations or to pay for some of the costs of improvements to or the expansion of our utility system assets. Our regulated utility companies cannot issue debt or equity securities without regulatory approval.**

We require financing to fund the ongoing capital program for the improvement of our utility system assets and for planned expansion of those systems. We expect to spend between \$96 million and \$124 million for capital projects through 2011. We must obtain regulatory approval to sell debt or equity securities to raise money for these projects. If sufficient capital is not available or the cost of capital is too high, or if the regulatory authorities deny a petition of ours to sell debt or equity securities, we may not be able to meet the costs of complying with environmental laws and regulations or the costs of improving and expanding our utility system assets to the level we believe necessary. This might result in the imposition of fines or restrictions on our operations and may curtail our ability to improve upon and expand our utility system assets.

**Weather conditions and overuse of underground aquifers may interfere with our sources of water, demand for water services and our ability to supply water to customers.**

Our ability to meet the existing and future water demands of our customers depends on an adequate supply of water. Unexpected conditions may interfere with our water supply sources. Drought and overuse of underground aquifers may limit the availability of ground and/or surface water. Freezing weather may also contribute to water transmission interruptions caused by pipe and/or main breakage. Any interruption in our water supply could cause a reduction in our revenue and profitability. These factors might adversely affect our ability to supply water in sufficient quantities to our customers. Governmental drought restrictions might result in decreased use of water services and can adversely affect our revenue and earnings.

**Our business is subject to seasonal fluctuations, which could affect demand for our water service and our revenues.**

Demand for our water during the warmer months is generally greater than during cooler months due primarily to additional consumption of water in connection with irrigation systems, swimming pools, cooling systems and other outside water use. Throughout the year, and particularly during typically warmer months, demand may vary with temperature and rainfall levels. In the event that temperatures during the typically warmer months are cooler than normal, or if there is more rainfall than normal, the demand for our water may decrease and adversely affect our revenues.

**Our water sources may become contaminated by naturally-occurring or man-made compounds and events. This may cause disruption in services and impose costs to restore the water to required levels of quality.**

Our sources of water may become contaminated by naturally-occurring or man-made compounds and events. In the event that our water supply is contaminated, we may have to interrupt the use of that water supply until we are able to install treatment equipment or substitute the flow of water from an uncontaminated water source through our transmission and distribution systems. We may also incur significant costs in treating the contaminated water through the use of our current treatment facilities, or development of new treatment methods. Our inability to substitute water supply from an uncontaminated water source, or to adequately treat the contaminated water source in a cost-effective manner may reduce our revenues and make us less profitable.

**We face competition from other water and wastewater utilities and service providers which might hinder our growth and reduce our profitability.**

We face risks of competition from other utilities authorized by federal, state or local agencies. Once a state utility regulator grants a franchise to a utility to serve a specific territory, that utility has an exclusive right to service that territory. Although a new franchise offers some protection against competitors, the pursuit of franchises is competitive, especially in Delaware where new franchises may be awarded to utilities based upon competitive negotiation. Competing utilities have challenged, and may in the future challenge, our applications for new franchises. Also, third parties entering into long-term agreements to operate municipal systems might adversely affect us and our long-term agreements to supply water on a contract basis to municipalities, which could adversely affect our operating results.

**We have a long-term contractual obligation for water and wastewater system operation and maintenance under which we may incur costs in excess of payments received.**

Middlesex Water Company and USA-PA operate and maintain the water and wastewater systems of the City of Perth Amboy, New Jersey under a 20-year contract expiring in 2018. This contract does not protect us against incurring costs in excess of revenues we earn pursuant to the contract. There can be no absolute assurance that we will not experience losses resulting from this contract. Losses under this contract or our failure or inability to perform may have a material adverse effect on our financial condition and results of operations. Also, in connection with the contract, Perth Amboy, through the Middlesex County Improvement Authority, issued approximately \$68.0 million in three series of bonds. Middlesex guaranteed one of those series of bonds, designated the Series C Serial Bonds, in the principal amount of approximately \$26.3 million. As of December 31, 2008, approximately \$21.4 million of the Series C Serial Bonds remain outstanding. If Perth Amboy defaults on its obligations to pay the bonds we have guaranteed, we would have to raise funds to meet our obligations under that guarantee.

**An important element of our growth strategy is the acquisition of water and wastewater assets, operations, contracts or companies. Any pending or future acquisitions we decide to undertake may involve risks.**

The acquisition and/or operation of water and wastewater systems is an important element in our growth strategy. This strategy depends on identifying suitable opportunities and reaching mutually agreeable terms with acquisition candidates or contract partners. These negotiations, as well as the integration of acquired businesses, could require us to incur significant costs and cause diversion of our management's time and resources. Further, acquisitions may result in dilution of our equity securities, incurrence of debt and contingent liabilities, fluctuations in quarterly results and other related expenses. In addition, the assets, operations, contracts or companies we acquire may not achieve the sales and profitability expected.

**The current concentration of our business in central New Jersey and Delaware makes us susceptible to any adverse development in local regulatory, economic, demographic, competitive and weather conditions.**

Our New Jersey water and wastewater businesses provide services to customers who are located primarily in eastern Middlesex County, New Jersey. Water service is provided under wholesale contracts to the Township of Edison, the Boroughs of Highland Park and Sayreville, both the Old Bridge and the Marlboro Township Municipal Utilities Authorities, and the City of Rahway in Union County, New Jersey. We also provide water and wastewater services to customers in the State of Delaware. Our revenues and operating results are therefore subject to local regulatory, economic, demographic, competitive and weather conditions in a relatively concentrated geographic area. A change in any of these conditions could make it more costly or difficult for us to conduct our business. In addition, any such change would have a disproportionate effect on us, compared to water utility companies that do not have such a geographic concentration.

**The necessity for ongoing security has and may continue to result in increased operating costs.**

Because of the continuing threats to the health and security of the United States of America, we procedures to review and modify, as necessary, security measures at our facilities. We provide ongoing training and communications to our employees about threats to our water supply. Our security measures include the delivery and handling of certain chemicals used in our business. We are at risk for terrorist attacks and have incurred, and will continue to incur costs for security precautions to protect our facilities, operations and supplies from such risks.

**Our ability to achieve growth is somewhat dependent on the residential building market in the territories we serve. If housing starts decline significantly, our rate of growth may not meet our expectations.**

We expect our revenues to increase from customer growth for our regulated water and wastewater operations as a result of the anticipated construction and sale of new housing units in the territories we serve. Although the residential building market in Delaware has experienced growth in recent years, this growth may not continue in the future. If housing starts in the territories we serve decline significantly as a result of economic conditions or otherwise, our revenue growth may not meet our expectations and our financial results could be negatively impacted.

**There can be no assurance that we will continue to pay dividends in the future or, if dividends are paid, that they will be in amounts similar to past dividends.**

We have paid dividends on our common stock each year since 1912 and have increased the amount of dividends paid each year since 1973. Our earnings, financial condition, capital requirements, applicable regulations and other factors, including the timeliness and adequacy of rate increases, will determine both our ability to pay dividends on common stock and the amount of those dividends. There can be no assurance that we will continue to pay dividends in the future or, if dividends are paid, that they will be in amounts similar to past dividends.

**If we are unable to pay the principal and interest on our indebtedness as it comes due or we default under certain other provisions of our loan documents, our indebtedness could be accelerated and our results of operations and financial condition could be adversely affected.**

Our ability to pay the principal and interest on our indebtedness as it comes due will depend upon our current and future performance. Our performance is affected by many factors, some of which are beyond our control. We believe that our cash generated from operations, and, if necessary, borrowings under our existing credit facilities, will be sufficient to enable us to make our debt payments as they become due. If, however, we do not generate sufficient cash, we may be required to refinance our obligations or sell additional equity, which may be on terms that are not as favorable to us.

No assurance can be given that any refinancing or sale of equity will be possible when needed or that we will be able to negotiate acceptable terms. In addition, our failure to comply with certain provisions contained in our trust indentures and loan agreements relating to our outstanding indebtedness could lead to a default under these documents, which could result in an acceleration of our indebtedness.

**We depend significantly on the services of the members of our senior management team, and the departure of any of those persons could cause our operating results to suffer.**

Our success depends significantly on the continued individual and collective contributions of our senior management team. If we lose the services of any member of our senior management or are unable to hire and retain experienced management personnel, it could affect our operating results.

**We are subject to anti-takeover measures that may be used by existing management to discourage, delay or prevent changes of control that might benefit non-management shareholders.**

Subsection 10A of the New Jersey Business Corporation Act, known as the New Jersey Shareholders Protection Act, applies to us. The Shareholders Protection Act deters merger proposals, tender offers or other attempts to effect changes in control that are not approved by our Board of Directors. In addition, we have a classified Board of Directors, which means only one-third of the Directors are elected each year. A classified Board can make it harder for an acquirer to gain control by voting its candidates onto the Board of Directors and may also deter merger proposals and tender offers. Our Board of Directors also has the ability, subject to obtaining BPU approval, to issue one or more series of preferred stock having such number of shares, designation, preferences, voting rights, limitations and other rights as the Board of Directors may fix. This could be used by the Board of Directors to discourage, delay or prevent an acquisition that might benefit non-management shareholders.

**Item 1B. Unresolved Staff Comments.**

None.

**Item 2. Properties.**

Utility Plant

The water utility plant in our systems consist of source of supply, pumping, water treatment, transmission and distribution, general facilities and all appurtenances, including all connecting pipes.

*Middlesex System*

The Middlesex System's principal source of surface supply is the Delaware & Raritan Canal owned by the State of New Jersey and operated as a water resource by the New Jersey Water Supply Authority.

Water is withdrawn from the Delaware & Raritan Canal at New Brunswick, New Jersey through our intake and pumping station, located on state-owned land bordering the canal. Water is transported through two raw water pipelines for treatment and distribution at our CJO Plant in Edison, New Jersey.

The CJO Plant includes chemical storage and chemical feed equipment, two dual rapid mixing basins, four upflow clarifiers which are also called superpulsators, four underground reinforced chlorine contact tanks, twelve rapid filters containing gravel, sand and anthracite for water treatment and a steel washwater tank. The CJO Plant also includes a computerized Supervisory Control and Data Acquisitions system to monitor and control the CJO Plant and the water supply and distribution system in the Middlesex System. There is an on-site State certified laboratory capable of performing bacteriological, chemical, process control and advanced instrumental chemical sampling and analysis. The firm design capacity of the CJO Plant is 45 mgd (60 mgd maximum capacity). The main pumping station at the CJO Plant has a design capacity of 90 mgd. The four electric motor-driven, vertical turbine pumps presently installed have an aggregate capacity of 72 mgd.

In addition, there is a 15 mgd auxiliary pumping station located at the CJO Plant location. It has a dedicated substation and emergency power supply provided by a diesel-driven generator. It pumps from the 10 million gallon distribution storage reservoir directly into the distribution system.

The transmission and distribution system is comprised of 732 miles of mains and includes 23,200 feet of 48-inch reinforced concrete transmission main connecting the CJO Plant to our distribution pipe network and



related storage facilities. Also included is a 58,600 foot transmission main and a 38,800 foot transmission main, augmented with a long-term, non-exclusive agreement with the East Brunswick system to transport water to several of our contract customers.

Middlesex System's storage facilities consist of a 10 million gallon reservoir at the CJO Plant, 5 million gallon and 2 million gallon reservoirs in Edison (Grandview), a 5 million gallon reservoir in Carteret (Eborn) and a 2 million gallon reservoir at the Park Avenue Well Field.

In New Jersey, we own the properties on which Middlesex System's 31 wells are located, the properties on which our storage tanks are located as well as the property where the CJO Plant is located. We also own our headquarters complex located at 1500 Ronson Road, Iselin, New Jersey, consisting of a 27,000 square foot office building and an adjacent 16,500 square foot maintenance facility.

#### *Tidewater System*

The Tidewater System is comprised of 89 production plants that vary in pumping capacity from 26,000 gallons per day to 2.0 mgd. Water is transported to our customers through 594 miles of transmission and distribution mains. Storage facilities include 49 tanks, with an aggregate capacity of 6.0 million gallons. Our Delaware operations are managed from Tidewater's offices in Dover, Delaware. The Delaware office property, located on eleven-acre lot owned by White Marsh, consists of two office buildings totaling approximately 17,000 square feet.

#### *Pinelands System*

Pinelands Water owns well site and storage properties in Southampton Township, New Jersey. The Pinelands Water storage facility is a 1.2 million gallon standpipe. Water is transported to our customers through 18 miles of transmission and distribution mains.

#### *Pinelands Wastewater System*

Pinelands Wastewater owns a 12 acre site on which its 0.5 million gallons per day capacity tertiary treatment plant and connecting pipes are located. Its wastewater collection system is comprised of approximately 25 miles of main.

#### *Bayview System*

Bayview owns two well sites, which are located in Downe Township, Cumberland County, New Jersey. Water is transported to its customers through our 4.2 mile distribution system.

#### *TESI System*

The TESI System owns and operates six wastewater treatment systems in Southern Delaware. The treatment plants provide clarification, sedimentation, and disinfection. The combined total capacity of the plants is 0.6 mgd.

#### *USA-PA, USA and White Marsh*

Our non-regulated subsidiaries, namely USA-PA, USA and White Marsh, do not own utility plant property.

**Item 3. Legal Proceedings.**

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.

**Item 4. Submission of Matters to a Vote of Security Holders.**

None.

**PART II****Item 5. Market for the Registrant's Common Equity and Related Stockholder Matters.**

The Company's common stock is traded on the NASDAQ Stock Market, under the symbol MSEX. The following table shows the range of high and low share prices per share for the common stock and the dividend paid to shareholders in such quarter. As of December 31, 2008, there were 1,967 holders of record.

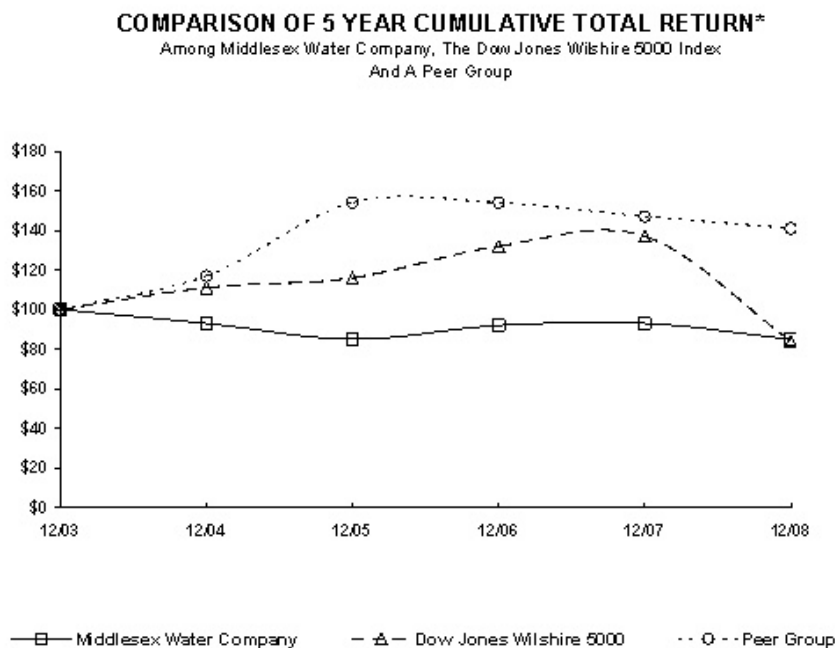
| 2008           | High     | Low      | Dividend  |
|----------------|----------|----------|-----------|
| Fourth Quarter | \$ 17.93 | \$ 12.05 | \$ 0.1775 |
| Third Quarter  | \$ 18.52 | \$ 15.68 | \$ 0.1750 |
| Second Quarter | \$ 19.23 | \$ 16.59 | \$ 0.1750 |
| First Quarter  | \$ 19.83 | \$ 17.25 | \$ 0.1750 |
| 2007           | High     | Low      | Dividend  |
| Fourth Quarter | \$ 19.25 | \$ 18.10 | \$ 0.1750 |
| Third Quarter  | \$ 20.24 | \$ 18.05 | \$ 0.1725 |
| Second Quarter | \$ 19.48 | \$ 18.12 | \$ 0.1725 |
| First Quarter  | \$ 19.07 | \$ 17.75 | \$ 0.1725 |

The Company has paid dividends on its common stock each year since 1912. Although it is the present intention of the Board of Directors of the Company to continue to pay regular quarterly cash dividends on its common stock, the payment of future dividends is contingent upon the future earnings of the Company, its financial condition and other factors deemed relevant by the Board of Directors at its discretion.

If four or more quarterly dividends are in arrears, the preferred shareholders, as a class, are entitled to elect two members to the Board of Directors in addition to Directors elected by holders of the common stock. In the event dividends on the preferred stock are in arrears, no dividends may be declared or paid on the common stock of the Company.

The Company maintains an escrow account for 58,775 shares of the Company's common stock which were awarded under the 1997 Restricted Stock Plan, which has expired and 21,807 shares of the Company's common stock which were awarded under the 2008 Restricted Stock Plan. Such stock is subject to an agreement requiring forfeiture by the employee in the event of termination of employment within five years of the award other than as a result of retirement, death, disability or change in control. Shareholders approved the new 2008 Restricted Stock Plan at the Company's May 21, 2008 annual meeting of shareholders. The maximum number of shares authorized for grant under the 2008 Restricted Stock Plan is 300,000 shares.

Set forth below is a line graph comparing the yearly change in the cumulative total return (which includes reinvestment of dividends) of a \$100 investment for the Company's common stock, a peer group of investor-owned water utilities, and the Dow Jones Wilshire 5000 Stock Index for the period of five years commencing December 31, 2003. In 2008, we added American Water Works, Inc. as a component of our peer group. The current peer group also includes American States Water Company, Aqua America Inc., Artesian Resources Corp., California Water Service Company, Connecticut Water Service, Inc., Pennichuck Corp., SJW Corp., Southwest Water Company, York Water Company and the Company. The Dow Jones Wilshire 5000 Stock Index measures the performance of all U.S. headquartered equity securities with readily available price data.



\* \$100 invested on 12/31/03 in stock or index-including reinvestment of dividends.  
Fiscal year ending December 31.

|                         | 2003   | 2004   | 2005   | 2006   | 2007   | 2008   |
|-------------------------|--------|--------|--------|--------|--------|--------|
| Middlesex Water Company | 100.00 | 93.30  | 85.42  | 92.27  | 93.35  | 84.88  |
| Dow Jones Wilshire 5000 | 100.00 | 110.85 | 115.91 | 132.02 | 137.22 | 84.14  |
| Peer Group              | 100.00 | 116.61 | 154.40 | 153.89 | 147.33 | 140.97 |

**Item 6. Selected Financial Data.****CONSOLIDATED SELECTED FINANCIAL DATA**  
**(Thousands of Dollars Except per Share Data)**

|                                     | 2008       | 2007       | 2006       | 2005       | 2004       |
|-------------------------------------|------------|------------|------------|------------|------------|
| Operating Revenues                  | \$ 91,038  | \$ 86,114  | \$ 81,061  | \$ 74,613  | \$ 70,991  |
| Operating Expenses:                 |            |            |            |            |            |
| Operations and Maintenance          | 48,929     | 46,240     | 43,345     | 42,156     | 39,984     |
| Depreciation                        | 7,922      | 7,539      | 7,060      | 6,460      | 5,846      |
| Other Taxes                         | 10,168     | 9,664      | 9,338      | 8,779      | 8,228      |
| Total Operating Expenses            | 67,019     | 63,443     | 59,743     | 57,395     | 54,058     |
| Operating Income                    | 24,019     | 22,671     | 21,318     | 17,218     | 16,933     |
| Other Income, Net                   | 1,302      | 1,527      | 774        | 740        | 795        |
| Interest Charges                    | 7,057      | 6,619      | 7,012      | 6,245      | 5,468      |
| Income Taxes                        | 6,056      | 5,736      | 5,041      | 3,237      | 3,814      |
| Net Income                          | 12,208     | 11,843     | 10,039     | 8,476      | 8,446      |
| Preferred Stock Dividend            | 218        | 248        | 248        | 251        | 255        |
| Earnings Applicable to Common Stock | \$ 11,990  | \$ 11,595  | \$ 9,791   | \$ 8,225   | \$ 8,191   |
| Earnings per Share:                 |            |            |            |            |            |
| Basic                               | \$ 0.90    | \$ 0.88    | \$ 0.83    | \$ 0.72    | \$ 0.74    |
| Diluted                             | \$ 0.89    | \$ 0.87    | \$ 0.82    | \$ 0.71    | \$ 0.73    |
| Average Shares Outstanding:         |            |            |            |            |            |
| Basic                               | 13,317     | 13,203     | 11,844     | 11,445     | 11,080     |
| Diluted                             | 13,615     | 13,534     | 12,175     | 11,784     | 11,423     |
| Dividends Declared and Paid         | \$ 0.703   | \$ 0.693   | \$ 0.683   | \$ 0.673   | \$ 0.663   |
| Total Assets                        | \$ 440,000 | \$ 392,675 | \$ 370,267 | \$ 324,383 | \$ 305,634 |
| Convertible Preferred Stock         | \$ 2,273   | \$ 2,856   | \$ 2,856   | \$ 2,856   | \$ 2,961   |
| Long-term Debt                      | \$ 118,217 | \$ 131,615 | \$ 130,706 | \$ 128,175 | \$ 115,281 |

**Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operation.**

The following discussion of the Company's historical results of operations and financial condition should be read in conjunction with the Company's consolidated financial statements and related notes.

**Overview**

Middlesex Water Company has operated as a water utility in New Jersey since 1897, and in Delaware, through our wholly-owned subsidiary, Tidewater, since 1992. We are in the business of collecting, treating and distributing water for domestic, commercial, municipal, industrial and fire protection purposes. We also operate a New Jersey municipal water and wastewater system under contract and provide 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 and in Delaware. Only our USA, USA-PA and White Marsh subsidiaries are not regulated utilities.

In the design of water and wastewater systems that we ultimately intend to construct, own and operate, we invest capital in Preliminary Survey and Investigation (PS&I) activities. These costs are recorded as a deferred asset on the balance sheet in anticipation of recovery of and a return on, these costs through future rates charged to customers, as these investments are placed into service as utility plant. Our future capital expenditures are discussed in more detail in the Liquidity and Capital Resources Section below.

Our New Jersey water utility system (the Middlesex System) provides water services to approximately 59,700 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 303,000. In partnership with our subsidiary, USA-PA, we operate the water supply system and wastewater system for the City of Perth Amboy, New Jersey. Our other New Jersey subsidiaries, Pinelands Water and Pinelands Wastewater, provide water and wastewater services to residents in Southampton Township, New Jersey.

Our Delaware subsidiaries, Tidewater and Southern Shores, provide water services to approximately 35,500 retail customers in New Castle, Kent and Sussex Counties, Delaware. Our TESI subsidiary provides wastewater services to approximately 1,800 residential retail customers. Our other Delaware subsidiary, White Marsh, services an additional 7,200 customers in Kent and Sussex Counties through 68 operations and maintenance contracts.

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

We expect the growth of our regulated wastewater operations in Delaware will eventually become a more significant component of our operations.

In September 2008, we entered into an agreement to own and operate a water and wastewater facility system that is expected to serve 1,500 people in North Carolina. Planning is under way to gain approval from the North Carolina Public Service Commission to operate these systems as regulated public utilities, which are expected to be ready to serve customers during the third quarter of 2009.

On January 26, 2009 Tidewater filed an application with the PSC seeking permission to increase its base rates by 32.54%. Approximately 5.25% of the requested increase is already collected from customers through a separately PSC approved rate called a Distribution System Improvement Charge (DSIC). The request was made necessary by increased costs of operations, maintenance and taxes, as well as capital investment of approximately \$26.7 million since its last rate filing in April of 2006. We cannot predict whether the PSC will ultimately approve, deny, or reduce the amount of the request. Concurrent with the rate filing, Tidewater also submitted a request for a 12.79% interim rate increase subject to refund as allowed under PSC regulations. The interim rate increase includes the 5.25% DSIC rate. If approved by the PSC, the interim rates of 12.79% will go into effect on March 27, 2009 and the DSIC rate will be set to zero.

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. These factors are evident in the discussions below which compare our results of operations from prior years.

### Operating Results by Segment

The Company has two operating segments, Regulated and Non-Regulated. Our Regulated segment contributed 89%, 90% and 89% of total revenues, and 90%, 94% and 94% of net income for the years ended December 31, 2008, 2007 and 2006, respectively. The discussion of the Company's results of operations is on a consolidated basis, and includes significant factors by subsidiary. The segments in the tables included below are comprised of the following companies: Regulated- Middlesex, Tidewater, Pinelands, Southern Shores, and TESI; Non-Regulated- USA, USA-PA, and White Marsh.

### Results of Operations in 2008 Compared to 2007

|                            | <u>Years ended December 31,</u><br>(Millions of Dollars) |                          |                |                  |                          |                |
|----------------------------|--|--------------------------|----------------|------------------|--------------------------|----------------|
|                            | 2008   |                          |                | 2007             |                          |                |
|                            | <u>Regulated</u>   | Non-<br><u>Regulated</u> | <u>Total</u>   | <u>Regulated</u> | Non-<br><u>Regulated</u> | <u>Total</u>   |
| Revenues                   | \$ 81.1  | \$ 9.9                   | \$ 91.0        | \$ 77.1          | \$ 9.0                   | \$ 86.1        |
| Operations and maintenance | 41.2   | 7.7                      | 48.9           | 38.8             | 7.4                      | 46.2           |
| Depreciation               | 7.8  | 0.1                      | 7.9            | 7.4              | 0.1                      | 7.5            |
| Other taxes                | 10.0   | 0.2                      | 10.2           | 9.5              | 0.2                      | 9.7            |
| <b>Operating income</b>    | <b>22.1</b>  | <b>1.9</b>               | <b>24.0</b>    | <b>21.4</b>      | <b>1.3</b>               | <b>22.7</b>    |
| Other income (expense)     | 0.9  | 0.4                      | 1.3            | 1.5              | -                        | 1.5            |
| Interest expense           | 7.0  | 0.1                      | 7.1            | 6.6              | -                        | 6.6            |
| Income taxes               | 5.0  | 1.0                      | 6.0            | 5.2              | 0.6                      | 5.8            |
| <b>Net income</b>          | <b>\$ 11.0</b>   | <b>\$ 1.2</b>            | <b>\$ 12.2</b> | <b>\$ 11.1</b>   | <b>\$ 0.7</b>            | <b>\$ 11.8</b> |

Operating revenues for the year rose \$4.9 million, or 5.7% over the same period in 2007. Revenues in our Middlesex system increased \$4.2 million as a result of a 9.1% base rate increase implemented October 26, 2007. Middlesex revenues decreased \$1.1 million due to lower consumption by our customers during 2008. Water sales improved \$0.8 million in our Delaware water systems. We recorded additional revenue of \$1.2 million as a result of an additional 12% base rate increase that was granted to Tidewater February 28, 2007, and Distribution System Improvement Charge (DSIC) rate increases of 1.62% and 2.94% that went into effect January 1, 2008 and July 1, 2008, respectively. DSIC is a PSC approved rate that allows water utilities to recover their investment in non-revenue producing capital improvements to the water system in between base rate increase requests. Fees charged for initial connection to our Delaware Water system were \$0.4 million lower in 2008 as new residential and commercial development has slowed in our Delaware service territories. USA-PA's fees for managing the Perth Amboy water and wastewater systems were \$0.5 million higher than the same period in 2007, due mostly to scheduled increases in the fixed fee component of the contract. Revenues from our regulated wastewater operations in Delaware increased \$0.2 million due to customer growth. All other operations accounted for \$0.3 million of additional revenues.

While we anticipate continued organic customer and consumption growth among our Delaware systems, such growth and increased consumption cannot be guaranteed. The impact of the national economic recession has been to reduce the level of activity in the new residential housing market in our Delaware service territories. In addition, our water systems are highly dependent on the effects of weather, which may adversely impact future consumption despite customer growth. Appreciable organic customer and consumption growth is less likely in our New Jersey systems due to the extent to which our service territory is developed. The Company expects its 2009 Tidewater operating revenues to reflect the benefit of the DSIC rate increase effective January 1, 2009 and interim rate increase expected to be go into effect in late March 2009. There can be no assurances that the PSC will accept, reject or amend the level of the interim rate increase request.

Operation and maintenance expenses increased \$2.7 million, or 5.8%. Even though 2008 water production was lower than 2007 in our Middlesex and Tidewater systems, our expenses increased \$0.3 million due to higher costs for water, electric power and chemicals. Labor and benefits costs increased \$1.3 million, which includes \$0.7 million recognized for employee benefits due to market fluctuations in the cash surrender value of life insurance policies. The costs to operate our regulated wastewater facilities in Delaware increased \$0.3 million due to acquisition of the Milton, Delaware municipal wastewater system during 2007 and an increased number of wastewater treatment facilities in operation in Delaware. Costs for service claims under our LineCare<sup>SM</sup> program were \$0.1 million higher due in part to a 9.4% increase in the number of subscribers in the program during 2008. Operating costs for USA-PA increased \$0.3 million due to higher pass-through charges. All other expense categories increased \$0.4 million.

Depreciation expense for 2008 increased by \$0.4 million, or 5.1%, due to a higher level of utility plant in service.

Other taxes increased by \$0.5 million generally reflecting additional taxes on higher taxable gross revenues, payroll and real estate.

Other income was \$0.2 million lower than 2007, primarily due to one-time gains recorded in 2007 on two transactions related to assets no longer used in our operations.

Interest expense increased by \$0.4 million, or 6.6%, as a result of a higher level of average short-term debt outstanding when compared to 2007.

Income tax expense based on our current year operating results was \$0.2 million higher than 2007 and reflects increased revenues due to higher water rates in New Jersey and Delaware.

Net income increased to \$12.2 million from \$11.8 million in the prior year, and basic earnings per share increased from \$0.88 to \$0.90. Diluted earnings per share increased from \$0.87 to \$0.89.

### Results of Operations in 2007 Compared to 2006

|                            | <u>Years ended December 31,</u><br>(Millions of Dollars) |                      |                |                  |                      |                |
|----------------------------|--|----------------------|----------------|------------------|----------------------|----------------|
|                            | <u>2007</u>  |                      |                | <u>2006</u>      |                      |                |
|                            | <u>Regulated</u>   | <u>Non-Regulated</u> | <u>Total</u>   | <u>Regulated</u> | <u>Non-Regulated</u> | <u>Total</u>   |
| Revenues                   | \$ 77.1  | \$ 9.0               | \$ 86.1        | \$ 71.9          | \$ 9.2               | \$ 81.1        |
| Operations and maintenance | 38.8   | 7.4                  | 46.2           | 35.7             | 7.7                  | 43.4           |
| Depreciation               | 7.4  | 0.1                  | 7.5            | 7.0              | 0.1                  | 7.1            |
| Other taxes                | 9.5  | 0.2                  | 9.7            | 9.1              | 0.2                  | 9.3            |
| <b>Operating income</b>    | <b>21.4</b>  | <b>1.3</b>           | <b>22.7</b>    | <b>20.1</b>      | <b>1.2</b>           | <b>21.3</b>    |
| Other income (expense)     | 1.5  | -                    | 1.5            | 0.9              | (0.1)                | 0.8            |
| Interest expense           | 6.6  | -                    | 6.6            | 7.0              | --                   | 7.0            |
| Income taxes               | 5.2  | 0.6                  | 5.8            | 4.6              | 0.5                  | 5.1            |
| <b>Net income</b>          | <b>\$ 11.1</b>   | <b>\$ 0.7</b>        | <b>\$ 11.8</b> | <b>\$ 9.4</b>    | <b>\$ 0.6</b>        | <b>\$ 10.0</b> |

Operating revenues for the year rose \$5.0 million, or 6.2% over the same period in 2006. Revenues improved by \$3.7 million in our Tidewater System, of which \$2.4 million was a result of a base rate increase that was granted to Tidewater. The rate increase was implemented in two parts; a 15% interim rate increase in June 2006 and an additional 12% final increase on February 28, 2007. Customer growth and higher consumption contributed \$1.9 million of increased revenues. Our Tidewater System experienced record water production and consumption billed due to extended favorable weather during the spring and summer. Fees charged to new customers for initial connection to our Delaware water systems were lower by \$0.6 million as new residential and commercial development has slowed in our Delaware service territories. Revenues in our Middlesex system increased by \$0.7 million as a result of a 9.1% base rate increase implemented on October 26, 2007. Middlesex revenues also increased by \$0.3 million due to increased sales to our contract customers. TESI revenues increased by \$0.3 million, as we connected new customers to our existing and new wastewater systems in Delaware.

Operation and maintenance expenses increased \$2.8 million, or 6.5%. Labor costs were \$1.3 million higher due to wage increases and increased headcount to meet the needs of the growing Delaware customer base, risk management, training and safety. As expected, electric generation costs for our Middlesex system increased due to the renewal in late 2006 of our contract with the power purveyor. That factor accounted for most of the \$0.6 million in additional power costs. Pumping and water treatment costs increased a combined \$0.2 million due to higher costs for chemicals and disposal of residuals. Costs for water main breaks in our New Jersey system and transportation fuel were \$0.2 million higher than the same period in 2006 due to the number and size of the breaks and higher gasoline prices. The cost to operate our TESI regulated wastewater facilities in Delaware increased by \$0.2 million as we acquired the Milton, Delaware wastewater system during the year. All other operating costs increased by \$0.3 million.

Depreciation expense for 2007 increased by \$0.4 million, or 5.6%, due to a higher level of utility plant in service.

Other taxes increased by \$0.4 million generally reflecting additional taxes on higher taxable gross revenues, payroll and real estate.

Other income increased \$0.7 million, primarily due to a gain of \$0.2 million on the sale of non-utility real property in New Jersey and a gain of \$0.4 million on the sale of certain water service rights in Delaware.

Interest expense decreased by \$0.4 million, or 5.7%, as a result of a lower level of average short-term debt outstanding when compared to 2006.

Income tax expense based on our current year operating results was \$0.9 million higher than 2006 and reflects the increased revenues due to higher water rates in New Jersey and Delaware, the record customer usage in Delaware and the sale of non-essential assets. This was partially offset by \$0.2 million of solar tax credits recorded during 2007.

Net income increased to \$11.8 million from \$10.0 million in the prior year, and basic earnings per share increased from \$0.83 to \$0.88. Diluted earnings per share increased from \$0.82 to \$0.87.

## **Outlook**

In addition to factors previously discussed under “Results of Operations in 2008 Compared to 2007,” our revenues are expected to increase in 2009 from rate increases granted to our Pinelands companies in December 2008. Middlesex has filed a petition with the BPU to implement a purchased water adjustment clause (PWAC) seeking recovery of \$1.0 million of additional costs associated with rate increases from two non-affiliated water purveyors for our purchases of treated and untreated water. There can be no assurances that the BPU will grant the PWAC in whole or in part.

Revenues and earnings will also be influenced by weather. Changes in these factors, as well as increases in capital expenditures and operating costs are the primary factors that determine the need for rate increase filings. We continue to implement viable plans to streamline operations and reduce operating costs.

We expect our level of borrowing to increase during 2009 in order to finance a portion of our capital expenditures during the coming year (see Liquidity and Capital Resources). However, current interest rates on short-term borrowings are significantly below the rates at which we borrowed during much of 2008. We believe those lower interest rates will continue during 2009 and will result in lower interest expense.

The actual return on assets held in our retirement benefit plans during 2008 resulted in a decline in the amount available to fund current and future obligations. We expect this will result in higher benefits expenses and increased cash contributions to the plans in 2009.

As a result of ongoing delays in new residential home construction throughout the service territories we serve, there may be an increase in the amount of PS&I that will not be currently recoverable in rates.

Our strategy includes continued revenue growth through acquisitions, internal expansion, contract operations and when necessary, rate relief. We will continue to pursue opportunities in both the regulated and non-regulated sectors that are financially sound, complement existing capabilities and increase shareholder value.

## **Liquidity and Capital Resources**

Cash flows from operations are largely based on three factors: weather, adequate and timely rate increases, and customer growth. The effect of those factors on net income is discussed in results of operations. For 2008, cash



flows from operating activities increased \$0.3 million to \$19.1 million, as compared to the prior year. This increase was primarily attributable to higher net income and depreciation. The \$19.1 million of net cash flow from operations enabled us to fund approximately 67% of our utility plant expenditures for the period internally, with the remainder funded with proceeds from equity issued under our Dividend Reinvestment Plan, long-term borrowings and short-term borrowings.

For 2007, cash flows from operating activities increased \$2.7 million to \$18.8 million, as compared to the prior year. This increase was primarily attributable to higher net income and depreciation. The \$18.8 million of net cash flow from operations enabled us to fund approximately 86% of our utility plant expenditures for the period internally, with the remainder funded with proceeds from equity issued under our Dividend Reinvestment Plan, long-term borrowings and short-term borrowings.

Increases in certain operating costs will impact our liquidity and capital resources. As described in our results of operations and outlook discussions, during 2008 we received rate relief for Tidewater and Pinelands and have filed for rate increases for Middlesex and Tidewater. We continually monitor the need for timely rate filing to minimize the lag between the time we experience increased operating and capital costs and the time we receive appropriate rate relief. There is no certainty, however, that the BPU or PSC will approve any or all future requested increases.

### **Sources of Liquidity**

**Short-term Debt.** The Company had established lines of credit aggregating \$36.0 million as of December 31, 2008, and increased the established amount to \$50.0 million in February 2009. At December 31, 2008, the outstanding borrowings under these credit lines was \$25.9 million at a weighted average interest rate of 2.30%.

The weighted average daily amounts of borrowings outstanding under the Company's credit lines and the weighted average interest rates on those amounts were \$16.4 million and \$2.6 million at 3.69% and 6.36% for the years ended December 31, 2008 and 2007, respectively.

**Long-term Debt.** Subject to regulatory approval, the Company periodically finances capital projects under State Revolving Fund (SRF) loan programs in New Jersey and Delaware. These government programs provide financing at interest rates that are typically below rates available in the broader financial markets. A portion of the borrowings under the New Jersey SRF is interest-free. We participated in the Delaware and New Jersey SRF loan programs during 2008 and expect to participate in the 2009 New Jersey SRF program for up to \$4.0 million.

During 2008, Middlesex closed on \$3.5 million of first mortgage bonds through the New Jersey Environmental Infrastructure Trust (NJEIT) under the New Jersey SRF loan program in order to finance our 2009 RENEW program. The proceeds of these bonds, and any interest earned, are held by a trustee, and are classified as Restricted Cash on the Consolidated Balance Sheet.

Substantially all of the Utility Plant of the Company is subject to the lien of its mortgage, which includes debt service and capital ratio covenants. The Company is in compliance with all of its mortgage covenants and restrictions.

**Common Stock.** The Company periodically issues shares of common stock in connection with its Dividend Reinvestment and Common Stock Purchase Plan (the Plan). The Company raised \$1.2 million through the issuance of shares under the Plan during 2008. Periodically, the Company may issue additional equity to reduce short-term indebtedness and for other general corporate purposes. The last public offering of our common stock closed in November 2006. The majority of the net proceeds of approximately \$26.2 million from that common

stock offering of 1.5 million shares were used to repay all of the Company's short-term borrowings outstanding at that time.

### ***Capital Expenditures and Commitments***

Under our capital program for 2009, we plan to expend \$10.0 million for additions and improvements for our Delaware water systems, which include the construction of several storage tanks and the creation of new wells and interconnections. We expect to spend approximately \$1.0 million for construction of wastewater systems in Delaware. We expect to spend \$5.2 million to complete the implementation of a Company-wide information system and \$0.9 million for other information systems equipment and software. We expect to spend \$3.5 million for our RENEW program, which is our program to clean and cement line unlined mains in the Middlesex System. There remains a total of approximately 109 miles of unlined mains in the 730-mile Middlesex System. In 2008, three miles of unlined mains were cleaned and cement lined. The capital program also includes \$12.4 million for scheduled upgrades to our existing systems in New Jersey. The scheduled upgrades consist of \$4.0 million for improvements to existing plant, \$5.8 million for mains, \$0.9 million for service lines, \$0.7 million for meters, \$0.3 million for hydrants, and \$0.8 million for other infrastructure needs.

To pay for our capital program in 2009, we will utilize internally generated funds and funds available and held in trust under existing NJEIT loans (currently, \$4.5 million) and Delaware SRF loans (currently, \$1.9 million). The SRF programs provide low cost financing for projects that meet certain water quality and system improvement benchmarks. If necessary, we will also utilize short-term borrowings through \$50.0 million of available lines of credit with several financial institutions. As of December 31, 2008, we had \$25.9 million outstanding against the lines of credit.

Going forward into 2010 through 2011, we currently project that we may be required to expend between \$65.0 million and \$91.2 million for capital projects. The exact amount is dependent on customer growth, residential housing sales and project scheduling. In particular, Middlesex had filed a prudence review application with the BPU for a proposed major transmission pipeline designed to strengthen its existing transmission network and provide further system reliability. Initial estimates to construct the pipeline are \$26.2 million. A settlement amongst the parties in the prudence review was approved by the BPU on October 23, 2008. As part of the settlement, it was agreed the pipeline is needed but will not be constructed at this time. The parties further agreed that it would be effective utility management and proper long-term planning for the Company to proceed with the procurement of easements along the agreed-upon pipeline route in anticipation of a need for the project as customer demand for water increases in the South River Basin portion of our customer base.

To the extent possible and because of favorable interest rates available to regulated water utilities, we expect to finance portions of our capital expenditures under the SRF loan programs. We also expect to use internally generated funds and proceeds from the sale of common stock through the Dividend Reinvestment and Common Stock Purchase Plan. It may also be necessary to sell shares of our Common Stock through a public offering.

### ***Contractual Obligations***

In the course of normal business activities, the Company enters into a variety of contractual obligations and commercial commitments. Some of these items result in direct obligations on the Company's balance sheet while others are commitments, some firm and some based on uncertainties, which are disclosed in the Company's other underlying consolidated financial statements.

The table below presents our known contractual obligations for the periods specified as of December 31, 2008.

|                               | Payment Due by Period<br>(Millions of Dollars) |                     |                |                |                      |
|-------------------------------|--|---------------------|----------------|----------------|----------------------|
|                               | Total  | Less than<br>1 Year | 1-3 Years      | 4-5<br>Years   | More than<br>5 Years |
| Long-term Debt                | \$ 136.0                                       | \$ 18.0             | \$ 6.8         | \$ 7.0         | \$ 104.2             |
| Notes Payable                 | 25.9   | 25.9                | ---            | ---            | ---                  |
| Interest on Long-term Debt    | 93.4   | 5.8                 | 10.9           | 10.3           | 66.4                 |
| Purchased Water Contracts     | 41.9   | 4.9                 | 7.8            | 4.9            | 24.3                 |
| Wastewater Operations         | 47.6   | 4.2                 | 8.7            | 9.3            | 25.4                 |
| Employee Retirement Plans (1) | 5.6  | 5.6                 | ---            | ---            | ---                  |
| <b>Total</b>                  | <b>\$ 350.4</b>                                | <b>\$ 64.4</b>      | <b>\$ 34.2</b> | <b>\$ 31.5</b> | <b>\$ 220.3</b>      |

(1) Amount not determinable after one year.

## Guarantees

USA-PA operates the City of Perth Amboy's (Perth Amboy) water and wastewater systems under a service contract agreement through June 30, 2018. Under the agreement, USA-PA receives a fixed fee and a variable fee based on increased system billing. Scheduled fixed fee payments were \$8.0 million in 2008 and will increase over the term of the contract to \$10.2 million by the end of the contract.

In connection with the agreement, Perth Amboy, through the Middlesex County Improvement Authority, issued approximately \$68.0 million in three series of bonds. Middlesex guaranteed one of those series of bonds, designated the Series C Serial Bonds, in the principal amount of approximately \$26.3 million. Perth Amboy guaranteed the two other series of bonds. The Series C Serial Bonds have various maturity dates with the final maturity date on September 1, 2015. As of December 31, 2008, approximately \$21.4 million of the Series C Serial Bonds remained outstanding.

We are obligated to perform under the guarantee in the event notice is received from the Series C Serial Bonds trustee of an impending debt service deficiency. If Middlesex funds any debt service obligations as guarantor, there is a provision in the agreement that requires Perth Amboy to reimburse us. There are other provisions in the agreement that we believe make it unlikely that we will be required to perform under the guarantee, such as scheduled annual rate increases for the water and wastewater services as well as rate increases due to unforeseen circumstances. In the event revenues from customers could not satisfy the reimbursement requirements, Perth Amboy has Ad Valorem taxing powers, which could be used to raise the needed amount.

## Critical Accounting Policies and Estimates

The application of accounting policies and standards often requires the use of estimates, assumptions and judgments. Changes in these variables may lead to significantly different financial statement results. Our critical accounting policies are set forth below.

### Regulatory Accounting

We maintain our books and records in accordance with accounting principles generally accepted in the United States of America. Middlesex and certain of its subsidiaries, which account for 89% of Operating Revenues and 98% of Total Assets, are subject to regulation in the states in which they operate. Those companies are required to maintain their accounts in accordance with regulatory authorities' rules and guidelines, which may differ from other authoritative accounting pronouncements. In those instances, the Company follows the guidance provided in the Financial Accounting Standards Board (FASB), Statement of Financial Accounting Standards (SFAS) No. 71, "Accounting For the Effects of Certain Types of Regulation" (SFAS 71).

In accordance with SFAS No. 71, costs and obligations are deferred if it is probable that these items will be recognized for rate-making purposes in future rates. Accordingly, we have recorded costs and obligations, which will be amortized over various future periods. Any change in the assessment of the probability of rate-making treatment will require us to change the accounting treatment of the deferred item. We have no reason to believe any of the deferred items that are recorded would be treated differently by the regulators in the future.

#### *Revenues*

Revenues from metered customers include amounts billed on a cycle basis and unbilled amounts estimated from the last meter reading date to the end of the accounting period. The estimated unbilled amounts are determined by utilizing factors which include historical consumption usage and current climate conditions. Differences between estimated revenues and actual billings are recorded in a subsequent period.

Revenues from unmetered customers are billed at a fixed tariff rate in advance at the beginning of each service period and are recognized in revenue ratably over the service period.

Revenues from the Perth Amboy management contract are comprised of fixed and variable fees. Fixed fees, which have been set for the life of the contract, are billed monthly and recorded as earned. Variable fees, which are based on billings and other factors and are not significant, are recorded upon approval of the amount by Perth Amboy.

#### *Pension Plan*

We maintain a noncontributory defined benefit pension plan which covers substantially all employees with more than 1,000 hours of service and who were hired prior to March 31, 2007.

The discount rate utilized for determining future pension obligations has increased from 5.89% at December 31, 2006 to 6.59% at December 31, 2007 and decreased to 6.17% at December 31, 2008. Lowering the discount rate by 0.5% would have increased the net periodic pension cost by \$0.2 million in 2008. Lowering the expected long-term rate of return on the pension plans by 0.5% (from 8.0% to 7.5%) would have increased the net periodic pension cost in 2008 by approximately \$0.1 million.

The discount rate for determining future pension obligations is determined based on market rates for long-term, high-quality corporate bonds at our December 31 measurement date. The expected long-term rate of return for pension assets is determined based on historical returns and our asset allocation.

Future pension expense will depend on future investment performance, changes in future discount rates and various other demographic factors related to the population participating in the pension plan.

#### **Recent Accounting Standards**

See Note 1(m) of the Notes to Consolidated Financial Statements for a discussion of recent accounting pronouncements.

#### **Item 7A. Qualitative and Quantitative Disclosures About Market Risk.**

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 2009 to 2038. Over the next twelve months, approximately \$18.0 million of the current portion of 24 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.

**Item 8. Financial Statements and Supplementary Data.**

**Report of Independent Registered Public Accounting Firm**

To the Board of Directors and

Stockholders of Middlesex Water Company

We have audited the accompanying consolidated balance sheets and consolidated statements of capital stock and long-term debt of Middlesex Water Company and subsidiaries (the Company) as of December 31, 2008 and 2007, and the related consolidated statements of income, stockholders' equity and comprehensive income, and cash flows for each of the years in the three-year period ended December 31, 2008. The Company's management is responsible for these consolidated financial statements. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of the Company as of December 31, 2008 and 2007, and the results of its operations and its cash flows for each of the years in the three-year period ended December 31, 2008 in conformity with accounting principles generally accepted in the United States of America.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), Middlesex Water Company's internal control over financial reporting as of December 31, 2008, based on criteria established in *Internal Control – Integral Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO), and our report dated March 13, 2009 expressed an unqualified opinion.

/s/ Beard Miller Company LLP

Beard Miller Company LLP  
Reading, Pennsylvania  
March 13, 2009

**MIDDLESEX WATER COMPANY**  
**CONSOLIDATED BALANCE SHEETS**  
(In thousands)

|  |  | December 31,<br>2008 | December 31,<br>2007 |
|--|--|----------------------|----------------------|
| <b>ASSETS</b>  |  |                      |                      |
| <b>UTILITY PLANT:</b>                                  | Water Production                                     | \$ 107,517           | \$ 98,942            |
|  | Transmission and Distribution                        | 283,759              | 264,939              |
|  | General  | 27,142               | 24,874               |
|  | Construction Work in Progress                        | 11,653               | 9,833                |
|  | <b>TOTAL</b>   | <b>430,071</b>       | <b>398,588</b>       |
|  | Less Accumulated Depreciation                        | 70,544               | 64,736               |
|  | <b>UTILITY PLANT - NET</b>                           | <b>359,527</b>       | <b>333,852</b>       |
| <b>CURRENT ASSETS:</b>                                 | Cash and Cash Equivalents                            | 3,288                | 2,029                |
|  | Accounts Receivable, net                             | 9,510                | 8,227                |
|  | Unbilled Revenues                                    | 4,822                | 4,609                |
|  | Materials and Supplies (at average cost)             | 1,475                | 1,205                |
|  | Prepayments  | 1,481                | 1,363                |
|  | <b>TOTAL CURRENT ASSETS</b>                          | <b>20,576</b>        | <b>17,433</b>        |
| <b>DEFERRED CHARGES AND OTHER ASSETS:</b>              | Unamortized Debt Expense                             | 2,903                | 2,884                |
|  | Preliminary Survey and Investigation Charges         | 7,187                | 5,283                |
|  | Regulatory Assets                                    | 31,910               | 16,090               |
|  | Operations Contracts Fees Receivable                 | 3,708                | 4,184                |
|  | Restricted Cash                                      | 7,049                | 6,418                |
|  | Non-utility Assets - Net                             | 6,762                | 6,183                |
|  | Other  | 378                  | 348                  |
|  | <b>TOTAL DEFERRED CHARGES AND OTHER ASSETS</b>       | <b>59,897</b>        | <b>41,390</b>        |
|  | <b>TOTAL ASSETS</b>                                  | <b>\$ 440,000</b>    | <b>\$ 392,675</b>    |
| <b>CAPITALIZATION AND LIABILITIES</b>                  |  |                      |                      |
| <b>CAPITALIZATION:</b>                                 | Common Stock, No Par Value                           | \$ 107,726           | \$ 105,668           |
|  | Retained Earnings                                    | 30,077               | 27,441               |
|  | Accumulated Other Comprehensive Income, net of tax   | 0                    | 69                   |
|  | <b>TOTAL COMMON EQUITY</b>                           | <b>137,803</b>       | <b>133,178</b>       |
|  | Preferred Stock                                      | 3,375                | 3,958                |
|  | Long-term Debt                                       | 118,217              | 131,615              |
|  | <b>TOTAL CAPITALIZATION</b>                          | <b>259,395</b>       | <b>268,751</b>       |
| <b>CURRENT LIABILITIES:</b>                            | Current Portion of Long-term Debt                    | 17,985               | 2,723                |
|  | Notes Payable  | 25,877               | 6,250                |
|  | Accounts Payable                                     | 5,689                | 6,477                |
|  | Accrued Taxes  | 7,781                | 7,611                |
|  | Accrued Interest                                     | 2,053                | 1,916                |
|  | Unearned Revenues and Advanced Service Fees          | 842                  | 758                  |
|  | Other  | 1,243                | 1,274                |
|  | <b>TOTAL CURRENT LIABILITIES</b>                     | <b>61,470</b>        | <b>27,009</b>        |
| <b>COMMITMENTS AND CONTINGENT LIABILITIES (Note 4)</b> |  |                      |                      |
| <b>DEFERRED CREDITS AND OTHER LIABILITIES:</b>         | Customer Advances for Construction                   | 22,089               | 21,758               |
|  | Accumulated Deferred Investment Tax Credits          | 1,382                | 1,461                |
|  | Accumulated Deferred Income Taxes                    | 21,733               | 17,940               |
|  | Employee Benefit Plans                               | 25,540               | 13,333               |
|  | Regulatory Liability - Cost of Utility Plant Removal | 6,197                | 5,726                |
|  | Other  | 963                  | 459                  |
|  | <b>TOTAL DEFERRED CREDITS AND OTHER LIABILITIES</b>  | <b>77,904</b>        | <b>60,677</b>        |
| <b>CONTRIBUTIONS IN AID OF CONSTRUCTION</b>            |  | <b>41,231</b>        | <b>36,238</b>        |
|  | <b>TOTAL CAPITALIZATION AND LIABILITIES</b>          | <b>\$ 440,000</b>    | <b>\$ 392,675</b>    |

See Notes to Consolidated Financial Statements.

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

|  | Years Ended December 31, |           |           |
|--|--------------------------|-----------|-----------|
|  | 2008                     | 2007      | 2006      |
| Operating Revenues                               | \$ 91,038                | \$ 86,114 | \$ 81,061 |
| Operating Expenses:                              |                          |           |           |
| Operations                                       | 44,782                   | 42,117    | 39,799    |
| Maintenance                                      | 4,147                    | 4,123     | 3,546     |
| Depreciation                                     | 7,922                    | 7,539     | 7,060     |
| Other Taxes                                      | 10,168                   | 9,664     | 9,338     |
| Total Operating Expenses                         | 67,019                   | 63,443    | 59,743    |
| Operating Income                                 | 24,019                   | 22,671    | 21,318    |
| Other Income (Expense):                          |                          |           |           |
| Allowance for Funds Used During Construction     | 667                      | 537       | 632       |
| Other Income                                     | 906                      | 1,153     | 160       |
| Other Expense                                    | (271)                    | (163)     | (18)      |
| Total Other Income, net                          | 1,302                    | 1,527     | 774       |
| Interest Charges                                 | 7,057                    | 6,619     | 7,012     |
| Income before Income Taxes                       | 18,264                   | 17,579    | 15,080    |
| Income Taxes                                     | 6,056                    | 5,736     | 5,041     |
| Net Income                                       | 12,208                   | 11,843    | 10,039    |
| Preferred Stock Dividend Requirements            | 218                      | 248       | 248       |
| Earnings Applicable to Common Stock              | \$ 11,990                | \$ 11,595 | \$ 9,791  |
| Earnings per share of Common Stock:              |                          |           |           |
| Basic  | \$ 0.90                  | \$ 0.88   | \$ 0.83   |
| Diluted  | \$ 0.89                  | \$ 0.87   | \$ 0.82   |
| Average Number of<br>Common Shares Outstanding : |                          |           |           |
| Basic  | 13,317                   | 13,203    | 11,844    |
| Diluted  | 13,615                   | 13,534    | 12,175    |
| Cash Dividends Paid per Common Share             | \$ 0.703                 | \$ 0.693  | \$ 0.683  |

See Notes to Consolidated Financial Statements.

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

|   | Years Ended December 31, |                 |                 |
|---|--------------------------|-----------------|-----------------|
|   | 2008                     | 2007            | 2006            |
| <b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>  |                          |                 |                 |
| Net Income  | \$ 12,208                | \$ 11,843       | \$ 10,039       |
| Adjustments to Reconcile Net Income to  |                          |                 |                 |
| Net Cash Provided by Operating Activities:  |                          |                 |                 |
| Depreciation and Amortization   | 8,530                    | 8,176           | 7,761           |
| Provision for Deferred Income Taxes and ITC   | 1,032                    | 399             | 897             |
| Equity Portion of AFUDC   | (348)                    | (255)           | (259)           |
| Cash Surrender Value of Life Insurance  | 576                      | (271)           | (155)           |
| Gain on Disposal of Equity Investments  | (86)                     | -               | -               |
| Gain on Sale of Real Estate   | -                        | (267)           | -               |
| Changes in Assets and Liabilities:  |                          |                 |                 |
| Accounts Receivable   | (807)                    | (2,752)         | (463)           |
| Unbilled Revenues   | (213)                    | (596)           | (276)           |
| Materials & Supplies  | (270)                    | 101             | (46)            |
| Prepayments   | (118)                    | (134)           | (301)           |
| Other Assets  | (351)                    | (9)             | (485)           |
| Accounts Payable  | 147                      | 986             | (538)           |
| Accrued Taxes   | 206                      | 941             | 197             |
| Accrued Interest  | 137                      | 36              | 11              |
| Employee Benefit Plans  | (1,146)                  | 239             | (84)            |
| Unearned Revenue & Advanced Service Fees  | 84                       | 157             | 127             |
| Other Liabilities   | (465)                    | 224             | (299)           |
| <b>NET CASH PROVIDED BY OPERATING ACTIVITIES</b>  | <b>19,116</b>            | <b>18,818</b>   | <b>16,126</b>   |
| <b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>  |                          |                 |                 |
| Utility Plant Expenditures, Including AFUDC of \$319 in 2008, \$282 in 2007 and \$373 in 2006 | (28,429)                 | (21,930)        | (30,734)        |
| Restricted Cash   | (591)                    | 444             | (1,036)         |
| Proceeds from Real Estate Dispositions  | -                        | 273             | -               |
| Preliminary Survey & Investigation Charges  | (1,907)                  | (1,847)         | (1,661)         |
| <b>NET CASH USED IN INVESTING ACTIVITIES</b>  | <b>(30,927)</b>          | <b>(23,060)</b> | <b>(33,431)</b> |
| <b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>  |                          |                 |                 |
| Redemption of Long-term Debt  | (2,787)                  | (2,501)         | (1,915)         |
| Proceeds from Issuance of Long-term Debt  | 4,652                    | 3,632           | 5,016           |
| Net Short-term Bank Borrowings  | 19,627                   | 6,250           | (4,000)         |
| Deferred Debt Issuance Expenses   | (158)                    | (50)            | (28)            |
| Common Stock Issuance Expense   | -                        | (15)            | (238)           |
| Restricted Cash   | (40)                     | (12)            | (32)            |
| Proceeds from Issuance of Common Stock  | 1,475                    | 1,420           | 28,088          |
| Payment of Common Dividends   | (9,353)                  | (9,141)         | (8,190)         |
| Payment of Preferred Dividends  | (218)                    | (248)           | (248)           |
| Construction Advances and Contributions-Net   | (128)                    | 1,110           | 1,694           |
| <b>NET CASH PROVIDED BY FINANCING ACTIVITIES</b>  | <b>13,070</b>            | <b>445</b>      | <b>20,147</b>   |
| <b>NET CHANGES IN CASH AND CASH EQUIVALENTS</b>   | <b>1,259</b>             | <b>(3,797)</b>  | <b>2,842</b>    |
| <b>CASH AND CASH EQUIVALENTS AT BEGINNING OF PERIOD</b>                                       | <b>2,029</b>             | <b>5,826</b>    | <b>2,984</b>    |
| <b>CASH AND CASH EQUIVALENTS AT END OF PERIOD</b>   | <b>\$ 3,288</b>          | <b>\$ 2,029</b> | <b>\$ 5,826</b> |
| <b>SUPPLEMENTAL DISCLOSURE OF NON-CASH ACTIVITY:</b>  |                          |                 |                 |
| Utility Plant received as Construction Advances and Contributions                             | \$ 5,452                 | \$ 8,960        | \$ 3,543        |
| Transfer of Equity Investment to Employee Retirement Benefit Plans                            | \$ 132                   | \$ -            | \$ -            |
| <b>SUPPLEMENTAL DISCLOSURE OF CASH FLOWS INFORMATION:</b>                                     |                          |                 |                 |
| Cash Paid During the Year for:  |                          |                 |                 |
| Interest  | \$ 6,864                 | \$ 6,542        | \$ 6,937        |
| Interest Capitalized  | \$ (319)                 | \$ (282)        | \$ (373)        |
| Income Taxes  | \$ 5,205                 | \$ 4,534        | \$ 4,352        |

See Notes to Consolidated Financial Statements.



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

|   | December 31,<br>2008 | December 31,<br>2007 |
|---|----------------------|----------------------|
| <b>Common Stock, No Par Value</b>                                 |                      |                      |
| Shares Authorized - 40,000  |                      |                      |
| Shares Outstanding - 2008 - 13,404<br>2007 - 13,246               | \$ 107,726           | \$ 105,668           |
| Retained Earnings   | 30,077               | 27,441               |
| Accumulated Other Comprehensive Income, net of tax                | -                    | 69                   |
| <b>TOTAL COMMON EQUITY</b>  | <b>137,803</b>       | <b>133,178</b>       |
| <b>Cumulative Preference Stock, No Par Value:</b>                 |                      |                      |
| Shares Authorized - 100   |                      |                      |
| Shares Outstanding - None   |                      |                      |
| <b>Cumulative Preferred Stock, No Par Value:</b>                  |                      |                      |
| Shares Authorized - 2008 - 134; 2007 - 139                        |                      |                      |
| Shares Outstanding - 2008 - 32; 2007 - 37                         |                      |                      |
| <b>Convertible:</b>   |                      |                      |
| Shares Outstanding, \$7.00 Series - 14                            | 1,457                | 1,457                |
| Shares Outstanding, \$8.00 Series - 2008 - 7; 2007 - 12           | 816                  | 1,399                |
| <b>Nonredeemable:</b>   |                      |                      |
| Shares Outstanding, \$7.00 Series - 1                             | 102                  | 102                  |
| Shares Outstanding, \$4.75 Series - 10                            | 1,000                | 1,000                |
| <b>TOTAL PREFERRED STOCK</b>                                      | <b>3,375</b>         | <b>3,958</b>         |
| <b>Long-term Debt:</b>  |                      |                      |
| 8.05%, Amortizing Secured Note, due December 20, 2021             | 2,695                | 2,800                |
| 6.25%, Amortizing Secured Note, due May 22, 2028                  | 8,155                | 8,575                |
| 6.44%, Amortizing Secured Note, due August 25, 2030               | 6,067                | 6,347                |
| 6.46%, Amortizing Secured Note, due September 19, 2031            | 6,347                | 6,627                |
| 4.22%, State Revolving Trust Note, due December 31, 2022          | 657                  | 691                  |
| 3.30% to 3.60%, State Revolving Trust Note, due May 1, 2025       | 3,689                | 3,168                |
| 3.49%, State Revolving Trust Note, due January 25, 2027           | 675                  | 603                  |
| 4.03%, State Revolving Trust Note, due December 1, 2026           | 939                  | 974                  |
| 4.00% to 5.00%, State Revolving Trust Bond, due September 1, 2021 | 660                  | 695                  |
| 0.00%, State Revolving Fund Bond, due September 1, 2021           | 500                  | 538                  |
| 3.64%, State Revolving Trust Note, due July 1, 2028               | 389                  | -                    |
| 3.64%, State Revolving Trust Note, due January 1, 2028            | 140                  | -                    |
| <b>First Mortgage Bonds:</b>                                      |                      |                      |
| 5.20%, Series S, due October 1, 2022                              | 12,000               | 12,000               |
| 5.25%, Series T, due October 1, 2023                              | 6,500                | 6,500                |
| 6.40%, Series U, due February 1, 2009                             | 15,000               | 15,000               |
| 5.25%, Series V, due February 1, 2029                             | 10,000               | 10,000               |
| 5.35%, Series W, due February 1, 2038                             | 23,000               | 23,000               |
| 0.00%, Series X, due September 1, 2018                            | 538                  | 591                  |
| 4.25% to 4.63%, Series Y, due September 1, 2018                   | 710                  | 765                  |
| 0.00%, Series Z, due September 1, 2019                            | 1,230                | 1,342                |
| 5.25% to 5.75%, Series AA, due September 1, 2019                  | 1,675                | 1,785                |
| 0.00%, Series BB, due September 1, 2021                           | 1,566                | 1,685                |
| 4.00% to 5.00%, Series CC, due September 1, 2021                  | 1,895                | 1,995                |
| 5.10%, Series DD, due January 1, 2032                             | 6,000                | 6,000                |
| 0.00%, Series EE, due September 1, 2024                           | 6,693                | 7,112                |
| 3.00% to 5.50%, Series FF, due September 1, 2024                  | 8,025                | 8,385                |
| 0.00%, Series GG, due August 1, 2026                              | 1,619                | 1,710                |
| 4.00% to 5.00%, Series HH, due August 1, 2026                     | 1,880                | 1,950                |
| 0.00%, Series II, due August 1, 2027                              | 1,708                | 1,750                |
| 3.40% to 5.00%, Series JJ, due August 1, 2027                     | 1,750                | 1,750                |
| 0.00%, Series KK, due August 1, 2028                              | 1,750                | -                    |
| 5.00% to 5.50%, Series LL, due August 1, 2028                     | 1,750                | -                    |
| <b>SUBTOTAL LONG-TERM DEBT</b>                                    | <b>136,202</b>       | <b>134,338</b>       |
| Less: Current Portion of Long-term Debt                           | (17,985)             | (2,723)              |
| <b>TOTAL LONG-TERM DEBT</b>                                       | <b>\$ 118,217</b>    | <b>\$ 131,615</b>    |

**MIDDLESEX WATER COMPANY**  
**CONSOLIDATED STATEMENTS OF COMMON STOCKHOLDERS' EQUITY AND COMPREHENSIVE**  
**INCOME**  
(In thousands)

|   | <u>Common<br/>Stock<br/>Shares</u> | <u>Common<br/>Stock<br/>Amount</u> | <u>Retained<br/>Earnings</u> | <u>Accumulated<br/>Other<br/>Comprehensive<br/>Income (Loss)</u> | <u>Total</u>      |
|---|------------------------------------|------------------------------------|------------------------------|--|-------------------|
| Balance at January 1, 2006                                    | 11,584                             | \$ 76,161                          | \$ 23,638                    | \$ (207)   | \$ 99,592         |
| Net Income  |                                    |                                    | 10,039                       |  | 10,039            |
| Minimum Pension Liability, Net of \$135 Income Tax            |                                    |                                    |                              | 262  | 262               |
| Change in Value of Equity Investments, Net of \$20 Income Tax |                                    |                                    |                              | 39   | 39                |
| Comprehensive Income  |                                    |                                    |                              |  | <u>10,340</u>     |
| Dividend Reinvestment & Common Stock Purchase Plan            | 70                                 | 1,321                              |                              |  | 1,321             |
| Restricted Stock Award - Net                                  | 19                                 | 275                                |                              |  | 275               |
| Preferred Stock Conversion                                    | 1,495                              | 26,491                             |                              |  | 26,491            |
| Cash Dividends on Common Stock                                |                                    |                                    | (8,190)                      |  | (8,190)           |
| Cash Dividends on Preferred Stock                             |                                    |                                    | (248)                        |  | (248)             |
| Common Stock Expense  |                                    |                                    | (238)                        |  | (238)             |
| Balance at December 31, 2006                                  | <u>13,168</u>                      | <u>104,248</u>                     | <u>25,001</u>                | <u>94</u>  | <u>129,343</u>    |
| Net Income  |                                    |                                    | 11,843                       |  | 11,843            |
| Change in Value of Equity Investments, Net of \$13 Income Tax |                                    |                                    |                              | (25)   | (25)              |
| Comprehensive Income  |                                    |                                    |                              |  | <u>11,818</u>     |
| Dividend Reinvestment & Common Stock Purchase Plan            | 61                                 | 1,147                              |                              |  | 1,147             |
| Restricted Stock Award - Net                                  | 17                                 | 273                                |                              |  | 273               |
| Cash Dividends on Common Stock                                |                                    |                                    | (9,141)                      |  | (9,141)           |
| Cash Dividends on Preferred Stock                             |                                    |                                    | (248)                        |  | (248)             |
| Common Stock Expenses   |                                    |                                    | (15)                         |  | (15)              |
| Other   |                                    |                                    | 1                            |  | 1                 |
| Balance at December 31, 2007                                  | <u>13,246</u>                      | <u>105,668</u>                     | <u>27,441</u>                | <u>69</u>  | <u>133,178</u>    |
| Net Income  |                                    |                                    | 12,208                       |  | 12,208            |
| Change in Value of Equity Investments, Net of \$36 Income Tax |                                    |                                    |                              | (69)   | (69)              |
| Comprehensive Income  |                                    |                                    |                              |  | <u>12,139</u>     |
| Dividend Reinvestment & Common Stock Purchase Plan            | 67                                 | 1,187                              |                              |  | 1,187             |
| Conversion of \$8 Convertible Preferred Stock                 | 69                                 | 583                                |                              |  | 583               |
| Restricted Stock Award - Net                                  | 22                                 | 288                                |                              |  | 288               |
| Cash Dividends on Common Stock                                |                                    |                                    | (9,353)                      |  | (9,353)           |
| Cash Dividends on Preferred Stock                             |                                    |                                    | (218)                        |  | (218)             |
| Other   |                                    |                                    | (1)                          |  | (1)               |
| Balance at December 31, 2008                                  | <u>13,404</u>                      | <u>\$ 107,726</u>                  | <u>\$ 30,077</u>             | <u>\$ -</u>  | <u>\$ 137,803</u> |

See Notes to Consolidated Financial Statements.

## Middlesex Water Company

### Notes to Consolidated Financial Statements

#### Note 1 - Summary of Significant Accounting Policies

(a) Organization - Middlesex Water Company (Middlesex) 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) and Utility Service Affiliates (Perth Amboy) Inc. (USA-PA). 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.

Middlesex Water Company has operated as a water utility in New Jersey since 1897, and in Delaware, through our wholly-owned subsidiary, Tidewater, since 1992. We are in the business of collecting, treating, distributing and selling water for domestic, commercial, municipal, industrial and fire protection purposes. We also operate a New Jersey municipal water and wastewater system under contract and provide wastewater services in New Jersey and Delaware through our subsidiaries. We are regulated as to rates charged to customers for water and wastewater services in New Jersey and Delaware, as to the quality of services we provide and as to certain other matters. Only our USA, USA-PA and White Marsh subsidiaries are not regulated utilities.

Certain reclassifications have been made to the prior year financial statements to conform with current period presentation.

(b) System of Accounts - Middlesex, Pinelands Water and Pinelands Wastewater maintain their accounts in accordance with the Uniform System of Accounts prescribed by the Board of Public Utilities of the State of New Jersey (BPU). Tidewater, TESI and Southern Shores maintain their accounts in accordance with the Public Service Commission of Delaware (PSC) requirements.

(c) Utility Plant is stated at original cost as defined for regulatory purposes. Property accounts are charged with the cost of betterments and major replacements of property. Cost includes direct material, labor and indirect charges for pension benefits and payroll taxes. The cost of labor, materials, supervision and other expenses incurred in making repairs and minor replacements and in maintaining the properties is charged to the appropriate expense accounts. At December 31, 2008, there was no event or change in circumstance that would indicate that the carrying amount of any long-lived asset was not recoverable.

(d) Depreciation is computed by each regulated member of the Company utilizing a rate approved by the applicable regulatory authority. The Accumulated Provision for Depreciation is charged with the cost of property retired, less salvage. The following table sets forth the range of depreciation rates for the major utility plant categories used to calculate depreciation for the years ended December 31, 2008, 2007 and 2006. These rates have been approved by either the BPU or PSC:

|                  |                |                                      |               |
|------------------|----------------|--------------------------------------|---------------|
| Source of Supply | 1.15% - 3.44%  | Transmission and Distribution (T&D): |               |
| Pumping          | 2.87% - 5.04%  | T&D – Mains                          | 1.10% - 3.13% |
| Water Treatment  | 2.71% - 7.64%  | T&D – Services                       | 2.12% - 2.81% |
| General Plant    | 2.08% - 17.84% | T&D – Other                          | 1.61% - 4.63% |

Non-regulated fixed assets consist primarily of an office building, furniture and fixtures, and transportation equipment. These assets are recorded at original cost and depreciation is calculated based on the estimated useful lives, ranging from 3 to 40 years.

**(e)** Customers' Advances for Construction – Water utility plant and/or cash advances are contributed to the Company by customers, real estate developers and builders in order to extend water service to their properties. These contributions are recorded as Customers' Advances for Construction. Refunds on these advances are made by the Company in accordance with agreements with the contributing party and are based on either additional operating revenues related to the utility plant or as new customers are connected to and take service from the utility plant. After all refunds are made, any remaining balance is transferred to Contributions in Aid of Construction.

Contributions in Aid of Construction – Contributions in Aid of Construction include direct non-refundable contributions of water utility plant and/or cash and the portion of Customers' Advances for Construction that become non-refundable.

Advances and Contributions are not depreciated in accordance with BPU and PSC requirements. In addition, these amounts reduce the investment base for purposes of setting rates.

**(f)** Allowance for Funds Used During Construction (AFUDC) - Middlesex and its regulated subsidiaries capitalize AFUDC, which represents the cost of financing projects during construction. AFUDC is added to the construction costs of individual projects exceeding specific cost and construction period thresholds established for each company and then depreciated along with the rest of the utility plant's costs over its estimated useful life. For the years ended December 31, 2008, 2007 and 2006 approximately \$0.7 million, \$0.5 million and \$0.6 million, respectively of AFUDC was added to the cost of construction projects. AFUDC is calculated using each company's weighted cost of debt and equity as approved in their most recent respective regulatory rate order. The average AFUDC rate for the years ended December 31, 2008, 2007 and 2006 for Middlesex and Tidewater were 7.55% and 8.07%, respectively.

**(g)** Accounts Receivable – We record bad debt expense based on historical write-offs. The allowance for doubtful accounts was \$0.2 million at December 31, 2008, \$0.3 million at December 31, 2007, and \$0.3 million at December 31, 2006. The corresponding expense for the year ended December 31, 2008, 2007 and 2006 was \$0.2 million, \$0.1 million and \$0.3 million, respectively.

**(h)** Revenues - General metered customer's bills for regulated water service are typically comprised of two components; a fixed service charge and a volumetric or consumption charge. Revenues from general metered service water customers, except Tidewater, include amounts billed in arrears on a cycle basis and unbilled amounts estimated from the last meter reading date to the end of the accounting period. The estimated unbilled amounts are determined by utilizing factors which include historical consumption usage and current climate conditions. Actual billings may differ from our estimates. Revenues are adjusted in the period that the difference is identified. Tidewater customers are billed in advance for their fixed service charge and these revenues are recognized as the service is provided to the customer.

Southern Shores is an unmetered system. Customers are billed a fixed service charge in advance at the beginning of each month and revenues are recognized as earned. Revenues from the City of Perth Amboy management contract are comprised of fixed and variable fees. Fixed fees, which have been set for the life of the contract, are billed monthly and recorded as earned. Variable fees, which are not significant, are recorded upon approval of the amount by the City of Perth Amboy.

USA bills customers on a quarterly or annual basis for its LineCare<sup>SM</sup> service line maintenance program. Quarterly amounts billed are recognized as earned. Amounts that are billed on an annual basis are deferred and recognized as revenue ratably over the year.

**(i) Deferred Charges and Other Assets - Unamortized Debt Expense** is amortized over the lives of the related issues. Restricted Cash represents proceeds from loans entered into through state financing programs and is held in trusts. The proceeds are restricted for specific capital expenditures and debt service requirements.

**(j) Income Taxes - Middlesex** files a consolidated federal income tax return for the Company and income taxes are allocated based on the separate return method. Investment tax credits have been deferred and are amortized over the estimated useful life of the related property.

**(k) Statements of Cash Flows -** For purposes of reporting cash flows, the Company considers all highly liquid investments with original maturity dates of three months or less to be cash equivalents. Cash and cash equivalents represent bank balances and money market funds with investments maturing in less than 90 days.

**(l) Use of Estimates -** Conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts in the financial statements. Actual results could differ from those estimates.

**(m) Recent Accounting Pronouncements -** In December 2008, the Financial Accounting Standards Board (FASB) issued FASB Staff Position (FSP) FAS 132(R)-1, "Employers' Disclosures about Postretirement Benefit Plan Assets". This FSP amends Statement of Financial Accounting Standards (SFAS) 132(R), "Employers' Disclosures about Pensions and Other Postretirement Benefits", to provide guidance on an employer's disclosures about plan assets of a defined benefit pension or other postretirement plan. The disclosures about plan assets required by this FSP shall be provided for fiscal years ending after December 15, 2009. The Company is currently reviewing the effect this new pronouncement will have on its consolidated financial statements.

In October 2008, the FASB issued FSP FAS No. 157-3, "Determining the Fair Value of a Financial Asset When The Market for That Asset Is Not Active" (FSP 157-3), to clarify the application of the provisions of SFAS 157 in an inactive market and how an entity would determine fair value in an inactive market. FSP 157-3 was effective immediately. The application of the provisions of FSP 157-3 did not materially affect the Company's financial statements.

In September 2006, the Financial FASB issued SFAS 157, Fair Value Measurements, which establishes a framework for measuring fair value and expands disclosures about fair value measurements. SFAS 157 is effective for fiscal years beginning after November 15, 2007 and interim periods within those fiscal years. In February 2008, the FASB issued FSP FAS No. 157-2, "Effective Date of FASB Statement No. 157" (FSP 157-2), which deferred the effective date of SFAS 157 to fiscal years beginning after November 15, 2008 for nonfinancial assets and nonfinancial liabilities. Adoption of SFAS 157 for financial assets and financial liabilities did not have a material impact on the Company's financial statements. The Company does not anticipate that adoption of FSP 157-2 will have a material impact on its financial statements.

In June 2008, the FASB issued FASB Staff Position (FSP) EITF 03-6-1, "Determining Whether Instruments Granted in Share-Based Payment Transactions Are Participating Securities." This FSP clarifies that all outstanding unvested share-based payment awards that contain rights to nonforfeitable dividends participate in undistributed earnings with common shareholders. Awards of this nature are considered participating securities and the two-class method of computing basic and diluted earnings per share must be applied. This FSP, which is effective for fiscal years beginning after December 15, 2008 will not have an impact on the Company's consolidated financial statements.

SFAS No. 141 (R) "Business Combinations" was issued in December of 2007. This Statement establishes principles and requirements for how the acquirer of a business recognizes and measures in its financial statements the identifiable assets acquired, the liabilities assumed, and any noncontrolling interest in the acquired business entity. The Statement also provides guidance for recognizing and measuring the goodwill acquired in the business combination and determines what information to disclose to enable users of the financial statements to evaluate the nature and financial effects of the business combination. The guidance will become effective as of the beginning of a company's fiscal year beginning after December 15, 2008. This new pronouncement will impact the Company's accounting for business combinations completed beginning January 1, 2009.

In February 2007, the FASB issued FSP FAS 158-1, "Conforming Amendments to the Illustrations in FASB Statements No. 87, No. 88, and No 106 and to the Related Staff Implementation Guides." This FSP makes conforming amendments to other FASB statements and staff implementation guides and provides technical corrections to SFAS No. 158, "Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans." The conforming amendments in this FSP did not have a material impact on the Company's consolidated financial statements or disclosures.

In May 2007, the FASB issued FSP FIN 48-1 "Definition of Settlement in FASB Interpretation No. 48" (FSP FIN 48-1). FSP FIN 48-1 provides guidance on how to determine whether a tax position is effectively settled for the purpose of recognizing previously unrecognized tax benefits. FSP FIN 48-1 is effective retroactively to January 1, 2007. The implementation of this standard did not have a material impact on our consolidated financial position or results of operations.

In May 2007, the FASB issued FSP FIN 48-1 "Definition of Settlement in FASB Interpretation No. 48" (FSP FIN 48-1). FSP FIN 48-1 provides guidance on how to determine whether a tax position is effectively settled for the purpose of recognizing previously unrecognized tax benefits. FSP FIN 48-1 is effective retroactively to January 1, 2007. The implementation of this standard did not have a material impact on our consolidated financial position or results of operations.

**(n) Other Comprehensive Income** – Total comprehensive income includes changes in equity that are excluded from the consolidated statements of income and are recorded into a separate section of capitalization on the consolidated balance sheets.

**(o) Regulatory Accounting** - We maintain our books and records in accordance with accounting principles generally accepted in the United States of America. Middlesex and certain of its subsidiaries, which account for 90% of Operating Revenues and 98% of Total Assets, are subject to regulation in the state in which they operate. Those companies are required to maintain their accounts in accordance with regulatory authorities' rules and guidelines, which may differ from other authoritative accounting pronouncements. In those instances, the Company follows the guidance provided in SFAS No. 71, "Accounting for the Effects of Certain Types of Regulation."

**(p) Pension Plan** - We maintain a noncontributory defined benefit pension plan which covers substantially all employees with more than 1,000 hours of service, and who were hired as of March 31, 2007. The discount rate utilized for determining pension costs increased from 5.52% for the year ended December 31, 2006 to 5.89% for the year ended December 31, 2007 and increased to 6.59% for the year ended December 31, 2008. Future actual pension expense will depend on future investment performance, changes in future discount rates and various other factors related to the population participating in the pension plans.

## **Note 2 - Rate and Regulatory Matters**

Effective December 18, 2008, Pinelands Water and Pinelands Wastewater implemented New Jersey Board of Public Utilities (BPU) approved base rate increases of 5.53% and 18.30%, respectively. These increases represent a total base rate increase of approximately \$0.2 million for Pinelands to offset increased costs associated with the operation and maintenance of their systems.

Effective October 26, 2007, Middlesex received approval from the New Jersey Board of Public Utilities (BPU) for a 9.1%, or \$5.0 million increase in its base water rates. The increase was predicated on a rate base of \$164.4 million and an authorized return on equity of 10.0%. Middlesex had originally filed for an \$8.9 million or 16.5% base rate increase with the BPU on April 18, 2007. The rate increase is intended to recover increased costs of operations, maintenance, labor and benefits, purchased power, purchased water and taxes, as well as capital investment of approximately \$23.0 million since June 2005.

On April 28, 2006, Tidewater filed for a \$5.5 million, or 38.6%, base rate increase with the Delaware Public Service Commission (PSC). The request is intended to recover increased costs of operations, maintenance and taxes, as well as capital investment of approximately \$23.8 million since rates were last established in March 2005. Since June 27, 2006, Tidewater has been billing and recognizing additional revenues through a 15% interim rate increase subject to refund as allowed under PSC regulations. A settlement was reached amongst the parties which concluded that a 26.9% overall increase in base rates would be implemented. The PSC approved the settlement and the remaining 11.9% increase was put into effect on February 28, 2007.

In accordance with the tariff established for Southern Shores, an annual rate increase of 3% was implemented on January 1, 2009. Under the terms of a contract with Southern Shores Homeowners Association, the increase cannot exceed the lesser of the regional Consumer Price Index or 3%.

We have recorded certain costs as regulatory assets because we expect full recovery of, or are currently recovering, these costs in the rates we charge customers. These deferred costs have been excluded from rate base and, therefore, we are not earning a return on the unamortized balances. These items are detailed as follows:

| Regulatory Assets       | December 31,<br>(Thousands of Dollars) |                  | Remaining<br>Recovery<br>Periods |
|-------------------------|--|------------------|----------------------------------|
|                         | 2008                                   | 2007             |                                  |
| Postretirement Benefits | \$ 20,679                              | \$ 7,279         | Various                          |
| Income Taxes            | 10,905                                 | 8,222            | Various                          |
| Tank Painting           | 189                                    | 225              | 3-7 years                        |
| Rate Cases and Other    | 137                                    | 364              | Up to 2 years                    |
| <b>Total</b>            | <b>\$ 31,910</b>                       | <b>\$ 16,090</b> |                                  |

Postretirement benefits include pension and other postretirement benefits that have been recorded on the Consolidated Balance Sheet upon adoption of SFAS 158. These amounts represent obligations in excess of current funding, which the Company believes will be fully recovered in rates set by the regulatory authorities.

The recovery period for income taxes is dependent upon when the temporary differences between the tax and book treatment of various items reverse.

The Company uses composite depreciation rates for its regulated utility assets, which is currently an acceptable method under generally accepted accounting principles and is widely used in the utility industry. Historically, under the composite depreciation method, the anticipated costs of removing assets upon retirement are provided for over the life of those assets as a component of depreciation expense. The Company recovers certain asset retirement costs through rates charged to customers as an approved component of depreciation expense. As of December 31, 2008 and 2007, the Company has approximately \$6.2 million and \$5.7 million, respectively, of

expected costs of removal recovered currently in rates in excess of actual costs incurred. These amounts are recorded as regulatory liabilities.

The Company is recovering in current rates acquisition premiums totaling \$0.8 million over the remaining lives of the underlying Utility Plant. These deferred costs have been included in rate base as utility plant and a return is being earned on the unamortized balances during the recovery periods.

### Note 3 - Income Taxes

Income tax expense differs from the amount computed by applying the statutory rate on book income subject to tax for the following reasons:

|                                 | Years Ended December 31,<br>(Thousands of Dollars) |                 |                 |
|---------------------------------|--|-----------------|-----------------|
|                                 | 2008   | 2007            | 2006            |
| Income Tax at Statutory Rate    | \$ 6,253   | \$ 6,021        | \$ 5,155        |
| Tax Effect of:                  |  |                 |                 |
| Utility Plant Related           | (725)  | (595)           | (338)           |
| State Income Taxes – Net        | 309  | 350             | 257             |
| Employee Benefits               | 202  | (49)            | (48)            |
| Other                           | 17   | 9               | 15              |
| <b>Total Income Tax Expense</b> | <b>\$ 6,056</b>                                    | <b>\$ 5,736</b> | <b>\$ 5,041</b> |

Income tax expense is comprised of the following:

|                                 |                 |                 |                 |
|---------------------------------|-----------------|-----------------|-----------------|
| Current:                        |                 |                 |                 |
| Federal                         | \$ 4,651        | \$ 4,894        | \$ 3,846        |
| State                           | 392             | 413             | 298             |
| Deferred:                       |                 |                 |                 |
| Federal                         | 1,018           | 634             | 884             |
| State                           | 74              | 117             | 92              |
| Investment Tax Credits          | (79)            | (322)           | (79)            |
| <b>Total Income Tax Expense</b> | <b>\$ 6,056</b> | <b>\$ 5,736</b> | <b>\$ 5,041</b> |

The statutory review period for income tax returns for the years prior to 2007 has been closed. An examination by the Internal Revenue Service of the Federal income tax returns for 2005 and 2006 was completed during 2008. The examination resulted in a net refund, including interest of approximately \$0.1 million. The tax refund was recorded to the appropriate current and deferred tax accounts and the interest was reported as other income. In the event that there are interest and penalties associated with income tax adjustments in future examinations, these amounts will be reported under interest expense and other expense, respectively. There are no unrecognized tax benefits resulting from prior period tax positions.

Deferred income taxes reflect the net tax effect of temporary differences between the carrying amounts of assets and liabilities for financial purposes and the amounts used for income tax purposes. The components of the net deferred tax liability are as follows:



|                                     | December 31,<br>(Thousands of Dollars) |                  |
|-------------------------------------|--|------------------|
|                                     | 2008                                   | 2007             |
| Utility Plant Related               | \$ 26,224                              | \$ 24,892        |
| Customer Advances                   | (4,036)                                | (4,117)          |
| Employee Benefits                   | (65)                                   | (2,544)          |
| Other                               | (390)                                  | (291)            |
| <b>Total Deferred Tax Liability</b> | <b>\$ 21,733</b>                       | <b>\$ 17,940</b> |

#### Note 4 - Commitments and Contingent Liabilities

*Guarantees* - USA-PA operates the City of Perth Amboy's (Perth Amboy) water and wastewater systems under a service contract agreement through June 30, 2018. Under the agreement, USA-PA receives a fixed fee and a variable fee based on increased system billing. Scheduled fixed fee payments for 2008, 2007 and 2006 were \$8.0 million, \$7.8 million and \$7.6 million, respectively. The fixed fees will increase over the term of the contract to \$10.2 million.

In connection with the agreement, Perth Amboy, through the Middlesex County Improvement Authority, issued approximately \$68.0 million in three series of bonds. Middlesex guaranteed one of those series of bonds, designated the Series C Serial Bonds, in the principal amount of approximately \$26.3 million. Perth Amboy guaranteed the two other series of bonds. The Series C Serial Bonds have various maturity dates with the final maturity date on September 1, 2015. As of December 31, 2008, approximately \$21.4 million of the Series C Serial Bonds remained outstanding.

We are obligated to perform under the guarantee in the event notice is received from the Series C Serial Bonds trustee of an impending debt service deficiency. If Middlesex funds any debt service obligations as guarantor, there is a provision in the agreement that requires Perth Amboy to reimburse us. There are other provisions in the agreement that we believe make it unlikely that we will be required to perform under the guarantee, such as scheduled annual rate increases for water and wastewater services as well as rate increases due to unforeseen circumstances. In the event revenues from customers could not satisfy the reimbursement requirements, Perth Amboy has Ad Valorem taxing powers, which could be used to raise the needed amount.

*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 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, 2011, provides for the minimum purchase of 3 mgd of treated water with provisions for additional purchases.

Purchased water costs are shown below:

| <u>Purchased Water</u> | Years Ended December 31,<br>(Millions of Dollars) |               |               |
|------------------------|---|---------------|---------------|
|                        | <u>2008</u>                                       | <u>2007</u>   | <u>2006</u>   |
| Untreated              | \$ 2.4  | \$ 2.4        | \$ 2.3        |
| Treated                | 2.1   | 2.1           | 1.9           |
| <b>Total Costs</b>     | <b>\$ 4.5</b>                                     | <b>\$ 4.5</b> | <b>\$ 4.2</b> |

*Construction* – The Company may spend up to \$33.0 million in 2009, \$47.6 million in 2010 and \$43.6 million in 2011 on its construction program. The development of these estimates is based in part upon projected housing development and sales in Delaware. There is no assurance that the projected housing development will occur.

*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 5 – Short-term Borrowings**

Information regarding the Company’s short-term borrowings for the years ended December 31, 2008 and 2007 is summarized below:

|  | (Millions of Dollars) |         |
|--|-----------------------|---------|
|  | 2008                  | 2007    |
| Established Lines at Year-End              | \$ 36.0               | \$ 40.0 |
| Maximum Amount Outstanding                 | 25.9                  | 6.6     |
| Average Outstanding                        | 16.4                  | 2.6     |
| Notes Payable at Year-End                  | 25.9                  | 6.3     |
| Weighted Average Interest Rate             | 3.69%                 | 6.36%   |
| Weighted Average Interest Rate at Year-End | 2.30%                 | 5.79%   |

The maturity dates for the \$25.9 million borrowings outstanding as of December 31, 2008 are: \$16.5 million on several dates in January 2009, \$3.5 million on February 9, 2009 and \$5.9 million on several dates in March, 2009. The weighted average interest rate for those loans is 2.30%

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

#### **Note 6 - Capitalization**

All the transactions discussed below related to the issuance of securities were approved by either the BPU or PSC, except where otherwise noted.

##### *Common Stock*

In June 2007, the number of shares authorized under the Dividend Reinvestment and Common Stock Purchase Plan (DRP) increased from 1,700,000 shares to 2,300,000 shares. The cumulative number of shares issued under the DRP at December 31, 2008, is 1,684,411. The Company also has shares authorized and outstanding under a restricted stock plan, which is described in Note 7 – Employee Benefit Plans.

In November 2006, the Company sold and issued 1,495,000 shares of its common stock in a public offering that was priced at \$18.46. The majority of the net proceeds of approximately \$26.2 million were used to repay all of the Company’s short-term borrowings outstanding at that time. Remaining proceeds from the public offering were used to fund a portion of the 2007 capital program.

In the event dividends on the preferred stock are in arrears, no dividends may be declared or paid on the common stock of the Company. At December 31, 2008, no preferred stock dividends were in arrears.

#### *Preferred Stock*

If four or more quarterly dividends are in arrears, the preferred shareholders, as a class, are entitled to elect two members to the Board of Directors in addition to Directors elected by holders of the common stock. At December 31, 2008 and 2007, 31,898 and 36,898 shares of preferred stock presently authorized were outstanding and there were no dividends in arrears.

The conversion feature of the no par \$7.00 Series Cumulative and Convertible Preferred Stock allows the security holders to exchange one convertible preferred share for twelve shares of the Company's common stock. In addition, the Company may redeem up to 10% of the outstanding convertible stock in any calendar year at a price equal to the fair market value of twelve shares of the Company's common stock for each share of convertible stock redeemed.

The conversion feature of the no par \$8.00 Series Cumulative and Convertible Preferred Stock allows the security holders to exchange one convertible preferred share for 13.714 shares of the Company's common stock. The preferred shares are convertible into common stock at the election of the security holder or Middlesex. During 2008, 5,000 shares of the no par \$8.00 Series Cumulative and Convertible Preferred Stock were converted into 68,570 of common stock.

#### *Long-term Debt*

In November 2008, Middlesex issued \$3.5 million of first mortgage bonds through the New Jersey Environmental Infrastructure Trust under the New Jersey State Revolving Fund (SRF) program. The Company closed on the first mortgage bonds designated as Series KK and LL on November 8, 2008.

In December 2007, Tidewater closed on a loan with the Delaware SRF for two specific projects and borrowed \$0.5 million in 2008. The interest rate is 3.64% with a final maturity of July 1, 2028.

In November 2007, Middlesex issued \$3.5 million of first mortgage bonds through the New Jersey Environmental Infrastructure Trust under the New Jersey SRF program. The Company closed on the first mortgage bonds designated as Series II and JJ on November 8, 2007.

First Mortgage Bonds Series S through W and Series DD are term bonds with single maturity dates. With the exception of \$15.0 million for repayment for the First Mortgage Bond Series U which matured on February 2, 2009, principal repayments for the First Mortgage Bonds extend beyond 2012. The aggregate annual principal repayment obligations for all other long-term debt are shown below:

| (Millions of Dollars) |                          |
|-----------------------|--------------------------|
| <u>Year</u>           | <u>Annual Maturities</u> |
| 2009                  | \$3.0                    |
| 2010                  | \$3.4                    |
| 2011                  | \$3.4                    |
| 2012                  | \$3.5                    |
| 2013                  | \$3.5                    |

The weighted average interest rate on all long-term debt at December 31, 2008 and 2007 was 5.15% and 5.20%, respectively. Except for the Amortizing Secured Notes and Series U First Mortgage Bonds, all of the Company's outstanding debt has been issued through the New Jersey Economic Development Authority (\$57.5

million), the New Jersey Environmental Infrastructure Trust program (\$34.0 million) and the Delaware SRF program (\$6.5 million).

Restricted cash includes proceeds from the Series Y, AA, BB, CC, EE, FF, GG, HH, II, JJ, KK and LL First Mortgage Bonds and State Revolving Trust Bonds issuances. These funds are held in trusts and restricted for specific capital expenditures and debt service requirements. Series II and JJ proceeds can only be used for the 2008 main cleaning and cement lining program. Series KK and LL proceeds can only be used for the 2009 main cleaning and cement lining program. All other bond issuance balances in restricted cash are for debt service requirements.

Substantially all of the Utility Plant of the Company is subject to the lien of its mortgage, which includes debt service and capital ratio covenants. The Company is in compliance with all of its mortgage covenants and restrictions.

*Earnings Per Share*

The following table presents the calculation of basic and diluted earnings per share (EPS) for the three years ended December 31, 2008. Basic EPS is computed on the basis of the weighted average number of shares outstanding. Diluted EPS assumes the conversion of both the Convertible Preferred Stock \$7.00 Series and \$8.00 Series.

|  | (In Thousands, Except per Share Amounts) |        |           |        |           |        |
|--|--|--------|-----------|--------|-----------|--------|
|  | 2008                                     |        | 2007      |        | 2006      |        |
| Basic:                                       | Income                                   | Shares | Income    | Shares | Income    | Shares |
| Net Income                                   | \$ 12,208                                | 13,317 | \$ 11,843 | 13,203 | \$ 10,039 | 11,844 |
| Preferred Dividend                           | (218)                                    |        | (248)     |        | ( 248)    |        |
| Earnings Applicable to Common Stock          | \$ 11,990                                | 13,317 | \$ 11,595 | 13,203 | \$ 9,791  | 11,844 |
| Basic EPS                                    | \$ 0.90                                  |        | \$ 0.88   |        | \$ 0.83   |        |
| <b>Diluted:</b>                              |  |        |           |        |           |        |
| Earnings Applicable to Common Stock          | \$ 11,990                                | 13,317 | \$ 11,595 | 13,203 | \$ 9,791  | 11,844 |
| \$7.00 Series Dividend                       | 97                                       | 167    | 97        | 167    | 97        | 167    |
| \$8.00 Series Dividend                       | 66                                       | 131    | 96        | 164    | 96        | 164    |
| Adjusted Earnings Applicable to Common Stock | \$ 12,153                                | 13,615 | \$ 11,788 | 13,534 | \$ 9,984  | 12,175 |
| Diluted EPS                                  | \$ 0.89                                  |        | \$ 0.87   |        | \$ 0.82   |        |

*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 consolidated balance sheets for cash and cash equivalents, marketable securities, and trade receivables and payables approximate their respective fair values due to the short-term maturities of these instruments. The fair value of the Company's long-term debt relating to first mortgage bonds is based on quoted market prices for similar issues. The carrying amount and fair market value of the Company's bonds were as follows:

|                       | At December 31,        |            |                 |            |
|-----------------------|------------------------|------------|-----------------|------------|
|                       | (Thousands of Dollars) |            |                 |            |
|                       | 2008                   |            | 2007            |            |
|                       | Carrying Amount        | Fair Value | Carrying Amount | Fair Value |
| First Mortgage Bonds  | \$ 105,290             | \$ 95,171  | \$ 103,322      | \$ 104,681 |
| State Revolving Bonds | \$ 1,160               | \$ 1,170   | \$ 1,233        | \$ 1,272   |

For other long-term debt for which there was no quoted market price, it was not practicable to estimate their fair value. The carrying amount of these instruments was \$29.8 million at December 31, 2008 and 2007, respectively. Customer advances for construction have a carrying amount of \$22.1 million and \$21.8 million at December 31, 2008 and 2007, 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 7 - Employee Benefit Plans**

### *Pension*

The Company has a noncontributory defined benefit pension plan, which covers substantially all employees with more than 1,000 hours of service. 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' compensation. In order to be eligible for an annual contribution, the eligible employee must be employed by the Company on December 31<sup>st</sup> of the year the award pertains to. In addition, the Company maintains an unfunded supplemental pension plan for its executive officers. The Accumulated Benefit Obligation for all pension plans at December 31, 2008 and 2007 was \$27.5 million and \$21.6 million, respectively.

### *Postretirement Benefits Other Than Pensions*

The Company has a postretirement benefit plan other than pensions for substantially all of its retired employees. Employees hired after March 31, 2007 are not eligible to participate in this plan. Coverage includes healthcare and life insurance. Retiree contributions are dependent on credited years of service. Accrued retirement benefit costs are recorded each year.

The Company has recognized a deferred regulatory asset relating to the difference between the accrued retirement benefit costs and actual cash paid for plan premiums in years prior to 1998. Included in the regulatory asset is a transition obligation from adopting SFAS No.106, "Employers' Accounting for Postretirement Benefits Other than Pensions," on January 1, 1993. In addition to the recognition of annual accrued retirement benefit costs in rates, Middlesex is also recovering the transition obligation over 15 years. The regulatory assets at December 31, 2008 and 2007 were \$0.4 million and \$0.4 million, respectively.

The Company adopted SFAS 158 on December 31, 2006. Because the Company is subject to regulation in the states in which it operates, it is required to maintain its accounts in accordance with the regulatory authority's rules and guidelines, which may differ from other authoritative accounting pronouncements. In those instances, the Company follows the guidance of SFAS No. 71, "Accounting for the Effects of Certain Types of Regulation," (SFAS 71). Based on prior regulatory practice, and in accordance with the guidance provided by SFAS 71, the Company records underfunded pension and postretirement obligations, which otherwise would be recognized as Other Comprehensive Income under SFAS 158, as a Regulatory Asset, and expects to recover those costs in rates charged to customers. The adoption of this standard had no impact on results of operations or cash flows.

The Company uses a December 31 measurement date for all of its employee benefit plans. The table below sets forth information relating to the Company's pension plans and other postretirement benefits for 2008 and 2007.

December 31,  
(Thousands of Dollars)

|   | Pension Benefits   |                   | Other Benefits     |                   |
|---|--------------------|-------------------|--------------------|-------------------|
|   | 2008               | 2007              | 2008               | 2007              |
| <b>Reconciliation of Projected Benefit Obligation</b> |                    |                   |                    |                   |
| Beginning Balance                                     | \$ 30,167          | \$ 31,728         | \$ 15,067          | \$ 14,698         |
| Service Cost  | 1,248              | 1,296             | 775                | 821               |
| Interest Cost   | 1,950              | 1,807             | 1,010              | 895               |
| Actuarial (Gain)/Loss                                 | 2,637              | (3,081)           | 2,420              | (852)             |
| Benefits Paid   | (1,650)            | (1,583)           | (501)              | (495)             |
| <b>Ending Balance</b>                                 | <b>\$ 34,352</b>   | <b>\$ 30,167</b>  | <b>\$ 18,771</b>   | <b>\$ 15,067</b>  |
| <b>Reconciliation of Plan Assets at Fair Value</b>    |                    |                   |                    |                   |
| Beginning Balance                                     | \$ 24,568          | \$ 23,028         | \$ 7,025           | \$ 6,701          |
| Actual Return on Plan Assets                          | (5,390)            | 1,315             | (1,085)            | 324               |
| Employer Contributions                                | 2,508              | 1,808             | 1,800              | 495               |
| Benefits Paid   | (1,650)            | (1,583)           | (501)              | (495)             |
| <b>Ending Balance</b>                                 | <b>\$ 20,036</b>   | <b>\$ 24,568</b>  | <b>\$ 7,239</b>    | <b>\$ 7,025</b>   |
| <b>Funded Status</b>                                  | <b>\$ (14,316)</b> | <b>\$ (5,599)</b> | <b>\$ (11,532)</b> | <b>\$ (8,042)</b> |

Amounts Recognized in the Consolidated Balance Sheets consist of:

|                                 |                    |                   |                    |                   |
|---------------------------------|--------------------|-------------------|--------------------|-------------------|
| Current Liability               | (308)              | (308)             | -                  | -                 |
| Noncurrent Liability            | (14,008)           | (5,291)           | (11,532)           | (8,042)           |
| <b>Net Liability Recognized</b> | <b>\$ (14,316)</b> | <b>\$ (5,599)</b> | <b>\$ (11,532)</b> | <b>\$ (8,042)</b> |

Years Ended December 31,  
(Thousands of Dollars)

|  | Pension Benefits |                 |                 | Other Benefits  |                 |                 |
|--|------------------|-----------------|-----------------|-----------------|-----------------|-----------------|
|  | 2008             | 2007            | 2006            | 2008            | 2007            | 2006            |
| <b>Components of Net Periodic Benefit Cost</b> |                  |                 |                 |                 |                 |                 |
| Service Cost                                   | \$ 1,248         | \$ 1,296        | \$ 1,311        | \$ 775          | \$ 821          | \$ 756          |
| Interest Cost                                  | 1,950            | 1,807           | 1,703           | 1,010           | 895             | 804             |
| Expected Return on Plan Assets                 | (1,938)          | (1,819)         | (1,608)         | (581)           | (481)           | (330)           |
| Amortization of Net Transition Obligation      | -                | -               | -               | 135             | 135             | 135             |
| Amortization of Net Actuarial (Gain)/Loss      | -                | 75              | 258             | 287             | 337             | 443             |
| Amortization of Prior Service Cost             | 10               | 10              | 11              | -               | -               | -               |
| <b>Net Periodic Benefit Cost</b>               | <b>\$ 1,270</b>  | <b>\$ 1,369</b> | <b>\$ 1,675</b> | <b>\$ 1,626</b> | <b>\$ 1,707</b> | <b>\$ 1,808</b> |

Amounts that are expected to be amortized from Regulatory Assets into Net Periodic Benefit Cost in 2009 are as follows:

|                       | (Thousands of Dollars)      |                           |
|-----------------------|-----------------------------|---------------------------|
|                       | Pension<br>Benefits<br>2009 | Other<br>Benefits<br>2009 |
| Actuarial (Gain)/Loss | \$ 601                      | \$ 579                    |
| Prior Service Cost    | 10                          | -                         |
| Transition Obligation | -                           | 135                       |

|                                | Pension Benefits |       |       | Other Benefits |       |       |
|--------------------------------|------------------|-------|-------|----------------|-------|-------|
|                                | 2008             | 2007  | 2006  | 2008           | 2007  | 2006  |
| Weighted Average Assumptions:  |                  |       |       |                |       |       |
| Expected Return on Plan Assets | 8.00%            | 8.00% | 8.00% | 7.50%          | 7.50% | 7.50% |
| Discount Rate for:             |                  |       |       |                |       |       |
| Benefit Obligation             | 6.17%            | 6.59% | 5.89% | 6.12%          | 6.59% | 5.89% |
| Benefit Cost                   | 6.59%            | 5.89% | 5.52% | 6.59%          | 5.89% | 5.52% |
| Compensation Increase for:     |                  |       |       |                |       |       |
| Benefit Obligation             | 3.50%            | 3.50% | 3.50% | 3.50%          | 3.50% | 3.50% |
| Benefit Cost                   | 3.50%            | 3.50% | 3.50% | 3.50%          | 3.50% | 3.50% |

The compensation increase assumption for Other Benefits is attributable to life insurance provided to qualifying employees upon their retirement. The insurance coverage will be determined based on the employee's base compensation as of their retirement date.

A 9.0% annual rate of increase in the per capita cost of covered healthcare benefits was assumed for 2008 and assumed to decline by 1.0% per year through 2011 and by 0.5% per year to 5% by year 2014. A one-percentage point change in assumed healthcare cost trend rates would have the following effects:

|   | 1 Percentage Point<br>(Thousands of Dollars) |          |
|---|--|----------|
|   | Increase                                     | Decrease |
| Effect on Current Year's Service and Benefit Cost | \$ 392                                       | \$ (299) |
| Effect on Benefit Obligation                      | 2,630  | (2,070)  |

The following benefit payments, which reflect expected future service, are expected to be paid:

| Year          | Pension Benefits | Other Benefits  |
|---------------|------------------|-----------------|
| 2009          | \$ 1,630         | \$ 546          |
| 2010          | 1,635            | 561             |
| 2011          | 1,688            | 601             |
| 2012          | 1,691            | 645             |
| 2013          | 1,802            | 691             |
| 2014-2018     | 10,487           | 4,290           |
| <b>Totals</b> | <b>\$ 18,933</b> | <b>\$ 7,334</b> |

*Benefit Plans Assets*

The allocation of plan assets at December 31, 2008 and 2007 by asset category is as follows:

| <u>Asset Category</u> | <u>Pension Plan</u> |               | <u>Other Benefits</u> |               | <u>Target</u> | <u>Range</u> |
|-----------------------|---------------------|---------------|-----------------------|---------------|---------------|--------------|
|                       | <u>2008</u>         | <u>2007</u>   | <u>2008</u>           | <u>2007</u>   |               |              |
| Equity Securities     | 49.5%               | 59.7%         | 25.7%                 | 47.0%         | 60%           | 30-65%       |
| Debt Securities       | 47.0                | 37.8          | 59.6                  | 50.6          | 38%           | 25-70%       |
| Cash                  | 3.5                 | 2.5           | 14.7                  | 2.4           | 2%            | 0-10%        |
| Total                 | <u>100.0%</u>       | <u>100.0%</u> | <u>100.0%</u>         | <u>100.0%</u> |               |              |

Two outside investment firms each manage a portion of the pension plan asset portfolio. One of those investment firms also manages the other postretirement benefits assets. Quarterly meetings are held between the Company's Pension Committee of the Board of Directors and the investment managers to review their performance and asset allocation. If the actual asset allocation is outside the targeted range, the Pension Committee reviews current market conditions and advice provided by the investment managers to determine the appropriateness of rebalancing the portfolio.

The objective of the Company is to maximize the long-term return on benefit plan assets, relative to a reasonable level of risk, maintain a diversified investment portfolio and maintain compliance with the Employee Retirement Income Security Act of 1974. The expected long-term rate of return is based on the various asset categories in which plan assets are invested and the current expectations and historical performance for these categories.

Equity securities include Middlesex common stock in the amounts of \$0.7 million (3.4% of total plan assets) and \$0.7 million (3.0 % of total plan assets) at December 31, 2008 and 2007, respectively.

For the pension plan, Middlesex made total cash contributions of \$2.4 million and contributed \$0.1 million in equity securities to the plan in 2008 and expects to make cash contributions of approximately \$3.6 million in 2009.

For the postretirement health benefit plan, Middlesex made total cash contributions of \$1.8 million in 2008 and expects to make contributions of approximately \$2.0 million in 2009.

*401(k) Plan*

The Company has a 401(k) defined contribution plan, which covers substantially all employees with more than 1,000 hours of service. Under the terms of the Plan, the Company matches 100% of a participant's contributions, which do not exceed 1% of a participant's compensation, plus 50% of a participant's contributions exceeding 1%, but not more than 6%. The Company's matching contributions were \$0.5 million for the year ended December 31, 2008 and \$0.4 million for each of the years ended December 31, 2007 and 2006.

For those employees hired after March 31, 2007 and still employed on December 31, 2008, the Company approved a discretionary contribution that was based on 5% of eligible compensation. The Company expects to fund the contribution of \$0.1 million in March 2009.

*Stock-Based Compensation*

The Company maintains an escrow account for 58,775 shares of the Company's common stock which were awarded under the 1997 Restricted Stock Plan, which has expired and 21,807 shares of the Company's common stock which were awarded under the 2008 Restricted Stock Plan. Such stock is subject to an agreement requiring forfeiture by the employee in the event of termination of employment within five years of the award other than as a result of retirement, death, disability or change in control. Shareholders approved the new 2008



Restricted Stock Plan at the Company's May 21, 2008 annual meeting of shareholders. The maximum number of shares authorized for grant under the 2008 Restricted Stock Plan is 300,000 shares.

The Company recognizes compensation expense at fair value for the restricted stock awards in accordance with SFAS No.123(R), "Share-Based Payment." Compensation expense is determined by the market value of the stock on the date of the award and is being amortized over a five-year period.

The following table presents information on the Restricted Stock Plan:

|                                      | Shares | Unearned Compensation | Weighted Average Grant Price |
|--------------------------------------|--------|-----------------------|------------------------------|
| Balance, January 1, 2006             | 56     | \$ 700                |                              |
| Granted                              | 21     | 405                   | \$ 19.24                     |
| Vested                               | (11)   |                       |                              |
| Forfeited                            | (2)    | (38)                  |                              |
| Amortization of Compensation Expense |        | (271)                 |                              |
| Balance, December 31, 2006           | 64     | \$ 796                |                              |
| Granted                              | 18     | 344                   | \$ 19.10                     |
| Vested                               | (10)   |                       |                              |
| Forfeited                            | (1)    | (3)                   |                              |
| Amortization of Compensation Expense |        | (276)                 |                              |
| Balance, December 31, 2007           | 71     | \$ 861                |                              |
| Granted                              | 22     | 377                   | \$ 17.30                     |
| Vested                               | (12)   |                       |                              |
| Forfeited                            |        | (5)                   |                              |
| Amortization of Compensation Expense |        | (305)                 |                              |
| Balance, December 31, 2008           | 81     | \$ 928                |                              |

#### Note 8 – 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 and Delaware. 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 the states of New Jersey and Delaware with respect to utility service 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.

|                                       | Years Ended December 31,<br>(Thousands of Dollars) |                   |                  |
|---------------------------------------|--|-------------------|------------------|
| Operations by Segments:               | 2008   | 2007              | 2006             |
| <b>Revenues:</b>                      |  |                   |                  |
| Regulated                             | \$ 81,118  | \$ 77,113         | \$ 71,948        |
| Non – Regulated                       | 10,327   | 9,392             | 9,317            |
| Inter-segment Elimination             | (407)  | (391)             | (204)            |
| <b>Consolidated Revenues</b>          | <b>\$ 91,038</b>                                   | <b>\$ 86,114</b>  | <b>\$ 81,061</b> |
| <b>Operating Income:</b>              |  |                   |                  |
| Regulated                             | \$ 22,132  | \$ 21,351         | \$ 20,062        |
| Non – Regulated                       | 1,887  | 1,320             | 1,256            |
| <b>Consolidated Operating Income</b>  | <b>\$ 24,019</b>                                   | <b>\$ 22,671</b>  | <b>\$ 21,318</b> |
| <b>Depreciation:</b>                  |  |                   |                  |
| Regulated                             | \$ 7,798   | \$ 7,408          | \$ 6,936         |
| Non – Regulated                       | 124  | 131               | 124              |
| <b>Consolidated Depreciation</b>      | <b>\$ 7,922</b>                                    | <b>\$ 7,539</b>   | <b>\$ 7,060</b>  |
| <b>Other Income, Net:</b>             |  |                   |                  |
| Regulated                             | \$ 1,077   | \$ 1,643          | \$ 951           |
| Non – Regulated                       | 387  | ---               | (78)             |
| Inter-segment Elimination             | (162)  | (116)             | (99)             |
| <b>Consolidated Other Income, Net</b> | <b>\$ 1,302</b>                                    | <b>\$ 1,527</b>   | <b>\$ 774</b>    |
| <b>Interest Expense:</b>              |  |                   |                  |
| Regulated                             | \$ 6,981   | \$ 6,619          | \$ 7,012         |
| Non – Regulated                       | 238  | 116               | 99               |
| Inter-segment Elimination             | (162)  | (116)             | (99)             |
| <b>Consolidated Interest Charges</b>  | <b>\$ 7,057</b>                                    | <b>\$ 6,619</b>   | <b>\$ 7,012</b>  |
| <b>Net Income:</b>                    |  |                   |                  |
| Regulated                             | \$ 10,976  | \$ 11,120         | \$ 9,417         |
| Non – Regulated                       | 1,232  | 723               | 622              |
| <b>Consolidated Net Income</b>        | <b>\$ 12,208</b>                                   | <b>\$ 11,843</b>  | <b>\$ 10,039</b> |
| <b>Capital Expenditures:</b>          |  |                   |                  |
| Regulated                             | \$ 27,188  | \$ 21,586         | \$ 30,492        |
| Non – Regulated                       | 1,241  | 344               | 242              |
| <b>Total Capital Expenditures</b>     | <b>\$ 28,429</b>                                   | <b>\$ 21,930</b>  | <b>\$ 30,734</b> |
|                                       | As of  | As of             |                  |
|                                       | December 31,                                       | December 31,      |                  |
|                                       | 2008   | 2007              |                  |
| <b>Assets:</b>                        |  |                   |                  |
| Regulated                             | \$ 433,109   | \$ 387,931        |                  |
| Non – Regulated                       | 11,537   | 8,157             |                  |
| Inter-segment Elimination             | (4,646)  | (3,413)           |                  |
| <b>Consolidated Assets</b>            | <b>\$ 440,000</b>                                  | <b>\$ 392,675</b> |                  |

**Note 9 - Quarterly Operating Results - Unaudited**

Operating results for each quarter of 2008 and 2007 are as follows:

|                            | (Thousands of Dollars, Except per Share Data) |                 |                 |                 |           |  |
|----------------------------|---|-----------------|-----------------|-----------------|-----------|--|
|                            | 1 <sup>st</sup>                               | 2 <sup>nd</sup> | 3 <sup>rd</sup> | 4 <sup>th</sup> | Total     |  |
| <b>2008</b>                |   |                 |                 |                 |           |  |
| Operating Revenues         | \$ 20,855                                     | \$ 23,035       | \$ 25,653       | \$ 21,495       | \$ 91,038 |  |
| Operating Income           | 4,347   | 6,825           | 8,384           | 4,463           | 24,019    |  |
| Net Income                 | 2,004   | 3,565           | 4,715           | 1,924           | 12,208    |  |
| Basic Earnings per Share   | \$ 0.15                                       | \$ 0.26         | \$ 0.35         | \$ 0.14         | \$ 0.90   |  |
| Diluted Earnings per Share | \$ 0.15                                       | \$ 0.26         | \$ 0.35         | \$ 0.13         | \$ 0.89   |  |
| <b>2007</b>                |   |                 |                 |                 |           |  |
| Operating Revenues         | \$ 18,988                                     | \$ 21,745       | \$ 24,135       | \$ 21,246       | \$ 86,114 |  |
| Operating Income           | 3,722   | 6,279           | 7,729           | 4,941           | 22,671    |  |
| Net Income                 | 1,769   | 3,313           | 4,158           | 2,603           | 11,843    |  |
| Basic Earnings per Share   | \$ 0.13                                       | \$ 0.25         | \$ 0.31         | \$ 0.19         | \$ 0.88   |  |
| Diluted Earnings per Share | \$ 0.13                                       | \$ 0.24         | \$ 0.31         | \$ 0.19         | \$ 0.87   |  |

The information above, in the opinion of the Company, includes all adjustments consisting only of normal recurring accruals necessary for a fair presentation of such amounts. The business of the Company is subject to seasonal fluctuation with the peak period usually occurring during the summer months.

**Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure.**

None.

**Item 9A. Controls and Procedures**

(1) 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.

As required by Rule 13a-15 under 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 for the quarter ended December 31, 2008. Based upon that evaluation the Company's Chief Executive Officer and the Company's Chief Financial Officer concluded:

(a) Disclosure controls and procedures were effective as of the end of the period covered by this report.

(b) No changes in internal control over financial reporting occurred during our most recent fiscal quarter that has materially affected, or are reasonably likely to materially affect, internal control over financial reporting.

Accordingly, management believes the consolidated financial statements included in this report fairly present in all material respects our financial condition, results of operations and cash flows for the periods presented.

## **(2) Management's Report on Internal Control Over Financial Reporting**

The management of Middlesex Water Company (Middlesex or the Company) is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Exchange Act Rule 13A-15(f) and 15d-15(f). Middlesex's internal control system was designed to provide reasonable assurance to the Company's management and Board of Directors of adequate preparation and fair presentation of the published financial statements.

All internal control systems, no matter how well designed, have inherent limitations. Therefore, even those systems determined to be effective can provide only reasonable assurance with respect to the adequacy of financial statement preparation and presentation. Middlesex's management assessed the effectiveness of the Company's internal control over financial reporting as of December 31, 2008. In making this assessment, management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in *Internal Control-Integrated Framework*. Based on our assessment, we believe that as of December 31, 2008, the Company's internal control over financial reporting is operating as designed and is effective based on those criteria.

Middlesex's independent registered public accounting firm has audited the effectiveness of our internal control over financial reporting as of December 31, 2008 as stated in their report which is included herein.

/s/ Dennis W. Doll

Dennis W. Doll  
President and Chief  
Executive Officer

/s/ A. Bruce O'Connor

A. Bruce O'Connor  
Vice President and Chief  
Financial Officer

Iselin, New Jersey  
March 13, 2009

### **(3) Report of Independent Registered Public Accounting Firm**

#### **Report of Independent Registered Public Accounting Firm**

To the Board of Directors and

Stockholders of Middlesex Water Company

We have audited Middlesex Water Company's (the Company) internal control over financial reporting as of December 31, 2008, based on criteria established in *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting included in the accompanying Management's Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audit also included performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed 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. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2008, based on criteria established in *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets and consolidated statements of capital stock and long-term debt of the Company as of December 31, 2008 and 2007 and the related consolidated statements of income, stockholders' equity and comprehensive income, and cash flows for each of the years in the three-year period ended December 31, 2008. Our report dated March 13, 2009 expressed an unqualified opinion on these consolidated financial statements.

/s/ Beard Miller Company LLP  
Beard Miller Company LLP  
Reading, Pennsylvania  
March 13, 2009

**Item 9B. Other Information.**

None.

### PART III

**Item 10. Directors, Executive Officers and Corporate Governance.**

Information with respect to Directors of Middlesex Water Company is included in Middlesex Water Company's Proxy Statement for the 2009 Annual Meeting of Stockholders and is incorporated herein by reference.

Information regarding the Executive Officers of Middlesex Water Company is included under Item 1. in Part I of this Annual Report.

**Item 11. Executive Compensation.**

This Information for Middlesex Water Company is included in Middlesex Water Company's Proxy Statement for the 2009 Annual Meeting of Stockholders and is incorporated herein by reference.

**Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters.**

This information for Middlesex Water Company is included in Middlesex Water Company's Proxy Statement for the 2009 Annual Meeting of Stockholders and is incorporated herein by reference.

**Item 13. Certain Relationships and Related Transactions, and Director Independence.**

This information for Middlesex Water Company is included in Middlesex Water Company's Proxy Statement for the 2009 Annual Meeting of Stockholders and is incorporated herein by reference.

**Item 14. Principal Accounting Fees and Services.**

This information for Middlesex Water Company is included in Middlesex Water Company's Proxy Statement for the 2009 Annual Meeting of Stockholders and is incorporated herein by reference.

### PART IV

**Item 15. Exhibits and Financial Statement Schedules.**

1. The following Financial Statements and Supplementary Data are included in Part II- Item 8. of this annual report:

Consolidated Balance Sheets at December 31, 2008 and 2007.

Consolidated Statements of Income for each of the three years in the period ended December 31, 2008, 2007 and 2006.

Consolidated Statements of Cash Flows for each of the three years in the period ended December 31, 2008, 2007 and 2006.

Consolidated Statements of Capital Stock and Long-term Debt at December 31, 2008 and 2007.

Consolidated Statements of Common Stockholders Equity and Comprehensive Income for each of the three years in the period ended December 31, 2008, 2007 and 2006.

Notes to Consolidated Financial Statements.

2. Financial Statement Schedules

All Schedules are omitted because of the absence of the conditions under which they are required or because the required information is shown in the financial statements or notes thereto.

3. Exhibits

See Exhibit listing immediately following the signature page.



## SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities and Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

### MIDDLESEX WATER COMPANY

By: /s/ Dennis W. Doll  
Dennis W. Doll  
President, Chief Executive Officer and Director  
Date: March 13, 2009

Pursuant to the requirements of the Securities and Exchange Act of 1934, this report has been signed below by the following persons, on behalf of the registrant and in the capacities on March 13, 2009.

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

By: /s/ Dennis W. Doll  
Dennis W. Doll  
President, Chief Executive Officer and Director  
(Principal Executive Officer)

By: /s/ J. Richard Tompkins  
J. Richard Tompkins  
Chairman of the Board and Director

By: /s/ Annette Catino  
Annette Catino  
Director

By: /s/ John C. Cutting  
John C. Cutting  
Director

By: /s/ John R. Middleton  
John R. Middleton  
Director

By: /s/ John P. Mulkerin  
John P. Mulkerin  
Director

By: /s/ Walter G. Reinhard  
Walter G. Reinhard  
Director

By: /s/ Jeffries Shein  
Jeffries Shein  
Director

## EXHIBIT INDEX

Exhibits designated with an asterisk (\*) are filed herewith. The exhibits not so designated have heretofore been filed with the Commission and are incorporated herein by reference to the documents indicated in the previous filing columns following the description of such exhibits. Exhibits designated with a dagger (†) are management contracts or compensatory plans.

| Exhibit No. | Document Description  | Previous<br>Registration<br>No. | Filing's<br>Exhibit<br>No. |
|-------------|---|---------------------------------|----------------------------|
| 3.1         | Certificate of Incorporation of the Company, as amended, filed as Exhibit 3.1 of 1998 Form 10-K.  |                                 |                            |
| 3.2         | Bylaws of the Company, as amended, filed as Exhibit 3.2 of 2005 Form 10-K.  |                                 |                            |
| 3.3         | Certificate of Correction of Middlesex Water Company filed with the State of New Jersey on April 30, 1999, filed as Exhibit 3.3 of 2003 Form 10-K/A-2.  |                                 |                            |
| 3.4         | Certificate of Amendment to the Restated Certificate of Incorporation Middlesex Water Company, filed with the State of New Jersey on February 17, 2000, filed as Exhibit 3.4 of 2003 Form 10-K/A-2. |                                 |                            |
| 3.5         | Certificate of Amendment to the Restated Certificate of Incorporation Middlesex Water Company, filed with the State of New Jersey on June 5, 2002, filed as Exhibit 3.5 of 2003 Form 10-K/A-2.      |                                 |                            |
| 4.1         | Form of Common Stock Certificate.   | 2-55058                         | 2(a)                       |
| 4.2         | Registration Statement, Form S-3, under Securities Act of 1933 filed February 3, 1987, relating to the Dividend Reinvestment and Common Stock Purchase Plan.  | 33-11717                        |                            |
| 4.3         | Revised Prospectus relating to the Dividend Reinvestment and Common Stock Purchase Plan, Submitted to the Securities and Exchange Commission, January 20, 2000.                                     | 33-11717                        |                            |
| 4.4         | Post Effective Amendments No. 7, Form S-3, under Securities Act of 1933 filed February 1, 2002, relating to the Dividend Reinvestment and Common Stock Purchase Plan.                               | 33-11717                        |                            |
| 10.1        | Copy of Purchased Water Agreement between the Company and Elizabethtown Water Company, filed as Exhibit 10 of 2006 First Quarter Form 10-Q.   |                                 |                            |
| 10.2        | Copy of Mortgage, dated April 1, 1927, between the Company and Union County Trust Company, as Trustee, as supplemented by Supplemental Indentures, dated as of October 1, 1939 and April 1, 1949.   | 2-15795                         | 4(a)-4(f)                  |
| 10.3        | Copy of Supplemental Indenture, dated as of July 1, 1964 and June 15, 1991, between the Company and Union County Trust Company, as Trustee.   | 33-54922                        | 10.4-10.9                  |
| 10.4        | Copy of Supply Agreement, dated as of November 17, 1986, between the Company and the Old Bridge Municipal Utilities Authority.  | 33-31476                        | 10.12                      |
| 10.5        | Copy of Supply Agreement, dated as of July 14, 1987, between the Company and the Marlboro Township Municipal Utilities Authority, as amended.   | 33-31476                        | 10.13                      |

## EXHIBIT INDEX

| Exhibit No.  | Document Description   | Previous<br>Registration<br>No. | Filing's<br>Exhibit<br>No. |
|--------------|--|---------------------------------|----------------------------|
| 10.6         | Copy of Supply Agreement, dated as of February 11, 1988, with modifications dated February 25, 1992, and April 20, 1994, between the Company and the Borough of Sayreville filed as Exhibit No. 10.11 of 1994 First Quarter Form 10-Q. |                                 |                            |
| 10.7         | Copy of Water Purchase Contract, dated as of September 25, 2003, between the Company and the New Jersey Water Supply Authority, filed as Exhibit No. 10.7 of 2003 Form 10-K.   |                                 |                            |
| 10.8         | Copy of Treating and Pumping Agreement, dated April 9, 1984, between the Company and the Township of East Brunswick.   | 33-31476                        | 10.17                      |
| 10.9         | Copy of Supply Agreement, dated June 4, 1990, between the Company and Edison Township.   | 33-54922                        | 10.24                      |
| 10.10        | Copy of amended Supply Agreement, between the Company and the Borough of Highland Park, filed as Exhibit No. 10.1 of 2006 First Quarter Form 10-Q.   |                                 |                            |
| (t)10.11     | Copy of Supplemental Executive Retirement Plan, filed as Exhibit 10.13 of 1999 Third Quarter Form 10-Q.  |                                 |                            |
| (t)10.12(a)  | Copy of 2008 Restricted Stock Plan, filed as Appendix A to the Company's Definitive Proxy Statement, dated and filed April 11, 2008.   |                                 |                            |
| (t)10.12(b)  | Copy of 2008 Outside Director Stock Compensation Stock Plan, filed as Appendix B to the Company's Definitive Proxy Statement, dated and filed April 11, 2008.  |                                 |                            |
| *(t)10.13(a) | Change in Control Termination Agreement between Middlesex Water Company and Dennis W. Doll.  |                                 |                            |
| *(t)10.13(b) | Change in Control Termination Agreement between Middlesex Water Company and A. Bruce O'Connor.   |                                 |                            |
| *(t)10.13(c) | Change in Control Termination Agreement between Middlesex Water Company and Ronald F. Williams.  |                                 |                            |
| *(t)10.13(d) | Change in Control Termination Agreement between Middlesex Water Company and Richard M. Risoldi.  |                                 |                            |
| *(t)10.13(e) | Change in Control Termination Agreement between Middlesex Water Company and Kenneth J. Quinn.  |                                 |                            |
| *(t)10.13(f) | Change in Control Termination Agreement between Middlesex Water Company and James P. Garrett.  |                                 |                            |
| *(t)10.13(g) | Change in Control Termination Agreement between Tidewater Utilities, Inc. and Gerard L. Esposito.  |                                 |                            |
| *(t)10.13(h) | Change in Control Termination Agreement between Middlesex Water Company and Bernadette M. Sohler.  |                                 |                            |

## EXHIBIT INDEX

| Exhibit No. | Document Description  | Previous<br>Registration<br>No. | Filing's<br>Exhibit<br>No. |
|-------------|---|---------------------------------|----------------------------|
| 10.14       | Copy of Transmission Agreement, dated October 16, 1992, between the Company and the Township of East Brunswick.   | 33-54922                        | 10.23                      |
| 10.15       | Copy of Supplemental Indentures, dated September 1, 1993, (Series S & T) and January 1, 1994, (Series V), between the Company and United Counties Trust Company, as Trustee, filed as Exhibit No. 10.22 of 1993 Form 10-K.  |                                 |                            |
| 10.16       | Copy of Trust Indentures, dated September 1, 1993, (Series S & T) and January 1, 1994, (Series V), between the New Jersey Economic Development Authority and First Fidelity Bank (Series S & T), as Trustee, and Midlantic National Bank (Series V), as Trustee, filed as Exhibit No. 10.23 of 1993 Form 10-K.  |                                 |                            |
| 10.17       | Copy of Supplemental Indenture dated October 15, 1998 between Middlesex Water Company and First Union National Bank, as Trustee. Copy of Loan Agreement dated November 1, 1998 between the New Jersey and Middlesex Water Company (Series X), filed as Exhibit No. 10.22 of the 1998 Third Quarter Form 10-Q.   |                                 |                            |
| 10.18       | Copy of Supplemental Indenture dated October 15, 1998 between Middlesex Water Company and First Union National Bank, as Trustee. Copy of Loan Agreement dated November 1, 1998 between the State of New Jersey Environmental Infrastructure Trust and Middlesex Water Company (Series Y), filed as Exhibit No. 10.23 of the 1998 Third Quarter Form 10-Q. |                                 |                            |
| 10.19       | Copy of Operation, Maintenance and Management Services Agreement dated January 1, 1999 between the Company City of Perth Amboy, Middlesex County Improvement Authority and Utility Service Affiliates, Inc.   | 333-66727                       | 10.24                      |
| 10.20       | Copy of Supplemental Indenture dated October 15, 1999 between Middlesex Water Company and First Union National Bank, as Trustee and copy of Loan Agreement dated November 1, 1999 between the State of New Jersey and Middlesex Water Company (Series Z), filed as Exhibit No. 10.25 of the 1999 Form 10-K.   |                                 |                            |
| 10.21       | Copy of Supplemental Indenture dated October 15, 1999 between Middlesex Water Company and First Union National Bank, as Trustee and copy of Loan Agreement dated November 1, 1999 between the New Jersey Environmental Infrastructure Trust and Middlesex Water Company (Series AA), filed as Exhibit No. 10.26 of the 1999 Form 10-K.                    |                                 |                            |

## EXHIBIT INDEX

| Exhibit No. | Document Description   | Previous<br>Registration<br>No. | Filing's<br>Exhibit<br>No. |
|-------------|--|---------------------------------|----------------------------|
| 10.22       | Copy of Supplemental Indenture dated October 15, 2001 between Middlesex Water Company and First Union National Bank, as Trustee and copy of Loan Agreement dated November 1, 2001 between the State of New Jersey and Middlesex Water Company (Series BB). Filed as Exhibit No. 10.22 of the 2001 Form 10-K.   |                                 |                            |
| 10.23       | Copy of Supplemental Indenture dated October 15, 2001 between Middlesex Water Company and First Union National Bank, as Trustee and copy of Loan Agreement dated November 1, 2001 between the New Jersey Environmental Infrastructure Trust and Middlesex Water Company (Series CC). Filed as Exhibit No. 10.22 of the 2001 Form 10-K.                     |                                 |                            |
| 10.24       | Copy of Supplemental Indenture dated January 15, 2002 between Middlesex Water Company and First Union National Bank, as Trustee and copy of Loan Agreement dated January 1, 2002 between the New Jersey Economic Development Authority and Middlesex Water Company (Series DD), filed as Exhibit No. 10.24 of the 2001 Form 10-K.                          |                                 |                            |
| 10.25       | Copy of Supplemental Indenture dated March 1, 1998 between Middlesex Water Company and First Union National Bank, as Trustee. Copy of Trust Indenture dated March 1, 1998 between the New Jersey Economic Development Authority and PNC Bank, National Association, as Trustee (Series W), filed as Exhibit No. 10.21 of the 1998 Third Quarter Form 10-Q. |                                 |                            |
| 10.26       | Copy of Supplemental Indenture dated October 15, 2004 between Middlesex Water Company and Wachovia Bank, as Trustee and copy of Loan Agreement dated November 1, 2004 between the State of New Jersey and Middlesex Water Company (Series EE), filed as Exhibit No. 10.26 of the 2004 Form 10-K.   |                                 |                            |
| 10.27       | Copy of Supplemental Indenture dated October 15, 2004 between Middlesex Water Company and Wachovia Bank, as Trustee and copy of Loan Agreement dated November 1, 2004 between the New Jersey Environmental Infrastructure Trust and Middlesex Water Company (Series FF), filed as Exhibit No. 10.27 of the 2004 Form 10-K.                                 |                                 |                            |
| 10.29       | Copy of Supply Agreement, between the Company and the City of Rahway, filed as Exhibit No. 10.2 of 2006 First Quarter Form 10-Q.   |                                 |                            |

## EXHIBIT INDEX

| Exhibit No. | Document Description  | Previous<br>Registration<br>No. | Filing's<br>Exhibit<br>No. |
|-------------|---|---------------------------------|----------------------------|
| 10.30       | Copy of Supplemental Indenture dated October 15, 2006 between Middlesex Water Company and U.S. Bank National Association, as Trustee and copy of Loan Agreement dated November 1, 2006 between the State of New Jersey and Middlesex Water Company (Series GG), filed as Exhibit No. 10.30 of the 2006 Form 10-K.                           |                                 |                            |
| 10.31       | Copy of Supplemental Indenture dated October 15, 2006 between Middlesex Water Company and U.S. Bank National Association, as Trustee and copy of Loan Agreement dated November 1, 2006 between the New Jersey Environmental Infrastructure Trust and Middlesex Water Company (Series HH), filed as Exhibit No. 10.31 of the 2006 Form 10-K. |                                 |                            |
| 10.32       | Copy of Loan Agreement By and Between New Jersey Environmental Infrastructure Trust and Middlesex Water Company dated as of November 1, 2007 (Series II), filed as Exhibit No. 10.32 of the 2007 Form 10-K.   |                                 |                            |
| 10.33       | Copy of Loan Agreement By and Between The State of New Jersey, Acting By and Through The New Jersey Department of Environmental Protection, and Middlesex Water Company dated as of November 1, 2007 (Series JJ), filed as Exhibit 10.33 of the 2007 Form 10-K.   |                                 |                            |
| *10.34      | Copy of Loan Agreement By and Between New Jersey Environmental Infrastructure Trust and Middlesex Water Company dated as of November 1, 2008 (Series KK).   |                                 |                            |
| *10.35      | Copy of Loan Agreement By and Between The State of New Jersey, Acting By and Through The New Jersey Department of Environmental Protection and Middlesex Water Company dated as of November 1, 2008 (Series LL).  |                                 |                            |
| *21         | Middlesex Water Company Subsidiaries.   |                                 |                            |
| *23.1       | Consent of Independent Registered Public Accounting Firm, Beard Miller Company LLP.   |                                 |                            |
| *31         | Section 302 Certification by Dennis W. Doll pursuant to Rules 13a-14 and 15d-14 of the Securities Exchange Act of 1934.   |                                 |                            |
| *31.1       | Section 302 Certification by A. Bruce O'Connor pursuant to Rules 13a-14 and 15d-14 of the Securities Exchange Act of 1934.  |                                 |                            |
| *32         | Section 906 Certification by Dennis W. Doll pursuant to 18 U.S.C. §1350.  |                                 |                            |
| *32.1       | Section 906 Certification by A. Bruce O'Connor pursuant to 18 U.S.C. §1350.   |                                 |                            |

## CHANGE IN CONTROL TERMINATION AGREEMENT

This Change in Control Termination Agreement (the "Agreement") is entered into as of January 1, 2009, between Middlesex Water Company, a New Jersey corporation, with its principal place of business located at 1500 Ronson Road, P.O. Box 1500, Iselin, New Jersey 08830-0452, (the "Company"), and Dennis W. Doll, residing at 15 Edward Avenue, Monroe, New Jersey 08831(referred to as "You" in this Agreement).

**Recitals**

A. The Company considers it essential to the best interests of its stockholders to foster the continuous employment of key management personnel. In this connection, the Board of Directors of the Company (the "Board") recognizes that, as is the case with many publicly held Companies, the possibility of a Change in Control may exist. This possibility, and the uncertainty and questions that it may raise among management, may result in the departure or distraction of management personnel to the detriment of the Company and its stockholders.

B. The Board has determined that appropriate steps should be taken to reinforce and encourage the continued attention and dedication of members of the Company's management, including You, to the assigned duties without distraction in the face of potentially disturbing circumstances arising from the possibility of a Change in Control of the Company.

C. To induce You to remain in the employ of the Company, and in consideration of your agreement set forth below, the Company agrees that You shall receive the severance benefits set forth in this Agreement in the event your employment with the Company is terminated by the Company, or is terminated by You for "Good Reason" as defined herein in connection with a "Change in Control of the Company" (as defined in Section 2 below) under the circumstances described below. This Agreement is meant to supersede any other specific written agreements that may have been entered into between yourself and the Company concerning termination of employment.

Therefore, in consideration of your continued employment and the parties' agreement to be bound by the terms contained in this Agreement, the parties agree as follows:

1. **Term of Agreement.** This Agreement shall commence as of January 1, 2009 and shall continue in effect through December 31, 2009. However, commencing on December 31, 2009, and each December 31 afterwards,

the term of this Agreement shall automatically be extended for one (1) additional year unless, no later than the preceding November 1st, the Company shall have given notice that it does not wish to extend this Agreement. Notwithstanding the foregoing, if a Change in Control of the Company shall be proposed to occur or have occurred during the original or any extended term of this Agreement, this Agreement shall continue in effect until your termination of employment with the Company or its successor or when all amounts due under this Agreement following a termination have been paid, whichever is later.

2. **Change In Control.** No benefits shall be payable under this Agreement unless there shall have been a Change in Control of the Company, as set forth herein. For purposes of this Agreement, a "Change in Control" of the Company shall be deemed to occur if any party or group acquires beneficial ownership of 20 percent or more of the voting shares of the Company; or if shareholder approval is obtained for a transaction involving the acquisition of the Company through the purchase or exchange of the stock or assets of the Company by merger or otherwise; or if one-third or more of the Board elected in a 12-month period or less are so elected without the approval of a majority of the Board as constituted at the beginning of such period; or a liquidation or dissolution of Company.

3. **Termination Following Change In Control.** If any of the events described in Section 2 above constituting a Change in Control of the Company shall have occurred, then unless the termination is (A) because of your death, Disability or Retirement, (B) by the Company for Cause, or (C) by You other than for Good Reason, on the subsequent termination of your employment during the term of this Agreement, You shall be entitled to the severance benefits provided in Section 4.3 below if such termination occurs on or before the third (3<sup>rd</sup>) anniversary of the Change in Control date .

3.1 **Disability; Retirement.** If, as a result of your incapacity due to physical or mental illness, You shall have been absent from the full-time performance of your duties with the Company for 6 consecutive months, and within 30 days after written notice of termination is given You shall not have returned to the full-time performance of your duties, your employment may be terminated for "Disability." Termination of your employment by the Company or You due to your "Retirement" shall mean termination in accordance with the Company's retirement policy, including early retirement, generally applicable to its salaried employees or in accordance with any retirement arrangement established with your consent with respect to You.

3.2 **Cause.** Termination by the Company of your employment for "Cause" shall mean termination as a result of:

3.2.1 The willful and continued failure by You to substantially perform your duties with the Company as such employment was



performed by You prior to the Change in Control (other than any such failure resulting from your Disability or any such actual or anticipated failure after the issuance by You of a Notice of Termination for Good Reason as defined herein) after a written demand for substantial performance is delivered to You by the Board, which demand specifically identifies the manner in which the Board believes that You have not substantially performed your duties; or

3.2.2 The willful act by You in conduct that is demonstrably and materially injurious to the Company, and which the Board deems to cause or will cause substantial economic damage to the Company or injury to the business reputation of the Company, monetarily or otherwise. For purposes of this Section, no act, or failure to act, on your part shall be deemed "willful" unless done, or omitted to be done, by You not in good faith and without a reasonable belief that your action or omission was in the best interest of the Company. Notwithstanding the foregoing, You shall not be deemed to have been terminated for Cause unless and until there shall have been delivered to You a copy of a resolution duly adopted by the affirmative vote of not less than three-quarters of the entire membership of the Board at a meeting of the Board called and held for such purpose (after reasonable notice to You and an opportunity for You, together with your counsel, to be heard before the Board), finding that in the good faith opinion of the Board You were guilty of conduct set forth above in clauses 3.2.1 or 3.2.2 of this Section and specifying the particulars in detail.

3.3 **Good Reason.** You shall be entitled to receive severance benefits as provided in this Agreement if You terminate your employment with the Company for "Good Reason." For purposes of this Agreement, "Good Reason" shall mean, without your consent, the occurrence in connection with a Change in Control of the Company of any of the following circumstances unless, in the case of Sections 3.3.1, 3.3.5, 3.3.6, 3.3.7, or 3.3.8, the circumstances are fully corrected prior to the Date of Termination specified in the Notice of Termination, as defined in Sections 3.5 and 3.4, respectively, given in respect of them. If You terminate your employment with the Company for Good Reason, as provided below, your employment with the Company shall be considered to have been involuntarily terminated by the Company:

3.3.1 The assignment to You of any significant employment duties which are inconsistent with your status and position (i) prior to the Change in Control where such change is a direct result of any pending Change in Control; or (ii) as such status exists immediately prior to the Change in Control of the Company, or (iii) which are a

substantial adverse alteration in the nature or status of your responsibilities from those in effect immediately prior to the Change in Control of the Company whichever is applicable;

3.3.2 A reduction by the Company in your annual base salary as in effect on the initial date of this Agreement, or as same may be increased from time to time irrespective of future Company policies including any across-the-board salary reductions similarly affecting all key employees of the Company;

3.3.3 Your relocation, without your consent, to an employment location not within twenty-five (25) miles of your present office or job location, except for required travel on the Company's business to an extent substantially consistent with your present business travel obligations;

3.3.4 The failure by the Company, without your consent, to pay to You any part of your current compensation, or to pay to You any part of an installment of deferred compensation under any deferred compensation program of the Company, within fourteen (14) days of the date the compensation is due;

3.3.5 The failure by the Company to continue in effect any bonus to which You were entitled, or any compensation plan in which You participate (i) prior to the Change in Control where such change is a direct result of any pending Change in Control, or (ii) immediately prior to the Change in Control of the Company that is material to your total compensation, including but not limited to the Company's Restricted Stock Plan, 401(k) Plan, and Benefit Plans, or any substitute plans adopted prior to the Change in Control of the Company, unless an equitable arrangement (embodied in an ongoing substitute or alternative plan) has been made with respect to the plan, or the failure by the Company to continue your participation in it (or in such substitute or alternative plan) on a basis not materially less favorable, both in terms of the amount of benefits provided and the level of your participation relative to other participants, as existed at the time of the Change in Control;

3.3.6 The failure by the Company to continue to provide You with (i) benefits substantially similar to those enjoyed by You under any of the Company's life insurance, medical, health and accident, or disability plans in which You were participating at the time of the Change in Control of the Company was in effect for the employees of the Company generally at the time of the Change in Control, (ii) the failure to continue to provide You with a Company automobile

or allowance in lieu of it at the time of the Change in Control of the Company, (iii) the taking of any action by the Company that would directly or indirectly materially reduce any of such benefits or deprive You of any material fringe benefit enjoyed by You at the time of the Change in Control of the Company, or (iv) the failure by the Company to provide You with the number of paid vacation days to which You are entitled on the basis of years of service with the Company in accordance with the Company's normal vacation policy in effect at the time of the Change in Control of the Company;

3.3.7 The failure of the Company to obtain a satisfactory agreement from any successor to assume and agree to perform this Agreement, as contemplated in Section 5 of this Agreement; or

3.3.8 Any purported termination of your employment that is not effected pursuant to a Notice of Termination satisfying the requirements of Section 3.4 below (and, if applicable, the requirements of Section 3.2 above); for purposes of this Agreement, no such purported termination shall be effective.

3.4 **Notice of Termination.** Any purported termination of your employment by the Company or by You shall be communicated by written Notice of Termination to the other party to this Agreement in accordance with Section 6 of this Agreement. For purposes of this Agreement, a "Notice of Termination" shall mean a notice that shall indicate the specific termination provision in this Agreement relied on, and shall set forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of your employment under the provision so indicated. Your rights to terminate your employment pursuant to this Section shall not be affected by your incapacity due to Disability. Your continued employment shall not constitute consent to, or a waiver of rights with respect to, any circumstance constituting Good Reason under this Agreement. In the event You deliver Notice of Termination based on circumstances set forth in Sections 3.3.1, 3.3.5, 3.3.6, 3.3.7, or 3.3.8 above, which are fully corrected prior to the Date of Termination set forth in your Notice of Termination, the Notice of Termination shall be deemed withdrawn and of no further force or effect.

3.5 **Date of Termination, etc.** "Date of Termination" shall mean (A) if your employment is terminated for Disability, 30 days after Notice of Termination is given (provided that You shall not have returned to the full-time performance of your duties during such 30-day period), and (B) if your employment is terminated pursuant to Section 3.2 or 3.3 above or for any other reason (other than Disability), the date specified in the Notice of Termination (which, in the case of a termination pursuant to Section 3.2 above shall not be less than 30 days, and in the case of a termination pursuant to Section 3.3 above shall not be less than 15 nor more than 60 days, respectively, from the date the Notice

of Termination is given). However, if within 15 days after any Notice of Termination is given, or, if later, prior to the Date of Termination (as determined without regard to this provision), the party receiving the Notice of Termination notifies the other party that a dispute exists concerning the termination, then the Date of Termination shall be the date on which the dispute is finally determined, either by mutual written agreement of the parties, by a binding arbitration award, or by a final judgment, order, or decree of a court of competent jurisdiction (which is not appealable or with respect to which the time for appeal has expired and no appeal has been perfected). The Date of Termination shall be extended by a notice of dispute only if the notice is given in good faith and the party giving the notice pursues the resolution of the dispute with reasonable diligence. Notwithstanding the pendency of any such dispute, the Company will continue to pay You your full compensation in effect when the notice giving rise to the dispute was given (including, but not limited to, base salary) and continue You as a participant in all compensation, benefit, and insurance plans in which You were participating when the notice giving rise to the dispute was given, until the dispute is finally resolved in accordance with this Section. Amounts paid under this Section are in addition to all other amounts due under this Agreement and shall not be offset against or reduce any other amounts due under this Agreement.

4. **Compensation on Termination or During Disability.** Following a Change in Control of the Company, as defined by Section 2, on termination of your employment or during a period of Disability You shall be entitled to the following benefits:

4.1 During any period that You fail to perform your full-time duties with the Company as a result of incapacity due to Disability, You shall continue to receive your base salary at the rate in effect at the commencement of any such period, together with all amounts payable to You under any compensation plan of the Company during the period, until this Agreement is terminated pursuant to section 3.1 above. Thereafter, or in the event your employment shall be terminated by the Company or by You for Retirement, or by reason of your death, your benefits shall be determined under the Company's retirement, insurance, and other compensation programs then in effect in accordance with the terms of those programs.

4.2 If your employment shall be terminated by the Company for Cause or by You other than for Good Reason, Disability, death, or Retirement, the Company shall pay You your full base salary through the Date of Termination at the rate in effect at the time Notice of Termination is given, plus all other amounts and benefits to which You are entitled under any compensation plan of the Company at the time the payments are due. The Company shall have no obligations to You under this Agreement.

4.3 On or before the third anniversary of the Change in Control, if your employment by the Company shall be terminated (a) by the Company other than for Cause, Retirement or Disability, or (b) by You for Good Reason (as defined in Section 3.3 herein), then You shall be entitled to the benefits provided below:

4.3.1 The Company shall pay You your full salary through the Date of Termination at the rate in effect at the time Notice of Termination is given, plus all other amounts and benefits to which You are entitled under any compensation plan of the Company, at the time the payments are due, except as otherwise provided below.

4.3.2 In lieu of any further salary payments to You for periods subsequent to the Date of Termination, the Company shall pay to You, as severance pay the following: (i) a lump sum severance payment equal to three (3) times the average of your Compensation for the five (5) years prior to the occurrence of the circumstance giving rise to the Notice of Termination (or if employed less than 5 years, the average annualized compensation of the period worked to date), plus (ii) the amounts in the forms set forth in paragraphs 4.3.3, 4.3.4 and 4.3.5 (the "Severance Payments"). In addition to the Severance Payments, the Company shall pay to You an additional amount equal to the amount of the Excise Tax, if any, that is due or determined to be due under Section 4999 of the Internal Revenue Code of 1986, as amended, resulting from the Severance Payments or any other payments under this Agreement or any other agreement between You and the Company and an amount sufficient to pay the taxes on any such Excise Taxes (the "Gross-up").

4.3.3 The Company shall continue coverage for You and your dependents under any health or welfare benefit plan under which You and your dependents were participating prior to the Change in Control for a period ending on the earlier to occur of (i) the date You become covered by a new employer's health and welfare benefit plan, (ii) the date You become covered by Medicare, or (iii) the date which is thirty-six (36) months from the Date of Termination. The coverage for your dependents shall end earlier than (i), (ii) or (iii) if required by the health or welfare benefit plan due to age eligibility.

4.3.4 The Company shall pay to You any deferred compensation, including, but not limited to deferred bonuses, allocated or credited to You or your account as of the Date of Termination.

4.3.5 Outstanding stock options or Restricted Stock grants, if any, granted to You under the Company's Stock Plans which are not vested on Termination shall immediately vest.

4.3.6 Where You shall prevail in any action against the Company to recover benefits hereunder, the Company shall also pay to You all reasonable legal and accounting fees and expenses incurred by You as a result of the termination, including all such fees and expenses incurred by You as a result of the termination, (including all such fees and expenses, if any, incurred in contesting or disputing any termination or in seeking to obtain or enforce any right or benefit provided by this Agreement or in connection with any tax audit or proceeding to the extent attributable to the application of Code Section 4999 to any payment or benefit provided under this Agreement) or any other agreement with the Company.

4.3.7 The amount of Severance Payments and any Gross-up due to You under this or any other relevant agreement with the Company shall be determined by a third party agreed to by You and the Company. If You cannot agree on a third party, then both third parties shall determine the amounts due under this Agreement. If the third parties do not agree on the amount to be paid to You, then either party may submit the calculation of the amounts which are in dispute to Arbitration in accordance with this Agreement. The payments provided for in Paragraphs 4.3.2, 4.3.4 and 4.3.5 above, shall be made no later than the thirtieth (30<sup>th</sup>) day following the Date of Termination. However, if the amounts of the payments cannot be finally determined on or before that day, the Company shall pay to You on that day an estimate, as determined in good faith by the Company, of the minimum amount of such payments and shall pay the remainder of those payments (together with interest at the rate provided in Section 1274(b)(2)(B) of the Code) as soon as the amount can be determined but in no event later than the 30th day after the Date of Termination. In the event that the amount of the estimated payments exceeds the amount subsequently determined to have been due, the excess shall constitute a loan by the Company to You payable on the 30th day after demand by the Company (together with interest at the rate provided in Section 1274(b)(2)(B) of the Code).

4.4 For purposes of this Agreement, "Compensation" shall mean the gross earnings reported on Form W-2 during a calendar year (which may include but is not limited to the value of the personal use of an automobile, any third-party sick pay, and any fees paid to You for serving as a Director of the Company or its

subsidiaries); awards under the Company's Restricted Stock Plan or other equity awards; and Company contributions to your 401(k) account.

4.5 You shall not be required to mitigate the amount of any payment provided for in this Section 4 by seeking other employment or otherwise, nor shall the amount of any payment or benefit provided for in this Section 4 be reduced by any compensation earned by You as the result of employment by another employer, by retirement benefits, by offset against any amount claimed to be owed by You to the Company, or otherwise except as specifically provided in this Section 4.

4.6 In addition to all other amounts payable to You under this Section 4, You shall be entitled to receive all qualified benefits payable to You under the Company's 401(k) Plan, Defined Benefit Plan and any other plan or agreement relating to retirement benefits in accordance with the terms of those plans.

5. **Successors; Binding Agreement.**

5.1 The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation, or otherwise) to all or substantially all of the business and/or assets of the Company to expressly assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place. Failure of the Company to obtain the assumption and agreement prior to the effectiveness of any succession shall be a breach of this Agreement and shall entitle You to compensation from the Company in the same amount and on the same terms as You would have been entitled to under this Agreement if You had terminated your employment for Good Reason following a Change in Control of the Company, except that for purposes of implementing the foregoing, the date on which any such succession becomes effective shall be deemed the Date of Termination.

5.2 This Agreement shall inure to the benefit of and be enforceable by your personal or legal representatives, executors, administrators, heirs, distributees, and legatees. If You should die while any amount would still be payable to You if You had continued to live, all such amounts, unless otherwise provided in this Agreement, shall be paid in accordance with the terms of this Agreement to your legatee or other designee or, if there is no such designee, to your estate.

6. **Notice.** For the purpose of this Agreement, all notices and other communications provided for in the Agreement shall be in writing and shall be deemed to have been duly given when delivered or mailed by United States registered or certified mail, return receipt requested, postage prepaid, addressed to

the respective addresses set forth on the first page of this Agreement, provided that all notices to the Company shall be directed to the attention of the Board with a copy to the Secretary of the Company, or to such other address as either party may have furnished to the other in writing in accordance this Agreement, except that notice of a change of address shall be effective only on receipt.

7. **Miscellaneous**

7.1 No provision of this Agreement may be modified, waived, or discharged unless the waiver, modification, or discharge is agreed to in writing and signed by You and such officer as may be specifically designated by the Board.

7.2 No waiver by either party to this Agreement at any time of any breach by the other party of, or compliance with, any condition or provision of this Agreement to be performed by such other party shall be deemed a waiver of similar or dissimilar provisions or conditions at the same or at any prior or subsequent time.

7.3 No agreements or representations, oral or otherwise, express or implied, with respect to the subject matter of this Agreement have been made by either party that are not expressly set forth in this Agreement.

7.4 Nothing in this Agreement is intended to reduce any benefits payable to You under any other agreement You may have with the Company or in any Company plan in which You may participate.

7.5 The validity, interpretation, construction, and performance of this Agreement shall be governed by the law of New Jersey without reference to its conflict of laws principles.

7.6 All references to sections of the Exchange Act or the Code shall be deemed also to refer to any successor provisions to such sections. Any payments provided for shall be paid net of any applicable withholding or deduction required under federal, state or local law.

7.7 The obligations of the Company under Section 4 shall survive the expiration of the term of this Agreement.

8. **Validity**. The validity or enforceability of any provision of this Agreement shall not affect the validity or unenforceability of any other provision of this Agreement, which shall remain in full force and effect.



9. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed to be an original but all of which together will constitute one and the same instrument.

10. **Arbitration.** Any dispute or controversy arising under or in connection with this Agreement shall be settled exclusively by arbitration in New Jersey in accordance with the rules of the American Arbitration Association then in effect. Judgment may be entered on the arbitrator's award in any court having jurisdiction. However, You shall be entitled to seek specific performance of your right to be paid until the Date of Termination during the pendency of any dispute or controversy arising under or in connection this Agreement.

11. **Entire Agreement.** This Agreement sets forth the entire understanding of the parties with respect to its subject matter and supersedes all prior written or oral agreements or understandings with respect to the subject matter.

In witness whereof, the parties have executed this Agreement as of the day and year first above written.

**MIDDLESEX WATER COMPANY**

By: /s/ J. Richard Tompkins  
J. Richard Tompkins  
Chairman of the Board

**ATTEST:**

/s/ Kenneth J. Quinn  
Kenneth J. Quinn  
Secretary

/s/ Dennis W. Doll  
Dennis W. Doll

## CHANGE IN CONTROL TERMINATION AGREEMENT

This Change in Control Termination Agreement (the "Agreement") is entered into as of January 1, 2009, between Middlesex Water Company, a New Jersey corporation, with its principal place of business located at 1500 Ronson Road, P.O. Box 1500, Iselin, New Jersey 08830-0452, (the "Company"), and A. Bruce O'Connor, residing at 32 Buckingham Way, Freehold, New Jersey 07728, (referred to as "You" in this Agreement).

**Recitals**

A. The Company considers it essential to the best interests of its stockholders to foster the continuous employment of key management personnel. In this connection, the Board of Directors of the Company (the "Board") recognizes that, as is the case with many publicly held Companies, the possibility of a Change in Control may exist. This possibility, and the uncertainty and questions that it may raise among management, may result in the departure or distraction of management personnel to the detriment of the Company and its stockholders.

B. The Board has determined that appropriate steps should be taken to reinforce and encourage the continued attention and dedication of members of the Company's management, including You, to the assigned duties without distraction in the face of potentially disturbing circumstances arising from the possibility of a Change in Control of the Company.

C. To induce You to remain in the employ of the Company, and in consideration of your agreement set forth below, the Company agrees that You shall receive the severance benefits set forth in this Agreement in the event your employment with the Company is terminated by the Company, or is terminated by You for "Good Reason" as defined herein in connection with a "Change in Control of the Company" (as defined in Section 2 below) under the circumstances described below. This Agreement is meant to supersede any other specific written agreements that may have been entered into between yourself and the Company concerning termination of employment.

Therefore, in consideration of your continued employment and the parties' agreement to be bound by the terms contained in this Agreement, the parties agree as follows:

1. **Term of Agreement.** This Agreement shall commence as of January 1, 2009 and shall continue in effect through December 31, 2009. However, commencing on December 31, 2009, and each December 31 afterwards,

the term of this Agreement shall automatically be extended for one (1) additional year unless, no later than the preceding November 1st, the Company shall have given notice that it does not wish to extend this Agreement. Notwithstanding the foregoing, if a Change in Control of the Company shall be proposed to occur or have occurred during the original or any extended term of this Agreement, this Agreement shall continue in effect until your termination of employment with the Company or its successor or when all amounts due under this Agreement following a termination have been paid, whichever is later.

2. **Change In Control.** No benefits shall be payable under this Agreement unless there shall have been a Change in Control of the Company, as set forth herein. For purposes of this Agreement, a "Change in Control" of the Company shall be deemed to occur if any party or group acquires beneficial ownership of 20 percent or more of the voting shares of the Company; or if shareholder approval is obtained for a transaction involving the acquisition of the Company through the purchase or exchange of the stock or assets of the Company by merger or otherwise; or if one-third or more of the Board elected in a 12-month period or less are so elected without the approval of a majority of the Board as constituted at the beginning of such period; or a liquidation or dissolution of Company.

3. **Termination Following Change In Control.** If any of the events described in Section 2 above constituting a Change in Control of the Company shall have occurred, then unless the termination is (A) because of your death, Disability or Retirement, (B) by the Company for Cause, or (C) by You other than for Good Reason, on the subsequent termination of your employment during the term of this Agreement, You shall be entitled to the severance benefits provided in Section 4.3 below if such termination occurs on or before the third (3<sup>rd</sup>) anniversary of the Change in Control date .

3.1 **Disability; Retirement.** If, as a result of your incapacity due to physical or mental illness, You shall have been absent from the full-time performance of your duties with the Company for 6 consecutive months, and within 30 days after written notice of termination is given You shall not have returned to the full-time performance of your duties, your employment may be terminated for "Disability." Termination of your employment by the Company or You due to your "Retirement" shall mean termination in accordance with the Company's retirement policy, including early retirement, generally applicable to its salaried employees or in accordance with any retirement arrangement established with your consent with respect to You.

3.2 **Cause.** Termination by the Company of your employment for "Cause" shall mean termination as a result of:

3.2.1 The willful and continued failure by You to substantially perform your duties with the Company as such employment was

performed by You prior to the Change in Control (other than any such failure resulting from your Disability or any such actual or anticipated failure after the issuance by You of a Notice of Termination for Good Reason as defined herein) after a written demand for substantial performance is delivered to You by the Board, which demand specifically identifies the manner in which the Board believes that You have not substantially performed your duties; or

3.2.2 The willful act by You in conduct that is demonstrably and materially injurious to the Company, and which the Board deems to cause or will cause substantial economic damage to the Company or injury to the business reputation of the Company, monetarily or otherwise. For purposes of this Section, no act, or failure to act, on your part shall be deemed "willful" unless done, or omitted to be done, by You not in good faith and without a reasonable belief that your action or omission was in the best interest of the Company. Notwithstanding the foregoing, You shall not be deemed to have been terminated for Cause unless and until there shall have been delivered to You a copy of a resolution duly adopted by the affirmative vote of not less than three-quarters of the entire membership of the Board at a meeting of the Board called and held for such purpose (after reasonable notice to You and an opportunity for You, together with your counsel, to be heard before the Board), finding that in the good faith opinion of the Board You were guilty of conduct set forth above in clauses 3.2.1 or 3.2.2 of this Section and specifying the particulars in detail.

3.3 **Good Reason.** You shall be entitled to receive severance benefits as provided in this Agreement if You terminate your employment with the Company for "Good Reason." For purposes of this Agreement, "Good Reason" shall mean, without your consent, the occurrence in connection with a Change in Control of the Company of any of the following circumstances unless, in the case of Sections 3.3.1, 3.3.5, 3.3.6, 3.3.7, or 3.3.8, the circumstances are fully corrected prior to the Date of Termination specified in the Notice of Termination, as defined in Sections 3.5 and 3.4, respectively, given in respect of them. If You terminate your employment with the Company for Good Reason, as provided below, your employment with the Company shall be considered to have been involuntarily terminated by the Company:

3.3.1 The assignment to You of any significant employment duties which are inconsistent with your status and position (i) prior to the Change in Control where such change is a direct result of any pending Change in Control; or (ii) as such status exists immediately prior to the Change in Control of the Company, or (iii) which are a

substantial adverse alteration in the nature or status of your responsibilities from those in effect immediately prior to the Change in Control of the Company whichever is applicable;

3.3.2 A reduction by the Company in your annual base salary as in effect on the initial date of this Agreement, or as same may be increased from time to time irrespective of future Company policies including any across-the-board salary reductions similarly affecting all key employees of the Company;

3.3.3 Your relocation, without your consent, to an employment location not within twenty-five (25) miles of your present office or job location, except for required travel on the Company's business to an extent substantially consistent with your present business travel obligations;

3.3.4 The failure by the Company, without your consent, to pay to You any part of your current compensation, or to pay to You any part of an installment of deferred compensation under any deferred compensation program of the Company, within fourteen (14) days of the date the compensation is due;

3.3.5 The failure by the Company to continue in effect any bonus to which You were entitled, or any compensation plan in which You participate (i) prior to the Change in Control where such change is a direct result of any pending Change in Control, or (ii) immediately prior to the Change in Control of the Company that is material to your total compensation, including but not limited to the Company's Restricted Stock Plan, 401(k) Plan, and Benefit Plans, or any substitute plans adopted prior to the Change in Control of the Company, unless an equitable arrangement (embodied in an ongoing substitute or alternative plan) has been made with respect to the plan, or the failure by the Company to continue your participation in it (or in such substitute or alternative plan) on a basis not materially less favorable, both in terms of the amount of benefits provided and the level of your participation relative to other participants, as existed at the time of the Change in Control;

3.3.6 The failure by the Company to continue to provide You with (i) benefits substantially similar to those enjoyed by You under any of the Company's life insurance, medical, health and accident, or disability plans in which You were participating at the time of the Change in Control of the Company was in effect for the employees of the Company generally at the time of the Change in Control, (ii) the failure to continue to provide You with a Company automobile

or allowance in lieu of it at the time of the Change in Control of the Company, (iii) the taking of any action by the Company that would directly or indirectly materially reduce any of such benefits or deprive You of any material fringe benefit enjoyed by You at the time of the Change in Control of the Company, or (iv) the failure by the Company to provide You with the number of paid vacation days to which You are entitled on the basis of years of service with the Company in accordance with the Company's normal vacation policy in effect at the time of the Change in Control of the Company;

3.3.7 The failure of the Company to obtain a satisfactory agreement from any successor to assume and agree to perform this Agreement, as contemplated in Section 5 of this Agreement; or

3.3.8 Any purported termination of your employment that is not effected pursuant to a Notice of Termination satisfying the requirements of Section 3.4 below (and, if applicable, the requirements of Section 3.2 above); for purposes of this Agreement, no such purported termination shall be effective.

3.4 **Notice of Termination.** Any purported termination of your employment by the Company or by You shall be communicated by written Notice of Termination to the other party to this Agreement in accordance with Section 6 of this Agreement. For purposes of this Agreement, a "Notice of Termination" shall mean a notice that shall indicate the specific termination provision in this Agreement relied on, and shall set forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of your employment under the provision so indicated. Your rights to terminate your employment pursuant to this Section shall not be affected by your incapacity due to Disability. Your continued employment shall not constitute consent to, or a waiver of rights with respect to, any circumstance constituting Good Reason under this Agreement. In the event You deliver Notice of Termination based on circumstances set forth in Sections 3.3.1, 3.3.5, 3.3.6, 3.3.7, or 3.3.8 above, which are fully corrected prior to the Date of Termination set forth in your Notice of Termination, the Notice of Termination shall be deemed withdrawn and of no further force or effect.

3.5 **Date of Termination, etc.** "Date of Termination" shall mean (A) if your employment is terminated for Disability, 30 days after Notice of Termination is given (provided that You shall not have returned to the full-time performance of your duties during such 30-day period), and (B) if your employment is terminated pursuant to Section 3.2 or 3.3 above or for any other reason (other than Disability), the date specified in the Notice of Termination (which, in the case of a termination pursuant to Section 3.2 above shall not be less than 30 days, and in the case of a termination pursuant to Section 3.3 above shall not be less than 15 nor more than 60 days, respectively, from the date the Notice

of Termination is given). However, if within 15 days after any Notice of Termination is given, or, if later, prior to the Date of Termination (as determined without regard to this provision), the party receiving the Notice of Termination notifies the other party that a dispute exists concerning the termination, then the Date of Termination shall be the date on which the dispute is finally determined, either by mutual written agreement of the parties, by a binding arbitration award, or by a final judgment, order, or decree of a court of competent jurisdiction (which is not appealable or with respect to which the time for appeal has expired and no appeal has been perfected). The Date of Termination shall be extended by a notice of dispute only if the notice is given in good faith and the party giving the notice pursues the resolution of the dispute with reasonable diligence. Notwithstanding the pendency of any such dispute, the Company will continue to pay You your full compensation in effect when the notice giving rise to the dispute was given (including, but not limited to, base salary) and continue You as a participant in all compensation, benefit, and insurance plans in which You were participating when the notice giving rise to the dispute was given, until the dispute is finally resolved in accordance with this Section. Amounts paid under this Section are in addition to all other amounts due under this Agreement and shall not be offset against or reduce any other amounts due under this Agreement.

4. **Compensation on Termination or During Disability.** Following a Change in Control of the Company, as defined by Section 2, on termination of your employment or during a period of Disability You shall be entitled to the following benefits:

4.1 During any period that You fail to perform your full-time duties with the Company as a result of incapacity due to Disability, You shall continue to receive your base salary at the rate in effect at the commencement of any such period, together with all amounts payable to You under any compensation plan of the Company during the period, until this Agreement is terminated pursuant to section 3.1 above. Thereafter, or in the event your employment shall be terminated by the Company or by You for Retirement, or by reason of your death, your benefits shall be determined under the Company's retirement, insurance, and other compensation programs then in effect in accordance with the terms of those programs.

4.2 If your employment shall be terminated by the Company for Cause or by You other than for Good Reason, Disability, death, or Retirement, the Company shall pay You your full base salary through the Date of Termination at the rate in effect at the time Notice of Termination is given, plus all other amounts and benefits to which You are entitled under any compensation plan of the Company at the time the payments are due. The Company shall have no obligations to You under this Agreement.

4.3 On or before the third anniversary of the Change in Control, if your employment by the Company shall be terminated (a) by the Company other than for Cause, Retirement or Disability, or (b) by You for Good Reason (as defined in Section 3.3 herein), then You shall be entitled to the benefits provided below:

4.3.1 The Company shall pay You your full salary through the Date of Termination at the rate in effect at the time Notice of Termination is given, plus all other amounts and benefits to which You are entitled under any compensation plan of the Company, at the time the payments are due, except as otherwise provided below.

4.3.2 In lieu of any further salary payments to You for periods subsequent to the Date of Termination, the Company shall pay to You, as severance pay the following: (i) a lump sum severance payment equal to three (3) times the average of your Compensation for the five (5) years prior to the occurrence of the circumstance giving rise to the Notice of Termination (or if employed less than 5 years, the average annualized compensation of the period worked to date), plus (ii) the amounts in the forms set forth in paragraphs 4.3.3, 4.3.4 and 4.3.5 (the "Severance Payments"). In addition to the Severance Payments, the Company shall pay to You an additional amount equal to the amount of the Excise Tax, if any, that is due or determined to be due under Section 4999 of the Internal Revenue Code of 1986, as amended, resulting from the Severance Payments or any other payments under this Agreement or any other agreement between You and the Company and an amount sufficient to pay the taxes on any such Excise Taxes (the "Gross-up").

4.3.3 The Company shall continue coverage for You and your dependents under any health or welfare benefit plan under which You and your dependents were participating prior to the Change in Control for a period ending on the earlier to occur of (i) the date You become covered by a new employer's health and welfare benefit plan, (ii) the date You become covered by Medicare, or (iii) the date which is thirty-six (36) months from the Date of Termination. The coverage for your dependents shall end earlier than (i), (ii) or (iii) if required by the health or welfare benefit plan due to age eligibility.

4.3.4 The Company shall pay to You any deferred compensation, including, but not limited to deferred bonuses, allocated or credited to You or your account as of the Date of Termination.



4.3.5 Outstanding stock options or Restricted Stock grants, if any, granted to You under the Company's Stock Plans which are not vested on Termination shall immediately vest.

4.3.6 Where You shall prevail in any action against the Company to recover benefits hereunder, the Company shall also pay to You all reasonable legal and accounting fees and expenses incurred by You as a result of the termination, including all such fees and expenses incurred by You as a result of the termination, (including all such fees and expenses, if any, incurred in contesting or disputing any termination or in seeking to obtain or enforce any right or benefit provided by this Agreement or in connection with any tax audit or proceeding to the extent attributable to the application of Code Section 4999 to any payment or benefit provided under this Agreement) or any other agreement with the Company.

4.3.7 The amount of Severance Payments and any Gross-up due to You under this or any other relevant agreement with the Company shall be determined by a third party agreed to by You and the Company. If You cannot agree on a third party, then both third parties shall determine the amounts due under this Agreement. If the third parties do not agree on the amount to be paid to You, then either party may submit the calculation of the amounts which are in dispute to Arbitration in accordance with this Agreement. The payments provided for in Paragraphs 4.3.2, 4.3.4 and 4.3.5 above, shall be made no later than the thirtieth (30<sup>th</sup>) day following the Date of Termination. However, if the amounts of the payments cannot be finally determined on or before that day, the Company shall pay to You on that day an estimate, as determined in good faith by the Company, of the minimum amount of such payments and shall pay the remainder of those payments (together with interest at the rate provided in Section 1274(b)(2)(B) of the Code) as soon as the amount can be determined but in no event later than the 30th day after the Date of Termination. In the event that the amount of the estimated payments exceeds the amount subsequently determined to have been due, the excess shall constitute a loan by the Company to You payable on the 30th day after demand by the Company (together with interest at the rate provided in Section 1274(b)(2)(B) of the Code).

4.4 For purposes of this Agreement, "Compensation" shall mean the gross earnings reported on Form W-2 during a calendar year (which may include but is not limited to the value of the personal use of an automobile, any third-party sick pay, and any fees paid to You for serving as a Director of the Company or its

subsidiaries); awards under the Company's Restricted Stock Plan or other equity awards; and Company contributions to your 401(k) account.

4.5 You shall not be required to mitigate the amount of any payment provided for in this Section 4 by seeking other employment or otherwise, nor shall the amount of any payment or benefit provided for in this Section 4 be reduced by any compensation earned by You as the result of employment by another employer, by retirement benefits, by offset against any amount claimed to be owed by You to the Company, or otherwise except as specifically provided in this Section 4.

4.6 In addition to all other amounts payable to You under this Section 4, You shall be entitled to receive all qualified benefits payable to You under the Company's 401(k) Plan, Defined Benefit Plan and any other plan or agreement relating to retirement benefits in accordance with the terms of those plans.

5. **Successors; Binding Agreement.**

5.1 The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation, or otherwise) to all or substantially all of the business and/or assets of the Company to expressly assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place. Failure of the Company to obtain the assumption and agreement prior to the effectiveness of any succession shall be a breach of this Agreement and shall entitle You to compensation from the Company in the same amount and on the same terms as You would have been entitled to under this Agreement if You had terminated your employment for Good Reason following a Change in Control of the Company, except that for purposes of implementing the foregoing, the date on which any such succession becomes effective shall be deemed the Date of Termination.

5.2 This Agreement shall inure to the benefit of and be enforceable by your personal or legal representatives, executors, administrators, heirs, distributees, and legatees. If You should die while any amount would still be payable to You if You had continued to live, all such amounts, unless otherwise provided in this Agreement, shall be paid in accordance with the terms of this Agreement to your legatee or other designee or, if there is no such designee, to your estate.

6. **Notice.** For the purpose of this Agreement, all notices and other communications provided for in the Agreement shall be in writing and shall be deemed to have been duly given when delivered or mailed by United States registered or certified mail, return receipt requested, postage prepaid, addressed to

the respective addresses set forth on the first page of this Agreement, provided that all notices to the Company shall be directed to the attention of the Board with a copy to the Secretary of the Company, or to such other address as either party may have furnished to the other in writing in accordance this Agreement, except that notice of a change of address shall be effective only on receipt.

7. **Miscellaneous**

7.1 No provision of this Agreement may be modified, waived, or discharged unless the waiver, modification, or discharge is agreed to in writing and signed by You and such officer as may be specifically designated by the Board.

7.2 No waiver by either party to this Agreement at any time of any breach by the other party of, or compliance with, any condition or provision of this Agreement to be performed by such other party shall be deemed a waiver of similar or dissimilar provisions or conditions at the same or at any prior or subsequent time.

7.3 No agreements or representations, oral or otherwise, express or implied, with respect to the subject matter of this Agreement have been made by either party that are not expressly set forth in this Agreement.

7.4 Nothing in this Agreement is intended to reduce any benefits payable to You under any other agreement You may have with the Company or in any Company plan in which You may participate.

7.5 The validity, interpretation, construction, and performance of this Agreement shall be governed by the law of New Jersey without reference to its conflict of laws principles.

7.6 All references to sections of the Exchange Act or the Code shall be deemed also to refer to any successor provisions to such sections. Any payments provided for shall be paid net of any applicable withholding or deduction required under federal, state or local law.

7.7 The obligations of the Company under Section 4 shall survive the expiration of the term of this Agreement.

8. **Validity**. The validity or enforceability of any provision of this Agreement shall not affect the validity or unenforceability of any other provision of this Agreement, which shall remain in full force and effect.

9. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed to be an original but all of which together will constitute one and the same instrument.

10. **Arbitration.** Any dispute or controversy arising under or in connection with this Agreement shall be settled exclusively by arbitration in New Jersey in accordance with the rules of the American Arbitration Association then in effect. Judgment may be entered on the arbitrator's award in any court having jurisdiction. However, You shall be entitled to seek specific performance of your right to be paid until the Date of Termination during the pendency of any dispute or controversy arising under or in connection this Agreement.

11. **Entire Agreement.** This Agreement sets forth the entire understanding of the parties with respect to its subject matter and supersedes all prior written or oral agreements or understandings with respect to the subject matter.

In witness whereof, the parties have executed this Agreement as of the day and year first above written.

**MIDDLESEX WATER COMPANY**

By: /s/ Dennis W. Doll  
Dennis W. Doll  
President

**ATTEST:**

/s/ Kenneth J. Quinn  
Kenneth J. Quinn  
Secretary

/s/ A. Bruce O'Connor  
A. Bruce O'Connor

## CHANGE IN CONTROL TERMINATION AGREEMENT

This Change in Control Termination Agreement (the "Agreement") is entered into as of January 1, 2009, between Middlesex Water Company, a New Jersey corporation, with its principal place of business located at 1500 Ronson Road, P.O. Box 1500, Iselin, New Jersey 08830-0452, (the "Company"), and Ronald F. Williams, residing at 11 Peacock Court, Trenton, New Jersey 08619 (referred to as "You" in this Agreement).

**Recitals**

A. The Company considers it essential to the best interests of its stockholders to foster the continuous employment of key management personnel. In this connection, the Board of Directors of the Company (the "Board") recognizes that, as is the case with many publicly held Companies, the possibility of a Change in Control may exist. This possibility, and the uncertainty and questions that it may raise among management, may result in the departure or distraction of management personnel to the detriment of the Company and its stockholders.

B. The Board has determined that appropriate steps should be taken to reinforce and encourage the continued attention and dedication of members of the Company's management, including You, to the assigned duties without distraction in the face of potentially disturbing circumstances arising from the possibility of a Change in Control of the Company.

C. To induce You to remain in the employ of the Company, and in consideration of your agreement set forth below, the Company agrees that You shall receive the severance benefits set forth in this Agreement in the event your employment with the Company is terminated by the Company, or is terminated by You for "Good Reason" as defined herein in connection with a "Change in Control of the Company" (as defined in Section 2 below) under the circumstances described below. This Agreement is meant to supersede any other specific written agreements that may have been entered into between yourself and the Company concerning termination of employment.

Therefore, in consideration of your continued employment and the parties' agreement to be bound by the terms contained in this Agreement, the parties agree as follows:

1. **Term of Agreement.** This Agreement shall commence as of

January 1, 2009 and shall continue in effect through December 31, 2009. However, commencing on December 31, 2009, and each December 31 afterwards, the term of this Agreement shall automatically be extended for one (1) additional year unless, no later than the preceding November 1st, the Company shall have given notice that it does not wish to extend this Agreement. Notwithstanding the foregoing, if a Change in Control of the Company shall be proposed to occur or have occurred during the original or any extended term of this Agreement, this Agreement shall continue in effect until your termination of employment with the Company or its successor or when all amounts due under this Agreement following a termination have been paid, whichever is later.

2. **Change In Control.** No benefits shall be payable under this Agreement unless there shall have been a Change in Control of the Company, as set forth herein. For purposes of this Agreement, a "Change in Control" of the Company shall be deemed to occur if any party or group acquires beneficial ownership of 20 percent or more of the voting shares of the Company; or if shareholder approval is obtained for a transaction involving the acquisition of the Company through the purchase or exchange of the stock or assets of the Company by merger or otherwise; or if one-third or more of the Board elected in a 12-month period or less are so elected without the approval of a majority of the Board as constituted at the beginning of such period; or a liquidation or dissolution of Company.

3. **Termination Following Change In Control.** If any of the events described in Section 2 above constituting a Change in Control of the Company shall have occurred, then unless the termination is (A) because of your death, Disability or Retirement, (B) by the Company for Cause, or (C) by You other than for Good Reason, on the subsequent termination of your employment during the term of this Agreement, You shall be entitled to the severance benefits provided in Section 4.3 below if such termination occurs on or before the third (3<sup>rd</sup>) anniversary of the Change in Control date .

3.1 **Disability; Retirement.** If, as a result of your incapacity due to physical or mental illness, You shall have been absent from the full-time performance of your duties with the Company for 6 consecutive months, and within 30 days after written notice of termination is given You shall not have returned to the full-time performance of your duties, your employment may be terminated for "Disability." Termination of your employment by the Company or You due to your "Retirement" shall mean termination in accordance with the Company's retirement policy, including early retirement, generally applicable to its salaried employees or in accordance with any retirement arrangement established with your consent with respect to You.

3.2 **Cause.** Termination by the Company of your employment for "Cause" shall mean termination as a result of:

3.2.1 The willful and continued failure by You to substantially perform your duties with the Company as such employment was performed by You prior to the Change in Control (other than any such failure resulting from your Disability or any such actual or anticipated failure after the issuance by You of a Notice of Termination for Good Reason as defined herein) after a written demand for substantial performance is delivered to You by the Board, which demand specifically identifies the manner in which the Board believes that You have not substantially performed your duties; or

3.2.2 The willful act by You in conduct that is demonstrably and materially injurious to the Company, and which the Board deems to cause or will cause substantial economic damage to the Company or injury to the business reputation of the Company, monetarily or otherwise. For purposes of this Section, no act, or failure to act, on your part shall be deemed "willful" unless done, or omitted to be done, by You not in good faith and without a reasonable belief that your action or omission was in the best interest of the Company. Notwithstanding the foregoing, You shall not be deemed to have been terminated for Cause unless and until there shall have been delivered to You a copy of a resolution duly adopted by the affirmative vote of not less than three-quarters of the entire membership of the Board at a meeting of the Board called and held for such purpose (after reasonable notice to You and an opportunity for You, together with your counsel, to be heard before the Board), finding that in the good faith opinion of the Board You were guilty of conduct set forth above in clauses 3.2.1 or 3.2.2 of this Section and specifying the particulars in detail.

3.3 **Good Reason.** You shall be entitled to receive severance benefits as provided in this Agreement if You terminate your employment with the Company for "Good Reason." For purposes of this Agreement, "Good Reason" shall mean, without your consent, the occurrence in connection with a Change in Control of the Company of any of the following circumstances unless, in the case of Sections 3.3.1, 3.3.5, 3.3.6, 3.3.7, or 3.3.8, the circumstances are fully corrected prior to the Date of Termination specified in the Notice of Termination, as defined in Sections 3.5 and 3.4, respectively, given in respect of them. If You terminate your employment with the Company for Good Reason, as provided below, your employment with the Company shall be considered to have been involuntarily terminated by the Company:

3.3.1 The assignment to You of any significant employment duties which are inconsistent with your status and position (i) prior to the

Change in Control where such change is a direct result of any pending Change in Control; or (ii) as such status exists immediately prior to the Change in Control of the Company, or (iii) which are a substantial adverse alteration in the nature or status of your responsibilities from those in effect immediately prior to the Change in Control of the Company whichever is applicable;

3.3.2 A reduction by the Company in your annual base salary as in effect on the initial date of this Agreement, or as same may be increased from time to time irrespective of future Company policies including any across-the-board salary reductions similarly affecting all key employees of the Company;

3.3.3 Your relocation, without your consent, to an employment location not within twenty-five (25) miles of your present office or job location, except for required travel on the Company's business to an extent substantially consistent with your present business travel obligations;

3.3.4 The failure by the Company, without your consent, to pay to You any part of your current compensation, or to pay to You any part of an installment of deferred compensation under any deferred compensation program of the Company, within fourteen (14) days of the date the compensation is due;

3.3.5 The failure by the Company to continue in effect any bonus to which You were entitled, or any compensation plan in which You participate (i) prior to the Change in Control where such change is a direct result of any pending Change in Control, or (ii) immediately prior to the Change in Control of the Company that is material to your total compensation, including but not limited to the Company's Restricted Stock Plan, 401(k) Plan, and Benefit Plans, or any substitute plans adopted prior to the Change in Control of the Company, unless an equitable arrangement (embodied in an ongoing substitute or alternative plan) has been made with respect to the plan, or the failure by the Company to continue your participation in it (or in such substitute or alternative plan) on a basis not materially less favorable, both in terms of the amount of benefits provided and the level of your participation relative to other participants, as existed at the time of the Change in Control;

3.3.6 The failure by the Company to continue to provide You with (i) benefits substantially similar to those enjoyed by You under any of the Company's life insurance, medical, health and accident, or disability plans in which You were participating at the time of the



Change in Control of the Company was in effect for the employees of the Company generally at the time of the Change in Control, (ii) the failure to continue to provide You with a Company automobile or allowance in lieu of it at the time of the Change in Control of the Company, (iii) the taking of any action by the Company that would directly or indirectly materially reduce any of such benefits or deprive You of any material fringe benefit enjoyed by You at the time of the Change in Control of the Company, or (iv) the failure by the Company to provide You with the number of paid vacation days to which You are entitled on the basis of years of service with the Company in accordance with the Company's normal vacation policy in effect at the time of the Change in Control of the Company;

3.3.7 The failure of the Company to obtain a satisfactory agreement from any successor to assume and agree to perform this Agreement, as contemplated in Section 5 of this Agreement; or

3.3.8 Any purported termination of your employment that is not effected pursuant to a Notice of Termination satisfying the requirements of Section 3.4 below (and, if applicable, the requirements of Section 3.2 above); for purposes of this Agreement, no such purported termination shall be effective.

3.4 **Notice of Termination.** Any purported termination of your employment by the Company or by You shall be communicated by written Notice of Termination to the other party to this Agreement in accordance with Section 6 of this Agreement. For purposes of this Agreement, a "Notice of Termination" shall mean a notice that shall indicate the specific termination provision in this Agreement relied on, and shall set forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of your employment under the provision so indicated. Your rights to terminate your employment pursuant to this Section shall not be affected by your incapacity due to Disability. Your continued employment shall not constitute consent to, or a waiver of rights with respect to, any circumstance constituting Good Reason under this Agreement. In the event You deliver Notice of Termination based on circumstances set forth in Sections 3.3.1, 3.3.5, 3.3.6, 3.3.7, or 3.3.8 above, which are fully corrected prior to the Date of Termination set forth in your Notice of Termination, the Notice of Termination shall be deemed withdrawn and of no further force or effect.

3.5 **Date of Termination, etc.** "Date of Termination" shall mean (A) if your employment is terminated for Disability, 30 days after Notice of Termination is given (provided that You shall not have returned to the full-time performance of your duties during such 30-day period), and (B) if your employment is terminated pursuant to Section 3.2 or 3.3 above or for any other reason (other than Disability), the date specified in the Notice of Termination (which, in the case of a termination pursuant to Section 3.2 above shall not be less

than 30 days, and in the case of a termination pursuant to Section 3.3 above shall not be less than 15 nor more than 60 days, respectively, from the date the Notice of Termination is given). However, if within 15 days after any Notice of Termination is given, or, if later, prior to the Date of Termination (as determined without regard to this provision), the party receiving the Notice of Termination notifies the other party that a dispute exists concerning the termination, then the Date of Termination shall be the date on which the dispute is finally determined, either by mutual written agreement of the parties, by a binding arbitration award, or by a final judgment, order, or decree of a court of competent jurisdiction (which is not appealable or with respect to which the time for appeal has expired and no appeal has been perfected). The Date of Termination shall be extended by a notice of dispute only if the notice is given in good faith and the party giving the notice pursues the resolution of the dispute with reasonable diligence. Notwithstanding the pendency of any such dispute, the Company will continue to pay You your full compensation in effect when the notice giving rise to the dispute was given (including, but not limited to, base salary) and continue You as a participant in all compensation, benefit, and insurance plans in which You were participating when the notice giving rise to the dispute was given, until the dispute is finally resolved in accordance with this Section. Amounts paid under this Section are in addition to all other amounts due under this Agreement and shall not be offset against or reduce any other amounts due under this Agreement.

4. **Compensation on Termination or During Disability.** Following a Change in Control of the Company, as defined by Section 2, on termination of your employment or during a period of Disability You shall be entitled to the following benefits:

4.1 During any period that You fail to perform your full-time duties with the Company as a result of incapacity due to Disability, You shall continue to receive your base salary at the rate in effect at the commencement of any such period, together with all amounts payable to You under any compensation plan of the Company during the period, until this Agreement is terminated pursuant to section 3.1 above. Thereafter, or in the event your employment shall be terminated by the Company or by You for Retirement, or by reason of your death, your benefits shall be determined under the Company's retirement, insurance, and other compensation programs then in effect in accordance with the terms of those programs.

4.2 If your employment shall be terminated by the Company for Cause or by You other than for Good Reason, Disability, death, or Retirement, the Company shall pay You your full base salary through the Date of Termination at the rate in effect at the time Notice of Termination is given, plus all other amounts and benefits to which You are entitled under any compensation plan of the Company at the time the payments are due. The Company shall have no obligations to You under this Agreement.

4.3 On or before the third anniversary of the Change in Control, if your employment by the Company shall be terminated (a) by the Company other than for Cause, Retirement or Disability, or (b) by You for Good Reason (as defined in Section 3.3 herein), then You shall be entitled to the benefits provided below:

4.3.1 The Company shall pay You your full salary through the Date of Termination at the rate in effect at the time Notice of Termination is given, plus all other amounts and benefits to which You are entitled under any compensation plan of the Company, at the time the payments are due, except as otherwise provided below.

4.3.2 In lieu of any further salary payments to You for periods subsequent to the Date of Termination, the Company shall pay to You, as severance pay the following: (i) a lump sum severance payment equal to three (3) times the average of your Compensation for the five (5) years prior to the occurrence of the circumstance giving rise to the Notice of Termination (or if employed less than 5 years, the average annualized compensation of the period worked to date), plus (ii) the amounts in the forms set forth in paragraphs 4.3.3, 4.3.4 and 4.3.5 (the "Severance Payments"). In addition to the Severance Payments, the Company shall pay to You an additional amount equal to the amount of the Excise Tax, if any, that is due or determined to be due under Section 4999 of the Internal Revenue Code of 1986, as amended, resulting from the Severance Payments or any other payments under this Agreement or any other agreement between You and the Company and an amount sufficient to pay the taxes on any such Excise Taxes (the "Gross-up").

4.3.3 The Company shall continue coverage for You and your dependents under any health or welfare benefit plan under which You and your dependents were participating prior to the Change in Control for a period ending on the earlier to occur of (i) the date You become covered by a new employer's health and welfare benefit plan, (ii) the date You become covered by Medicare, or (iii) the date which is thirty-six (36) months from the Date of Termination. The coverage for your dependents shall end earlier than (i), (ii) or (iii) if required by the health or welfare benefit plan due to age eligibility.

4.3.4 The Company shall pay to You any deferred compensation, including, but not limited to deferred bonuses, allocated or credited to You or your account as of the Date of Termination.

4.3.5 Outstanding stock options or Restricted Stock grants, if any, granted to You under the Company's Stock Plans which are not vested on Termination shall immediately vest.

4.3.6 Where You shall prevail in any action against the Company to recover benefits hereunder, the Company shall also pay to You all reasonable legal and accounting fees and expenses incurred by You as a result of the termination, including all such fees and expenses incurred by You as a result of the termination, (including all such fees and expenses, if any, incurred in contesting or disputing any termination or in seeking to obtain or enforce any right or benefit provided by this Agreement or in connection with any tax audit or proceeding to the extent attributable to the application of Code Section 4999 to any payment or benefit provided under this Agreement) or any other agreement with the Company.

4.3.7 The amount of Severance Payments and any Gross-up due to You under this or any other relevant agreement with the Company shall be determined by a third party agreed to by You and the Company. If You cannot agree on a third party, then both third parties shall determine the amounts due under this Agreement. If the third parties do not agree on the amount to be paid to You, then either party may submit the calculation of the amounts which are in dispute to Arbitration in accordance with this Agreement. The payments provided for in Paragraphs 4.3.2, 4.3.4 and 4.3.5 above, shall be made no later than the thirtieth (30<sup>th</sup>) day following the Date of Termination. However, if the amounts of the payments cannot be finally determined on or before that day, the Company shall pay to You on that day an estimate, as determined in good faith by the Company, of the minimum amount of such payments and shall pay the remainder of those payments (together with interest at the rate provided in Section 1274(b)(2)(B) of the Code) as soon as the amount can be determined but in no event later than the 30th day after the Date of Termination. In the event that the amount of the estimated payments exceeds the amount subsequently determined to have been due, the excess shall constitute a loan by the Company to You payable on the 30th day after demand by the Company (together with interest at the rate provided in Section 1274(b)(2)(B) of the Code).

4.4 For purposes of this Agreement, "Compensation" shall mean the gross earnings reported on Form W-2 during a calendar year (which may include but is not limited to the value of the personal use of an automobile, any third-party sick pay, and any fees paid to You for serving as a Director of the Company or its

subsidiaries); awards under the Company's Restricted Stock Plan or other equity awards; and Company contributions to your 401(k) account.

4.5 You shall not be required to mitigate the amount of any payment provided for in this Section 4 by seeking other employment or otherwise, nor shall the amount of any payment or benefit provided for in this Section 4 be reduced by any compensation earned by You as the result of employment by another employer, by retirement benefits, by offset against any amount claimed to be owed by You to the Company, or otherwise except as specifically provided in this Section 4.

4.6 In addition to all other amounts payable to You under this Section 4, You shall be entitled to receive all qualified benefits payable to You under the Company's 401(k) Plan, Defined Benefit Plan and any other plan or agreement relating to retirement benefits in accordance with the terms of those plans.

5. **Successors; Binding Agreement.**

5.1 The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation, or otherwise) to all or substantially all of the business and/or assets of the Company to expressly assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place. Failure of the Company to obtain the assumption and agreement prior to the effectiveness of any succession shall be a breach of this Agreement and shall entitle You to compensation from the Company in the same amount and on the same terms as You would have been entitled to under this Agreement if You had terminated your employment for Good Reason following a Change in Control of the Company, except that for purposes of implementing the foregoing, the date on which any such succession becomes effective shall be deemed the Date of Termination.

5.2 This Agreement shall inure to the benefit of and be enforceable by your personal or legal representatives, executors, administrators, heirs, distributees, and legatees. If You should die while any amount would still be payable to You if You had continued to live, all such amounts, unless otherwise provided in this Agreement, shall be paid in accordance with the terms of this Agreement to your legatee or other designee or, if there is no such designee, to your estate.

6. **Notice.** For the purpose of this Agreement, all notices and other communications provided for in the Agreement shall be in writing and shall be deemed to have been duly given when delivered or mailed by United States registered or certified mail, return receipt requested, postage prepaid, addressed to

the respective addresses set forth on the first page of this Agreement, provided that all notices to the Company shall be directed to the attention of the Board with a copy to the Secretary of the Company, or to such other address as either party may have furnished to the other in writing in accordance this Agreement, except that notice of a change of address shall be effective only on receipt.

7. **Miscellaneous**

7.1 No provision of this Agreement may be modified, waived, or discharged unless the waiver, modification, or discharge is agreed to in writing and signed by You and such officer as may be specifically designated by the Board.

7.2 No waiver by either party to this Agreement at any time of any breach by the other party of, or compliance with, any condition or provision of this Agreement to be performed by such other party shall be deemed a waiver of similar or dissimilar provisions or conditions at the same or at any prior or subsequent time.

7.3 No agreements or representations, oral or otherwise, express or implied, with respect to the subject matter of this Agreement have been made by either party that are not expressly set forth in this Agreement.

7.4 Nothing in this Agreement is intended to reduce any benefits payable to You under any other agreement You may have with the Company or in any Company plan in which You may participate.

7.5 The validity, interpretation, construction, and performance of this Agreement shall be governed by the law of New Jersey without reference to its conflict of laws principles.

7.6 All references to sections of the Exchange Act or the Code shall be deemed also to refer to any successor provisions to such sections. Any payments provided for shall be paid net of any applicable withholding or deduction required under federal, state or local law.

7.7 The obligations of the Company under Section 4 shall survive the expiration of the term of this Agreement.

8. **Validity**. The validity or enforceability of any provision of this Agreement shall not affect the validity or unenforceability of any other provision of this Agreement, which shall remain in full force and effect.

9. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed to be an original but all of which together will constitute one and the same instrument.

10. **Arbitration.** Any dispute or controversy arising under or in connection with this Agreement shall be settled exclusively by arbitration in New Jersey in accordance with the rules of the American Arbitration Association then in effect. Judgment may be entered on the arbitrator's award in any court having jurisdiction. However, You shall be entitled to seek specific performance of your right to be paid until the Date of Termination during the pendency of any dispute or controversy arising under or in connection this Agreement.

11. **Entire Agreement.** This Agreement sets forth the entire understanding of the parties with respect to its subject matter and supersedes all prior written or oral agreements or understandings with respect to the subject matter.

In witness whereof, the parties have executed this Agreement as of the day and year first above written.

**MIDDLESEX WATER COMPANY**

By: /s/ Dennis W. Doll  
Dennis W. Doll  
President

**ATTEST:**

/s/ Kenneth J. Quinn  
Kenneth J. Quinn  
Secretary

/s/ Ronald Williams  
Ronald F. Williams

## CHANGE IN CONTROL TERMINATION AGREEMENT

This Change in Control Termination Agreement (the "Agreement") is entered into as of January 1, 2009, between Middlesex Water Company, a New Jersey corporation, with its principal place of business located at 1500 Ronson Road, P.O. Box 1500, Iselin, New Jersey 08830-0452, (the "Company"), and Richard M. Risoldi, residing at 11 Lohli Drive, Hamilton Square, New Jersey 08690, (referred to as "You" in this Agreement).

**Recitals**

A. The Company considers it essential to the best interests of its stockholders to foster the continuous employment of key management personnel. In this connection, the Board of Directors of the Company (the "Board") recognizes that, as is the case with many publicly held Companies, the possibility of a Change in Control may exist. This possibility, and the uncertainty and questions that it may raise among management, may result in the departure or distraction of management personnel to the detriment of the Company and its stockholders.

B. The Board has determined that appropriate steps should be taken to reinforce and encourage the continued attention and dedication of members of the Company's management, including You, to the assigned duties without distraction in the face of potentially disturbing circumstances arising from the possibility of a Change in Control of the Company.

C. To induce You to remain in the employ of the Company, and in consideration of your agreement set forth below, the Company agrees that You shall receive the severance benefits set forth in this Agreement in the event your employment with the Company is terminated by the Company, or is terminated by You for "Good Reason" as defined herein in connection with a "Change in Control of the Company" (as defined in Section 2 below) under the circumstances described below. This Agreement is meant to supersede any other specific written agreements that may have been entered into between yourself and the Company concerning termination of employment.

Therefore, in consideration of your continued employment and the parties' agreement to be bound by the terms contained in this Agreement, the parties agree as follows:

1. **Term of Agreement.** This Agreement shall commence as of January 1, 2009 and shall continue in effect through December 31, 2009. However, commencing on December 31, 2009, and each December 31 afterwards,



the term of this Agreement shall automatically be extended for one (1) additional year unless, no later than the preceding November 1st, the Company shall have given notice that it does not wish to extend this Agreement. Notwithstanding the foregoing, if a Change in Control of the Company shall be proposed to occur or have occurred during the original or any extended term of this Agreement, this Agreement shall continue in effect until your termination of employment with the Company or its successor or when all amounts due under this Agreement following a termination have been paid, whichever is later.

2. **Change In Control.** No benefits shall be payable under this Agreement unless there shall have been a Change in Control of the Company, as set forth herein. For purposes of this Agreement, a "Change in Control" of the Company shall be deemed to occur if any party or group acquires beneficial ownership of 20 percent or more of the voting shares of the Company; or if shareholder approval is obtained for a transaction involving the acquisition of the Company through the purchase or exchange of the stock or assets of the Company by merger or otherwise; or if one-third or more of the Board elected in a 12-month period or less are so elected without the approval of a majority of the Board as constituted at the beginning of such period; or a liquidation or dissolution of Company.

3. **Termination Following Change In Control.** If any of the events described in Section 2 above constituting a Change in Control of the Company shall have occurred, then unless the termination is (A) because of your death, Disability or Retirement, (B) by the Company for Cause, or (C) by You other than for Good Reason, on the subsequent termination of your employment during the term of this Agreement, You shall be entitled to the severance benefits provided in Section 4.3 below if such termination occurs on or before the third (3<sup>rd</sup>) anniversary of the Change in Control date .

3.1 **Disability; Retirement.** If, as a result of your incapacity due to physical or mental illness, You shall have been absent from the full-time performance of your duties with the Company for 6 consecutive months, and within 30 days after written notice of termination is given You shall not have returned to the full-time performance of your duties, your employment may be terminated for "Disability." Termination of your employment by the Company or You due to your "Retirement" shall mean termination in accordance with the Company's retirement policy, including early retirement, generally applicable to its salaried employees or in accordance with any retirement arrangement established with your consent with respect to You.

3.2 **Cause.** Termination by the Company of your employment for "Cause" shall mean termination as a result of:

3.2.1 The willful and continued failure by You to substantially perform your duties with the Company as such employment was

performed by You prior to the Change in Control (other than any such failure resulting from your Disability or any such actual or anticipated failure after the issuance by You of a Notice of Termination for Good Reason as defined herein) after a written demand for substantial performance is delivered to You by the Board, which demand specifically identifies the manner in which the Board believes that You have not substantially performed your duties; or

3.2.2 The willful act by You in conduct that is demonstrably and materially injurious to the Company, and which the Board deems to cause or will cause substantial economic damage to the Company or injury to the business reputation of the Company, monetarily or otherwise. For purposes of this Section, no act, or failure to act, on your part shall be deemed "willful" unless done, or omitted to be done, by You not in good faith and without a reasonable belief that your action or omission was in the best interest of the Company. Notwithstanding the foregoing, You shall not be deemed to have been terminated for Cause unless and until there shall have been delivered to You a copy of a resolution duly adopted by the affirmative vote of not less than three-quarters of the entire membership of the Board at a meeting of the Board called and held for such purpose (after reasonable notice to You and an opportunity for You, together with your counsel, to be heard before the Board), finding that in the good faith opinion of the Board You were guilty of conduct set forth above in clauses 3.2.1 or 3.2.2 of this Section and specifying the particulars in detail.

3.3 **Good Reason.** You shall be entitled to receive severance benefits as provided in this Agreement if You terminate your employment with the Company for "Good Reason." For purposes of this Agreement, "Good Reason" shall mean, without your consent, the occurrence in connection with a Change in Control of the Company of any of the following circumstances unless, in the case of Sections 3.3.1, 3.3.5, 3.3.6, 3.3.7, or 3.3.8, the circumstances are fully corrected prior to the Date of Termination specified in the Notice of Termination, as defined in Sections 3.5 and 3.4, respectively, given in respect of them. If You terminate your employment with the Company for Good Reason, as provided below, your employment with the Company shall be considered to have been involuntarily terminated by the Company:

3.3.1 The assignment to You of any significant employment duties which are inconsistent with your status and position (i) prior to the Change in Control where such change is a direct result of any pending Change in Control; or (ii) as such status exists immediately prior to the Change in Control of the Company, or (iii) which are a

substantial adverse alteration in the nature or status of your responsibilities from those in effect immediately prior to the Change in Control of the Company whichever is applicable;

3.3.2 A reduction by the Company in your annual base salary as in effect on the initial date of this Agreement, or as same may be increased from time to time irrespective of future Company policies including any across-the-board salary reductions similarly affecting all key employees of the Company;

3.3.3 Your relocation, without your consent, to an employment location not within twenty-five (25) miles of your present office or job location, except for required travel on the Company's business to an extent substantially consistent with your present business travel obligations;

3.3.4 The failure by the Company, without your consent, to pay to You any part of your current compensation, or to pay to You any part of an installment of deferred compensation under any deferred compensation program of the Company, within fourteen (14) days of the date the compensation is due;

3.3.5 The failure by the Company to continue in effect any bonus to which You were entitled, or any compensation plan in which You participate (i) prior to the Change in Control where such change is a direct result of any pending Change in Control, or (ii) immediately prior to the Change in Control of the Company that is material to your total compensation, including but not limited to the Company's Restricted Stock Plan, 401(k) Plan, and Benefit Plans, or any substitute plans adopted prior to the Change in Control of the Company, unless an equitable arrangement (embodied in an ongoing substitute or alternative plan) has been made with respect to the plan, or the failure by the Company to continue your participation in it (or in such substitute or alternative plan) on a basis not materially less favorable, both in terms of the amount of benefits provided and the level of your participation relative to other participants, as existed at the time of the Change in Control;

3.3.6 The failure by the Company to continue to provide You with (i) benefits substantially similar to those enjoyed by You under any of the Company's life insurance, medical, health and accident, or disability plans in which You were participating at the time of the Change in Control of the Company was in effect for the employees of the Company generally at the time of the Change in Control, (ii) the failure to continue to provide You with a Company automobile

or allowance in lieu of it at the time of the Change in Control of the Company, (iii) the taking of any action by the Company that would directly or indirectly materially reduce any of such benefits or deprive You of any material fringe benefit enjoyed by You at the time of the Change in Control of the Company, or (iv) the failure by the Company to provide You with the number of paid vacation days to which You are entitled on the basis of years of service with the Company in accordance with the Company's normal vacation policy in effect at the time of the Change in Control of the Company;

3.3.7 The failure of the Company to obtain a satisfactory agreement from any successor to assume and agree to perform this Agreement, as contemplated in Section 5 of this Agreement; or

3.3.8 Any purported termination of your employment that is not effected pursuant to a Notice of Termination satisfying the requirements of Section 3.4 below (and, if applicable, the requirements of Section 3.2 above); for purposes of this Agreement, no such purported termination shall be effective.

3.4 **Notice of Termination.** Any purported termination of your employment by the Company or by You shall be communicated by written Notice of Termination to the other party to this Agreement in accordance with Section 6 of this Agreement. For purposes of this Agreement, a "Notice of Termination" shall mean a notice that shall indicate the specific termination provision in this Agreement relied on, and shall set forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of your employment under the provision so indicated. Your rights to terminate your employment pursuant to this Section shall not be affected by your incapacity due to Disability. Your continued employment shall not constitute consent to, or a waiver of rights with respect to, any circumstance constituting Good Reason under this Agreement. In the event You deliver Notice of Termination based on circumstances set forth in Sections 3.3.1, 3.3.5, 3.3.6, 3.3.7, or 3.3.8 above, which are fully corrected prior to the Date of Termination set forth in your Notice of Termination, the Notice of Termination shall be deemed withdrawn and of no further force or effect.

3.5 **Date of Termination, etc.** "Date of Termination" shall mean (A) if your employment is terminated for Disability, 30 days after Notice of Termination is given (provided that You shall not have returned to the full-time performance of your duties during such 30-day period), and (B) if your employment is terminated pursuant to Section 3.2 or 3.3 above or for any other reason (other than Disability), the date specified in the Notice of Termination (which, in the case of a termination pursuant to Section 3.2 above shall not be less than 30 days, and in the case of a termination pursuant to Section 3.3 above shall not be less than 15 nor more than 60 days, respectively, from the date the Notice

of Termination is given). However, if within 15 days after any Notice of Termination is given, or, if later, prior to the Date of Termination (as determined without regard to this provision), the party receiving the Notice of Termination notifies the other party that a dispute exists concerning the termination, then the Date of Termination shall be the date on which the dispute is finally determined, either by mutual written agreement of the parties, by a binding arbitration award, or by a final judgment, order, or decree of a court of competent jurisdiction (which is not appealable or with respect to which the time for appeal has expired and no appeal has been perfected). The Date of Termination shall be extended by a notice of dispute only if the notice is given in good faith and the party giving the notice pursues the resolution of the dispute with reasonable diligence. Notwithstanding the pendency of any such dispute, the Company will continue to pay You your full compensation in effect when the notice giving rise to the dispute was given (including, but not limited to, base salary) and continue You as a participant in all compensation, benefit, and insurance plans in which You were participating when the notice giving rise to the dispute was given, until the dispute is finally resolved in accordance with this Section. Amounts paid under this Section are in addition to all other amounts due under this Agreement and shall not be offset against or reduce any other amounts due under this Agreement.

4. **Compensation on Termination or During Disability.** Following a Change in Control of the Company, as defined by Section 2, on termination of your employment or during a period of Disability You shall be entitled to the following benefits:

4.1 During any period that You fail to perform your full-time duties with the Company as a result of incapacity due to Disability, You shall continue to receive your base salary at the rate in effect at the commencement of any such period, together with all amounts payable to You under any compensation plan of the Company during the period, until this Agreement is terminated pursuant to section 3.1 above. Thereafter, or in the event your employment shall be terminated by the Company or by You for Retirement, or by reason of your death, your benefits shall be determined under the Company's retirement, insurance, and other compensation programs then in effect in accordance with the terms of those programs.

4.2 If your employment shall be terminated by the Company for Cause or by You other than for Good Reason, Disability, death, or Retirement, the Company shall pay You your full base salary through the Date of Termination at the rate in effect at the time Notice of Termination is given, plus all other amounts and benefits to which You are entitled under any compensation plan of the Company at the time the payments are due. The Company shall have no obligations to You under this Agreement.

4.3 On or before the third anniversary of the Change in Control, if your employment by the Company shall be terminated (a) by the Company other than for Cause, Retirement or Disability, or (b) by You for Good Reason (as defined in Section 3.3 herein), then You shall be entitled to the benefits provided below:

4.3.1 The Company shall pay You your full salary through the Date of Termination at the rate in effect at the time Notice of Termination is given, plus all other amounts and benefits to which You are entitled under any compensation plan of the Company, at the time the payments are due, except as otherwise provided below.

4.3.2 In lieu of any further salary payments to You for periods subsequent to the Date of Termination, the Company shall pay to You, as severance pay the following: (i) a lump sum severance payment equal to three (3) times the average of your Compensation for the five (5) years prior to the occurrence of the circumstance giving rise to the Notice of Termination (or if employed less than 5 years, the average annualized compensation of the period worked to date), plus (ii) the amounts in the forms set forth in paragraphs 4.3.3, 4.3.4 and 4.3.5 (the "Severance Payments"). In addition to the Severance Payments, the Company shall pay to You an additional amount equal to the amount of the Excise Tax, if any, that is due or determined to be due under Section 4999 of the Internal Revenue Code of 1986, as amended, resulting from the Severance Payments or any other payments under this Agreement or any other agreement between You and the Company and an amount sufficient to pay the taxes on any such Excise Taxes (the "Gross-up").

4.3.3 The Company shall continue coverage for You and your dependents under any health or welfare benefit plan under which You and your dependents were participating prior to the Change in Control for a period ending on the earlier to occur of (i) the date You become covered by a new employer's health and welfare benefit plan, (ii) the date You become covered by Medicare, or (iii) the date which is thirty-six (36) months from the Date of Termination. The coverage for your dependents shall end earlier than (i), (ii) or (iii) if required by the health or welfare benefit plan due to age eligibility.

4.3.4 The Company shall pay to You any deferred compensation, including, but not limited to deferred bonuses, allocated or credited to You or your account as of the Date of Termination.

4.3.5 Outstanding stock options or Restricted Stock grants, if any, granted to You under the Company's Stock Plans which are not vested on Termination shall immediately vest.

4.3.6 Where You shall prevail in any action against the Company to recover benefits hereunder, the Company shall also pay to You all reasonable legal and accounting fees and expenses incurred by You as a result of the termination, including all such fees and expenses incurred by You as a result of the termination, (including all such fees and expenses, if any, incurred in contesting or disputing any termination or in seeking to obtain or enforce any right or benefit provided by this Agreement or in connection with any tax audit or proceeding to the extent attributable to the application of Code Section 4999 to any payment or benefit provided under this Agreement) or any other agreement with the Company.

4.3.7 The amount of Severance Payments and any Gross-up due to You under this or any other relevant agreement with the Company shall be determined by a third party agreed to by You and the Company. If You cannot agree on a third party, then both third parties shall determine the amounts due under this Agreement. If the third parties do not agree on the amount to be paid to You, then either party may submit the calculation of the amounts which are in dispute to Arbitration in accordance with this Agreement. The payments provided for in Paragraphs 4.3.2, 4.3.4 and 4.3.5 above, shall be made no later than the thirtieth (30<sup>th</sup>) day following the Date of Termination. However, if the amounts of the payments cannot be finally determined on or before that day, the Company shall pay to You on that day an estimate, as determined in good faith by the Company, of the minimum amount of such payments and shall pay the remainder of those payments (together with interest at the rate provided in Section 1274(b)(2)(B) of the Code) as soon as the amount can be determined but in no event later than the 30th day after the Date of Termination. In the event that the amount of the estimated payments exceeds the amount subsequently determined to have been due, the excess shall constitute a loan by the Company to You payable on the 30th day after demand by the Company (together with interest at the rate provided in Section 1274(b)(2)(B) of the Code).

4.4 For purposes of this Agreement, "Compensation" shall mean the gross earnings reported on Form W-2 during a calendar year (which may include but is not limited to the value of the personal use of an automobile, any third-party sick pay, and any fees paid to You for serving as a Director of the Company or its

subsidiaries); awards under the Company's Restricted Stock Plan or other equity awards; and Company contributions to your 401(k) account.

4.5 You shall not be required to mitigate the amount of any payment provided for in this Section 4 by seeking other employment or otherwise, nor shall the amount of any payment or benefit provided for in this Section 4 be reduced by any compensation earned by You as the result of employment by another employer, by retirement benefits, by offset against any amount claimed to be owed by You to the Company, or otherwise except as specifically provided in this Section 4.

4.6 In addition to all other amounts payable to You under this Section 4, You shall be entitled to receive all qualified benefits payable to You under the Company's 401(k) Plan, Defined Benefit Plan and any other plan or agreement relating to retirement benefits in accordance with the terms of those plans.

5. **Successors; Binding Agreement.**

5.1 The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation, or otherwise) to all or substantially all of the business and/or assets of the Company to expressly assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place. Failure of the Company to obtain the assumption and agreement prior to the effectiveness of any succession shall be a breach of this Agreement and shall entitle You to compensation from the Company in the same amount and on the same terms as You would have been entitled to under this Agreement if You had terminated your employment for Good Reason following a Change in Control of the Company, except that for purposes of implementing the foregoing, the date on which any such succession becomes effective shall be deemed the Date of Termination.

5.2 This Agreement shall inure to the benefit of and be enforceable by your personal or legal representatives, executors, administrators, heirs, distributees, and legatees. If You should die while any amount would still be payable to You if You had continued to live, all such amounts, unless otherwise provided in this Agreement, shall be paid in accordance with the terms of this Agreement to your legatee or other designee or, if there is no such designee, to your estate.

6. **Notice.** For the purpose of this Agreement, all notices and other communications provided for in the Agreement shall be in writing and shall be deemed to have been duly given when delivered or mailed by United States registered or certified mail, return receipt requested, postage prepaid, addressed to



the respective addresses set forth on the first page of this Agreement, provided that all notices to the Company shall be directed to the attention of the Board with a copy to the Secretary of the Company, or to such other address as either party may have furnished to the other in writing in accordance this Agreement, except that notice of a change of address shall be effective only on receipt.

7. **Miscellaneous**

7.1 No provision of this Agreement may be modified, waived, or discharged unless the waiver, modification, or discharge is agreed to in writing and signed by You and such officer as may be specifically designated by the Board.

7.2 No waiver by either party to this Agreement at any time of any breach by the other party of, or compliance with, any condition or provision of this Agreement to be performed by such other party shall be deemed a waiver of similar or dissimilar provisions or conditions at the same or at any prior or subsequent time.

7.3 No agreements or representations, oral or otherwise, express or implied, with respect to the subject matter of this Agreement have been made by either party that are not expressly set forth in this Agreement.

7.4 Nothing in this Agreement is intended to reduce any benefits payable to You under any other agreement You may have with the Company or in any Company plan in which You may participate.

7.5 The validity, interpretation, construction, and performance of this Agreement shall be governed by the law of New Jersey without reference to its conflict of laws principles.

7.6 All references to sections of the Exchange Act or the Code shall be deemed also to refer to any successor provisions to such sections. Any payments provided for shall be paid net of any applicable withholding or deduction required under federal, state or local law.

7.7 The obligations of the Company under Section 4 shall survive the expiration of the term of this Agreement.

8. **Validity**. The validity or enforceability of any provision of this Agreement shall not affect the validity or unenforceability of any other provision of this Agreement, which shall remain in full force and effect.

9. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed to be an original but all of which together will constitute one and the same instrument.

10. **Arbitration.** Any dispute or controversy arising under or in connection with this Agreement shall be settled exclusively by arbitration in New Jersey in accordance with the rules of the American Arbitration Association then in effect. Judgment may be entered on the arbitrator's award in any court having jurisdiction. However, You shall be entitled to seek specific performance of your right to be paid until the Date of Termination during the pendency of any dispute or controversy arising under or in connection this Agreement.

11. **Entire Agreement.** This Agreement sets forth the entire understanding of the parties with respect to its subject matter and supersedes all prior written or oral agreements or understandings with respect to the subject matter.

In witness whereof, the parties have executed this Agreement as of the day and year first above written.

**MIDDLESEX WATER COMPANY**

By: /s/ Dennis W. Doll  
Dennis W. Doll  
President

**ATTEST:**

/s/ Kenneth J. Quinn  
Kenneth J. Quinn  
Secretary

/s/ Richard M. Risoldi  
Richard M. Risoldi

## CHANGE IN CONTROL TERMINATION AGREEMENT

This Change in Control Termination Agreement (the "Agreement") is entered into as of January 1, 2009, between Middlesex Water Company, a New Jersey corporation, with its principal place of business located at 1500 Ronson Road, P.O. Box 1500, Iselin, New Jersey 08830-0452, (the "Company"), and Kenneth J. Quinn, residing at 224 Stonehurst Boulevard, Freehold, New Jersey 07728, (referred to as "You" in this Agreement).

**Recitals**

A. The Company considers it essential to the best interests of its stockholders to foster the continuous employment of key management personnel. In this connection, the Board of Directors of the Company (the "Board") recognizes that, as is the case with many publicly held Companies, the possibility of a Change in Control may exist. This possibility, and the uncertainty and questions that it may raise among management, may result in the departure or distraction of management personnel to the detriment of the Company and its stockholders.

B. The Board has determined that appropriate steps should be taken to reinforce and encourage the continued attention and dedication of members of the Company's management, including You, to the assigned duties without distraction in the face of potentially disturbing circumstances arising from the possibility of a Change in Control of the Company.

C. To induce You to remain in the employ of the Company, and in consideration of your agreement set forth below, the Company agrees that You shall receive the severance benefits set forth in this Agreement in the event your employment with the Company is terminated by the Company, or is terminated by You for "Good Reason" as defined herein in connection with a "Change in Control of the Company" (as defined in Section 2 below) under the circumstances described below. This Agreement is meant to supersede any other specific written agreements that may have been entered into between yourself and the Company concerning termination of employment.

Therefore, in consideration of your continued employment and the parties' agreement to be bound by the terms contained in this Agreement, the parties agree as follows:

1. **Term of Agreement.** This Agreement shall commence as of January 1, 2009 and shall continue in effect through December 31, 2009. However, commencing on December 31, 2009, and each December 31 afterwards,

the term of this Agreement shall automatically be extended for one (1) additional year unless, no later than the preceding November 1st, the Company shall have given notice that it does not wish to extend this Agreement. Notwithstanding the foregoing, if a Change in Control of the Company shall be proposed to occur or have occurred during the original or any extended term of this Agreement, this Agreement shall continue in effect until your termination of employment with the Company or its successor or when all amounts due under this Agreement following a termination have been paid, whichever is later.

2. **Change In Control.** No benefits shall be payable under this Agreement unless there shall have been a Change in Control of the Company, as set forth herein. For purposes of this Agreement, a "Change in Control" of the Company shall be deemed to occur if any party or group acquires beneficial ownership of 20 percent or more of the voting shares of the Company; or if shareholder approval is obtained for a transaction involving the acquisition of the Company through the purchase or exchange of the stock or assets of the Company by merger or otherwise; or if one-third or more of the Board elected in a 12-month period or less are so elected without the approval of a majority of the Board as constituted at the beginning of such period; or a liquidation or dissolution of Company.

3. **Termination Following Change In Control.** If any of the events described in Section 2 above constituting a Change in Control of the Company shall have occurred, then unless the termination is (A) because of your death, Disability or Retirement, (B) by the Company for Cause, or (C) by You other than for Good Reason, on the subsequent termination of your employment during the term of this Agreement, You shall be entitled to the severance benefits provided in Section 4.3 below if such termination occurs on or before the third (3<sup>rd</sup>) anniversary of the Change in Control date .

3.1 **Disability; Retirement.** If, as a result of your incapacity due to physical or mental illness, You shall have been absent from the full-time performance of your duties with the Company for 6 consecutive months, and within 30 days after written notice of termination is given You shall not have returned to the full-time performance of your duties, your employment may be terminated for "Disability." Termination of your employment by the Company or You due to your "Retirement" shall mean termination in accordance with the Company's retirement policy, including early retirement, generally applicable to its salaried employees or in accordance with any retirement arrangement established with your consent with respect to You.

3.2 **Cause.** Termination by the Company of your employment for "Cause" shall mean termination as a result of:

3.2.1 The willful and continued failure by You to substantially perform your duties with the Company as such employment was

performed by You prior to the Change in Control (other than any such failure resulting from your Disability or any such actual or anticipated failure after the issuance by You of a Notice of Termination for Good Reason as defined herein) after a written demand for substantial performance is delivered to You by the Board, which demand specifically identifies the manner in which the Board believes that You have not substantially performed your duties; or

3.2.2 The willful act by You in conduct that is demonstrably and materially injurious to the Company, and which the Board deems to cause or will cause substantial economic damage to the Company or injury to the business reputation of the Company, monetarily or otherwise. For purposes of this Section, no act, or failure to act, on your part shall be deemed "willful" unless done, or omitted to be done, by You not in good faith and without a reasonable belief that your action or omission was in the best interest of the Company. Notwithstanding the foregoing, You shall not be deemed to have been terminated for Cause unless and until there shall have been delivered to You a copy of a resolution duly adopted by the affirmative vote of not less than three-quarters of the entire membership of the Board at a meeting of the Board called and held for such purpose (after reasonable notice to You and an opportunity for You, together with your counsel, to be heard before the Board), finding that in the good faith opinion of the Board You were guilty of conduct set forth above in clauses 3.2.1 or 3.2.2 of this Section and specifying the particulars in detail.

3.3 **Good Reason.** You shall be entitled to receive severance benefits as provided in this Agreement if You terminate your employment with the Company for "Good Reason." For purposes of this Agreement, "Good Reason" shall mean, without your consent, the occurrence in connection with a Change in Control of the Company of any of the following circumstances unless, in the case of Sections 3.3.1, 3.3.5, 3.3.6, 3.3.7, or 3.3.8, the circumstances are fully corrected prior to the Date of Termination specified in the Notice of Termination, as defined in Sections 3.5 and 3.4, respectively, given in respect of them. If You terminate your employment with the Company for Good Reason, as provided below, your employment with the Company shall be considered to have been involuntarily terminated by the Company:

3.3.1 The assignment to You of any significant employment duties which are inconsistent with your status and position (i) prior to the Change in Control where such change is a direct result of any pending Change in Control; or (ii) as such status exists immediately prior to the Change in Control of the Company, or (iii) which are a

substantial adverse alteration in the nature or status of your responsibilities from those in effect immediately prior to the Change in Control of the Company whichever is applicable;

3.3.2 A reduction by the Company in your annual base salary as in effect on the initial date of this Agreement, or as same may be increased from time to time irrespective of future Company policies including any across-the-board salary reductions similarly affecting all key employees of the Company;

3.3.3 Your relocation, without your consent, to an employment location not within twenty-five (25) miles of your present office or job location, except for required travel on the Company's business to an extent substantially consistent with your present business travel obligations;

3.3.4 The failure by the Company, without your consent, to pay to You any part of your current compensation, or to pay to You any part of an installment of deferred compensation under any deferred compensation program of the Company, within fourteen (14) days of the date the compensation is due;

3.3.5 The failure by the Company to continue in effect any bonus to which You were entitled, or any compensation plan in which You participate (i) prior to the Change in Control where such change is a direct result of any pending Change in Control, or (ii) immediately prior to the Change in Control of the Company that is material to your total compensation, including but not limited to the Company's Restricted Stock Plan, 401(k) Plan, and Benefit Plans, or any substitute plans adopted prior to the Change in Control of the Company, unless an equitable arrangement (embodied in an ongoing substitute or alternative plan) has been made with respect to the plan, or the failure by the Company to continue your participation in it (or in such substitute or alternative plan) on a basis not materially less favorable, both in terms of the amount of benefits provided and the level of your participation relative to other participants, as existed at the time of the Change in Control;

3.3.6 The failure by the Company to continue to provide You with (i) benefits substantially similar to those enjoyed by You under any of the Company's life insurance, medical, health and accident, or disability plans in which You were participating at the time of the Change in Control of the Company was in effect for the employees of the Company generally at the time of the Change in Control, (ii) the failure to continue to provide You with a Company automobile

or allowance in lieu of it at the time of the Change in Control of the Company, (iii) the taking of any action by the Company that would directly or indirectly materially reduce any of such benefits or deprive You of any material fringe benefit enjoyed by You at the time of the Change in Control of the Company, or (iv) the failure by the Company to provide You with the number of paid vacation days to which You are entitled on the basis of years of service with the Company in accordance with the Company's normal vacation policy in effect at the time of the Change in Control of the Company;

3.3.7 The failure of the Company to obtain a satisfactory agreement from any successor to assume and agree to perform this Agreement, as contemplated in Section 5 of this Agreement; or

3.3.8 Any purported termination of your employment that is not effected pursuant to a Notice of Termination satisfying the requirements of Section 3.4 below (and, if applicable, the requirements of Section 3.2 above); for purposes of this Agreement, no such purported termination shall be effective.

3.4 **Notice of Termination.** Any purported termination of your employment by the Company or by You shall be communicated by written Notice of Termination to the other party to this Agreement in accordance with Section 6 of this Agreement. For purposes of this Agreement, a "Notice of Termination" shall mean a notice that shall indicate the specific termination provision in this Agreement relied on, and shall set forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of your employment under the provision so indicated. Your rights to terminate your employment pursuant to this Section shall not be affected by your incapacity due to Disability. Your continued employment shall not constitute consent to, or a waiver of rights with respect to, any circumstance constituting Good Reason under this Agreement. In the event You deliver Notice of Termination based on circumstances set forth in Sections 3.3.1, 3.3.5, 3.3.6, 3.3.7, or 3.3.8 above, which are fully corrected prior to the Date of Termination set forth in your Notice of Termination, the Notice of Termination shall be deemed withdrawn and of no further force or effect.

3.5 **Date of Termination, etc.** "Date of Termination" shall mean (A) if your employment is terminated for Disability, 30 days after Notice of Termination is given (provided that You shall not have returned to the full-time performance of your duties during such 30-day period), and (B) if your employment is terminated pursuant to Section 3.2 or 3.3 above or for any other reason (other than Disability), the date specified in the Notice of Termination (which, in the case of a termination pursuant to Section 3.2 above shall not be less than 30 days, and in the case of a termination pursuant to Section 3.3 above shall not be less than 15 nor more than 60 days, respectively, from the date the Notice

of Termination is given). However, if within 15 days after any Notice of Termination is given, or, if later, prior to the Date of Termination (as determined without regard to this provision), the party receiving the Notice of Termination notifies the other party that a dispute exists concerning the termination, then the Date of Termination shall be the date on which the dispute is finally determined, either by mutual written agreement of the parties, by a binding arbitration award, or by a final judgment, order, or decree of a court of competent jurisdiction (which is not appealable or with respect to which the time for appeal has expired and no appeal has been perfected). The Date of Termination shall be extended by a notice of dispute only if the notice is given in good faith and the party giving the notice pursues the resolution of the dispute with reasonable diligence. Notwithstanding the pendency of any such dispute, the Company will continue to pay You your full compensation in effect when the notice giving rise to the dispute was given (including, but not limited to, base salary) and continue You as a participant in all compensation, benefit, and insurance plans in which You were participating when the notice giving rise to the dispute was given, until the dispute is finally resolved in accordance with this Section. Amounts paid under this Section are in addition to all other amounts due under this Agreement and shall not be offset against or reduce any other amounts due under this Agreement.

4. **Compensation on Termination or During Disability.** Following a Change in Control of the Company, as defined by Section 2, on termination of your employment or during a period of Disability You shall be entitled to the following benefits:

4.1 During any period that You fail to perform your full-time duties with the Company as a result of incapacity due to Disability, You shall continue to receive your base salary at the rate in effect at the commencement of any such period, together with all amounts payable to You under any compensation plan of the Company during the period, until this Agreement is terminated pursuant to section 3.1 above. Thereafter, or in the event your employment shall be terminated by the Company or by You for Retirement, or by reason of your death, your benefits shall be determined under the Company's retirement, insurance, and other compensation programs then in effect in accordance with the terms of those programs.

4.2 If your employment shall be terminated by the Company for Cause or by You other than for Good Reason, Disability, death, or Retirement, the Company shall pay You your full base salary through the Date of Termination at the rate in effect at the time Notice of Termination is given, plus all other amounts and benefits to which You are entitled under any compensation plan of the Company at the time the payments are due. The Company shall have no obligations to You under this Agreement.



4.3 On or before the third anniversary of the Change in Control, if your employment by the Company shall be terminated (a) by the Company other than for Cause, Retirement or Disability, or (b) by You for Good Reason (as defined in Section 3.3 herein), then You shall be entitled to the benefits provided below:

4.3.1 The Company shall pay You your full salary through the Date of Termination at the rate in effect at the time Notice of Termination is given, plus all other amounts and benefits to which You are entitled under any compensation plan of the Company, at the time the payments are due, except as otherwise provided below.

4.3.2 In lieu of any further salary payments to You for periods subsequent to the Date of Termination, the Company shall pay to You, as severance pay the following: (i) a lump sum severance payment equal to three (3) times the average of your Compensation for the five (5) years prior to the occurrence of the circumstance giving rise to the Notice of Termination (or if employed less than 5 years, the average annualized compensation of the period worked to date), plus (ii) the amounts in the forms set forth in paragraphs 4.3.3, 4.3.4 and 4.3.5 (the "Severance Payments"). In addition to the Severance Payments, the Company shall pay to You an additional amount equal to the amount of the Excise Tax, if any, that is due or determined to be due under Section 4999 of the Internal Revenue Code of 1986, as amended, resulting from the Severance Payments or any other payments under this Agreement or any other agreement between You and the Company and an amount sufficient to pay the taxes on any such Excise Taxes (the "Gross-up").

4.3.3 The Company shall continue coverage for You and your dependents under any health or welfare benefit plan under which You and your dependents were participating prior to the Change in Control for a period ending on the earlier to occur of (i) the date You become covered by a new employer's health and welfare benefit plan, (ii) the date You become covered by Medicare, or (iii) the date which is thirty-six (36) months from the Date of Termination. The coverage for your dependents shall end earlier than (i), (ii) or (iii) if required by the health or welfare benefit plan due to age eligibility.

4.3.4 The Company shall pay to You any deferred compensation, including, but not limited to deferred bonuses, allocated or credited to You or your account as of the Date of Termination.

4.3.5 Outstanding stock options or Restricted Stock grants, if any, granted to You under the Company's Stock Plans which are not vested on Termination shall immediately vest.

4.3.6 Where You shall prevail in any action against the Company to recover benefits hereunder, the Company shall also pay to You all reasonable legal and accounting fees and expenses incurred by You as a result of the termination, including all such fees and expenses incurred by You as a result of the termination, (including all such fees and expenses, if any, incurred in contesting or disputing any termination or in seeking to obtain or enforce any right or benefit provided by this Agreement or in connection with any tax audit or proceeding to the extent attributable to the application of Code Section 4999 to any payment or benefit provided under this Agreement) or any other agreement with the Company.

4.3.7 The amount of Severance Payments and any Gross-up due to You under this or any other relevant agreement with the Company shall be determined by a third party agreed to by You and the Company. If You cannot agree on a third party, then both third parties shall determine the amounts due under this Agreement. If the third parties do not agree on the amount to be paid to You, then either party may submit the calculation of the amounts which are in dispute to Arbitration in accordance with this Agreement. The payments provided for in Paragraphs 4.3.2, 4.3.4 and 4.3.5 above, shall be made no later than the thirtieth (30<sup>th</sup>) day following the Date of Termination. However, if the amounts of the payments cannot be finally determined on or before that day, the Company shall pay to You on that day an estimate, as determined in good faith by the Company, of the minimum amount of such payments and shall pay the remainder of those payments (together with interest at the rate provided in Section 1274(b)(2)(B) of the Code) as soon as the amount can be determined but in no event later than the 30th day after the Date of Termination. In the event that the amount of the estimated payments exceeds the amount subsequently determined to have been due, the excess shall constitute a loan by the Company to You payable on the 30th day after demand by the Company (together with interest at the rate provided in Section 1274(b)(2)(B) of the Code).

4.4 For purposes of this Agreement, "Compensation" shall mean the gross earnings reported on Form W-2 during a calendar year (which may include but is not limited to the value of the personal use of an automobile, any third-party sick pay, and any fees paid to You for serving as a Director of the Company or its

subsidiaries); awards under the Company's Restricted Stock Plan or other equity awards; and Company contributions to your 401(k) account.

4.5 You shall not be required to mitigate the amount of any payment provided for in this Section 4 by seeking other employment or otherwise, nor shall the amount of any payment or benefit provided for in this Section 4 be reduced by any compensation earned by You as the result of employment by another employer, by retirement benefits, by offset against any amount claimed to be owed by You to the Company, or otherwise except as specifically provided in this Section 4.

4.6 In addition to all other amounts payable to You under this Section 4, You shall be entitled to receive all qualified benefits payable to You under the Company's 401(k) Plan, Defined Benefit Plan and any other plan or agreement relating to retirement benefits in accordance with the terms of those plans.

5. **Successors; Binding Agreement.**

5.1 The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation, or otherwise) to all or substantially all of the business and/or assets of the Company to expressly assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place. Failure of the Company to obtain the assumption and agreement prior to the effectiveness of any succession shall be a breach of this Agreement and shall entitle You to compensation from the Company in the same amount and on the same terms as You would have been entitled to under this Agreement if You had terminated your employment for Good Reason following a Change in Control of the Company, except that for purposes of implementing the foregoing, the date on which any such succession becomes effective shall be deemed the Date of Termination.

5.2 This Agreement shall inure to the benefit of and be enforceable by your personal or legal representatives, executors, administrators, heirs, distributees, and legatees. If You should die while any amount would still be payable to You if You had continued to live, all such amounts, unless otherwise provided in this Agreement, shall be paid in accordance with the terms of this Agreement to your legatee or other designee or, if there is no such designee, to your estate.

6. **Notice.** For the purpose of this Agreement, all notices and other communications provided for in the Agreement shall be in writing and shall be deemed to have been duly given when delivered or mailed by United States registered or certified mail, return receipt requested, postage prepaid, addressed to

the respective addresses set forth on the first page of this Agreement, provided that all notices to the Company shall be directed to the attention of the Board with a copy to the Secretary of the Company, or to such other address as either party may have furnished to the other in writing in accordance this Agreement, except that notice of a change of address shall be effective only on receipt.

7. **Miscellaneous**

7.1 No provision of this Agreement may be modified, waived, or discharged unless the waiver, modification, or discharge is agreed to in writing and signed by You and such officer as may be specifically designated by the Board.

7.2 No waiver by either party to this Agreement at any time of any breach by the other party of, or compliance with, any condition or provision of this Agreement to be performed by such other party shall be deemed a waiver of similar or dissimilar provisions or conditions at the same or at any prior or subsequent time.

7.3 No agreements or representations, oral or otherwise, express or implied, with respect to the subject matter of this Agreement have been made by either party that are not expressly set forth in this Agreement.

7.4 Nothing in this Agreement is intended to reduce any benefits payable to You under any other agreement You may have with the Company or in any Company plan in which You may participate.

7.5 The validity, interpretation, construction, and performance of this Agreement shall be governed by the law of New Jersey without reference to its conflict of laws principles.

7.6 All references to sections of the Exchange Act or the Code shall be deemed also to refer to any successor provisions to such sections. Any payments provided for shall be paid net of any applicable withholding or deduction required under federal, state or local law.

7.7 The obligations of the Company under Section 4 shall survive the expiration of the term of this Agreement.

8. **Validity**. The validity or enforceability of any provision of this Agreement shall not affect the validity or unenforceability of any other provision of this Agreement, which shall remain in full force and effect.

9. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed to be an original but all of which together will constitute one and the same instrument.

10. **Arbitration.** Any dispute or controversy arising under or in connection with this Agreement shall be settled exclusively by arbitration in New Jersey in accordance with the rules of the American Arbitration Association then in effect. Judgment may be entered on the arbitrator's award in any court having jurisdiction. However, You shall be entitled to seek specific performance of your right to be paid until the Date of Termination during the pendency of any dispute or controversy arising under or in connection this Agreement.

11. **Entire Agreement.** This Agreement sets forth the entire understanding of the parties with respect to its subject matter and supersedes all prior written or oral agreements or understandings with respect to the subject matter.

In witness whereof, the parties have executed this Agreement as of the day and year first above written.

**MIDDLESEX WATER COMPANY**

By: /s/ Dennis W. Doll  
Dennis W. Doll  
President

**ATTEST:**

/s/ Ronald Williams  
Ronald F. Williams  
Assistant Secretary

/s/ Kenneth J. Quinn  
Kenneth J. Quinn

## CHANGE IN CONTROL TERMINATION AGREEMENT

This Change in Control Termination Agreement (the "Agreement") is entered into as of January 1, 2009, between Middlesex Water Company, a New Jersey corporation, with its principal place of business located at 1500 Ronson Road, P.O. Box 1500, Iselin, New Jersey 08830-0452, (the "Company"), and James P. Garrett, residing at 10 Oakmont Lane, Jackson, New Jersey 08527, (referred to as "You" in this Agreement).

**Recitals**

A. The Company considers it essential to the best interests of its stockholders to foster the continuous employment of key management personnel. In this connection, the Board of Directors of the Company (the "Board") recognizes that, as is the case with many publicly held Companies, the possibility of a Change in Control may exist. This possibility, and the uncertainty and questions that it may raise among management, may result in the departure or distraction of management personnel to the detriment of the Company and its stockholders.

B. The Board has determined that appropriate steps should be taken to reinforce and encourage the continued attention and dedication of members of the Company's management, including You, to the assigned duties without distraction in the face of potentially disturbing circumstances arising from the possibility of a Change in Control of the Company.

C. To induce You to remain in the employ of the Company, and in consideration of your agreement set forth below, the Company agrees that You shall receive the severance benefits set forth in this Agreement in the event your employment with the Company is terminated by the Company, or is terminated by You for "Good Reason" as defined herein in connection with a "Change in Control of the Company" (as defined in Section 2 below) under the circumstances described below. This Agreement is meant to supersede any other specific written agreements that may have been entered into between yourself and the Company concerning termination of employment.

Therefore, in consideration of your continued employment and the parties' agreement to be bound by the terms contained in this Agreement, the parties agree as follows:

1. **Term of Agreement.** This Agreement shall commence as of January 1, 2009 and shall continue in effect through December 31, 2009. However, commencing on December 31, 2009, and each December 31 afterwards,

the term of this Agreement shall automatically be extended for one (1) additional year unless, no later than the preceding November 1st, the Company shall have given notice that it does not wish to extend this Agreement. Notwithstanding the foregoing, if a Change in Control of the Company shall be proposed to occur or have occurred during the original or any extended term of this Agreement, this Agreement shall continue in effect until your termination of employment with the Company or its successor or when all amounts due under this Agreement following a termination have been paid, whichever is later.

2. **Change In Control.** No benefits shall be payable under this Agreement unless there shall have been a Change in Control of the Company, as set forth herein. For purposes of this Agreement, a "Change in Control" of the Company shall be deemed to occur if any party or group acquires beneficial ownership of 20 percent or more of the voting shares of the Company; or if shareholder approval is obtained for a transaction involving the acquisition of the Company through the purchase or exchange of the stock or assets of the Company by merger or otherwise; or if one-third or more of the Board elected in a 12-month period or less are so elected without the approval of a majority of the Board as constituted at the beginning of such period; or a liquidation or dissolution of Company.

3. **Termination Following Change In Control.** If any of the events described in Section 2 above constituting a Change in Control of the Company shall have occurred, then unless the termination is (A) because of your death, Disability or Retirement, (B) by the Company for Cause, or (C) by You other than for Good Reason, on the subsequent termination of your employment during the term of this Agreement, You shall be entitled to the severance benefits provided in Section 4.3 below if such termination occurs on or before the third (3<sup>rd</sup>) anniversary of the Change in Control date .

3.1 **Disability; Retirement.** If, as a result of your incapacity due to physical or mental illness, You shall have been absent from the full-time performance of your duties with the Company for 6 consecutive months, and within 30 days after written notice of termination is given You shall not have returned to the full-time performance of your duties, your employment may be terminated for "Disability." Termination of your employment by the Company or You due to your "Retirement" shall mean termination in accordance with the Company's retirement policy, including early retirement, generally applicable to its salaried employees or in accordance with any retirement arrangement established with your consent with respect to You.

3.2 **Cause.** Termination by the Company of your employment for "Cause" shall mean termination as a result of:

3.2.1 The willful and continued failure by You to substantially perform your duties with the Company as such employment was

performed by You prior to the Change in Control (other than any such failure resulting from your Disability or any such actual or anticipated failure after the issuance by You of a Notice of Termination for Good Reason as defined herein) after a written demand for substantial performance is delivered to You by the Board, which demand specifically identifies the manner in which the Board believes that You have not substantially performed your duties; or

3.2.2 The willful act by You in conduct that is demonstrably and materially injurious to the Company, and which the Board deems to cause or will cause substantial economic damage to the Company or injury to the business reputation of the Company, monetarily or otherwise. For purposes of this Section, no act, or failure to act, on your part shall be deemed "willful" unless done, or omitted to be done, by You not in good faith and without a reasonable belief that your action or omission was in the best interest of the Company. Notwithstanding the foregoing, You shall not be deemed to have been terminated for Cause unless and until there shall have been delivered to You a copy of a resolution duly adopted by the affirmative vote of not less than three-quarters of the entire membership of the Board at a meeting of the Board called and held for such purpose (after reasonable notice to You and an opportunity for You, together with your counsel, to be heard before the Board), finding that in the good faith opinion of the Board You were guilty of conduct set forth above in clauses 3.2.1 or 3.2.2 of this Section and specifying the particulars in detail.

3.3 **Good Reason.** You shall be entitled to receive severance benefits as provided in this Agreement if You terminate your employment with the Company for "Good Reason." For purposes of this Agreement, "Good Reason" shall mean, without your consent, the occurrence in connection with a Change in Control of the Company of any of the following circumstances unless, in the case of Sections 3.3.1, 3.3.5, 3.3.6, 3.3.7, or 3.3.8, the circumstances are fully corrected prior to the Date of Termination specified in the Notice of Termination, as defined in Sections 3.5 and 3.4, respectively, given in respect of them. If You terminate your employment with the Company for Good Reason, as provided below, your employment with the Company shall be considered to have been involuntarily terminated by the Company:

3.3.1 The assignment to You of any significant employment duties which are inconsistent with your status and position (i) prior to the Change in Control where such change is a direct result of any pending Change in Control; or (ii) as such status exists immediately prior to the Change in Control of the Company, or (iii) which are a



substantial adverse alteration in the nature or status of your responsibilities from those in effect immediately prior to the Change in Control of the Company whichever is applicable;

3.3.2 A reduction by the Company in your annual base salary as in effect on the initial date of this Agreement, or as same may be increased from time to time irrespective of future Company policies including any across-the-board salary reductions similarly affecting all key employees of the Company;

3.3.3 Your relocation, without your consent, to an employment location not within twenty-five (25) miles of your present office or job location, except for required travel on the Company's business to an extent substantially consistent with your present business travel obligations;

3.3.4 The failure by the Company, without your consent, to pay to You any part of your current compensation, or to pay to You any part of an installment of deferred compensation under any deferred compensation program of the Company, within fourteen (14) days of the date the compensation is due;

3.3.5 The failure by the Company to continue in effect any bonus to which You were entitled, or any compensation plan in which You participate (i) prior to the Change in Control where such change is a direct result of any pending Change in Control, or (ii) immediately prior to the Change in Control of the Company that is material to your total compensation, including but not limited to the Company's Restricted Stock Plan, 401(k) Plan, and Benefit Plans, or any substitute plans adopted prior to the Change in Control of the Company, unless an equitable arrangement (embodied in an ongoing substitute or alternative plan) has been made with respect to the plan, or the failure by the Company to continue your participation in it (or in such substitute or alternative plan) on a basis not materially less favorable, both in terms of the amount of benefits provided and the level of your participation relative to other participants, as existed at the time of the Change in Control;

3.3.6 The failure by the Company to continue to provide You with (i) benefits substantially similar to those enjoyed by You under any of the Company's life insurance, medical, health and accident, or disability plans in which You were participating at the time of the Change in Control of the Company was in effect for the employees of the Company generally at the time of the Change in Control, (ii) the failure to continue to provide You with a Company automobile

or allowance in lieu of it at the time of the Change in Control of the Company, (iii) the taking of any action by the Company that would directly or indirectly materially reduce any of such benefits or deprive You of any material fringe benefit enjoyed by You at the time of the Change in Control of the Company, or (iv) the failure by the Company to provide You with the number of paid vacation days to which You are entitled on the basis of years of service with the Company in accordance with the Company's normal vacation policy in effect at the time of the Change in Control of the Company;

3.3.7 The failure of the Company to obtain a satisfactory agreement from any successor to assume and agree to perform this Agreement, as contemplated in Section 5 of this Agreement; or

3.3.8 Any purported termination of your employment that is not effected pursuant to a Notice of Termination satisfying the requirements of Section 3.4 below (and, if applicable, the requirements of Section 3.2 above); for purposes of this Agreement, no such purported termination shall be effective.

3.4 **Notice of Termination.** Any purported termination of your employment by the Company or by You shall be communicated by written Notice of Termination to the other party to this Agreement in accordance with Section 6 of this Agreement. For purposes of this Agreement, a "Notice of Termination" shall mean a notice that shall indicate the specific termination provision in this Agreement relied on, and shall set forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of your employment under the provision so indicated. Your rights to terminate your employment pursuant to this Section shall not be affected by your incapacity due to Disability. Your continued employment shall not constitute consent to, or a waiver of rights with respect to, any circumstance constituting Good Reason under this Agreement. In the event You deliver Notice of Termination based on circumstances set forth in Sections 3.3.1, 3.3.5, 3.3.6, 3.3.7, or 3.3.8 above, which are fully corrected prior to the Date of Termination set forth in your Notice of Termination, the Notice of Termination shall be deemed withdrawn and of no further force or effect.

3.5 **Date of Termination, etc.** "Date of Termination" shall mean (A) if your employment is terminated for Disability, 30 days after Notice of Termination is given (provided that You shall not have returned to the full-time performance of your duties during such 30-day period), and (B) if your employment is terminated pursuant to Section 3.2 or 3.3 above or for any other reason (other than Disability), the date specified in the Notice of Termination (which, in the case of a termination pursuant to Section 3.2 above shall not be less than 30 days, and in the case of a termination pursuant to Section 3.3 above shall not be less than 15 nor more than 60 days, respectively, from the date the Notice

of Termination is given). However, if within 15 days after any Notice of Termination is given, or, if later, prior to the Date of Termination (as determined without regard to this provision), the party receiving the Notice of Termination notifies the other party that a dispute exists concerning the termination, then the Date of Termination shall be the date on which the dispute is finally determined, either by mutual written agreement of the parties, by a binding arbitration award, or by a final judgment, order, or decree of a court of competent jurisdiction (which is not appealable or with respect to which the time for appeal has expired and no appeal has been perfected). The Date of Termination shall be extended by a notice of dispute only if the notice is given in good faith and the party giving the notice pursues the resolution of the dispute with reasonable diligence. Notwithstanding the pendency of any such dispute, the Company will continue to pay You your full compensation in effect when the notice giving rise to the dispute was given (including, but not limited to, base salary) and continue You as a participant in all compensation, benefit, and insurance plans in which You were participating when the notice giving rise to the dispute was given, until the dispute is finally resolved in accordance with this Section. Amounts paid under this Section are in addition to all other amounts due under this Agreement and shall not be offset against or reduce any other amounts due under this Agreement.

4. **Compensation on Termination or During Disability.** Following a Change in Control of the Company, as defined by Section 2, on termination of your employment or during a period of Disability You shall be entitled to the following benefits:

4.1 During any period that You fail to perform your full-time duties with the Company as a result of incapacity due to Disability, You shall continue to receive your base salary at the rate in effect at the commencement of any such period, together with all amounts payable to You under any compensation plan of the Company during the period, until this Agreement is terminated pursuant to section 3.1 above. Thereafter, or in the event your employment shall be terminated by the Company or by You for Retirement, or by reason of your death, your benefits shall be determined under the Company's retirement, insurance, and other compensation programs then in effect in accordance with the terms of those programs.

4.2 If your employment shall be terminated by the Company for Cause or by You other than for Good Reason, Disability, death, or Retirement, the Company shall pay You your full base salary through the Date of Termination at the rate in effect at the time Notice of Termination is given, plus all other amounts and benefits to which You are entitled under any compensation plan of the Company at the time the payments are due. The Company shall have no obligations to You under this Agreement.

4.3 On or before the third anniversary of the Change in Control, if your employment by the Company shall be terminated (a) by the Company other than for Cause, Retirement or Disability, or (b) by You for Good Reason (as defined in Section 3.3 herein), then You shall be entitled to the benefits provided below:

4.3.1 The Company shall pay You your full salary through the Date of Termination at the rate in effect at the time Notice of Termination is given, plus all other amounts and benefits to which You are entitled under any compensation plan of the Company, at the time the payments are due, except as otherwise provided below.

4.3.2 In lieu of any further salary payments to You for periods subsequent to the Date of Termination, the Company shall pay to You, as severance pay the following: (i) a lump sum severance payment equal to three (3) times the average of your Compensation for the five (5) years prior to the occurrence of the circumstance giving rise to the Notice of Termination (or if employed less than 5 years, the average annualized compensation of the period worked to date), plus (ii) the amounts in the forms set forth in paragraphs 4.3.3, 4.3.4 and 4.3.5 (the "Severance Payments"). In addition to the Severance Payments, the Company shall pay to You an additional amount equal to the amount of the Excise Tax, if any, that is due or determined to be due under Section 4999 of the Internal Revenue Code of 1986, as amended, resulting from the Severance Payments or any other payments under this Agreement or any other agreement between You and the Company and an amount sufficient to pay the taxes on any such Excise Taxes (the "Gross-up").

4.3.3 The Company shall continue coverage for You and your dependents under any health or welfare benefit plan under which You and your dependents were participating prior to the Change in Control for a period ending on the earlier to occur of (i) the date You become covered by a new employer's health and welfare benefit plan, (ii) the date You become covered by Medicare, or (iii) the date which is thirty-six (36) months from the Date of Termination. The coverage for your dependents shall end earlier than (i), (ii) or (iii) if required by the health or welfare benefit plan due to age eligibility.

4.3.4 The Company shall pay to You any deferred compensation, including, but not limited to deferred bonuses, allocated or credited to You or your account as of the Date of Termination.

4.3.5 Outstanding stock options or Restricted Stock grants, if any, granted to You under the Company's Stock Plans which are not vested on Termination shall immediately vest.

4.3.6 Where You shall prevail in any action against the Company to recover benefits hereunder, the Company shall also pay to You all reasonable legal and accounting fees and expenses incurred by You as a result of the termination, including all such fees and expenses incurred by You as a result of the termination, (including all such fees and expenses, if any, incurred in contesting or disputing any termination or in seeking to obtain or enforce any right or benefit provided by this Agreement or in connection with any tax audit or proceeding to the extent attributable to the application of Code Section 4999 to any payment or benefit provided under this Agreement) or any other agreement with the Company.

4.3.7 The amount of Severance Payments and any Gross-up due to You under this or any other relevant agreement with the Company shall be determined by a third party agreed to by You and the Company. If You cannot agree on a third party, then both third parties shall determine the amounts due under this Agreement. If the third parties do not agree on the amount to be paid to You, then either party may submit the calculation of the amounts which are in dispute to Arbitration in accordance with this Agreement. The payments provided for in Paragraphs 4.3.2, 4.3.4 and 4.3.5 above, shall be made no later than the thirtieth (30<sup>th</sup>) day following the Date of Termination. However, if the amounts of the payments cannot be finally determined on or before that day, the Company shall pay to You on that day an estimate, as determined in good faith by the Company, of the minimum amount of such payments and shall pay the remainder of those payments (together with interest at the rate provided in Section 1274(b)(2)(B) of the Code) as soon as the amount can be determined but in no event later than the 30th day after the Date of Termination. In the event that the amount of the estimated payments exceeds the amount subsequently determined to have been due, the excess shall constitute a loan by the Company to You payable on the 30th day after demand by the Company (together with interest at the rate provided in Section 1274(b)(2)(B) of the Code).

4.4 For purposes of this Agreement, "Compensation" shall mean the gross earnings reported on Form W-2 during a calendar year (which may include but is not limited to the value of the personal use of an automobile, any third-party sick pay, and any fees paid to You for serving as a Director of the Company or its

subsidiaries); awards under the Company's Restricted Stock Plan or other equity awards; and Company contributions to your 401(k) account.

4.5 You shall not be required to mitigate the amount of any payment provided for in this Section 4 by seeking other employment or otherwise, nor shall the amount of any payment or benefit provided for in this Section 4 be reduced by any compensation earned by You as the result of employment by another employer, by retirement benefits, by offset against any amount claimed to be owed by You to the Company, or otherwise except as specifically provided in this Section 4.

4.6 In addition to all other amounts payable to You under this Section 4, You shall be entitled to receive all qualified benefits payable to You under the Company's 401(k) Plan, Defined Benefit Plan and any other plan or agreement relating to retirement benefits in accordance with the terms of those plans.

5. **Successors; Binding Agreement.**

5.1 The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation, or otherwise) to all or substantially all of the business and/or assets of the Company to expressly assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place. Failure of the Company to obtain the assumption and agreement prior to the effectiveness of any succession shall be a breach of this Agreement and shall entitle You to compensation from the Company in the same amount and on the same terms as You would have been entitled to under this Agreement if You had terminated your employment for Good Reason following a Change in Control of the Company, except that for purposes of implementing the foregoing, the date on which any such succession becomes effective shall be deemed the Date of Termination.

5.2 This Agreement shall inure to the benefit of and be enforceable by your personal or legal representatives, executors, administrators, heirs, distributees, and legatees. If You should die while any amount would still be payable to You if You had continued to live, all such amounts, unless otherwise provided in this Agreement, shall be paid in accordance with the terms of this Agreement to your legatee or other designee or, if there is no such designee, to your estate.

6. **Notice.** For the purpose of this Agreement, all notices and other communications provided for in the Agreement shall be in writing and shall be deemed to have been duly given when delivered or mailed by United States registered or certified mail, return receipt requested, postage prepaid, addressed to

the respective addresses set forth on the first page of this Agreement, provided that all notices to the Company shall be directed to the attention of the Board with a copy to the Secretary of the Company, or to such other address as either party may have furnished to the other in writing in accordance this Agreement, except that notice of a change of address shall be effective only on receipt.

7. **Miscellaneous**

7.1 No provision of this Agreement may be modified, waived, or discharged unless the waiver, modification, or discharge is agreed to in writing and signed by You and such officer as may be specifically designated by the Board.

7.2 No waiver by either party to this Agreement at any time of any breach by the other party of, or compliance with, any condition or provision of this Agreement to be performed by such other party shall be deemed a waiver of similar or dissimilar provisions or conditions at the same or at any prior or subsequent time.

7.3 No agreements or representations, oral or otherwise, express or implied, with respect to the subject matter of this Agreement have been made by either party that are not expressly set forth in this Agreement.

7.4 Nothing in this Agreement is intended to reduce any benefits payable to You under any other agreement You may have with the Company or in any Company plan in which You may participate.

7.5 The validity, interpretation, construction, and performance of this Agreement shall be governed by the law of New Jersey without reference to its conflict of laws principles.

7.6 All references to sections of the Exchange Act or the Code shall be deemed also to refer to any successor provisions to such sections. Any payments provided for shall be paid net of any applicable withholding or deduction required under federal, state or local law.

7.7 The obligations of the Company under Section 4 shall survive the expiration of the term of this Agreement.

8. **Validity**. The validity or enforceability of any provision of this Agreement shall not affect the validity or unenforceability of any other provision of this Agreement, which shall remain in full force and effect.

9. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed to be an original but all of which together will constitute one and the same instrument.

10. **Arbitration.** Any dispute or controversy arising under or in connection with this Agreement shall be settled exclusively by arbitration in New Jersey in accordance with the rules of the American Arbitration Association then in effect. Judgment may be entered on the arbitrator's award in any court having jurisdiction. However, You shall be entitled to seek specific performance of your right to be paid until the Date of Termination during the pendency of any dispute or controversy arising under or in connection this Agreement.

11. **Entire Agreement.** This Agreement sets forth the entire understanding of the parties with respect to its subject matter and supersedes all prior written or oral agreements or understandings with respect to the subject matter.

In witness whereof, the parties have executed this Agreement as of the day and year first above written.

**MIDDLESEX WATER COMPANY**

By: /s/ Dennis W. Doll  
Dennis W. Doll  
President

**ATTEST:**

/s/ Kenneth J. Quinn  
Kenneth J. Quinn  
Secretary

/s/ James P. Garrett  
James P. Garrett



## CHANGE IN CONTROL TERMINATION AGREEMENT

This Change in Control Termination Agreement (the "Agreement") is entered into as of January 1, 2009, between Middlesex Water Company, a New Jersey corporation, with its principal place of business located at 1500 Ronson Road, P.O. Box 1500, Iselin, New Jersey 08830-0452, (the "Company"), and Gerard L. Esposito, residing at 18 Victoria Drive, Milford, Delaware 19963, (referred to as "You" in this Agreement).

**Recitals**

A. The Company considers it essential to the best interests of its stockholders to foster the continuous employment of key management personnel. In this connection, the Board of Directors of the Company (the "Board") recognizes that, as is the case with many publicly held Companies, the possibility of a Change in Control may exist. This possibility, and the uncertainty and questions that it may raise among management, may result in the departure or distraction of management personnel to the detriment of the Company and its stockholders.

B. The Board has determined that appropriate steps should be taken to reinforce and encourage the continued attention and dedication of members of the Company's management, including You, to the assigned duties without distraction in the face of potentially disturbing circumstances arising from the possibility of a Change in Control of the Company.

C. To induce You to remain in the employ of the Company, and in consideration of your agreement set forth below, the Company agrees that You shall receive the severance benefits set forth in this Agreement in the event your employment with the Company is terminated by the Company, or is terminated by You for "Good Reason" as defined herein in connection with a "Change in Control of the Company" (as defined in Section 2 below) under the circumstances described below. This Agreement is meant to supersede any other specific written agreements that may have been entered into between yourself and the Company concerning termination of employment.

Therefore, in consideration of your continued employment and the parties' agreement to be bound by the terms contained in this Agreement, the parties agree as follows:

1. **Term of Agreement.** This Agreement shall commence as of January 1, 2009 and shall continue in effect through December 31, 2009. However, commencing on December 31, 2009, and each December 31 afterwards,

the term of this Agreement shall automatically be extended for one (1) additional year unless, no later than the preceding November 1st, the Company shall have given notice that it does not wish to extend this Agreement. Notwithstanding the foregoing, if a Change in Control of the Company shall be proposed to occur or have occurred during the original or any extended term of this Agreement, this Agreement shall continue in effect until your termination of employment with the Company or its successor or when all amounts due under this Agreement following a termination have been paid, whichever is later.

2. **Change In Control.** No benefits shall be payable under this Agreement unless there shall have been a Change in Control of the Company, as set forth herein. For purposes of this Agreement, a "Change in Control" of the Company shall be deemed to occur if any party or group acquires beneficial ownership of 20 percent or more of the voting shares of the Company; or if shareholder approval is obtained for a transaction involving the acquisition of the Company through the purchase or exchange of the stock or assets of the Company by merger or otherwise; or if one-third or more of the Board elected in a 12-month period or less are so elected without the approval of a majority of the Board as constituted at the beginning of such period; or a liquidation or dissolution of Company.

3. **Termination Following Change In Control.** If any of the events described in Section 2 above constituting a Change in Control of the Company shall have occurred, then unless the termination is (A) because of your death, Disability or Retirement, (B) by the Company for Cause, or (C) by You other than for Good Reason, on the subsequent termination of your employment during the term of this Agreement, You shall be entitled to the severance benefits provided in Section 4.3 below if such termination occurs on or before the third (3<sup>rd</sup>) anniversary of the Change in Control date .

3.1 **Disability; Retirement.** If, as a result of your incapacity due to physical or mental illness, You shall have been absent from the full-time performance of your duties with the Company for 6 consecutive months, and within 30 days after written notice of termination is given You shall not have returned to the full-time performance of your duties, your employment may be terminated for "Disability." Termination of your employment by the Company or You due to your "Retirement" shall mean termination in accordance with the Company's retirement policy, including early retirement, generally applicable to its salaried employees or in accordance with any retirement arrangement established with your consent with respect to You.

3.2 **Cause.** Termination by the Company of your employment for "Cause" shall mean termination as a result of:

3.2.1 The willful and continued failure by You to substantially perform your duties with the Company as such employment was

performed by You prior to the Change in Control (other than any such failure resulting from your Disability or any such actual or anticipated failure after the issuance by You of a Notice of Termination for Good Reason as defined herein) after a written demand for substantial performance is delivered to You by the Board, which demand specifically identifies the manner in which the Board believes that You have not substantially performed your duties; or

3.2.2 The willful act by You in conduct that is demonstrably and materially injurious to the Company, and which the Board deems to cause or will cause substantial economic damage to the Company or injury to the business reputation of the Company, monetarily or otherwise. For purposes of this Section, no act, or failure to act, on your part shall be deemed "willful" unless done, or omitted to be done, by You not in good faith and without a reasonable belief that your action or omission was in the best interest of the Company. Notwithstanding the foregoing, You shall not be deemed to have been terminated for Cause unless and until there shall have been delivered to You a copy of a resolution duly adopted by the affirmative vote of not less than three-quarters of the entire membership of the Board at a meeting of the Board called and held for such purpose (after reasonable notice to You and an opportunity for You, together with your counsel, to be heard before the Board), finding that in the good faith opinion of the Board You were guilty of conduct set forth above in clauses 3.2.1 or 3.2.2 of this Section and specifying the particulars in detail.

3.3 **Good Reason.** You shall be entitled to receive severance benefits as provided in this Agreement if You terminate your employment with the Company for "Good Reason." For purposes of this Agreement, "Good Reason" shall mean, without your consent, the occurrence in connection with a Change in Control of the Company of any of the following circumstances unless, in the case of Sections 3.3.1, 3.3.5, 3.3.6, 3.3.7, or 3.3.8, the circumstances are fully corrected prior to the Date of Termination specified in the Notice of Termination, as defined in Sections 3.5 and 3.4, respectively, given in respect of them. If You terminate your employment with the Company for Good Reason, as provided below, your employment with the Company shall be considered to have been involuntarily terminated by the Company:

3.3.1 The assignment to You of any significant employment duties which are inconsistent with your status and position (i) prior to the Change in Control where such change is a direct result of any pending Change in Control; or (ii) as such status exists immediately prior to the Change in Control of the Company, or (iii) which are a

substantial adverse alteration in the nature or status of your responsibilities from those in effect immediately prior to the Change in Control of the Company whichever is applicable;

3.3.2 A reduction by the Company in your annual base salary as in effect on the initial date of this Agreement, or as same may be increased from time to time irrespective of future Company policies including any across-the-board salary reductions similarly affecting all key employees of the Company;

3.3.3 Your relocation, without your consent, to an employment location not within twenty-five (25) miles of your present office or job location, except for required travel on the Company's business to an extent substantially consistent with your present business travel obligations;

3.3.4 The failure by the Company, without your consent, to pay to You any part of your current compensation, or to pay to You any part of an installment of deferred compensation under any deferred compensation program of the Company, within fourteen (14) days of the date the compensation is due;

3.3.5 The failure by the Company to continue in effect any bonus to which You were entitled, or any compensation plan in which You participate (i) prior to the Change in Control where such change is a direct result of any pending Change in Control, or (ii) immediately prior to the Change in Control of the Company that is material to your total compensation, including but not limited to the Company's Restricted Stock Plan, 401(k) Plan, and Benefit Plans, or any substitute plans adopted prior to the Change in Control of the Company, unless an equitable arrangement (embodied in an ongoing substitute or alternative plan) has been made with respect to the plan, or the failure by the Company to continue your participation in it (or in such substitute or alternative plan) on a basis not materially less favorable, both in terms of the amount of benefits provided and the level of your participation relative to other participants, as existed at the time of the Change in Control;

3.3.6 The failure by the Company to continue to provide You with (i) benefits substantially similar to those enjoyed by You under any of the Company's life insurance, medical, health and accident, or disability plans in which You were participating at the time of the Change in Control of the Company was in effect for the employees of the Company generally at the time of the Change in Control, (ii) the failure to continue to provide You with a Company automobile

or allowance in lieu of it at the time of the Change in Control of the Company, (iii) the taking of any action by the Company that would directly or indirectly materially reduce any of such benefits or deprive You of any material fringe benefit enjoyed by You at the time of the Change in Control of the Company, or (iv) the failure by the Company to provide You with the number of paid vacation days to which You are entitled on the basis of years of service with the Company in accordance with the Company's normal vacation policy in effect at the time of the Change in Control of the Company;

3.3.7 The failure of the Company to obtain a satisfactory agreement from any successor to assume and agree to perform this Agreement, as contemplated in Section 5 of this Agreement; or

3.3.8 Any purported termination of your employment that is not effected pursuant to a Notice of Termination satisfying the requirements of Section 3.4 below (and, if applicable, the requirements of Section 3.2 above); for purposes of this Agreement, no such purported termination shall be effective.

3.4 **Notice of Termination.** Any purported termination of your employment by the Company or by You shall be communicated by written Notice of Termination to the other party to this Agreement in accordance with Section 6 of this Agreement. For purposes of this Agreement, a "Notice of Termination" shall mean a notice that shall indicate the specific termination provision in this Agreement relied on, and shall set forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of your employment under the provision so indicated. Your rights to terminate your employment pursuant to this Section shall not be affected by your incapacity due to Disability. Your continued employment shall not constitute consent to, or a waiver of rights with respect to, any circumstance constituting Good Reason under this Agreement. In the event You deliver Notice of Termination based on circumstances set forth in Sections 3.3.1, 3.3.5, 3.3.6, 3.3.7, or 3.3.8 above, which are fully corrected prior to the Date of Termination set forth in your Notice of Termination, the Notice of Termination shall be deemed withdrawn and of no further force or effect.

3.5 **Date of Termination, etc.** "Date of Termination" shall mean (A) if your employment is terminated for Disability, 30 days after Notice of Termination is given (provided that You shall not have returned to the full-time performance of your duties during such 30-day period), and (B) if your employment is terminated pursuant to Section 3.2 or 3.3 above or for any other reason (other than Disability), the date specified in the Notice of Termination (which, in the case of a termination pursuant to Section 3.2 above shall not be less than 30 days, and in the case of a termination pursuant to Section 3.3 above shall not be less than 15 nor more than 60 days, respectively, from the date the Notice

of Termination is given). However, if within 15 days after any Notice of Termination is given, or, if later, prior to the Date of Termination (as determined without regard to this provision), the party receiving the Notice of Termination notifies the other party that a dispute exists concerning the termination, then the Date of Termination shall be the date on which the dispute is finally determined, either by mutual written agreement of the parties, by a binding arbitration award, or by a final judgment, order, or decree of a court of competent jurisdiction (which is not appealable or with respect to which the time for appeal has expired and no appeal has been perfected). The Date of Termination shall be extended by a notice of dispute only if the notice is given in good faith and the party giving the notice pursues the resolution of the dispute with reasonable diligence. Notwithstanding the pendency of any such dispute, the Company will continue to pay You your full compensation in effect when the notice giving rise to the dispute was given (including, but not limited to, base salary) and continue You as a participant in all compensation, benefit, and insurance plans in which You were participating when the notice giving rise to the dispute was given, until the dispute is finally resolved in accordance with this Section. Amounts paid under this Section are in addition to all other amounts due under this Agreement and shall not be offset against or reduce any other amounts due under this Agreement.

4. **Compensation on Termination or During Disability.** Following a Change in Control of the Company, as defined by Section 2, on termination of your employment or during a period of Disability You shall be entitled to the following benefits:

4.1 During any period that You fail to perform your full-time duties with the Company as a result of incapacity due to Disability, You shall continue to receive your base salary at the rate in effect at the commencement of any such period, together with all amounts payable to You under any compensation plan of the Company during the period, until this Agreement is terminated pursuant to section 3.1 above. Thereafter, or in the event your employment shall be terminated by the Company or by You for Retirement, or by reason of your death, your benefits shall be determined under the Company's retirement, insurance, and other compensation programs then in effect in accordance with the terms of those programs.

4.2 If your employment shall be terminated by the Company for Cause or by You other than for Good Reason, Disability, death, or Retirement, the Company shall pay You your full base salary through the Date of Termination at the rate in effect at the time Notice of Termination is given, plus all other amounts and benefits to which You are entitled under any compensation plan of the Company at the time the payments are due. The Company shall have no obligations to You under this Agreement.

4.3 On or before the third anniversary of the Change in Control, if your employment by the Company shall be terminated (a) by the Company other than for Cause, Retirement or Disability, or (b) by You for Good Reason (as defined in Section 3.3 herein), then You shall be entitled to the benefits provided below:

4.3.1 The Company shall pay You your full salary through the Date of Termination at the rate in effect at the time Notice of Termination is given, plus all other amounts and benefits to which You are entitled under any compensation plan of the Company, at the time the payments are due, except as otherwise provided below.

4.3.2 In lieu of any further salary payments to You for periods subsequent to the Date of Termination, the Company shall pay to You, as severance pay the following: (i) a lump sum severance payment equal to three (3) times the average of your Compensation for the five (5) years prior to the occurrence of the circumstance giving rise to the Notice of Termination (or if employed less than 5 years, the average annualized compensation of the period worked to date), plus (ii) the amounts in the forms set forth in paragraphs 4.3.3, 4.3.4 and 4.3.5 (the "Severance Payments"). In addition to the Severance Payments, the Company shall pay to You an additional amount equal to the amount of the Excise Tax, if any, that is due or determined to be due under Section 4999 of the Internal Revenue Code of 1986, as amended, resulting from the Severance Payments or any other payments under this Agreement or any other agreement between You and the Company and an amount sufficient to pay the taxes on any such Excise Taxes (the "Gross-up").

4.3.3 The Company shall continue coverage for You and your dependents under any health or welfare benefit plan under which You and your dependents were participating prior to the Change in Control for a period ending on the earlier to occur of (i) the date You become covered by a new employer's health and welfare benefit plan, (ii) the date You become covered by Medicare, or (iii) the date which is thirty-six (36) months from the Date of Termination. The coverage for your dependents shall end earlier than (i), (ii) or (iii) if required by the health or welfare benefit plan due to age eligibility.

4.3.4 The Company shall pay to You any deferred compensation, including, but not limited to deferred bonuses, allocated or credited to You or your account as of the Date of Termination.

4.3.5 Outstanding stock options or Restricted Stock grants, if any, granted to You under the Company's Stock Plans which are not vested on Termination shall immediately vest.

4.3.6 Where You shall prevail in any action against the Company to recover benefits hereunder, the Company shall also pay to You all reasonable legal and accounting fees and expenses incurred by You as a result of the termination, including all such fees and expenses incurred by You as a result of the termination, (including all such fees and expenses, if any, incurred in contesting or disputing any termination or in seeking to obtain or enforce any right or benefit provided by this Agreement or in connection with any tax audit or proceeding to the extent attributable to the application of Code Section 4999 to any payment or benefit provided under this Agreement) or any other agreement with the Company.

4.3.7 The amount of Severance Payments and any Gross-up due to You under this or any other relevant agreement with the Company shall be determined by a third party agreed to by You and the Company. If You cannot agree on a third party, then both third parties shall determine the amounts due under this Agreement. If the third parties do not agree on the amount to be paid to You, then either party may submit the calculation of the amounts which are in dispute to Arbitration in accordance with this Agreement. The payments provided for in Paragraphs 4.3.2, 4.3.4 and 4.3.5 above, shall be made no later than the thirtieth (30<sup>th</sup>) day following the Date of Termination. However, if the amounts of the payments cannot be finally determined on or before that day, the Company shall pay to You on that day an estimate, as determined in good faith by the Company, of the minimum amount of such payments and shall pay the remainder of those payments (together with interest at the rate provided in Section 1274(b)(2)(B) of the Code) as soon as the amount can be determined but in no event later than the 30th day after the Date of Termination. In the event that the amount of the estimated payments exceeds the amount subsequently determined to have been due, the excess shall constitute a loan by the Company to You payable on the 30th day after demand by the Company (together with interest at the rate provided in Section 1274(b)(2)(B) of the Code).

4.4 For purposes of this Agreement, "Compensation" shall mean the gross earnings reported on Form W-2 during a calendar year (which may include but is not limited to the value of the personal use of an automobile, any third-party sick pay, and any fees paid to You for serving as a Director of the Company or its



subsidiaries); awards under the Company's Restricted Stock Plan or other equity awards; and Company contributions to your 401(k) account.

4.5 You shall not be required to mitigate the amount of any payment provided for in this Section 4 by seeking other employment or otherwise, nor shall the amount of any payment or benefit provided for in this Section 4 be reduced by any compensation earned by You as the result of employment by another employer, by retirement benefits, by offset against any amount claimed to be owed by You to the Company, or otherwise except as specifically provided in this Section 4.

4.6 In addition to all other amounts payable to You under this Section 4, You shall be entitled to receive all qualified benefits payable to You under the Company's 401(k) Plan, Defined Benefit Plan and any other plan or agreement relating to retirement benefits in accordance with the terms of those plans.

5. **Successors; Binding Agreement.**

5.1 The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation, or otherwise) to all or substantially all of the business and/or assets of the Company to expressly assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place. Failure of the Company to obtain the assumption and agreement prior to the effectiveness of any succession shall be a breach of this Agreement and shall entitle You to compensation from the Company in the same amount and on the same terms as You would have been entitled to under this Agreement if You had terminated your employment for Good Reason following a Change in Control of the Company, except that for purposes of implementing the foregoing, the date on which any such succession becomes effective shall be deemed the Date of Termination.

5.2 This Agreement shall inure to the benefit of and be enforceable by your personal or legal representatives, executors, administrators, heirs, distributees, and legatees. If You should die while any amount would still be payable to You if You had continued to live, all such amounts, unless otherwise provided in this Agreement, shall be paid in accordance with the terms of this Agreement to your legatee or other designee or, if there is no such designee, to your estate.

6. **Notice.** For the purpose of this Agreement, all notices and other communications provided for in the Agreement shall be in writing and shall be deemed to have been duly given when delivered or mailed by United States registered or certified mail, return receipt requested, postage prepaid, addressed to

the respective addresses set forth on the first page of this Agreement, provided that all notices to the Company shall be directed to the attention of the Board with a copy to the Secretary of the Company, or to such other address as either party may have furnished to the other in writing in accordance this Agreement, except that notice of a change of address shall be effective only on receipt.

7. **Miscellaneous**

7.1 No provision of this Agreement may be modified, waived, or discharged unless the waiver, modification, or discharge is agreed to in writing and signed by You and such officer as may be specifically designated by the Board.

7.2 No waiver by either party to this Agreement at any time of any breach by the other party of, or compliance with, any condition or provision of this Agreement to be performed by such other party shall be deemed a waiver of similar or dissimilar provisions or conditions at the same or at any prior or subsequent time.

7.3 No agreements or representations, oral or otherwise, express or implied, with respect to the subject matter of this Agreement have been made by either party that are not expressly set forth in this Agreement.

7.4 Nothing in this Agreement is intended to reduce any benefits payable to You under any other agreement You may have with the Company or in any Company plan in which You may participate.

7.5 The validity, interpretation, construction, and performance of this Agreement shall be governed by the law of New Jersey without reference to its conflict of laws principles.

7.6 All references to sections of the Exchange Act or the Code shall be deemed also to refer to any successor provisions to such sections. Any payments provided for shall be paid net of any applicable withholding or deduction required under federal, state or local law.

7.7 The obligations of the Company under Section 4 shall survive the expiration of the term of this Agreement.

8. **Validity**. The validity or enforceability of any provision of this Agreement shall not affect the validity or unenforceability of any other provision of this Agreement, which shall remain in full force and effect.

9. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed to be an original but all of which together will constitute one and the same instrument.

10. **Arbitration.** Any dispute or controversy arising under or in connection with this Agreement shall be settled exclusively by arbitration in New Jersey in accordance with the rules of the American Arbitration Association then in effect. Judgment may be entered on the arbitrator's award in any court having jurisdiction. However, You shall be entitled to seek specific performance of your right to be paid until the Date of Termination during the pendency of any dispute or controversy arising under or in connection this Agreement.

11. **Entire Agreement.** This Agreement sets forth the entire understanding of the parties with respect to its subject matter and supersedes all prior written or oral agreements or understandings with respect to the subject matter.

In witness whereof, the parties have executed this Agreement as of the day and year first above written.

**MIDDLESEX WATER COMPANY**

By: /s/ Dennis W. Doll  
Dennis W. Doll  
President

**ATTEST:**

/s/ Kenneth J. Quinn  
Kenneth J. Quinn  
Secretary

/s/ Gerard L. Esposito  
Gerard L. Esposito

## CHANGE IN CONTROL TERMINATION AGREEMENT

This Change in Control Termination Agreement (the "Agreement") is entered into as of January 1, 2009, between Middlesex Water Company, a New Jersey corporation, with its principal place of business located at 1500 Ronson Road, P.O. Box 1500, Iselin, New Jersey 08830-0452, (the "Company"), and Bernadette M. Sohler, residing at 62 Timberlane Drive, Colonia, New Jersey 07067, (referred to as "You" in this Agreement).

**Recitals**

A. The Company considers it essential to the best interests of its stockholders to foster the continuous employment of key management personnel. In this connection, the Board of Directors of the Company (the "Board") recognizes that, as is the case with many publicly held Companies, the possibility of a Change in Control may exist. This possibility, and the uncertainty and questions that it may raise among management, may result in the departure or distraction of management personnel to the detriment of the Company and its stockholders.

B. The Board has determined that appropriate steps should be taken to reinforce and encourage the continued attention and dedication of members of the Company's management, including You, to the assigned duties without distraction in the face of potentially disturbing circumstances arising from the possibility of a Change in Control of the Company.

C. To induce You to remain in the employ of the Company, and in consideration of your agreement set forth below, the Company agrees that You shall receive the severance benefits set forth in this Agreement in the event your employment with the Company is terminated by the Company, or is terminated by You for "Good Reason" as defined herein in connection with a "Change in Control of the Company" (as defined in Section 2 below) under the circumstances described below. This Agreement is meant to supersede any other specific written agreements that may have been entered into between yourself and the Company concerning termination of employment.

Therefore, in consideration of your continued employment and the parties' agreement to be bound by the terms contained in this Agreement, the parties agree as follows:

1. **Term of Agreement.** This Agreement shall commence as of January 1, 2009 and shall continue in effect through December 31, 2009. However, commencing on December 31, 2009, and each December 31 afterwards,

the term of this Agreement shall automatically be extended for one (1) additional year unless, no later than the preceding November 1st, the Company shall have given notice that it does not wish to extend this Agreement. Notwithstanding the foregoing, if a Change in Control of the Company shall be proposed to occur or have occurred during the original or any extended term of this Agreement, this Agreement shall continue in effect until your termination of employment with the Company or its successor or when all amounts due under this Agreement following a termination have been paid, whichever is later.

2. **Change In Control.** No benefits shall be payable under this Agreement unless there shall have been a Change in Control of the Company, as set forth herein. For purposes of this Agreement, a "Change in Control" of the Company shall be deemed to occur if any party or group acquires beneficial ownership of 20 percent or more of the voting shares of the Company; or if shareholder approval is obtained for a transaction involving the acquisition of the Company through the purchase or exchange of the stock or assets of the Company by merger or otherwise; or if one-third or more of the Board elected in a 12-month period or less are so elected without the approval of a majority of the Board as constituted at the beginning of such period; or a liquidation or dissolution of Company.

3. **Termination Following Change In Control.** If any of the events described in Section 2 above constituting a Change in Control of the Company shall have occurred, then unless the termination is (A) because of your death, Disability or Retirement, (B) by the Company for Cause, or (C) by You other than for Good Reason, on the subsequent termination of your employment during the term of this Agreement, You shall be entitled to the severance benefits provided in Section 4.3 below if such termination occurs on or before the third (3<sup>rd</sup>) anniversary of the Change in Control date .

3.1 **Disability; Retirement.** If, as a result of your incapacity due to physical or mental illness, You shall have been absent from the full-time performance of your duties with the Company for 6 consecutive months, and within 30 days after written notice of termination is given You shall not have returned to the full-time performance of your duties, your employment may be terminated for "Disability." Termination of your employment by the Company or You due to your "Retirement" shall mean termination in accordance with the Company's retirement policy, including early retirement, generally applicable to its salaried employees or in accordance with any retirement arrangement established with your consent with respect to You.

3.2 **Cause.** Termination by the Company of your employment for "Cause" shall mean termination as a result of:

3.2.1 The willful and continued failure by You to substantially perform your duties with the Company as such employment was

performed by You prior to the Change in Control (other than any such failure resulting from your Disability or any such actual or anticipated failure after the issuance by You of a Notice of Termination for Good Reason as defined herein) after a written demand for substantial performance is delivered to You by the Board, which demand specifically identifies the manner in which the Board believes that You have not substantially performed your duties; or

3.2.2 The willful act by You in conduct that is demonstrably and materially injurious to the Company, and which the Board deems to cause or will cause substantial economic damage to the Company or injury to the business reputation of the Company, monetarily or otherwise. For purposes of this Section, no act, or failure to act, on your part shall be deemed "willful" unless done, or omitted to be done, by You not in good faith and without a reasonable belief that your action or omission was in the best interest of the Company. Notwithstanding the foregoing, You shall not be deemed to have been terminated for Cause unless and until there shall have been delivered to You a copy of a resolution duly adopted by the affirmative vote of not less than three-quarters of the entire membership of the Board at a meeting of the Board called and held for such purpose (after reasonable notice to You and an opportunity for You, together with your counsel, to be heard before the Board), finding that in the good faith opinion of the Board You were guilty of conduct set forth above in clauses 3.2.1 or 3.2.2 of this Section and specifying the particulars in detail.

3.3 **Good Reason.** You shall be entitled to receive severance benefits as provided in this Agreement if You terminate your employment with the Company for "Good Reason." For purposes of this Agreement, "Good Reason" shall mean, without your consent, the occurrence in connection with a Change in Control of the Company of any of the following circumstances unless, in the case of Sections 3.3.1, 3.3.5, 3.3.6, 3.3.7, or 3.3.8, the circumstances are fully corrected prior to the Date of Termination specified in the Notice of Termination, as defined in Sections 3.5 and 3.4, respectively, given in respect of them. If You terminate your employment with the Company for Good Reason, as provided below, your employment with the Company shall be considered to have been involuntarily terminated by the Company:

3.3.1 The assignment to You of any significant employment duties which are inconsistent with your status and position (i) prior to the Change in Control where such change is a direct result of any pending Change in Control; or (ii) as such status exists immediately prior to the Change in Control of the Company, or (iii) which are a

substantial adverse alteration in the nature or status of your responsibilities from those in effect immediately prior to the Change in Control of the Company whichever is applicable;

3.3.2 A reduction by the Company in your annual base salary as in effect on the initial date of this Agreement, or as same may be increased from time to time irrespective of future Company policies including any across-the-board salary reductions similarly affecting all key employees of the Company;

3.3.3 Your relocation, without your consent, to an employment location not within twenty-five (25) miles of your present office or job location, except for required travel on the Company's business to an extent substantially consistent with your present business travel obligations;

3.3.4 The failure by the Company, without your consent, to pay to You any part of your current compensation, or to pay to You any part of an installment of deferred compensation under any deferred compensation program of the Company, within fourteen (14) days of the date the compensation is due;

3.3.5 The failure by the Company to continue in effect any bonus to which You were entitled, or any compensation plan in which You participate (i) prior to the Change in Control where such change is a direct result of any pending Change in Control, or (ii) immediately prior to the Change in Control of the Company that is material to your total compensation, including but not limited to the Company's Restricted Stock Plan, 401(k) Plan, and Benefit Plans, or any substitute plans adopted prior to the Change in Control of the Company, unless an equitable arrangement (embodied in an ongoing substitute or alternative plan) has been made with respect to the plan, or the failure by the Company to continue your participation in it (or in such substitute or alternative plan) on a basis not materially less favorable, both in terms of the amount of benefits provided and the level of your participation relative to other participants, as existed at the time of the Change in Control;

3.3.6 The failure by the Company to continue to provide You with (i) benefits substantially similar to those enjoyed by You under any of the Company's life insurance, medical, health and accident, or disability plans in which You were participating at the time of the Change in Control of the Company was in effect for the employees of the Company generally at the time of the Change in Control, (ii) the failure to continue to provide You with a Company automobile

or allowance in lieu of it at the time of the Change in Control of the Company, (iii) the taking of any action by the Company that would directly or indirectly materially reduce any of such benefits or deprive You of any material fringe benefit enjoyed by You at the time of the Change in Control of the Company, or (iv) the failure by the Company to provide You with the number of paid vacation days to which You are entitled on the basis of years of service with the Company in accordance with the Company's normal vacation policy in effect at the time of the Change in Control of the Company;

3.3.7 The failure of the Company to obtain a satisfactory agreement from any successor to assume and agree to perform this Agreement, as contemplated in Section 5 of this Agreement; or

3.3.8 Any purported termination of your employment that is not effected pursuant to a Notice of Termination satisfying the requirements of Section 3.4 below (and, if applicable, the requirements of Section 3.2 above); for purposes of this Agreement, no such purported termination shall be effective.

3.4 **Notice of Termination.** Any purported termination of your employment by the Company or by You shall be communicated by written Notice of Termination to the other party to this Agreement in accordance with Section 6 of this Agreement. For purposes of this Agreement, a "Notice of Termination" shall mean a notice that shall indicate the specific termination provision in this Agreement relied on, and shall set forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of your employment under the provision so indicated. Your rights to terminate your employment pursuant to this Section shall not be affected by your incapacity due to Disability. Your continued employment shall not constitute consent to, or a waiver of rights with respect to, any circumstance constituting Good Reason under this Agreement. In the event You deliver Notice of Termination based on circumstances set forth in Sections 3.3.1, 3.3.5, 3.3.6, 3.3.7, or 3.3.8 above, which are fully corrected prior to the Date of Termination set forth in your Notice of Termination, the Notice of Termination shall be deemed withdrawn and of no further force or effect.

3.5 **Date of Termination, etc.** "Date of Termination" shall mean (A) if your employment is terminated for Disability, 30 days after Notice of Termination is given (provided that You shall not have returned to the full-time performance of your duties during such 30-day period), and (B) if your employment is terminated pursuant to Section 3.2 or 3.3 above or for any other reason (other than Disability), the date specified in the Notice of Termination (which, in the case of a termination pursuant to Section 3.2 above shall not be less than 30 days, and in the case of a termination pursuant to Section 3.3 above shall not be less than 15 nor more than 60 days, respectively, from the date the Notice



of Termination is given). However, if within 15 days after any Notice of Termination is given, or, if later, prior to the Date of Termination (as determined without regard to this provision), the party receiving the Notice of Termination notifies the other party that a dispute exists concerning the termination, then the Date of Termination shall be the date on which the dispute is finally determined, either by mutual written agreement of the parties, by a binding arbitration award, or by a final judgment, order, or decree of a court of competent jurisdiction (which is not appealable or with respect to which the time for appeal has expired and no appeal has been perfected). The Date of Termination shall be extended by a notice of dispute only if the notice is given in good faith and the party giving the notice pursues the resolution of the dispute with reasonable diligence. Notwithstanding the pendency of any such dispute, the Company will continue to pay You your full compensation in effect when the notice giving rise to the dispute was given (including, but not limited to, base salary) and continue You as a participant in all compensation, benefit, and insurance plans in which You were participating when the notice giving rise to the dispute was given, until the dispute is finally resolved in accordance with this Section. Amounts paid under this Section are in addition to all other amounts due under this Agreement and shall not be offset against or reduce any other amounts due under this Agreement.

4. **Compensation on Termination or During Disability.** Following a Change in Control of the Company, as defined by Section 2, on termination of your employment or during a period of Disability You shall be entitled to the following benefits:

4.1 During any period that You fail to perform your full-time duties with the Company as a result of incapacity due to Disability, You shall continue to receive your base salary at the rate in effect at the commencement of any such period, together with all amounts payable to You under any compensation plan of the Company during the period, until this Agreement is terminated pursuant to section 3.1 above. Thereafter, or in the event your employment shall be terminated by the Company or by You for Retirement, or by reason of your death, your benefits shall be determined under the Company's retirement, insurance, and other compensation programs then in effect in accordance with the terms of those programs.

4.2 If your employment shall be terminated by the Company for Cause or by You other than for Good Reason, Disability, death, or Retirement, the Company shall pay You your full base salary through the Date of Termination at the rate in effect at the time Notice of Termination is given, plus all other amounts and benefits to which You are entitled under any compensation plan of the Company at the time the payments are due. The Company shall have no obligations to You under this Agreement.

4.3 On or before the third anniversary of the Change in Control, if your employment by the Company shall be terminated (a) by the Company other than for Cause, Retirement or Disability, or (b) by You for Good Reason (as defined in Section 3.3 herein), then You shall be entitled to the benefits provided below:

4.3.1 The Company shall pay You your full salary through the Date of Termination at the rate in effect at the time Notice of Termination is given, plus all other amounts and benefits to which You are entitled under any compensation plan of the Company, at the time the payments are due, except as otherwise provided below.

4.3.2 In lieu of any further salary payments to You for periods subsequent to the Date of Termination, the Company shall pay to You, as severance pay the following: (i) a lump sum severance payment equal to three (3) times the average of your Compensation for the five (5) years prior to the occurrence of the circumstance giving rise to the Notice of Termination (or if employed less than 5 years, the average annualized compensation of the period worked to date), plus (ii) the amounts in the forms set forth in paragraphs 4.3.3, 4.3.4 and 4.3.5 (the "Severance Payments"). In addition to the Severance Payments, the Company shall pay to You an additional amount equal to the amount of the Excise Tax, if any, that is due or determined to be due under Section 4999 of the Internal Revenue Code of 1986, as amended, resulting from the Severance Payments or any other payments under this Agreement or any other agreement between You and the Company and an amount sufficient to pay the taxes on any such Excise Taxes (the "Gross-up").

4.3.3 The Company shall continue coverage for You and your dependents under any health or welfare benefit plan under which You and your dependents were participating prior to the Change in Control for a period ending on the earlier to occur of (i) the date You become covered by a new employer's health and welfare benefit plan, (ii) the date You become covered by Medicare, or (iii) the date which is thirty-six (36) months from the Date of Termination. The coverage for your dependents shall end earlier than (i), (ii) or (iii) if required by the health or welfare benefit plan due to age eligibility.

4.3.4 The Company shall pay to You any deferred compensation, including, but not limited to deferred bonuses, allocated or credited to You or your account as of the Date of Termination.

4.3.5 Outstanding stock options or Restricted Stock grants, if any, granted to You under the Company's Stock Plans which are not vested on Termination shall immediately vest.

4.3.6 Where You shall prevail in any action against the Company to recover benefits hereunder, the Company shall also pay to You all reasonable legal and accounting fees and expenses incurred by You as a result of the termination, including all such fees and expenses incurred by You as a result of the termination, (including all such fees and expenses, if any, incurred in contesting or disputing any termination or in seeking to obtain or enforce any right or benefit provided by this Agreement or in connection with any tax audit or proceeding to the extent attributable to the application of Code Section 4999 to any payment or benefit provided under this Agreement) or any other agreement with the Company.

4.3.7 The amount of Severance Payments and any Gross-up due to You under this or any other relevant agreement with the Company shall be determined by a third party agreed to by You and the Company. If You cannot agree on a third party, then both third parties shall determine the amounts due under this Agreement. If the third parties do not agree on the amount to be paid to You, then either party may submit the calculation of the amounts which are in dispute to Arbitration in accordance with this Agreement. The payments provided for in Paragraphs 4.3.2, 4.3.4 and 4.3.5 above, shall be made no later than the thirtieth (30<sup>th</sup>) day following the Date of Termination. However, if the amounts of the payments cannot be finally determined on or before that day, the Company shall pay to You on that day an estimate, as determined in good faith by the Company, of the minimum amount of such payments and shall pay the remainder of those payments (together with interest at the rate provided in Section 1274(b)(2)(B) of the Code) as soon as the amount can be determined but in no event later than the 30th day after the Date of Termination. In the event that the amount of the estimated payments exceeds the amount subsequently determined to have been due, the excess shall constitute a loan by the Company to You payable on the 30th day after demand by the Company (together with interest at the rate provided in Section 1274(b)(2)(B) of the Code).

4.4 For purposes of this Agreement, "Compensation" shall mean the gross earnings reported on Form W-2 during a calendar year (which may include but is not limited to the value of the personal use of an automobile, any third-party sick pay, and any fees paid to You for serving as a Director of the Company or its

subsidiaries); awards under the Company's Restricted Stock Plan or other equity awards; and Company contributions to your 401(k) account.

4.5 You shall not be required to mitigate the amount of any payment provided for in this Section 4 by seeking other employment or otherwise, nor shall the amount of any payment or benefit provided for in this Section 4 be reduced by any compensation earned by You as the result of employment by another employer, by retirement benefits, by offset against any amount claimed to be owed by You to the Company, or otherwise except as specifically provided in this Section 4.

4.6 In addition to all other amounts payable to You under this Section 4, You shall be entitled to receive all qualified benefits payable to You under the Company's 401(k) Plan, Defined Benefit Plan and any other plan or agreement relating to retirement benefits in accordance with the terms of those plans.

5. **Successors; Binding Agreement.**

5.1 The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation, or otherwise) to all or substantially all of the business and/or assets of the Company to expressly assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place. Failure of the Company to obtain the assumption and agreement prior to the effectiveness of any succession shall be a breach of this Agreement and shall entitle You to compensation from the Company in the same amount and on the same terms as You would have been entitled to under this Agreement if You had terminated your employment for Good Reason following a Change in Control of the Company, except that for purposes of implementing the foregoing, the date on which any such succession becomes effective shall be deemed the Date of Termination.

5.2 This Agreement shall inure to the benefit of and be enforceable by your personal or legal representatives, executors, administrators, heirs, distributees, and legatees. If You should die while any amount would still be payable to You if You had continued to live, all such amounts, unless otherwise provided in this Agreement, shall be paid in accordance with the terms of this Agreement to your legatee or other designee or, if there is no such designee, to your estate.

6. **Notice.** For the purpose of this Agreement, all notices and other communications provided for in the Agreement shall be in writing and shall be deemed to have been duly given when delivered or mailed by United States registered or certified mail, return receipt requested, postage prepaid, addressed to

the respective addresses set forth on the first page of this Agreement, provided that all notices to the Company shall be directed to the attention of the Board with a copy to the Secretary of the Company, or to such other address as either party may have furnished to the other in writing in accordance this Agreement, except that notice of a change of address shall be effective only on receipt.

7. **Miscellaneous**

7.1 No provision of this Agreement may be modified, waived, or discharged unless the waiver, modification, or discharge is agreed to in writing and signed by You and such officer as may be specifically designated by the Board.

7.2 No waiver by either party to this Agreement at any time of any breach by the other party of, or compliance with, any condition or provision of this Agreement to be performed by such other party shall be deemed a waiver of similar or dissimilar provisions or conditions at the same or at any prior or subsequent time.

7.3 No agreements or representations, oral or otherwise, express or implied, with respect to the subject matter of this Agreement have been made by either party that are not expressly set forth in this Agreement.

7.4 Nothing in this Agreement is intended to reduce any benefits payable to You under any other agreement You may have with the Company or in any Company plan in which You may participate.

7.5 The validity, interpretation, construction, and performance of this Agreement shall be governed by the law of New Jersey without reference to its conflict of laws principles.

7.6 All references to sections of the Exchange Act or the Code shall be deemed also to refer to any successor provisions to such sections. Any payments provided for shall be paid net of any applicable withholding or deduction required under federal, state or local law.

7.7 The obligations of the Company under Section 4 shall survive the expiration of the term of this Agreement.

8. **Validity**. The validity or enforceability of any provision of this Agreement shall not affect the validity or unenforceability of any other provision of this Agreement, which shall remain in full force and effect.

9. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed to be an original but all of which together will constitute one and the same instrument.

10. **Arbitration.** Any dispute or controversy arising under or in connection with this Agreement shall be settled exclusively by arbitration in New Jersey in accordance with the rules of the American Arbitration Association then in effect. Judgment may be entered on the arbitrator's award in any court having jurisdiction. However, You shall be entitled to seek specific performance of your right to be paid until the Date of Termination during the pendency of any dispute or controversy arising under or in connection this Agreement.

11. **Entire Agreement.** This Agreement sets forth the entire understanding of the parties with respect to its subject matter and supersedes all prior written or oral agreements or understandings with respect to the subject matter.

In witness whereof, the parties have executed this Agreement as of the day and year first above written.

**MIDDLESEX WATER COMPANY**

By: /s/ Dennis W. Doll  
Dennis W. Doll  
President

**ATTEST:**

/s/ Kenneth J. Quinn  
Kenneth J. Quinn  
Secretary

/s/ Bernadette M. Sohler  
Bernadette M. Sohler

**LOAN AGREEMENT**  
**BY AND BETWEEN**  
**NEW JERSEY ENVIRONMENTAL INFRASTRUCTURE TRUST**  
**AND**  
**MIDDLESEX WATER COMPANY**

**DATED AS OF NOVEMBER 1, 2008**

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**NEW JERSEY ENVIRONMENTAL INFRASTRUCTURE TRUST LOAN AGREEMENT**

**THIS LOAN AGREEMENT**, made and entered into as of this November 1, 2008, by and between the NEW JERSEY ENVIRONMENTAL INFRASTRUCTURE TRUST, a public body corporate and politic with corporate succession, and the Borrower (capitalized terms used in this Loan Agreement shall have, unless the context otherwise requires, the meanings set forth in said Section 1.01);

**WITNESSETH THAT:**

**WHEREAS**, the Trust, in accordance with the Act, the Bond Resolution and a financial plan approved by the State Legislature in accordance with Sections 22 and 22.1 of the Act, will issue its Trust Bonds on or prior to the Loan Closing for the purpose of making the Loan to the Borrower and the Loans to the Borrowers from the proceeds of the Trust Bonds to finance a portion of the Costs of Environmental Infrastructure Facilities;

**WHEREAS**, the Borrower has, in accordance with the Act and the Regulations, made timely application to the Trust for a Loan to finance a portion of the Costs of the Project;

**WHEREAS**, the State Legislature, in accordance with Sections 20 and 20.1 of the Act, has in the form of an appropriations act approved a project priority list that includes the Project and that authorizes an expenditure of proceeds of the Trust Bonds to finance a portion of the Costs of the Project;

**WHEREAS**, the Trust has approved the Borrower's application for a Loan from available proceeds of the Trust Bonds to finance a portion of the Costs of the Project;

**WHEREAS**, in accordance with the applicable Bond Act (as defined in the Fund Loan Agreement), and the Regulations, the Borrower has been awarded a Fund Loan for a portion of the Costs of the Project; and

**WHEREAS**, the Borrower, in accordance with the Act, the Regulations, the Business Corporation Law and all other applicable law, will issue a Borrower Bond to the Trust evidencing said Loan at the Loan Closing.

**NOW, THEREFORE**, for and in consideration of the award of the Loan by the Trust, the Borrower agrees to complete the Project and to perform under this Loan Agreement in accordance with the conditions, covenants and procedures set forth herein and attached hereto as part hereof, as follows:

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## ARTICLE I

### DEFINITIONS

**SECTION 1.01. Definitions.** (a) The following terms as used in this Loan Agreement shall, unless the context clearly requires otherwise, have the following meanings:

**"Act"** means the "New Jersey Environmental 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 that portion of Interest on the Loan or Interest on the Borrower Bond payable hereunder as an annual fee of up to four-tenths of one percent (.40%) of the initial principal amount of the Loan or such lesser amount, if any, as may be authorized by any act of the State Legislature and as the Trust may approve from time to time.

**"Authorized Officer"** means, in the case of the Borrower, any person or persons authorized pursuant to a resolution of the board of directors of the Borrower to perform any act or execute any document relating to the Loan, the Borrower Bond or this Loan Agreement.

**"Bond Counsel"** means a law firm appointed or approved by the Trust, as the case may be, having a reputation in the field of municipal law whose opinions are generally acceptable by purchasers of municipal bonds.

**"Borrower"** means the corporation that is a party to and is described in Schedule A to this Loan Agreement, and its successors and assigns.

**"Borrower Bond"** means the general obligation bond, note, debenture or other evidence of indebtedness authorized, executed, attested and delivered by the Borrower to the Trust and, if applicable, authenticated on behalf of the Borrower to evidence the Loan, a specimen of which is attached hereto as Exhibit D and made a part hereof.

**"Borrowers"** means any other Local Government Unit or Private Entity (as such terms are defined in the Regulations) authorized to construct, operate and maintain Environmental Infrastructure Facilities that have entered into Loan Agreements with the Trust pursuant to which the Trust will make Loans to such recipients from moneys on deposit in the Project Fund, excluding the Project Loan Account.

**"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 eligible, reasonable, necessary, allocable to the Project and permitted by generally accepted accounting principles, including Allowances and Building Costs (as defined in the Regulations), as shall be determined on a project-specific basis in accordance with the Regulations as set forth in Exhibit B hereto, as the same may be amended by subsequent eligible costs as evidenced by a certificate of an authorized officer of the Trust.

"**Debt Service Reserve Fund**" means the Debt Service Reserve Fund, if any, as defined in the Bond Resolution.

"**Department**" means the New Jersey Department of Environmental Protection.

"**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, described in Exhibit A-1 attached hereto and made a part hereof for which the Borrower is borrowing the Loan under this Loan Agreement.

"**Event of Default**" means any occurrence or event specified in Section 5.01 hereof.

"**Excess Project Funds**" shall have the meaning set forth in Section 3.03A hereof.

"**Fund Loan**" means the loan made to the Borrower by the State, acting by and through the Department, pursuant to the Fund Loan Agreement dated as of November 1, 2008 by and between the Borrower and the State, acting by and through the Department, to finance or refinance a portion of the Costs of the Project.

"**Fund Loan Agreement**" means the loan agreement dated as of November 1, 2008 by and between the Borrower and the State, acting by and through the Department, regarding the terms and conditions of the Fund Loan.

"**Interest on the Loan**" or "**Interest on the Borrower Bond**" means the sum of (i) the Interest Portion, (ii) the Administrative Fee, and (iii) any late charges incurred hereunder.

"**Interest Portion**" means that portion of Interest on the Loan or Interest on the Borrower Bond payable hereunder that is necessary to pay the Borrower's proportionate share of interest on the Trust Bonds (i) as set forth in Exhibit A-2 hereof under the column heading entitled "Interest", or (ii) with respect to any prepayment of Trust Bond Loan Repayments in accordance with Section 3.07 or 5.03 hereof, to accrue on any principal amount of Trust Bond Loan Repayments to the date of the optional redemption or acceleration, as the case may be, of the Trust Bonds allocable to such prepaid or accelerated Trust Bond Loan Repayment.

"**Loan**" means the loan made by the Trust to the Borrower to finance or refinance a portion of the Costs of the Project pursuant to this Loan Agreement.

**"Loan Agreement"** means this Loan Agreement, including the Exhibits attached hereto, as it may be supplemented, modified or amended from time to time in accordance with the terms hereof and of the Bond Resolution.

**"Loan Agreements"** means any other loan agreements entered into by and between the Trust and one or more of the Borrowers pursuant to which the Trust will make Loans to such Borrowers from moneys on deposit in the Project Fund, excluding the Project Loan Account, financed with the proceeds of the Trust Bonds.

**"Loan Closing"** means the date upon which the Trust shall issue and deliver the Trust Bonds and the Borrower shall deliver its Borrower Bond, as previously authorized, executed, attested and, if applicable, authenticated, to the Trust.

**"Loan Repayments"** means the sum of (i) Trust Bond Loan Repayments, (ii) the Administrative Fee, and (iii) any late charges incurred hereunder.

**"Loan Term"** means the term of this Loan Agreement provided in Sections 3.01 and 3.03 hereof and in Exhibit A-2 attached hereto and made a part hereof.

**"Loans"** means the loans made by the Trust to the Borrowers under the Loan Agreements from moneys on deposit in the Project Fund, excluding the Project Loan Account.

**"Master Program Trust Agreement"** means that certain Master Program Trust Agreement, dated as of November 1, 1995, by and among the Trust, the State, United States Trust Company of New York, as Master Program Trustee thereunder, The Bank of New York (NJ), in several capacities thereunder, and First Fidelity Bank, N.A. (predecessor to Wachovia Bank, National Association), in several capacities thereunder, as supplemented by that certain Agreement of Resignation of Outgoing Master Program Trustee, Appointment of Successor Master Program Trustee and Acceptance Agreement, dated as of November 1, 2001, by and among United States Trust Company of New York, as Outgoing Master Program Trustee, State Street Bank and Trust Company, N.A. (predecessor to U.S. Bank Trust National Association), as Successor Master Program Trustee, and the Trust, as the same may be amended and supplemented from time to time in accordance with its terms.

**"Official Statement"** means the Official Statement relating to the issuance of the Trust Bonds.

**"Preliminary Official Statement"** means the Preliminary Official Statement relating to the issuance of the Trust Bonds.

**"Prime Rate"** means the prevailing commercial interest rate announced by the Trustee from time to time in the State as its prime lending rate.

**"Project"** means the Environmental Infrastructure Facilities of the Borrower described in Exhibit A-1 attached hereto and made a part hereof, which constitutes a project for which the Trust is permitted to make a loan to the Borrower pursuant to the Act, the Regulations and the

Bond Resolution, all or a portion of the Costs of which is financed or refinanced by the Trust through the making of the Loan under this Loan Agreement and which may be identified under either the Drinking Water or Clean Water Project Lists with the Project Number specified in Exhibit A-1 attached hereto.

**"Project Fund"** means the Project Fund as defined in the Bond Resolution.

**"Project Loan Account"** means the project loan account established on behalf of the Borrower in the Project Fund in accordance with the Bond Resolution to finance all or a portion of the Costs of the Project.

**"Regulations"** means the rules and regulations, as applicable, now or hereafter promulgated under 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.

**"Trust"** means the 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.

**"Trust Bond Loan Repayments"** means the repayments of the principal amount of the Loan plus the payment of any premium associated with prepaying the principal amount of the Loan in accordance with Section 3.07 hereof plus the Interest Portion.

**"Trust Bonds"** means bonds authorized by Section 2.03 of the Bond Resolution, together with any refunding bonds authenticated, if applicable, and delivered pursuant to Section 2.04 of the Bond Resolution, in each case issued in order to finance (i) the portion of the Loan deposited in the Project Loan Account, (ii) the portion of the Loans deposited in the balance of the Project Fund, (iii) any capitalized interest related to such bonds, (iv) a portion of the costs of issuance related to such bonds, and (v) that portion of the Debt Service Reserve Fund (to the extent the Trust establishes a Debt Service Reserve Fund pursuant to the Bond Resolution), if any, allocable to the Loan or Loans, as the case may be, a portion of which includes the funding of reserve capacity, if applicable, for the Environmental Infrastructure Facilities of the Borrower or Borrowers, as the case may be, or to refinance any or all of the above.

**"Trustee"** means, initially, The Bank of New York Mellon, the Trustee appointed by the Trust and its successors as Trustee under the Bond Resolution, as provided in Article X of the Bond Resolution.

(b) In addition to the capitalized terms defined in subsection (a) of this Section 1.01, certain additional capitalized terms used in this Loan Agreement shall, unless the context clearly requires otherwise, have the meanings ascribed to such additional capitalized terms in Schedule A attached hereto and made a part hereof.

(c) Except as otherwise defined herein or where the context otherwise requires, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include firms, associations, corporations, agencies and districts. Words importing one gender shall include the other gender.

## ARTICLE II

### REPRESENTATIONS AND COVENANTS OF BORROWER

**SECTION 2.01. Representations of Borrower.** The Borrower represents for the benefit of the Trust, the Trustee and the holders of the Trust Bonds as follows:

(a) Organization and Authority.

(i) The Borrower is a corporation duly created and validly existing under and pursuant to the Constitution and statutes of the State, including the Business Corporation Law.

(ii) The acting officers of the Borrower who are contemporaneously herewith performing or have previously performed any action contemplated in this Loan Agreement either are or, at the time any such action was performed, were the duly appointed or elected officers of such Borrower empowered by applicable State law and, if applicable, authorized by resolution of the Borrower to perform such actions. To the extent any such action was performed by an officer no longer the duly acting officer of such Borrower, all such actions previously taken by such officer are still in full force and effect.

(iii) The Borrower has full legal right and authority and all necessary licenses and permits required as of the date hereof to own, operate and maintain its Environmental Infrastructure System, to carry on its activities relating thereto, to execute, attest and deliver this Loan Agreement and the Borrower Bond, to authorize the authentication of the Borrower Bond, to sell the Borrower Bond to the Trust, to undertake and complete the Project and to carry out and consummate all transactions contemplated by this Loan Agreement.

(iv) The proceedings of the Borrower's board of directors approving this Loan Agreement and the Borrower Bond, authorizing the execution, attestation and delivery of this Loan Agreement and the Borrower Bond, authorizing the sale of the Borrower Bond to the Trust, authorizing the authentication of the Borrower Bond on behalf of the Borrower and authorizing the Borrower to undertake and complete the Project, including, without limitation, the Borrower Bond Resolution (collectively, the "Proceedings"), have been duly and lawfully adopted in accordance with the Business Corporation Law and other applicable State law at a meeting or meetings that were duly called and held in accordance with the Borrower By-Laws and at which quorums were present and acting throughout.

(v) By official action of the Borrower taken prior to or concurrent with the execution and delivery hereof, including, without limitation, the Proceedings, the Borrower has duly authorized, approved and consented to all necessary action to be taken by the Borrower for: (A) the execution, attestation, delivery and performance of this Loan Agreement and the transactions contemplated hereby; (B) the issuance of the



Borrower Bond and the sale thereof to the Trust upon the terms set forth herein; (C) the approval of the inclusion, if such inclusion is deemed necessary in the sole discretion of the Trust, in the Preliminary Official Statement and the Official Statement of all statements and information relating to the Borrower set forth in "APPENDIX B" thereto (the "Borrower Appendices") and any amendment thereof or supplement thereto; and (D) the execution, delivery and due performance of any and all other certificates, agreements and instruments that may be required to be executed, delivered and performed by the Borrower in order to carry out, give effect to and consummate the transactions contemplated by this Loan Agreement, including, without limitation, the designation of the Borrower Appendices portion of the Preliminary Official Statement, if any, as "deemed final" for the purposes and within the meaning of Rule 15c2-12 ("Rule 15c2-12") of the Securities and Exchange Commission ("SEC") promulgated under the Securities Exchange Act of 1934, as amended or supplemented, including any successor regulation or statute thereto.

(vi) This Loan Agreement and the Borrower Bond have each been duly authorized by the Borrower and duly executed, attested and delivered by Authorized Officers of the Borrower, and the Borrower Bond has been duly sold by the Borrower to the Trust, duly authenticated by the trustee or paying agent, if applicable, under the Borrower Bond Resolution and duly issued by the Borrower in accordance with the terms of the Borrower Bond Resolution; and assuming that the Trust has all the requisite power and authority to authorize, execute, attest and deliver, and has duly authorized, executed, attested and delivered, this Loan Agreement, and assuming further that this Loan Agreement is the legal, valid and binding obligation of the Trust, enforceable against the Trust in accordance with its terms, each of this Loan Agreement and the Borrower Bond constitutes a legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its respective 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; and the information contained under "Description of Loan" in Exhibit A-2 attached hereto and made a part hereof is true and accurate in all respects.

(b) Full Disclosure. There is no fact that the Borrower has not disclosed to the Trust in writing on the Borrower's application for the Loan or otherwise that materially adversely affects or (so far as the Borrower can now foresee) that will materially adversely affect the properties, activities, prospects or condition (financial or otherwise) of the Borrower or its Environmental Infrastructure System, or the ability of the Borrower to make all Loan Repayments and any other payments required under this Loan Agreement or otherwise to observe and perform its duties, covenants, obligations and agreements under this Loan Agreement and the Borrower Bond.

(c) Pending Litigation. There are no proceedings pending or, to the knowledge of the Borrower, threatened against or affecting the Borrower in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would materially adversely affect (i) the undertaking or completion of the Project, (ii) the properties, activities, prospects or condition (financial or otherwise) of the Borrower or its Environmental

Infrastructure System, (iii) the ability of the Borrower to make all Loan Repayments or any other payments required under this Loan Agreement, (iv) the authorization, execution, attestation or delivery of this Loan Agreement or the Borrower Bond, (v) the issuance of the Borrower Bond and the sale thereof to the Trust, (vi) the adoption of the Borrower Bond Resolution, or (vii) the Borrower's ability otherwise to observe and perform its duties, covenants, obligations and agreements under this Loan Agreement and the Borrower Bond, which proceedings have not been previously disclosed in writing to the Trust either in the Borrower's application for the Loan or otherwise.

(d) Compliance with Existing Laws and Agreements. (i) The authorization, execution, attestation and delivery of this Loan Agreement and the Borrower Bond by the Borrower, (ii) the authentication of the Borrower Bond by the trustee or paying agent under the Borrower Bond Resolution, as the case may be, and the sale of the Borrower Bond to the Trust, (iii) the adoption of the Borrower Bond Resolution, (iv) the observation and performance by the Borrower of its duties, covenants, obligations and agreements hereunder and thereunder, (v) the consummation of the transactions provided for in this Loan Agreement, the Borrower Bond Resolution and the Borrower Bond, and (vi) the undertaking and completion of the Project will not (A) other than the lien, charge or encumbrance created hereby, by the Borrower Bond, by the Borrower Bond Resolution and by any other outstanding debt obligations of the Borrower that are at parity with the Borrower Bond as to lien on, and source and security for payment thereon from, the revenues of the Borrower's Environmental Infrastructure System, 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 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 is subject.

(e) No Defaults. No event has occurred and no condition exists that, upon the authorization, execution, attestation and delivery of this Loan Agreement and the Borrower Bond, the issuance of the Borrower Bond and the sale thereof to the Trust, the adoption of the Borrower Bond Resolution or the receipt of the amount of the Loan, would constitute an Event of Default hereunder. The Borrower is not in violation of, and has not received notice of any claimed violation of, any term of any agreement or other instrument to which it is a party or by which it, its Environmental Infrastructure System or its properties may be bound, which violation would materially adversely affect the properties, activities, prospects or condition (financial or otherwise) of the Borrower or its Environmental Infrastructure System or the ability of the Borrower to make all Loan Repayments, to pay all other amounts due hereunder or otherwise to observe and perform its duties, covenants, obligations and agreements under this Loan Agreement and the Borrower Bond.

(f) Governmental Consent. The Borrower has obtained all permits and approvals required to date by any governmental body or officer for the authorization, execution, attestation and delivery of this Loan Agreement and the Borrower Bond, for the issuance of the Borrower Bond and the sale thereof to the Trust, for the adoption of the Borrower Bond Resolution, for the making, observance and performance by the Borrower of its duties, covenants, obligations and agreements under this Loan Agreement and the Borrower Bond and for the undertaking or completion of the Project and the financing or refinancing thereof, including, but not limited to, if required, the approval by the New Jersey Board of Public Utilities (the "BPU") of the issuance by the Borrower of the Borrower Bond to the Trust, as required by Section 9a of the Act, and any other approvals required therefor by the BPU; and the Borrower has complied with all applicable provisions of law requiring any notification, declaration, filing or registration with any governmental body or officer in connection with the making, observance and performance by the Borrower of its duties, covenants, obligations and agreements under this Loan Agreement and the Borrower Bond or with the undertaking or completion of the Project and the financing or refinancing thereof. No consent, approval or authorization of, or filing, registration or qualification with, any governmental body or officer that has not been obtained is required on the part of the Borrower as a condition to the authorization, execution, attestation and delivery of this Loan Agreement and the Borrower Bond, the issuance of the Borrower Bond and the sale thereof to the Trust, the undertaking or completion of the Project or the consummation of any transaction herein contemplated.

(g) Compliance with Law. The Borrower:

(i) is in compliance with all laws, ordinances, governmental rules and regulations to which it is subject, the failure to comply with which would materially adversely affect (A) the ability of the Borrower to conduct its activities or to undertake or complete the Project, (B) the ability of the Borrower to make the Loan Repayments and to pay all other amounts due hereunder, or (C) the condition (financial or otherwise) of the Borrower or its Environmental Infrastructure System; and

(ii) has obtained all licenses, permits, franchises or other governmental authorizations presently necessary for the ownership of its properties or for the conduct of its activities that, if not obtained, would materially adversely affect (A) the ability of the Borrower to conduct its activities or to undertake or complete the Project, (B) the ability of the Borrower to make the Loan Repayments and to pay all other amounts due hereunder, or (C) the condition (financial or otherwise) of the Borrower or its Environmental Infrastructure System.

(h) Use of Proceeds. The Borrower will apply the proceeds of the Loan from the Trust as described in Exhibit B attached hereto and made a part hereof (i) to finance or refinance a portion of the Costs of the Borrower's Project; and (ii) where applicable, to reimburse the Borrower for a portion of the Costs of the Borrower's Project, which portion was paid or incurred in anticipation of reimbursement by the Trust and is eligible for such reimbursement under and pursuant to the Regulations, the Code and any other applicable law. All of such costs constitute Costs for which the Trust is authorized to make Loans to the Borrower pursuant to the Act and the Regulations.

(i) Official Statement. The descriptions and information set forth in the Borrower Appendices, if any, contained in the Official Statement relating to the Borrower, its operations and the transactions contemplated hereby, as of the date of the Official Statement, were and, as of the date of delivery hereof, are true and correct in all material respects, and did not and do not contain any untrue statement of a material fact or omit to state a material fact that is necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading.

(j) Preliminary Official Statement. As of the date of the Preliminary Official Statement, the descriptions and information set forth in the Borrower Appendices, if any, contained in the Preliminary Official Statement relating to the Borrower, its operations and the transactions contemplated hereby (i) were "deemed final" by the Borrower for the purposes and within the meaning of Rule 15c2-12 and (ii) were true and correct in all material respects, and did not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading.

#### **SECTION 2.02. Particular Covenants of Borrower.**

(a) Promise to Pay. The Borrower unconditionally and irrevocably promises, in accordance with the terms of and to the extent provided in the Borrower Bond Resolution, to make punctual payment of the principal and redemption premium, if any, of the Loan and the Borrower Bond, the Interest on the Loan, the Interest on the Borrower Bond and all other amounts due under this Loan Agreement and the Borrower Bond according to their respective terms.

(b) Performance Under Loan Agreement; Rates. The Borrower covenants and agrees (i) to comply with all applicable State and federal laws, rules and regulations in the performance of this Loan Agreement; (ii) to maintain its Environmental Infrastructure System in good repair and operating condition; (iii) to cooperate with the Trust in the observance and performance of the respective duties, covenants, obligations and agreements of the Borrower and the Trust under this Loan Agreement; and (iv) to establish, levy and collect rents, rates and other charges for the products and services provided by its Environmental Infrastructure System, which rents, rates and other charges shall be at least sufficient to comply with all covenants pertaining thereto contained in, and all other provisions of, any bond resolution, trust indenture or other security agreement, if any, relating to any bonds, notes or other evidences of indebtedness issued or to be issued by the Borrower, including without limitation rents, rates and other charges, together with other available moneys, sufficient to pay the principal of and Interest on the Borrower Bond, plus all other amounts due hereunder.

(c) Borrower Bond; No Prior Liens. Except for (i) the Borrower Bond, (ii) any bonds or notes at parity with the Borrower Bond and currently outstanding or issued on the date hereof, (iii) any future bonds or notes of the Borrower issued under the Borrower Bond Resolution at parity with the Borrower Bond, and (iv) any Permitted Encumbrances (as defined in the Borrower Bond Resolution), the assets of the Borrower that are subject to the Borrower Bond

Resolution are and will be free and clear of any pledge, lien, charge or encumbrance thereon or with respect thereto prior to, or of equal rank with, the Borrower Bond, and all corporate or other action on the part of the Borrower to that end has been and will be duly and validly taken.

(d) Completion of Project and Provision of Moneys Therefor. The Borrower covenants and agrees (i) to exercise its best efforts in accordance with prudent environmental infrastructure utility practice to complete the Project and to accomplish such completion on or before the estimated Project completion date set forth in Exhibit G hereto and made a part hereof; (ii) to comply with the terms and provisions contained in Exhibit G hereto; and (iii) to provide from its own fiscal resources all moneys, in excess of the total amount of loan proceeds it receives under the Loan and Fund Loan, required to complete the Project.

(e) See Section 2.02(e) as set forth in Schedule A attached hereto, made a part hereof and incorporated in this Section 2.02(e) by reference as if set forth in full herein.

(f) Exclusion of Interest from Federal Gross Income and Compliance with Code.

(i) The Borrower covenants and agrees that it shall not take any action or omit to take any action that would result in the loss of the exclusion of the interest on any Trust Bonds now or hereafter issued from gross income for purposes of federal income taxation as that status is governed by Section 103(a) of the Code.

(ii) The Borrower shall not directly or indirectly use or permit the use of any proceeds of the Trust Bonds (or amounts replaced with such proceeds) or any other funds or take any action or omit to take any action that would cause the Trust Bonds (assuming solely for this purpose that the proceeds of the Trust Bonds loaned to the Borrower represent all of the proceeds of the Trust Bonds) to be "arbitrage bonds" within the meaning of Section 148(a) of the Code.

(iii) The Borrower shall not directly or indirectly use or permit the use of any proceeds of the Trust Bonds to pay the principal of or the interest or redemption premium on or any other amount in connection with the retirement or redemption of any issue of state or local governmental obligations ("refinancing of indebtedness"), unless the Borrower shall (A) establish to the satisfaction of the Trust, prior to the issuance of the Trust Bonds, that such refinancing of indebtedness will not adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Trust Bonds, and (B) provide to the Trust an opinion of Bond Counsel to that effect in form and substance satisfactory to the Trust.

(iv) The Borrower shall not directly or indirectly use or permit the use of any proceeds of the Trust Bonds to reimburse the Borrower for an expenditure with respect to Costs of the Borrower's Project paid by the Borrower prior to the issuance of the Trust Bonds, unless (A) the allocation by the Borrower of the proceeds of the Trust Bonds to reimburse such expenditure complies with the requirements of Treasury Regulations §1.150-2 necessary to enable the reimbursement allocation to be treated as an expenditure of the proceeds of the Trust Bonds for purposes of applying Sections 103 and 141-150,

inclusive, of the Code, or (B) such proceeds of the Trust Bonds will be used for refinancing of indebtedness that was used to pay Costs of the Borrower's Project or to reimburse the Borrower for expenditures with respect to Costs of the Borrower's Project paid by the Borrower prior to the issuance of such indebtedness in accordance with a reimbursement allocation for such expenditures that complies with the requirements of Treasury Regulations §1.150-2.

(v) The Borrower shall not directly or indirectly use or permit the use of any proceeds of the Trust Bonds to pay any costs which are not Costs of the Borrower's Project that constitute a "capital expenditure," within the meaning of Treasury Regulations §1.150-1.

(vi) The Borrower shall not use the proceeds of the Trust Bonds (assuming solely for this purpose that the proceeds of the Trust Bonds loaned to the Borrower represent all of the proceeds of the Trust Bonds) in any manner that would cause the Trust Bonds to be considered "federally guaranteed" within the meaning of Section 149(b) of the Code or "hedge bonds" within the meaning of Section 149(g) of the Code.

(vii) The Borrower shall not issue any debt obligations that (A) are sold at substantially the same time as the Trust Bonds and finance or refinance the Loan made to the Borrower, (B) are sold pursuant to the same plan of financing as the Trust Bonds and finance or refinance the Loan made to the Borrower, and (C) are reasonably expected to be paid out of substantially the same source of funds as the Trust Bonds and finance or refinance the Loan made to the Borrower.

(viii) Neither the Borrower nor any "related party" (within the meaning of Treasury Regulations §1.150-1) shall purchase Trust Bonds in an amount related to the amount of the Loan.

(ix) The Borrower will not issue or permit to be issued obligations that will constitute an "advance refunding" of the Borrower Bond within the meaning of Section 149(d)(5) of the Code without the express written consent of the Trust, which consent may only be delivered by the Trust after the Trust has received notice from the Borrower of such contemplated action no later than sixty (60) days prior to any such contemplated action, and which consent is in the sole discretion of the Trust.

(x) See Section 2.02(f)(x) as set forth in Schedule A attached hereto, made a part hereof and incorporated in this Section 2.02(f)(x) by reference as if set forth in full herein.

(xi) No "gross proceeds" of the Trust Bonds held by the Borrower (other than amounts in a "bona fide debt service fund") will be held in a "commingled fund" (as such terms are defined in Treasury Regulations §1.148-1(b)).

(xii) Based upon all of the objective facts and circumstances in existence on the date of issuance of the Trust Bonds used to finance the Project, (A) within six months of

the date of issuance of the Trust Bonds used to finance the Project, the Borrower will incur a substantial binding obligation to a third party to expend on the Project at least five percent (5%) of the "net sale proceeds" (within the meaning of Treasury Regulations §1.148-1) of the Loan used to finance the Project (treating an obligation as not being binding if it is subject to contingencies within the control of the Borrower, the Trust or a "related party" (within the meaning of Treasury Regulations §1.150-1)), (B) completion of the Project and the allocation to expenditures of the "net sale proceeds" of the Loan used to finance the Project will proceed with due diligence, and (C) all of the proceeds of the Loan used to finance the Project (other than amounts deposited into the Debt Service Reserve Fund (to the extent the Trust establishes a Debt Service Reserve Fund pursuant to the Bond Resolution) allocable to that portion of the Loan used to finance reserve capacity, if any) and investment earnings thereon will be spent prior to the period ending three (3) years subsequent to the date of issuance of the Trust Bonds used to finance the Project. Accordingly, the proceeds of the Loan deposited in the Project Loan Account used to finance the Project will be eligible for the 3-year arbitrage temporary period since the expenditure test, time test and due diligence test, as set forth in Treasury Regulations §1.148-2(e)(2), will be satisfied.

(xiii) The weighted average maturity of the Loan does not exceed 120% of the average reasonably expected economic life of the Project financed or refinanced with the Loan, determined in the same manner as under Section 147(b) of the Code. Accordingly, the term of the Loan will not be longer than is reasonably necessary for the governmental purposes of the Loan within the meaning of Treasury Regulations §1.148-1(c)(4).

(xiv) The Borrower shall, within 30 days of date the Borrower concludes that no additional proceeds of the Loan will be required to pay costs of the Project, provide to the Trust a certificate of the Borrower evidencing such conclusion.

For purposes of this subsection and subsection (h) of this Section 2.02, quoted terms shall have the meanings given thereto by Section 148 of the Code, including, particularly, Treasury Regulations §§1.148-1 through 1.148-11, inclusive, as supplemented or amended, to the extent applicable to the Trust Bonds, and any successor Treasury Regulations applicable to the Trust Bonds.

(g) Operation and Maintenance of Environmental Infrastructure System. The Borrower covenants and agrees that it shall, in accordance with prudent environmental infrastructure utility practice, (i) at all times operate the properties of its Environmental Infrastructure System and any business in connection therewith in an efficient manner, (ii) maintain its Environmental Infrastructure System in good repair, working order and operating condition, and (iii) from time to time make all necessary and proper repairs, renewals, replacements, additions, betterments and improvements with respect to its Environmental Infrastructure System so that at all times the business carried on in connection therewith shall be properly and advantageously conducted.

(h) Records and Accounts.

(i) The Borrower shall keep accurate records and accounts for its Environmental Infrastructure System (the "System Records") separate and distinct from its other records and accounts (the "General Records"). Such System Records shall be audited annually by an independent certified public accountant, which may be part of the annual audit of the General Records of the Borrower. Such System Records and General Records shall be made available for inspection by the Trust at any reasonable time upon prior written notice, and a copy of such annual audit(s) therefor, including all written comments and recommendations of such accountant, shall be furnished to the Trust within 150 days of the close of the fiscal year being so audited or, with the consent of the Trust, such additional period as may be provided by law.

(ii) Within 30 days following receipt of any Loan proceeds, including without limitation the "Allowance for Administrative Costs" or the "Allowance for Planning and Design" set forth in Exhibit B hereto, the Borrower shall allocate such proceeds to an expenditures in a manner that satisfies the requirements of Treasury Regulation §1.148-6(d) and transmit a copy of each such allocation to the Trust. No portion of the Allowance for Administrative Costs will be allocated to a cost other than a cost described in N.J.A.C. 7:22-5.11(a) 3, 4 or 6. No portion of the Allowance for Planning and Design will be allocated to a cost other than a cost described N.J.A.C. 7:22-5.12, or other costs of the Borrower's Environmental Infrastructure System which are "capital expenditures," within the meaning of Treasury Regulations §1.150-1. The Borrower shall retain records of such allocations for at least until the date that is three years after the scheduled maturity date of the Trust Bonds. The Borrower shall make such records available to the Trust within 15 days of any request by the Trust.

(iii) Unless otherwise advised in writing by the Trust, in furtherance of the covenant of the Borrower contained in subsection (f) of this Section 2.02 not to cause the Trust Bonds to be arbitrage bonds, the Borrower shall keep, or cause to be kept, accurate records of each investment it makes in any "nonpurpose investment" acquired with, or otherwise allocated to, "gross proceeds" of the Trust Bonds not held by the Trustee and each "expenditure" it makes allocated to "gross proceeds" of the Trust Bonds. Such records shall include the purchase price, including any constructive "payments" (or in the case of a "payment" constituting a deemed acquisition of a "nonpurpose investment" (e.g., a "nonpurpose investment" first allocated to "gross proceeds" of the Trust Bonds after it is actually acquired because it is deposited in a sinking fund for the Trust Bonds)), the "fair market value" of the "nonpurpose investment" on the date first allocated to the "gross proceeds" of the Trust Bonds, nominal interest rate, dated date, maturity date, type of property, frequency of periodic payments, period of compounding, yield to maturity, amount actually or constructively received on disposition (or in the case of a "receipt" constituting a deemed disposition of a "nonpurpose investment" (e.g., a "nonpurpose investment" that ceases to be allocated to the "gross proceeds" of the Trust Bonds because it is removed from a sinking fund for the Trust Bonds)), the "fair market value" of the "nonpurpose investment" on the date it ceases to be allocated to the "gross proceeds" of the Trust Bonds, the purchase date and disposition date of the "nonpurpose investment" and evidence of the "fair market value" of such property on the purchase date and disposition date (or deemed purchase or disposition date) for each such "nonpurpose



investment". The purchase date, disposition date and the date of determination of "fair market value" shall be the date on which a contract to purchase or sell the "nonpurpose investment" becomes binding, i.e., the trade date rather than the settlement date. For purposes of the calculation of purchase price and disposition price, brokerage or selling commissions, administrative expenses or similar expenses shall not increase the purchase price of an item and shall not reduce the amount actually or constructively received upon disposition of an item, except to the extent such costs constitute "qualified administrative costs".

(iv) Within thirty (30) days of the last day of the fifth and each succeeding fifth "bond year" (which, unless otherwise advised by the Trust, shall be the five-year period ending on the date five years subsequent to the date immediately preceding the date of issuance of the Trust Bonds and each succeeding fifth "bond year") and within thirty (30) days of the date the last bond that is part of the Trust Bonds is discharged (or on any other periodic basis requested in writing by the Trust), the Borrower shall (A) calculate, or cause to be calculated, the "rebate amount" as of the "computation date" or "final computation date" attributable to any "nonpurpose investment" made by the Borrower and (B) remit the following to the Trust: (1) an amount of money that when added to the "future value" as of the "computation date" of any previous payments made to the Trust on account of rebate equals the "rebate amount", (2) the calculations supporting the "rebate amount" attributable to any "nonpurpose investment" made by the Borrower allocated to "gross proceeds" of the Trust Bonds, and (3) any other information requested by the Trust relating to compliance with Section 148 of the Code (e.g., information related to any "nonpurpose investment" of the Borrower for purposes of application of the "universal cap").

(v) The Borrower covenants and agrees that it will account for "gross proceeds" of the Trust Bonds, investments allocable to the Trust Bonds and expenditures of "gross proceeds" of the Trust Bonds in accordance with Treasury Regulations §1.148-6. All allocations of "gross proceeds" of the Trust Bonds to expenditures will be recorded on the books of the Borrower kept in connection with the Trust Bonds no later than 18 months after the later of the date the particular Costs of the Borrower's Project is paid or the date the portion of the project financed by the Trust Bonds is placed in service. All allocations of proceeds of the Trust Bonds to expenditures will be made no later than the date that is 60 days after the fifth anniversary of the date the Trust Bonds are issued or the date 60 days after the retirement of the Trust Bonds, if earlier. Such records and accounts will include the particular Cost paid, the date of the payment and the party to whom the payment was made.

(vi) From time to time as directed by the Trust, the Borrower shall provide to the Trust a written report demonstrating compliance by the Borrower with the provisions of Section 2.02(f) of this Loan Agreement, each such written report to be submitted by the Borrower to the Trust in the form of a full and complete written response to a questionnaire provided by the Trust to the Borrower. Each such questionnaire shall be provided by the Trust to the Borrower not less than fourteen (14) days prior to the date established by the Trust for receipt from the Borrower of the full and complete written response to the questionnaire.

(i) Inspections; Information. The Borrower shall permit the Trust and the Trustee and any party designated by any of such parties, at any and all reasonable times during construction of the Project and thereafter upon prior written notice, to examine, visit and inspect the property, if any, constituting the Project and to inspect and make copies of any accounts, books and records, including (without limitation) its records regarding receipts, disbursements, contracts, investments and any other matters relating thereto and to its financial standing, and shall supply such reports and information as the Trust and the Trustee may reasonably require in connection therewith.

(j) Insurance. The Borrower shall maintain or cause to be maintained, in force, insurance policies with responsible insurers or self-insurance programs providing against risk of direct physical loss, damage or destruction of its Environmental Infrastructure System at least to the extent that similar insurance is usually carried by utilities constructing, operating and maintaining Environmental Infrastructure Facilities of the nature of the Borrower's Environmental Infrastructure System, including liability coverage, all to the extent available at reasonable cost but in no case less than will satisfy all applicable regulatory requirements.

(k) Costs of Project. The Borrower certifies that the building cost of the Project, as listed in Exhibit B hereto and made a part hereof, is a reasonable and accurate estimation thereof, and it will supply to the Trust a certificate from a licensed professional engineer authorized to practice in the State stating that such building cost is a reasonable and accurate estimation and that the useful life of the Project exceeds the maturity date of the Borrower Bond.

(l) Delivery of Documents. Concurrently with the delivery of this Loan Agreement (as previously authorized, executed and attested) at the Loan Closing, the Borrower will cause to be delivered to the Trust and the Trustee each of the following items:

(i) an opinion of the Borrower's bond counsel substantially in the form of Exhibit E hereto; provided, however, that the Trust may permit portions of such opinion to be rendered by general counsel to the Borrower and may permit variances in such opinion from the form set forth in Exhibit E if, in the opinion of the Trust, such variances are not to the material detriment of the interests of the holders of the Trust Bonds;

(ii) counterparts of this Loan Agreement as previously executed and attested by the parties hereto;

(iii) copies of those resolutions finally adopted by the board of directors of the Borrower and requested by the Trust, including, without limitation, (A) the resolution of the Borrower authorizing the execution, attestation and delivery of this Loan Agreement, (B) the Borrower Bond Resolution, as amended and supplemented as of the date of the Loan Closing, authorizing the execution, attestation, authentication, sale and delivery of the Borrower Bond to the Trust, (C) the resolution of the Borrower, if any, confirming the details of the sale of the Borrower Bond to the Trust, (D) the resolution of the Borrower,

if any, declaring its official intent to reimburse expenditures for the Costs of the Project from the proceeds of the Trust Bonds, each of said resolutions of the Borrower being certified by an Authorized Officer of the Borrower as of the date of the Loan Closing, (E) the resolution of the BPU approving the issuance by the Borrower of the Borrower Bond to the Trust and setting forth any other approvals required therefor by the BPU, if applicable, and (F) any other Proceedings;

(iv) if the Loan is being made to reimburse the Borrower for all or a portion of the Costs of the Borrower's Project or to refinance indebtedness or reimburse the Borrower for the repayment of indebtedness previously incurred by the Borrower to finance all or a portion of the Costs of the Borrower's Project, an opinion of Bond Counsel, in form and substance satisfactory to the Trust, to the effect that such reimbursement or refinancing will not adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Trust Bonds; and

(v) the certificates of insurance coverage as required pursuant to the terms of Section 3.06(d) hereof and such other certificates, documents, opinions and information as the Trust may require in Exhibit F hereto, if any.

(m) Execution and Delivery of Borrower Bond. Concurrently with the delivery of this Loan Agreement at the Loan Closing, the Borrower shall also deliver to the Trust the Borrower Bond, as previously executed, attested and, if applicable, authenticated, upon the receipt of a written certification of the Trust that a portion of the net proceeds of the Trust Bonds shall be deposited in the Project Loan Account simultaneously with the delivery of the Borrower Bond.

(n) Notice of Material Adverse Change. The Borrower shall promptly notify the Trust of any material adverse change in the properties, activities, prospects or condition (financial or otherwise) of the Borrower or its Environmental Infrastructure System, or in the ability of the Borrower to make all Loan Repayments and otherwise to observe and perform its duties, covenants, obligations and agreements under this Loan Agreement and the Borrower Bond.

(o) Continuing Representations. The representations of the Borrower contained herein shall be true at the time of the execution of this Loan Agreement and at all times during the term of this Loan Agreement.

(p) Continuing Disclosure Covenant. To the extent that the Trust, in its sole discretion, determines, at any time prior to the termination of the Loan Term, that the Borrower is a material "obligated person", as the term "obligated person" is defined in Rule 15c2-12, with materiality being determined by the Trust pursuant to criteria established, from time to time, by the Trust in its sole discretion and set forth in a bond resolution or official statement of the Trust, the Borrower hereby covenants that it will authorize and provide to the Trust, for inclusion in any preliminary official statement or official statement of the Trust, all statements and information relating to the Borrower deemed material by the Trust for the purpose of satisfying Rule 15c2-12 as well as Rule 10b-5 promulgated pursuant to the Securities Exchange Act of 1934, as amended or supplemented, including any successor regulation or statute thereto ("Rule

10b-5"), including certificates and written representations of the Borrower evidencing its compliance with Rule 15c2-12 and Rule 10b-5; and the Borrower hereby further covenants that the Borrower shall execute and deliver the Continuing Disclosure Agreement, in substantially the form attached hereto as Exhibit H, with such revisions thereto prior to execution and delivery thereof as the Trust shall determine to be necessary, desirable or convenient, in its sole discretion, for the purpose of satisfying Rule 15c2-12 and the purposes and intent thereof, as Rule 15c2-12, its purposes and intent may hereafter be interpreted from time to time by the SEC or any court of competent jurisdiction; and pursuant to the terms and provisions of the Continuing Disclosure Agreement, the Borrower shall thereafter provide on-going disclosure with respect to all statements and information relating to the Borrower in satisfaction of the requirements set forth in Rule 15c2-12 and Rule 10b-5, including, without limitation, the provision of certificates and written representations of the Borrower evidencing its compliance with Rule 15c2-12 and Rule 10b-5.

(q) Additional Covenants and Requirements. (i) No later than the Loan Closing and, if necessary, in connection with the Trust's issuance of the Trust Bonds or the making of the Loan, additional covenants and requirements have been included in Exhibit F hereto and made a part hereof. Such covenants and requirements may include, but need not be limited to, the maintenance of specified levels of Environmental Infrastructure System rates, the issuance of additional debt of the Borrower, the use by or on behalf of the Borrower of certain proceeds of the Trust Bonds as such use relates to the exclusion from gross income for federal income tax purposes of the interest on any Trust Bonds, the transfer of revenues and receipts from the Borrower's Environmental Infrastructure System, compliance with Rule 15c2-12, Rule 10b-5 and any other applicable federal or State securities laws, and matters in connection with the appointment of the Trustee under the Bond Resolution and any successors thereto. The Borrower hereby agrees to observe and comply with each such additional covenant and requirement, if any, included in Exhibit F hereto. (ii) Additional defined terms, covenants, representations and requirements have been included in Schedule A attached hereto and made a part hereof. Such additional defined terms, covenants, representations and requirements are incorporated in this Loan Agreement by reference thereto as if set forth in full herein and the Borrower hereby agrees to observe and comply with each such additional term, covenant, representation and requirement included in Schedule A as if the same were set forth in its entirety where reference thereto is made in this Loan Agreement.

## ARTICLE III

### LOAN TO BORROWER; AMOUNTS PAYABLE; GENERAL AGREEMENTS

**SECTION 3.01. Loan; Loan Term.** The Trust hereby agrees to make the Loan as described in Exhibit A-2 hereof and to disburse proceeds of the Loan to the Borrower in accordance with Section 3.02 and Exhibit C hereof, and the Borrower hereby agrees to borrow and accept the Loan from the Trust upon the terms set forth in Exhibit A-2 attached hereto and made a part hereof; provided, however, that the Trust shall be under no obligation to make the Loan if (a) at the Loan Closing, the Borrower does not deliver to the Trust a Borrower Bond and such other documents required under Section 2.02(l) hereof, or (b) an Event of Default has occurred and is continuing under the Bond Resolution or this Loan Agreement. Although the Trust intends to disburse proceeds of the Loan to the Borrower at the times and up to the amounts set forth in Exhibit C to pay a portion of the Costs of the Project, due to unforeseen circumstances there may not be a sufficient amount on deposit in the Project Fund on any date to make the disbursement in such amount. Nevertheless, the Borrower agrees that the amount actually deposited in the Project Loan Account at the Loan Closing plus the Borrower's allocable share of (i) certain costs of issuance and underwriter's discount for all Trust Bonds issued to finance the Loan; (ii) capitalized interest during the Project construction period, if applicable; and (iii) that portion of the Debt Service Reserve Fund (to the extent the Trust establishes a Debt Service Reserve Fund pursuant to the Bond Resolution) attributable to the cost of funding reserve capacity for the Project, if applicable, shall constitute the initial principal amount of the Loan (as the same may be adjusted downward in accordance with the definition thereof), and neither the Trust nor the Trustee shall have any obligation thereafter to loan any additional amounts to the Borrower.

The Borrower shall use the proceeds of the Loan strictly in accordance with Section 2.01(h) hereof.

The payment obligations created under this Loan Agreement and the obligations to pay the principal of the Borrower Bond, Interest on the Borrower Bond and other amounts due under the Borrower Bond are each direct, general, irrevocable and unconditional obligations of the Borrower payable from any source legally available to the Borrower in accordance with the terms of and to the extent provided in the Borrower Bond Resolution.

**SECTION 3.02. Disbursement of Loan Proceeds.** (a) The Trustee, as the agent of the Trust, shall disburse the amounts on deposit in the Project Loan Account to the Borrower upon receipt of a requisition executed by an Authorized Officer of the Borrower, and approved by the Trust, in a form meeting the requirements of Section 5.02(3) of the Bond Resolution.

- (b) The Trust and Trustee shall not be required to disburse any Loan proceeds to the Borrower under this Loan Agreement, unless:
- (i) the proceeds of the Trust Bonds shall be available for disbursement, as determined solely by the Trust;

(ii) in accordance with the Bond Act, and the Regulations, the Borrower shall have timely applied for, shall have been awarded and, prior to or simultaneously with the Loan Closing, shall have closed a Fund Loan for a portion of the Allowable Costs (as defined in such Regulations) of the Project in an amount not in excess of the amount of Allowable Costs of the Project financed by the Loan from the Trust;

(iii) the Borrower shall have on hand moneys to pay for the greater of (A) that portion of the total Costs of the Project that is not eligible to be funded from the Fund Loan or the Loan, or (B) that portion of the total Costs of the Project that exceeds the actual amounts of the loan commitments made by the State and the Trust, respectively, for the Fund Loan and the Loan; and

(iv) no Event of Default nor any event that, with the passage of time or service of notice or both, would constitute an Event of Default shall have occurred and be continuing hereunder.

**SECTION 3.03. Amounts Payable.** (a) The Borrower shall repay the Loan in installments payable to the Trustee as follows:

(i) the principal of the Loan shall be repaid annually on the Principal Payment Dates, in accordance with the schedule set forth in Exhibit A-2 attached hereto and made a part hereof, as the same may be amended or modified by any credits applicable to the Borrower as set forth in the Bond Resolution;

(ii) the Interest Portion described in clause (i) of the definition thereof shall be paid semiannually on the Interest Payment Dates, in accordance with the schedule set forth in Exhibit A-2 attached hereto and made a part hereof, as the same may be amended or modified by any credits applicable to the Borrower as set forth in the Bond Resolution; and

(iii) the Interest Portion described in clause (ii) of the definition thereof shall be paid upon the date of optional redemption or acceleration, as the case may be, of the Trust Bonds allocable to any prepaid or accelerated Trust Bond Loan Repayment.

The obligations of the Borrower under the Borrower Bond shall be deemed to be amounts payable under this Section 3.03. Each Loan Repayment, whether satisfied through a direct payment by the Borrower to the Trustee or (with respect to the Interest Portion) through the use of Trust Bond proceeds and income thereon on deposit in the Interest Account (as defined in the Bond Resolution) to pay interest on the Trust Bonds, shall be deemed to be a credit against the corresponding obligation of the Borrower under this Section 3.03 and shall fulfill the Borrower's obligation to pay such amount hereunder and under the Borrower Bond. Each payment made to the Trustee pursuant to this Section 3.03 shall be applied *first* to the Interest Portion then due and payable, *second* to the principal of the Loan then due and payable, *third* to the payment of the Administrative Fee, and *finally* to the payment of any late charges hereunder.

(b) The Interest on the Loan described in clause (iii) of the definition thereof shall (i) consist of a late charge for any Trust Bond Loan Repayment that is received by the Trustee later than the tenth (10th) day following its due date and (ii) be payable immediately thereafter in an amount equal to the greater of twelve percent (12%) per annum or the Prime Rate plus one half of one percent per annum on such late payment from its due date to the date it is actually paid; provided, however, that the rate of Interest on the Loan, including, without limitation, any late payment charges incurred hereunder, shall not exceed the maximum interest rate permitted by law.

(c) The Borrower shall receive, as a credit against its semiannual payment obligations of the Interest Portion, the amounts certified by the Trust pursuant to Section 5.10 of the Bond Resolution. Such amounts shall represent the Borrower's allocable share of the interest earnings on certain funds and accounts established under the Bond Resolution, calculated in accordance with Section 5.10 of the Bond Resolution.

(d) In accordance with the provisions of the Bond Resolution, the Borrower shall receive, as a credit against its Trust Bond Loan Repayments, the amounts set forth in the certificate of the Trust filed with the Trustee pursuant to Section 5.02(4) of the Bond Resolution.

(e) The Interest on the Loan described in clause (ii) of the definition thereof shall be paid by the Borrower in the amount of one-half of the Administrative Fee, if any, to the Trustee on each Interest Payment Date, commencing with the first Interest Payment Date subsequent to the Loan Closing.

(f) The Borrower hereby agrees to pay to the Trust at the Loan Closing a "Security Review Fee" in the amount necessary to reimburse the Trust for all of its costs and expenses incurred in connection with reviewing the additional security securing the Trust Loan as set forth in Exhibit F hereto, if any, including without limitation the fees and expenses of any professional advisers hired by the Trust in connection therewith.

**SECTION 3.03A. Amounts on Deposit in Project Loan Account after Completion of Project Draws.** (a) If, on the date which is thirty (30) days following the final date for which a disbursement of Loan proceeds is scheduled to be made pursuant to Exhibit C hereto, any amounts remain on deposit in the Borrower's Project Loan Account, the Borrower must provide to the Trust and the Department a certificate of an Authorized Officer of the Borrower (i) stating that the Borrower has not yet completed the Project, (ii) stating that the Borrower intends to complete the Project, (iii) setting forth the amount of remaining Loan Proceeds required to complete the Project, and (iv) providing a revised draw schedule, in a form similar to Exhibit C hereto and approved by the Department.

(b) If, on the date which is thirty (30) days following the final date for which a disbursement of Loan proceeds is scheduled to be made pursuant to a revised draw schedule certified to the Trust and the Department in accordance with Section 3.03A(a) hereof, any amounts remain on deposit in the Borrower's Project Loan Account, the Borrower must provide to the Trust and the Department a certificate of an Authorized Officer of the Borrower (i) stating that the Borrower has not yet completed the Project, (ii) stating that the Borrower intends to

complete the Project, (iii) setting forth the amount of remaining Loan Proceeds required to complete the Project, and (iv) providing a revised draw schedule, in a form similar to Exhibit C hereto and approved by the Department.

(c) If, on the date which the Borrower has completed the Project, any amounts remain on deposit in the Borrower's Project Loan Account, the Borrower must within thirty (30) days following such date provide to the Trust and the Department a certificate (i) stating that the Project is complete and (ii) setting forth the remaining costs, if any, of the Project for which a disbursement of Loan will be required.

(d) If the Borrower fails to provide the certificate described in paragraphs (a), (b) or (c) of this Section 3.03A, when due, or if such certificate states that the Borrower does not require all, or any portion, of the amount on deposit in the Project Loan Account to complete the Project, such amounts on deposit in the Project Loan Account which are not certified by an Authorized Officer of the Borrower as being required to complete the Project ("Excess Project Funds") shall be applied as follows.

(i) If Trust Bonds can be redeemed within sixty (60) days of the date the Borrower is required to provide the certificate described in paragraphs (a), (b) or (c) of this Section 3.03A, the Excess Project Funds shall be used by the Trust within such sixty (60) day period to redeem Trust Bonds, including payment of any pre-payment premium. The Trust Bonds shall be redeemed in inverse order of their maturity. The amount of any maturity redeemed shall not exceed the same proportion as the Loan bears to all Loans made from proceeds of the Trust Bonds rounded down to whole denominations or any integral multiple. The aggregate amount of Trust Bonds so redeemed shall not be less than the amount of nonqualified bonds allocable to the Borrower under Treasury Regulations §1.142-12. The Excess Project Funds used to redeem Trust Bonds shall be applied by the Trust as a prepayment of the Borrower's Loan Repayments with respect to the redeemed bonds. Any excess shall be held by Trust invested at a yield which does not exceed the yield on the Trust Bonds.

(ii) If Trust Bonds can not be redeemed within sixty (60) days of the date the Borrower is required to provide the certificate described in paragraphs (a), (b) or (c) of this Section 3.03A, the Trust shall, within such sixty (60) day period, (A) deposit all of the Excess Project Funds in a defeasance escrow established to defease Trust Bonds in inverse order of their maturity, in the same proportion as the Loan bears to all Loans made from proceeds of the Trust Bonds, (B) provide the notice to the Internal Revenue Service required pursuant to Treasury Regulations §1.142-2(c)(2), or any successor income tax regulations, and (C) apply the Excess Project Funds as a prepayment of the Borrower's Loan Repayments for the defeased Trust Bonds. The aggregate amount of Trust Bonds so defeased shall not be less than the amount of nonqualified bonds allocable to the Borrower under Treasury Regulations §1.142-12.

**SECTION 3.04. 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 or to any extent



whatsoever while any Trust Bonds remain outstanding or any Loan Repayments remain unpaid, for any reason, 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 Trust or the Trustee to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with the Project, this Loan Agreement or the Bond Resolution, or any rights of set-off, recoupment, abatement or counterclaim that the Borrower might otherwise have against the Trust, the Trustee or any other party or parties; provided, however, that payments hereunder shall not constitute a waiver of any such rights. The Borrower shall not be obligated to make any payments required to be made by any other Borrowers under separate Loan Agreements or the Bond Resolution.

The Borrower acknowledges that payment of the Trust Bonds by the Trust, including payment from moneys drawn by the Trustee from the Debt Service Reserve Fund (to the extent the Trust establishes a Debt Service Reserve Fund pursuant to the Bond Resolution), does not constitute payment of the amounts due under this Loan Agreement and the Borrower Bond. If at any time the amount in the Debt Service Reserve Fund shall be less than the Debt Service Reserve Requirement as the result of any transfer of moneys from the Debt Service Reserve Fund to the Debt Service Fund (as all such terms are defined in the Bond Resolution) as the result of a failure by the Borrower to make any Trust Bond Loan Repayments required hereunder, the Borrower agrees to replenish (i) such moneys so transferred and (ii) any deficiency arising from losses incurred in making such transfer as the result of the liquidation by the Trust of Investment Securities (as defined in the Bond Resolution) acquired as an investment of moneys in the Debt Service Reserve Fund, by making payments to the Trust in equal monthly installments for the lesser of six (6) months or the remaining term of the Loan at an interest rate to be determined by the Trust necessary to make up any loss caused by such deficiency.

The Borrower acknowledges that payment of the Trust Bonds from moneys that were originally received by the Trustee from repayments by the Borrowers of loans made to the Borrowers by the State, acting by and through the Department, pursuant to loan agreements dated as of November 1, 2008 by and between the Borrowers and the State, acting by and through the Department, to finance or refinance a portion of the Costs of the Environmental Infrastructure Facilities of the Borrowers, and which moneys were upon such receipt by the Trustee deposited in the Trust Bonds Security Account (as defined in the Bond Resolution), does not constitute payment of the amounts due under this Loan Agreement and the Borrower Bond.

**SECTION 3.05. Loan Agreement to Survive Bond Resolution and Trust Bonds.** The Borrower acknowledges that its duties, covenants, obligations and agreements hereunder shall survive the discharge of the Bond Resolution applicable to the Trust Bonds and shall survive the payment of the principal and redemption premium, if any, of and the interest on the Trust Bonds until the Borrower can take no action or fail to take any action that could adversely affect the exclusion from gross income of the interest on the Trust Bonds for purposes of federal

income taxation, at which time such duties, covenants, obligations and agreements hereunder shall, except for those set forth in Sections 3.06(a) and (b) hereof, terminate.

**SECTION 3.06. Disclaimer of Warranties and Indemnification.** (a) The Borrower acknowledges and agrees that (i) neither the Trust nor the Trustee makes any warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for any use of the Environmental Infrastructure System or the Project or any portions thereof or any other warranty or representation with respect thereto; (ii) in no event shall the Trust or the Trustee or their respective agents be liable or responsible for any incidental, indirect, special or consequential damages in connection with or arising out of this Loan Agreement or the Project or the existence, furnishing, functioning or use of the Environmental Infrastructure System or the Project or any item or products or services provided for in this Loan Agreement; and (iii) to the fullest extent permitted by law, the Borrower shall indemnify and hold the Trust and the Trustee harmless against, and the Borrower shall pay any and all, liability, loss, cost, damage, claim, judgment or expense of any and all kinds or nature and however arising and imposed by law, which the Trust and the Trustee may sustain, be subject to or be caused to incur by reason of any claim, suit or action based upon personal injury, death or damage to property, whether real, personal or mixed, or upon or arising out of contracts entered into by the Borrower, the Borrower's ownership of the Environmental Infrastructure System or the Project, or the acquisition, construction or installation of the Project.

(b) It is mutually agreed by the Borrower, the Trust and the Trustee that the Trust and its officers, agents, servants or employees shall not be liable for, and shall be indemnified and saved harmless by the Borrower in any event from, any action performed under this Loan Agreement and any claim or suit of whatsoever nature, except in the event of loss or damage resulting from their own negligence or willful misconduct. It is further agreed that the Trustee and its directors, officers, agents, servants or employees shall not be liable for, and shall be indemnified and saved harmless by the Borrower in any event from, any action performed pursuant to this Loan Agreement, except in the event of loss or damage resulting from their own negligence or willful misconduct.

(c) The Borrower and the Trust agree that all claims shall be subject to and governed by the provisions of the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 *et seq.* (except for N.J.S.A. 59:13-9 thereof), although such Act by its express terms does not apply to claims arising under contract with the Trust.

(d) In connection with its obligation to provide the insurance required under Section 2.02(j) hereof: (i) the Borrower shall include, or cause to be included, the Trust and its directors, employees and officers as additional "named insureds" on (A) any certificate of liability insurance procured by the Borrower (or other similar document evidencing the liability insurance coverage procured by the Borrower) and (B) any certificate of liability insurance procured by any contractor or subcontractor for the Project, and from the later of the date of the Loan Closing or the date of the initiation of construction of the Project until the date the Borrower receives the written certificate of Project completion from the Trust, the Borrower shall maintain said liability insurance covering the Trust and said directors, employees and officers in good standing; and (ii) the Borrower shall include the Trust as an additional "named insured" on any certificate of

insurance providing against risk of direct physical loss, damage or destruction of the Environmental Infrastructure System, and during the Loan Term the Borrower shall maintain said insurance covering the Trust in good standing.

The Borrower shall provide the Trust with a copy of each of any such original, supplemental, amendatory or reissued certificates of insurance (or other similar documents evidencing the insurance coverage) required pursuant to this Section 3.06(d).

**SECTION 3.07. Option to Prepay Loan Repayments.** The Borrower may prepay the Trust Bond Loan Repayments, in whole or in part (but if in part, in the amount of \$100,000 or any integral multiple thereof), upon prior written notice to the Trust and the Trustee not less than ninety (90) days in addition to the number of days' advance notice to the Trustee required for any optional redemption of the Trust Bonds, and upon payment by the Borrower to the Trustee of amounts that, together with investment earnings thereon, will be sufficient to pay the principal amount of the Trust Bond Loan Repayments to be prepaid plus the Interest Portion described in clause (ii) of the definition thereof on any such date of redemption; provided, however, that, with respect to any prepayment other than those required by Section 3.03A hereof, any such full or partial prepayment may only be made (i) if the Borrower is not then in arrears on its Fund Loan, (ii) if the Borrower is contemporaneously making a full or partial prepayment of the Fund Loan such that, after the prepayment of the Loan and the Fund Loan, the Trust, in its sole discretion, determines that the interests of the owners of the Trust Bonds are not adversely affected by such prepayments, and (iii) upon the prior written approval of the Trust. In addition, if at the time of such prepayment the Trust Bonds may only be redeemed at the option of the Trust upon payment of a premium, the Borrower shall add to its prepayment of Trust Bond Loan Repayments an amount, as determined by the Trust, equal to such premium allocable to the Trust Bonds to be redeemed as a result of the Borrower's prepayment. Prepayments shall be applied first to the Interest Portion that accrues on the portion of the Loan to be prepaid until such prepayment date as described in clause (ii) of the definition thereof and then to principal payments (including premium, if any) on the Loan in inverse order of their maturity.

**SECTION 3.08. Priority of Loan and Fund Loan.** (a) The Borrower hereby agrees that, to the extent allowed by law or the Borrower Bond Resolution, any Loan Repayments then due and payable on the Loan shall be satisfied by the Trustee before any loan repayments on the Borrower's Fund Loan shall be satisfied by the Trustee. The Borrower agrees not to interfere with any such action by the Trustee.

(b) The Borrower hereby acknowledges that in the event the Borrower fails or is unable to pay promptly to the Trust in full any Trust Bond Loan Repayments under this Loan Agreement when due, then any (i) Administrative Fee paid hereunder, (ii) late charges paid hereunder, and (iii) loan repayments paid by the Borrower on its Fund Loan under the related loan agreement therefor, any of which payments shall be received by the Trustee during the time of any such Trust Bond Loan Repayment deficiency, shall be applied by the Trustee *first* to satisfy such Trust Bond Loan Repayment deficiency as a credit against the obligations of the Borrower to make payments of the Interest Portion under the Loan and the Borrower Bond, *second*, to the extent available, to make Trust Bond Loan Repayments of principal hereunder and payments of principal under the Borrower Bond, *third*, to the extent available, to pay the

Administrative Fee, *fourth*, to the extent available, to pay any late charges hereunder, *fifth*, to the extent available, to satisfy the repayment of the Borrower's Fund Loan under its related loan agreement therefor, and *finally*, to the extent available, to satisfy the repayment of the administrative fee under any such related loan agreement.

(c) The Borrower hereby further acknowledges that any loan repayments paid by the Borrower on its Fund Loan under the related loan agreement therefor shall be applied according to the provisions of the Master Program Trust Agreement.

**SECTION 3.09. Approval of the New Jersey State Treasurer.** The Borrower and the Trust hereby acknowledge that prior to or simultaneously with the Loan Closing the New Jersey State Treasurer, in satisfaction of the requirements of Section 9a of the Act, issued the "Certificate of the New Jersey State Treasurer Regarding the Approval of the Trust Loan and the Fund Loan" (the "Treasurer's Certificate"). Pursuant to the terms of the Treasurer's Certificate, the New Jersey State Treasurer approved the Loan and the terms and conditions thereof as established by the provisions of this Loan Agreement.

## ARTICLE IV

### ASSIGNMENT OF LOAN AGREEMENT AND BORROWER BOND

**SECTION 4.01. Assignment and Transfer by Trust.** (a) The Borrower hereby expressly acknowledges that, other than the provisions of Section 2.02(d)(ii) hereof, the Trust's right, title and interest in, to and under this Loan Agreement and the Borrower Bond have been assigned to the Trustee as security for the Trust Bonds as provided in the Bond Resolution, and that if any Event of Default shall occur, the Trustee or any Bond Insurer (as such term may be defined in the Bond Resolution), if applicable, pursuant to the Bond Resolution, shall be entitled to act hereunder in the place and stead of the Trust. The Borrower hereby acknowledges the requirements of the Bond Resolution applicable to the Trust Bonds and consents to such assignment and appointment. This Loan Agreement and the Borrower Bond, including, without limitation, the right to receive payments required to be made by the Borrower hereunder and to compel or otherwise enforce observance and performance by the Borrower of its other duties, covenants, obligations and agreements hereunder, may be further transferred, assigned and reassigned in whole or in part to one or more assignees or subassignees by the Trustee at any time subsequent to their execution without the necessity of obtaining the consent of, but after giving prior written notice to, the Borrower.

The Trust shall retain the right to compel or otherwise enforce observance and performance by the Borrower of its duties, covenants, obligations and agreements under Section 2.02(d)(ii) hereof; provided, however, that in no event shall the Trust have the right to accelerate the Borrower Bond in connection with the enforcement of Section 2.02(d)(ii) hereof.

(b) The Borrower hereby approves and consents to any assignment or transfer of this Loan Agreement and the Borrower Bond that the Trust deems to be necessary in connection with any refunding of the Trust Bonds or the issuance of additional bonds under the Bond Resolution or otherwise, all in connection with the pooled loan program of the Trust.

**SECTION 4.02. Assignment by Borrower.** Neither this Loan Agreement nor the Borrower Bond may be assigned by the Borrower for any reason, unless the following conditions shall be satisfied: (i) the Trust and the Trustee shall have approved said assignment in writing; (ii) the assignee shall have expressly assumed in writing the full and faithful observance and performance of the Borrower's duties, covenants, obligations and agreements under this Loan Agreement and, to the extent permitted under applicable law, the Borrower Bond; (iii) immediately after such assignment, the assignee shall not be in default in the observance or performance of any duties, covenants, obligations or agreements of the Borrower under this Loan Agreement or the Borrower Bond; and (iv) the Trust shall have received an opinion of Bond Counsel to the effect that such assignment will not adversely affect the security of the holders of the Trust Bonds or the exclusion of the interest on the Trust Bonds from gross income for purposes of federal income taxation under Section 103(a) of the Code.

## ARTICLE V

### EVENTS OF DEFAULT AND REMEDIES

**SECTION 5.01. Events of Default.** If any of the following events occur, it is hereby defined as and declared to be and to constitute an "Event of Default":

- (a) failure by the Borrower to pay, or cause to be paid, any Trust Bond Loan Repayment required to be paid hereunder when due, which failure shall continue for a period of fifteen (15) days;
- (b) failure by the Borrower to make, or cause to be made, any required payments of principal, redemption premium, if any, and interest on any bonds, notes or other obligations of the Borrower issued under the Borrower Bond Resolution (other than the Loan and the Borrower Bond) or otherwise secured by all or a portion of the property pledged under the Borrower Bond Resolution, after giving effect to the applicable grace period;
- (c) failure by the Borrower to pay, or cause to be paid, the Administrative Fee or any late charges incurred hereunder or any portion thereof when due or to observe and perform any duty, covenant, obligation or agreement on its part to be observed or performed under this Loan Agreement, other than as referred to in subsection (a) of this Section 5.01 or other than the obligations of the Borrower contained in Section 2.02(d)(ii) hereof and in Exhibit F hereto, which failure shall continue for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, is given to the Borrower by the Trustee, unless the Trustee shall agree in writing to an extension of such time prior to its expiration; provided, however, that if the failure stated in such notice is correctable but cannot be corrected within the applicable period, the Trustee may not unreasonably withhold its consent to an extension of such time up to 120 days from the delivery of the written notice referred to above if corrective action is instituted by the Borrower within the applicable period and diligently pursued until the Event of Default is corrected;
- (d) any representation made by or on behalf of the Borrower contained in this Loan Agreement, or in any instrument furnished in compliance with or with reference to this Loan Agreement or the Loan, is false or misleading in any material respect;
- (e) 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 Loan Agreement 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 (including, without limitation, a receiver, liquidator or trustee) 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;
- (f) the Borrower shall generally fail to pay its debts as such debts become due; and

(g) failure of the Borrower to observe or perform such additional duties, covenants, obligations, agreements or conditions as are required by the Trust and specified in Exhibit F attached hereto and made a part hereof.

**SECTION 5.02. Notice of Default.** The Borrower shall give the Trustee and the Trust prompt telephonic notice of the occurrence of any Event of Default referred to in Section 5.01(d) or (e) hereof and of the occurrence of any other event or condition that constitutes an Event of Default at such time as any senior administrative or financial officer of the Borrower becomes aware of the existence thereof.

**SECTION 5.03. Remedies on Default.** Whenever an Event of Default referred to in Section 5.01 hereof shall have occurred and be continuing, the Borrower acknowledges the rights of the Trustee and of any Bond Insurer to direct any and all remedies in accordance with the terms of the Bond Resolution, and the Borrower also acknowledges that the Trust shall have the right to take, or to direct the Trustee to take, any action permitted or required pursuant to the Bond Resolution and to take whatever other action at law or in equity may appear necessary or desirable 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.

In addition, if an Event of Default referred to in Section 5.01(a) hereof shall have occurred and be continuing, the Trust shall, to the extent allowed by applicable law and to the extent and in the manner set forth in the Bond Resolution, have the right to declare, or to direct the Trustee to declare, all Loan Repayments and all other amounts due hereunder (including, without limitation, payments under the Borrower Bond) together with the prepayment premium, if any, calculated pursuant to Section 3.07 hereof to be immediately due and payable, and upon notice to the Borrower the same shall become due and payable without further notice or demand.

**SECTION 5.04. Attorneys' Fees and Other Expenses.** The Borrower shall on demand pay to the Trust or the Trustee 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 by either of them in the collection of Trust Bond Loan Repayments or any other sum due hereunder or in the enforcement of the observation or performance of any other duties, covenants, obligations or agreements of the Borrower upon an Event of Default.

**SECTION 5.05. Application of Moneys.** Any moneys collected by the Trust or the Trustee pursuant to Section 5.03 hereof shall be applied (a) *first* to pay any attorneys' fees or other fees and expenses owed by the Borrower pursuant to Section 5.04 hereof, (b) *second*, to the extent available, to pay the Interest Portion then due and payable, (c) *third*, to the extent available, to pay the principal due and payable on the Loan, (d) *fourth*, to the extent available, to pay the Administrative Fee, any late charges incurred hereunder or any other amounts due and payable under this Loan Agreement, and (e) *fifth*, to the extent available, to pay the Interest Portion and the principal on the Loan and other amounts payable hereunder as such amounts become due and payable.

**SECTION 5.06. No Remedy Exclusive; Waiver; Notice.** No remedy herein conferred upon or reserved to the Trust or the Trustee is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Loan Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right, remedy or power accruing upon any Event of Default shall impair any such right, remedy or power or shall be construed to be a waiver thereof, but any such right, remedy or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Trust or the Trustee to exercise any remedy reserved to it in this Article V, it shall not be necessary to give any notice other than such notice as may be required in this Article V.

**SECTION 5.07. Retention of Trust's Rights.** Notwithstanding any assignment or transfer of this Loan Agreement pursuant to the provisions hereof or of the Bond Resolution, or anything else to the contrary contained herein, the Trust shall have the right upon the occurrence of an Event of Default to take any action, including (without limitation) bringing an action against the Borrower at law or in equity, as the Trust may, in its discretion, deem necessary to enforce the obligations of the Borrower to the Trust pursuant to Section 5.03 hereof.



## ARTICLE VI

### MISCELLANEOUS

**SECTION 6.01. Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when hand delivered or mailed by registered or certified mail, postage prepaid, to the Borrower at the address specified in Exhibit A-1 attached hereto and made a part hereof and to the Trust and the Trustee at the following addresses:

(a) Trust:

New Jersey Environmental Infrastructure Trust  
P.O. Box 440  
Trenton, New Jersey 08625  
Attention: Executive Director

(b) Trustee:

The Bank of New York Mellon  
385 Rifle Camp Road  
West Paterson, New Jersey 07424  
Attention: Corporate Trust Department

Any of the foregoing parties may designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent by notice in writing given to the others.

**SECTION 6.02. Binding Effect.** This Loan Agreement shall inure to the benefit of and shall be binding upon the Trust and the Borrower and their respective successors and assigns.

**SECTION 6.03. Severability.** In the event any provision of this Loan Agreement shall be 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.

**SECTION 6.04. Amendments, Supplements and Modifications.** Except as otherwise provided in this Section 6.04, this Loan Agreement may not be amended, supplemented or modified without the prior written consent of the Trust and the Borrower and without the satisfaction of all conditions set forth in Section 11.12 of the Bond Resolution. Notwithstanding the conditions set forth in Section 11.12 of the Bond Resolution, (i) Section 2.02(p) hereof may be amended, supplemented or modified upon the written consent of the Trust and the Borrower and without the consent of the Trustee, any Bond Insurer or any holders of the Trust Bonds, and (ii) Exhibit H hereto may be amended, supplemented or modified prior to the execution and delivery thereof as the Trust, in its sole discretion, shall determine to be necessary, desirable or convenient for the purpose of satisfying Rule 15c2-12 and the purpose and intent thereof as Rule 15c2-12, its purpose and intent may hereafter be interpreted from time to time by the SEC or any

court of competent jurisdiction, and such amendment, supplement or modification shall not require the consent of the Borrower, the Trustee, any Bond Insurer or any holders of the Trust Bonds.

**SECTION 6.05. Execution in Counterparts.** This Loan Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**SECTION 6.06. Applicable Law and Regulations.** This Loan Agreement shall be governed by and construed in accordance with the laws of the State, including the Act and the Regulations, which Regulations are, by this reference thereto, incorporated herein as part of this Loan Agreement.

**SECTION 6.07. Consents and Approvals.** Whenever the written consent or approval of the Trust shall be required under the provisions of this Loan Agreement, such consent or approval may only be given by the Trust unless otherwise provided by law or by rules, regulations or resolutions of the Trust or unless expressly delegated to the Trustee and except as otherwise provided in Section 6.09 hereof.

**SECTION 6.08. Captions.** The captions or headings in this Loan Agreement are for convenience only and shall not in any way define, limit or describe the scope or intent of any provisions or sections of this Loan Agreement.

**SECTION 6.09. Benefit of Loan Agreement; Compliance with Bond Resolution.** This Loan Agreement is executed, among other reasons, to induce the purchase of the Trust Bonds. Accordingly, all duties, covenants, obligations and agreements of the Borrower herein contained are hereby declared to be for the benefit of and are enforceable by the Trust, the holders of the Trust Bonds and the Trustee. The Borrower covenants and agrees to observe and comply with, and to enable the Trust to observe and comply with, all duties, covenants, obligations and agreements contained in the Bond Resolution.

**SECTION 6.10. Further Assurances.** The Borrower shall, at the request of the Trust, authorize, execute, attest, acknowledge and deliver such further resolutions, conveyances, transfers, assurances, financing statements and other 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 Loan Agreement and the Borrower Bond.

IN WITNESS WHEREOF, the Trust and the Borrower have caused this Loan Agreement to be executed, sealed and delivered as of the date first above written.

**NEW JERSEY ENVIRONMENTAL  
INFRASTRUCTURE TRUST**

[SEAL]

ATTEST:

By: /s/ Robert A. Briant, Sr.  
Robert A. Briant, Sr.  
Chairman

/s/ Gerald T. Keenan  
Gerald T. Keenan  
Secretary

[SEAL]

ATTEST:

**MIDDLESEX WATER COMPANY**

By: /s/ A. Bruce O'Connor  
A. Bruce O'Connor  
VP & Chief Financial Officer

/s/ Kenneth J. Quinn  
Kenneth J. Quinn  
VP, Secretary & Treasurer

[Signature Page]

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## SCHEDULE A

### Certain Additional Loan Agreement Provisions

In addition to the terms defined in subsection (a) of Section 1.01 of this Loan Agreement, certain additional capitalized terms used in this Loan Agreement shall, unless the context clearly requires otherwise, have the meanings ascribed to such additional capitalized terms in this Schedule A.

#### Additional Definitions:

**“Borrower”** means Middlesex Water Company, a corporation duly created and validly existing under the laws of the State of New Jersey.

**“Bond Resolution”** means the “Environmental Infrastructure Trust Bond Resolution, Series 2008A”, as adopted by the Board of Directors of the Trust on or about September 16, 2008, authorizing the issuance of the Trust Bonds, and all further amendments and supplements thereto adopted in accordance with the provisions thereof.

**“Borrower Bond Resolution”** means the indenture of the Borrower entitled “INDENTURE OF MORTGAGE” dated as of April 1, 1927, as amended and supplemented from time to time, in particular by a indenture detailing the terms of the Borrower Bond, dated as of November 1, 2008 and entitled “THIRTY-SEVENTH SUPPLEMENTAL INDENTURE”, pursuant to which the Borrower Bond has been issued.

**“Interest Payment Dates”** means February 1 and August 1 of each year, commencing on August 1, 2009.

**“Loan”** means the loan made by the Trust to the Borrower to finance or refinance a portion of the Cost of the Project pursuant to this Loan Agreement. For all purposes of this Loan Agreement, the amount of the Loan at any time shall be the initial aggregate principal amount of the Borrower Bond (which amount equals the amount actually deposited in the Project Loan Account at the Loan Closing plus the Borrower's allocable share of certain costs of issuance and underwriter's discount for all Trust Bonds issued to finance the Loan), less any amount of such principal amount that has been repaid by the Borrower under this Loan Agreement and less any adjustment made pursuant to the provisions of the Bond Resolution, including, without limitation, Section 5.02(4) thereof, N.J.A.C. 7:22-4.26 and the appropriations act of the State Legislature authorizing the expenditure of Trust Bond proceeds to finance a portion of the Cost of the Project.

**“Principal Payment Dates”** means August 1 of each year, commencing on August 1, 2010.

**SECTION 2.02(e)**

Disposition of Environmental Infrastructure System. The Borrower shall not permit the disposition of all or substantially all of its Environmental Infrastructure System, directly or indirectly, including, without limitation, by means of sale, lease, abandonment, sale of stock, statutory merger or otherwise (collectively, a "Disposition"), except on ninety (90) days' prior written notice to the Trust, and, in any event, shall not permit a Disposition unless the following conditions are met: (i) the Borrower shall, in accordance with Section 4.02 hereof, assign this Loan Agreement and the Borrower Bond and its rights and interests hereunder and thereunder to the purchaser or lessee of the Environmental Infrastructure System, and such purchaser or lessee shall assume all duties, covenants, obligations and agreements of the Borrower under this Loan Agreement and the Borrower Bond; and (ii) the Trust shall by appropriate action determine, in its sole discretion, that such sale, lease, abandonment or other disposition will not adversely affect (A) the Trust's ability to meet its duties, covenants, obligations and agreements under the Bond Resolution, (B) the value of this Loan Agreement or the Borrower Bond as security for the payment of Trust Bonds and the interest thereon, or (C) the excludability from gross income for federal income tax purposes of the interest on Trust Bonds then outstanding or that could be issued in the future.

**SECTION 2.02(f)(x)**

The Borrower will not have a reserve or replacement fund (within the meaning of Section 148(d)(1) of the Code) allocable to the Borrower Bond evidencing the Loan.

**EXHIBIT A-1**

1) **Name and Address of Local Unit:**

Middlesex Water Company  
1500 Ronson Road  
Iselin, New Jersey 08830-0452

Attention: Ronald F. Williams P.E. Vice President - Operations

2) **Description of the Project:**

The proposed project will involve cleaning/relining and spot replacement of water mains, hydrants, service lines, and valves. Approximately forty five thousand feet of 4, 6, 8, 10, 12, 16 and 20-inch diameter water mains will be relined. The project will occur in the City of South Amboy, and Woodbridge Township.

3) **Description of the Water Supply System:**

The Middlesex Water Company is an investor-owned water utility that provides water service to retail customers primarily in eastern Middlesex County. Water services are now furnished to approximately 58,000 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 and the Borough of South Plainfield and the City of South Amboy in Middlesex County, and a portion of the Township of Clark in Union County.

The Middlesex Water 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**

**Description of Loan**

See Exhibit A-2 to Specimen Borrower Bond (Exhibit D hereto)

A-2-1

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**EXHIBIT B**

**Basis for Determination of Allowable Project Costs**

B-1

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**EXHIBIT B**

**Basis for the Determination of Allowable Costs**

The determination of the costs allowable for assistance from the New Jersey Environmental Infrastructure Financing Program is presented below.

| <b><u>Cost Classification</u></b>    | <b><u>Application Amount</u></b> | <b><u>Allowable Costs</u></b> |
|--------------------------------------|----------------------------------|-------------------------------|
| 1. Administrative Expenses           | \$ 89,100                        | \$ 89,100                     |
| 2. Other Costs                       | 0                                | 0                             |
| 3. Engineering Fees                  | 160,000                          | 160,000                       |
| 4. Building Costs                    | 2,970,000                        | 2,970,000                     |
| 5. Contingencies                     | 148,500                          | 148,500                       |
| 6. Allowance for Planning and design | 132,400                          | 132,400                       |
| 7. Sub-total                         | 3,500,000                        | 3,500,000                     |
| 8. DEP Fee                           |                                  | 70,000                        |
| 9. Total Project Costs               |                                  | \$3,570,000                   |

As a result of the review by the New Jersey Department of Environmental Protection, 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 on the application was \$89,100. The amount requested is for water main cleaning/relining. The allowable administrative expenses are authorized to be three percent of the allowable building costs. Therefore, the total amount for this line item is  $\$2,970,000 \times 0.03 = \$89,100$ .

Allowable Administrative Expenses are \$89,100.

**3. Engineering Fees**

The amount requested for this line item on the application was \$160,000. This amount is for engineering services for this project and the full amount is allowable.

Allowable Engineering Fees are \$160,000.

4. **Building Costs**

The total amount requested for this line item was \$2,970,000. The allowable cost analysis (as per N.J.A.C. 7:22-5.8) has determined that the entire amount requested for this line item is allowable. Therefore, the Allowable Cost Ratio (ACR) is one (1.0). In addition the project does not provide any reserve capacity. Therefore, the Reserve Capacity Cost Ratio (RCCR) is one (1.0). Thus, the entire requested amount is allowable.

Allowable Building Costs are \$2,970,000.

5. **Contingencies**

The total amount requested on the application was \$148,500. The allowable amount for this line item is five percent of the allowable building costs. Therefore, the total allowable cost for this line item is  $\$2,970,000 \times 0.05 = \$148,500$ .

Allowable Contingencies are \$148,500.

6. **Allowance for Planning and Design**

The total amount requested for this line item was \$132,400. The allowable amount for this line item based on an allowable building cost is:  $\$250,000 + (\$2,970,000 - \$1,000,000) \times 0.12 = \$486,400$ . However, the applicant has requested \$132,400 for this line item.

Allowance for Planning and Design for this project is \$132,400.

7. **Sub-total**

The subtotal for project costs applied for is 3,500,000. The actual cost was adjusted to \$3,500,000.

Therefore, the Sub-total is \$3,500,000.

8. **DEP Fee**

DEP Fee =  $\$3,500,000 \times 2\% = \$70,000$

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 2008 Financing Program of the Trust. As a portion of the cost of the borrower's project that represents a condition precedent to the inclusion of the borrower's project in the 2008 Financing Program of the Trust, the DEP Loan Surcharge or Loan Origination Fee represents a program expense of the 2008 Financing Program of the Trust and will be financed for the borrower as part of the Trust loan made by the Trust to the borrower from the proceeds of the Trust bonds, the Trust shall direct the trustee for the Trust bonds to transfer to DEP from the Project Fund the DEP Loan Surcharge or Loan Origination Fee allocable to the borrower. The DEP's authority to assess a Loan Surcharge or Loan Origination Fee was established pursuant to P.L. 2002, c.34 approved on July 1, 2002.

9. **Total Project Costs:**

The total project costs are \$3,570,000

I. Disbursement to Borrower is: \$3,500,000.

Fund Share is \$1,750,000.

Trust Share is \$1,750,000.

II. Disbursement to DEP is \$70,000.

EXHIBIT C

Estimated Disbursement Schedule

C-1

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**EXHIBIT C**

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

| Year | Month     | Fund Share<br>Borrower<br>Disbursement | Trust Share<br>Borrower<br>Disbursement | Trust Share<br>DEP<br>Disbursement | Total             |
|------|-----------|--|---|------------------------------------|-------------------|
| 2008 | November  | \$ 0                                   | \$ 0                                    | \$ *70,000                         | \$ *70,000        |
|      | November  |  |   |                                    |                   |
|      | December  |  |   |                                    |                   |
| 2009 | January   | 0                                      | 0                                       |                                    | 0                 |
|      | February  | 0                                      | 0                                       |                                    | 0                 |
|      | March     | 262,500                                | 262,500                                 |                                    | 525,000           |
|      | April     | 225,000                                | 225,000                                 |                                    | 450,000           |
|      | May       | 275,000                                | 275,000                                 |                                    | 550,000           |
|      | June      | 275,000                                | 275,000                                 |                                    | 550,000           |
|      | July      | 225,000                                | 225,000                                 |                                    | 450,000           |
|      | August    | 300,000                                | 300,000                                 |                                    | 600,000           |
|      | September | 93,750                                 | 93,750                                  |                                    | 187,500           |
|      | October   | 93,750                                 | 93,750                                  |                                    | 187,500           |
|      |           | <b>TOTAL</b>                           | <b>\$ 1,750,000</b>                     | <b>\$ 1,750,000</b>                | <b>\$ *70,000</b> |

\*This is the DEP loan origination fee. No action is required on the part of the borrower.

The trust will make a single transfer to DEP, through the Trust's Trustee, on behalf of all of the Borrowers in 2008 Financing Program.

**EXHIBIT D**

**Specimen Borrower Bond**

D-1

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**EXHIBIT E**

**Opinions of Borrower's Bond and General Counsels**

**EXHIBIT F**

**Additional Covenants and Requirements**

None.



**EXHIBIT G**

**General Administrative Requirements for the  
State Environmental Infrastructure Financing Program**

G-1

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**EXHIBIT G**

**General Administrative and Special Requirements**

The following General Administrative Requirements are applicable to this Loan. The listing of these requirements does not limit, or otherwise alter, the project sponsor's obligations under the Federal Safe Drinking Water Act, the New Jersey Safe Drinking Water Act, the State rules under N.J.A.C. 7:22, the Fund and Trust Loan Agreements, or the Special Requirements. The Special Requirements specific to this project are found in this Exhibit after the listing of General Administrative Requirements.

**1. Operation and Maintenance Manual (O&M Manual)**

During construction (i.e., prior to initiation of operation), the project sponsor shall certify to the Trust, in the case of a Trust Loan, and to the New Jersey Department of Environmental Protection (Department), in the case of a Fund Loan, that a final Plan of Operation, and an O&M Manual have been developed for the project.

**2. Project Performance**

The project sponsor shall comply with the project performance provisions of N.J.A.C. 7:22-3.30 and 7:22-4.30. As a minimum, unless further specified, the project performance standards shall consist of N.J.A.C. 7.10-11, "Standards for Construction of Public Community Systems".

**3. Flood Insurance**

The project sponsor shall acquire or have the construction contractor acquire, as appropriate flood insurance made available under the National Flood Insurance Act of 1968, as amended. Insurance coverage shall begin with the period of construction and continue for the entire useful life of the facility. The insurance shall be in an amount at least equal to the allowable improvements or the maximum limit of coverage made available to the project sponsor under the National Flood Insurance Act, whichever is less. The project sponsor must comply with this requirement prior to the release of the initial payment for construction work.

4. **Audit**

The project sponsor shall have an annual financial audit performed if the project sponsor expended \$500,000 or more in State and/or Federal financial assistance during the project sponsor's fiscal year. The audit shall be performed in accordance with the Single Audit Act, Federal OMB Circular No. A-133, and State Policy OMB Circular 04-04-OMB. Copies of all audit reports must be submitted to the New Jersey Department of Environmental Protection, Office of Audit, P.O. Box 402, Trenton, New Jersey 08625.

If the project sponsor expended less than \$500,000 in State and/or Federal financial assistance within their fiscal year, but expend \$100,000 or more in State and/or Federal financial assistance within their fiscal year, the project sponsor shall have either a financial statement audit performed in accordance with Government Auditing Standards (Yellow Book) or a program-specific audit performed in accordance with the Act, Amendments, OMB Circular No. A-133 Revised and State policy.

Program-specific audits in accordance with OMB Circular No. A-133 Revised can be elected when a project sponsor expends Federal or State financial assistance under only one Federal or State program and the Federal or State program's laws, regulations, or grant agreements do not require a financial statement audit of the grantee."

4. **Socially and Economically Disadvantaged Individuals Utilization Plan**

The project sponsor shall ensure that the contractor provides a Socially and Economically Disadvantaged Individuals (SED) Utilization Plan in accordance with N.J.A.C. 7:22-9.1 et seq. which outlines the entire contract work, each significant segment of the contract on which SEDs will or may participate and a description of how SEDs will be contracted. This plan shall be submitted no later than 30 days after the contract award.

**SPECIAL REQUIREMENTS**

**Project Schedule:**

The project sponsor unit shall expeditiously initiate and complete the project in accordance with the project schedule, which was submitted as part of the application and is repeated below. Failure to promptly initiate and complete the project may result in the imposition of sanctions under N.J.A.C. 7:22-3.4 through 3.44 and N.J.A.C. 7:22-4.40 through 4.44. In addition, failure to promptly award all sub agreement(s) for building the project within 12 months of date of this loan may result in limitation of allowable costs as provided by N.J.A.C. 7:22-5.4(d) 5. This limitation on allowable costs incurred under contract awarded after 12 months from the date of this loan are unallowable unless a special extension has been granted by the Department, in the case of a Fund Loan and the Trust, in the case of a Trust Loan.

| <u>EVENT</u>                                 | <u>DATE</u>       |
|--|-------------------|
| <b><u>ADVERTISEMENT:</u></b>                 |                   |
| Clean and Line Water Mains                   | December 19, 2008 |
| <b><u>BID RECEIPT:</u></b>                   |                   |
| Clean and Line Water Mains                   | January 20, 2009  |
| <b><u>AWARD:</u></b>                         |                   |
| Clean and Line Water Mains                   | February 20, 2009 |
| <b><u>ISSUANCE OF NOTICE TO PROCEED:</u></b> |                   |
| Clean and Line Water Mains                   | March 27, 2009    |
| <b><u>COMPLETION OF CONSTRUCTION:</u></b>    |                   |
| Clean and Line Water Mains                   | October 27, 2009  |
| <b><u>INITIATION OF OPERATION:</u></b>       |                   |
| Clean and Line Water Mains                   | October 27, 2009  |
| <b><u>CERTIFICATION OF PROJECT:</u></b>      |                   |
| Clean and Line Water Mains                   | October 27, 2010  |

**EXHIBIT H**

**Form of Continuing Disclosure Agreement**

H-1

**&# 160;**

**LOAN AGREEMENT**  
**BY AND BETWEEN**  
**THE STATE OF NEW JERSEY,**  
**ACTING BY AND THROUGH THE NEW JERSEY**  
**DEPARTMENT OF ENVIRONMENTAL PROTECTION,**  
**AND**  
**MIDDLESEX WATER COMPANY**

**DATED AS OF NOVEMBER 1, 2008**

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**NEW JERSEY ENVIRONMENTAL INFRASTRUCTURE FUND LOAN AGREEMENT**

**THIS LOAN AGREEMENT**, made and entered into as of November 1, 2008, by and between THE STATE OF NEW JERSEY, acting by and through the New Jersey Department of Environmental Protection, and the Borrower (capitalized terms used in this Loan Agreement shall have, unless the context otherwise requires, the meanings ascribed thereto in Section 1.01 hereof);

**WITNESSETH THAT:**

**WHEREAS**, the Borrower has, in accordance with the Regulations, made timely application to the State for a Loan to finance a portion of the Cost of the Project;

**WHEREAS**, the State has approved the Borrower's application for a Loan from Federal Funds, if and when received by and available to the State, and moneys from repayments of loans previously made from such Federal Funds, in the amount of the loan commitment set forth in Exhibit A-2 attached hereto and made a part hereof to finance a portion of the Cost of the Project;

**WHEREAS**, the New Jersey State Legislature has approved an appropriations act that authorizes an expenditure of said proceeds, Federal Funds or related moneys to finance a portion of the Cost of the Project;

**WHEREAS**, the Borrower, in accordance with the Business Corporation Law and all other applicable law, will issue a Borrower Bond to the State evidencing said Loan at the Loan Closing; and

**WHEREAS**, in accordance with the New Jersey Environmental Infrastructure Trust Act, P.L. 1985, c. 334, as amended, and the Regulations, the Borrower has been awarded a Trust Loan for a portion of the Cost of the Project plus, if applicable to the Borrower, capitalized interest on the Trust Loan, certain costs of issuance and bond insurance premium related thereto.

**NOW, THEREFORE**, for and in consideration of the award of the Loan by the State, the Borrower agrees to complete the Project and to perform under this Loan Agreement in accordance with the conditions, covenants and procedures set forth herein and attached hereto as part hereof, as follows:

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## ARTICLE I

### DEFINITIONS

**SECTION 1.01. Definitions.** The following terms as used in this Loan Agreement shall, unless the context clearly requires otherwise, have the following meanings:

**"Administrative Fee"** means an annual fee of up to one percent (1.0%) of the initial principal amount of the Loan or such lesser amount, if any, as may be authorized by any act of the New Jersey State Legislature and as the State may approve from time to time.

**"Authorized Officer"** means, in the case of the Borrower, any person or persons authorized pursuant to a resolution of the board of directors of the Borrower to perform any act or execute any document relating to the Loan, the Borrower Bond or this Loan Agreement.

**"Borrower"** means the corporation that is a party to and is described in Schedule A to this Loan Agreement, and its successors and assigns.

**"Borrower Bond"** means the general obligation bond, note, debenture or other evidence of indebtedness authorized, executed, attested and delivered by the Borrower to the State and authenticated, if applicable, on behalf of the Borrower to evidence the Loan, a specimen of which is attached hereto as Exhibit D and made a part hereof.

**"Borrowers"** means any other Local Government Unit or Private Entity (as such terms are defined in the Regulations) authorized to construct, operate and maintain Environmental Infrastructure Facilities that have entered into Loan Agreements with the State pursuant to which the State will make Loans to such recipients from Federal Funds.

**"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 eligible, reasonable, necessary, allocable to the Project and permitted by generally accepted accounting principles, including Allowances and Building Costs (as defined in the Regulations), as shall be determined on a project-specific basis in accordance with the Regulations as set forth in Exhibit B hereto, as the same may be amended by subsequent eligible costs as evidenced by a certificate of an authorized officer of the State.

**"Department"** means the New Jersey Department of Environmental Protection

**"Environmental Infrastructure Facilities"** means Water Supply Facilities (as such term is defined in the Regulations).

**"Environmental Infrastructure System"** means the Environmental Infrastructure Facilities of the Borrower, including the Project, described in Exhibit A-1 attached hereto and made a part hereof for which the Borrower is borrowing the Loan under this Loan Agreement.

**"Event of Default"** means any occurrence or event specified in Section 5.01 hereof.

**"Excess Project Funds"** shall have the meaning set forth in Section 3.03A hereof.

**"Federal Funds"** means those funds awarded to the State pursuant to the Clean Water Act (33 U.S.C. §1251 *et seq.*) or the Safe Drinking Water Act (42 U.S.C. §300f *et seq.*), as the same may from time to time be amended and supplemented.

**"Loan"** means the loan made by the State to the Borrower to finance or refinance a portion of the Cost of the Project pursuant to this Loan Agreement. For all purposes of this Loan Agreement, the principal amount of the Loan at any time shall be the amount of the loan commitment set forth in Exhibit A-2 attached hereto and made a part hereof (such amount being also specified as the initial aggregate principal amount of the Borrower Bond) less any amount of such principal amount that has been repaid by the Borrower under this Loan Agreement and less any adjustment made for low bid or final building costs pursuant to the provisions of N.J.A.C. 7:22-3.26 and the appropriations act of the New Jersey State Legislature authorizing the expenditure of moneys to finance a portion of the Cost of the Project.

**"Loan Agreement"** means this Loan Agreement, including the Exhibits attached hereto, as it may be supplemented, modified or amended from time to time in accordance with the terms hereof.

**"Loan Agreements"** means any other loan agreements entered into by and between the State and one or more of the Borrowers pursuant to which the State will make Loans to such Borrowers from Federal Funds.

**"Loan Closing"** means the date upon which the Borrower shall deliver its Borrower Bond, as previously authorized, executed, attested and, if applicable, authenticated, to the State.

**"Loan Repayments"** means the sum of (i) the repayments of the principal amount of the Loan payable by the Borrower pursuant to Section 3.03(a) of this Loan Agreement and (ii) any late charges incurred hereunder, but shall not include the Administrative Fee.

**"Loan Term"** means the term of this Loan Agreement provided in Sections 3.01 and 3.03 hereof and in Exhibit A-2 attached hereto and made a part hereof.

**"Loans"** means the loans made by the State to the Borrowers under the Loan Agreements from Federal Funds.

**"Master Program Trust Agreement"** means that certain Master Program Trust Agreement, dated as of November 1, 1995, by and among the Trust, the State, United States

Trust Company of New York, as Master Program Trustee thereunder, The Bank of New York (NJ), in several capacities thereunder, and First Fidelity Bank, N.A. (predecessor to Wachovia Bank, National Association), in several capacities thereunder, as supplemented by that certain Agreement of Resignation of Outgoing Master Program Trustee, Appointment of Successor Master Program Trustee and Acceptance Agreement, dated as of November 1, 2001, by and among United States Trust Company of New York, as Outgoing Master Program Trustee, State Street Bank and Trust Company, N.A. (predecessor to U.S. Bank Trust National Association), as Successor Master Program Trustee, and the Trust, as the same may be amended and supplemented from time to time in accordance with its terms.

**"Prime Rate"** means the prevailing commercial interest rate announced by the Trustee from time to time in the State as its prime lending rate.

**"Project"** means the Environmental Infrastructure Facilities of the Borrower described in Exhibit A-1 attached hereto and made a part hereof, which constitutes a project for which the State is permitted to make a loan to the Borrower pursuant to the Regulations, all or a portion of the Cost of which is financed or refinanced by the State through the making of the Loan under this Loan Agreement and which may be identified under either the Drinking Water or Clean Water Project Lists with the Project Number specified in Exhibit A-1 attached hereto.

**"Regulations"** means the rules and regulations, as applicable, now or hereafter promulgated under N.J.A.C. 7:22-3 *et seq.*, 7:22-4 *et seq.*, 7:22-5 *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, acting, unless otherwise specifically indicated, by and through the Department, and its successors and assigns.

**"Trust"** means the New Jersey Environmental Infrastructure Trust, a public body corporate and politic with corporate succession duly created and validly existing under and by virtue of P.L. 1985, c. 334, as amended (N.J.S.A. 58:11B-1 *et seq.*).

**"Trust Loan"** means the loan made to the Borrower by the Trust pursuant to the Trust Loan Agreement.

**"Trust Loan Agreement"** means the loan agreement by and between the Borrower and the Trust dated as of November 1, 2008 to finance or refinance a portion of the Cost of the Project.

**"Trustee"** means, initially, The Bank of New York Mellon, the Trustee appointed by the Trust and its successors as Trustee under the Bond Resolution, as provided in Article X of the Bond Resolution.

(b) In addition to the capitalized terms defined in subsection (a) of this Section 1.01, certain additional capitalized terms used in this Loan Agreement shall, unless the context clearly requires otherwise, have the meanings ascribed to such additional capitalized terms in Schedule A attached hereto and made a part hereof.

(c) Except as otherwise defined herein or where the context otherwise requires, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include firms, associations, corporations, agencies and districts. Words importing one gender shall include the other gender.

## ARTICLE II

### REPRESENTATIONS AND COVENANTS OF BORROWER

**SECTION 2.01. Representations of Borrower.** The Borrower represents for the benefit of the State as follows:

(a) Organization and Authority.

(i) The Borrower is a corporation duly created and validly existing under and pursuant to the Constitution and statutes of the State, including the Business Corporation Law.

(ii) The acting officers of the Borrower who are contemporaneously herewith performing or have previously performed any action contemplated in this Loan Agreement either are or, at the time any such action was performed, were the duly appointed or elected officers of such Borrower empowered by applicable New Jersey law and, if applicable, authorized by resolution of the Borrower to perform such actions. To the extent any such action was performed by an officer no longer the duly acting officer of such Borrower, all such actions previously taken by such officer are still in full force and effect.

(iii) The Borrower has full legal right and authority and all necessary licenses and permits required as of the date hereof to own, operate and maintain its Environmental Infrastructure System, to carry on its activities relating thereto, to execute, attest and deliver this Loan Agreement and the Borrower Bond, to authorize the authentication of the Borrower Bond, to sell the Borrower Bond to the State, to undertake and complete the Project and to carry out and consummate all transactions contemplated by this Loan Agreement.

(iv) The proceedings of the Borrower's board of directors approving this Loan Agreement and the Borrower Bond, authorizing the execution, attestation and delivery of this Loan Agreement and the Borrower Bond, authorizing the sale of the Borrower Bond to the State, authorizing the authentication of the Borrower Bond on behalf of the Borrower and authorizing the Borrower to undertake and complete the Project, including, without limitation, the Borrower Bond Resolution (collectively, the "Proceedings"), have been duly and lawfully adopted in accordance with the Business Corporation Law and other applicable New Jersey law at a meeting or meetings that were duly called and held in accordance with the Borrower By-Laws and at which quorums were present and acting throughout.

(v) By official action of the Borrower taken prior to or concurrent with the execution and delivery hereof, including, without limitation, the Proceedings, the Borrower has duly authorized, approved and consented to all necessary action to be taken by the Borrower for: (A) the execution, attestation, delivery and performance of this Loan Agreement and the transactions contemplated hereby; (B) the issuance of the

Borrower Bond and the sale thereof to the State upon the terms set forth herein; and (C) the execution, delivery and due performance of any and all other certificates, agreements and instruments that may be required to be executed, delivered and performed by the Borrower in order to carry out, give effect to and consummate the transactions contemplated by this Loan Agreement.

(vi) This Loan Agreement and the Borrower Bond have each been duly authorized by the Borrower and duly executed, attested and delivered by Authorized Officers of the Borrower, and the Borrower Bond has been duly sold by the Borrower to the State, duly authenticated by the trustee or paying agent, if applicable, under the Borrower Bond Resolution and duly issued by the Borrower in accordance with the terms of the Borrower Bond Resolution; and assuming that the State has all the requisite power and authority to authorize, execute, attest and deliver, and has duly authorized, executed, attested and delivered, this Loan Agreement, and assuming further that this Loan Agreement is the legal, valid and binding obligation of the State, enforceable against the State in accordance with its terms, each of this Loan Agreement and the Borrower Bond constitutes a legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its respective 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; and the information contained under "Description of Loan" in Exhibit A-2 attached hereto and made a part hereof is true and accurate in all respects.

(b) Full Disclosure. There is no fact that the Borrower has not disclosed to the State in writing on the Borrower's application for the Loan or otherwise that materially adversely affects or (so far as the Borrower can now foresee) that will materially adversely affect the properties, activities, prospects or condition (financial or otherwise) of the Borrower or its Environmental Infrastructure System, or the ability of the Borrower to make all Loan Repayments or otherwise to observe and perform its duties, covenants, obligations and agreements under this Loan Agreement and the Borrower Bond.

(c) Pending Litigation. There are no proceedings pending or, to the knowledge of the Borrower, threatened against or affecting the Borrower in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would materially adversely affect (i) the undertaking or completion of the Project, (ii) the properties, activities, prospects or condition (financial or otherwise) of the Borrower or its Environmental Infrastructure System, (iii) the ability of the Borrower to make all Loan Repayments, (iv) the authorization, execution, attestation or delivery of this Loan Agreement or the Borrower Bond, (v) the issuance of the Borrower Bond and the sale thereof to the State, (vi) the adoption of the Borrower Bond Resolution, or (vii) the Borrower's ability otherwise to observe and perform its duties, covenants, obligations and agreements under this Loan Agreement and the Borrower Bond, which proceedings have not been previously disclosed in writing to the State either in the Borrower's application for the Loan or otherwise.

(d) Compliance with Existing Laws and Agreements. (i) The authorization, execution, attestation and delivery of this Loan Agreement and the Borrower Bond by the

Borrower, (ii) the authentication of the Borrower Bond by the trustee or paying agent under the Borrower Bond Resolution, as the case may be, and the sale of the Borrower Bond to the State, (iii) the adoption of the Borrower Bond Resolution, (iv) the observation and performance by the Borrower of its duties, covenants, obligations and agreements hereunder and thereunder, (v) the consummation of the transactions provided for in this Loan Agreement, the Borrower Bond Resolution and the Borrower Bond, and (vi) the undertaking and completion of the Project will not (A) other than the lien, charge or encumbrance created hereby, by the Borrower Bond, by the Borrower Bond Resolution and by any other outstanding debt obligations of the Borrower that are at parity with the Borrower Bond as to lien on, and source and security for payment thereon from, the revenues of the Borrower's Environmental Infrastructure System, 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 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 is subject.

(e) No Defaults. No event has occurred and no condition exists that, upon the authorization, execution, attestation and delivery of this Loan Agreement and the Borrower Bond, the issuance of the Borrower Bond and the sale thereof to the State, the adoption of the Borrower Bond Resolution or the receipt of the amount of the Loan, would constitute an Event of Default hereunder. The Borrower is not in violation of, and has not received notice of any claimed violation of, any term of any agreement or other instrument to which it is a party or by which it, its Environmental Infrastructure System or its properties may be bound, which violation would materially adversely affect the properties, activities, prospects or condition (financial or otherwise) of the Borrower or its Environmental Infrastructure System or the ability of the Borrower to make all Loan Repayments, to pay all other amounts due hereunder or otherwise to observe and perform its duties, covenants, obligations and agreements under this Loan Agreement and the Borrower Bond.

(f) Governmental Consent. The Borrower has obtained all permits and approvals required to date by any governmental body or officer for the authorization, execution, attestation and delivery of this Loan Agreement and the Borrower Bond, for the issuance of the Borrower Bond and the sale thereof to the State, for the adoption of the Borrower Bond Resolution, for the making, observance and performance by the Borrower of its duties, covenants, obligations and agreements under this Loan Agreement and the Borrower Bond and for the undertaking or completion of the Project and the financing or refinancing thereof, including, but not limited to, if required, the approval by the New Jersey Board of Public Utilities (the "BPU") of the issuance by the Borrower of the Borrower Bond to the State and any other approvals required therefor by the BPU; and the Borrower has complied with all applicable provisions of law requiring any notification, declaration, filing or registration with any governmental body or officer in connection with the making, observance and performance by the Borrower of its duties,



covenants, obligations and agreements under this Loan Agreement and the Borrower Bond or with the undertaking or completion of the Project and the financing or refinancing thereof. No consent, approval or authorization of, or filing, registration or qualification with, any governmental body or officer that has not been obtained is required on the part of the Borrower as a condition to the authorization, execution, attestation and delivery of this Loan Agreement and the Borrower Bond, the issuance of the Borrower Bond and the sale thereof to the State, the undertaking or completion of the Project or the consummation of any transaction herein contemplated.

(g) Compliance with Law. The Borrower:

(i) is in compliance with all laws, ordinances, governmental rules and regulations to which it is subject, the failure to comply with which would materially adversely affect (A) the ability of the Borrower to conduct its activities or to undertake or complete the Project, (B) the ability of the Borrower to make the Loan Repayments and to pay all other amounts due hereunder, or (C) the condition (financial or otherwise) of the Borrower or its Environmental Infrastructure System; and

(ii) has obtained all licenses, permits, franchises or other governmental authorizations presently necessary for the ownership of its properties or for the conduct of its activities that, if not obtained, would materially adversely affect (A) the ability of the Borrower to conduct its activities or to undertake or complete the Project, (B) the ability of the Borrower to make the Loan Repayments and to pay all other amounts due hereunder, or (C) the condition (financial or otherwise) of the Borrower or its Environmental Infrastructure System.

(h) Use of Proceeds. The Borrower will apply the proceeds of the Loan from the State as described in Exhibit B attached hereto and made a part hereof (i) to finance or refinance a portion of the Cost of the Borrower's Project; and (ii) where applicable, to reimburse the Borrower for a portion of the Cost of the Borrower's Project, which portion was paid or incurred in anticipation of reimbursement by the State and is eligible for such reimbursement under and pursuant to the Regulations, the Code and any other applicable law. All of such costs constitute Costs for which the State is authorized to make Loans to the Borrower pursuant to the Regulations.

#### **SECTION 2.02. Particular Covenants of Borrower.**

(a) Promise to Pay. The Borrower unconditionally promises, in accordance with the terms of and to the extent provided in the Borrower Bond Resolution, to make punctual payment of the principal of the Loan and the Borrower Bond and all other amounts due under this Loan Agreement and the Borrower Bond according to their respective terms.

(b) Performance Under Loan Agreement; Rates. The Borrower covenants and agrees (i) to comply with all applicable State and federal laws, rules and regulations in the performance of this Loan Agreement; (ii) to maintain its Environmental Infrastructure System in good repair and operating condition; (iii) to cooperate with the State in the observance and performance of

the respective duties, covenants, obligations and agreements of the Borrower and the State under this Loan Agreement; and (iv) to establish, levy and collect rents, rates and other charges for the products and services provided by its Environmental Infrastructure System, which rents, rates and other charges shall be at least sufficient to comply with all covenants pertaining thereto contained in, and all other provisions of, any bond resolution, trust indenture or other security agreement, if any, relating to any bonds, notes or other evidences of indebtedness issued or to be issued by the Borrower, including without limitation rents, rates and other charges, together with other available moneys, sufficient to pay the principal of and Interest on the Borrower Bond, plus all other amounts due hereunder.

(c) Revenue Obligation; No Prior Pledges. The Borrower shall not be required to make payments under this Loan Agreement except from the revenues of its Environmental Infrastructure System and from such other funds of such Environmental Infrastructure System legally available therefor and from any other sources pledged to such payment pursuant to subsection (a) of this Section 2.02. In no event shall the Borrower be required to make payments under this Loan Agreement from any revenues or receipts not derived from its Environmental Infrastructure System or pledged pursuant to subsection (a) of this Section 2.02. Except for (i) loan repayments required with respect to the Trust Loan, (ii) the debt service on any future bonds or notes of the Borrower issued at parity with the Borrower Bond under the Borrower Bond Resolution, and (iii) the debt service on any bonds, notes or evidences of indebtedness of the Borrower at parity with the Borrower Bond under the Borrower Bond Resolution and currently outstanding or issued on the date hereof, the revenues derived by the Borrower from its Environmental Infrastructure System, after the payment of all costs of operating and maintaining the Environmental Infrastructure System, are and will be free and clear of any pledge, lien, charge or encumbrance thereon or with respect thereto prior to, or of equal rank with, the obligation of the Borrower to make Loan Repayments under this Loan Agreement and the Borrower Bond, and all corporate or other action on the part of the Borrower to that end has been and will be duly and validly taken.

(d) Completion of Project and Provision of Moneys Therefor. The Borrower covenants and agrees (i) to exercise its best efforts in accordance with prudent environmental infrastructure utility practice to complete the Project and to accomplish such completion on or before the estimated Project completion date set forth in Exhibit G hereto and made a part hereof; (ii) to comply with the terms and provisions contained in Exhibit G hereto; and (iii) to provide from its own fiscal resources all moneys, in excess of the total amount of loan proceeds it receives under the Loan and Trust Loan, required to complete the Project.

(e) See Section 2.02(e) as set forth in Schedule A attached hereto, made a part hereof and incorporated in this Section 2.02(e) by reference as if set forth in full herein.

(f) Reserved.

(g) Operation and Maintenance of Environmental Infrastructure System. The Borrower covenants and agrees that it shall, in accordance with prudent environmental infrastructure utility practice, (i) at all times operate the properties of its Environmental Infrastructure System and any business in connection therewith in an efficient manner, (ii)

maintain its Environmental Infrastructure System in good repair, working order and operating condition, and (iii) from time to time make all necessary and proper repairs, renewals, replacements, additions, betterments and improvements with respect to its Environmental Infrastructure System so that at all times the business carried on in connection therewith shall be properly and advantageously conducted.

(h) Records and Accounts. The Borrower shall keep accurate records and accounts for its Environmental Infrastructure System (the "System Records") separate and distinct from its other records and accounts (the "General Records"). Such System Records shall be audited annually by an independent certified public accountant, which may be part of the annual audit of the General Records of the Borrower. Such System Records and General Records shall be made available for inspection by the State at any reasonable time upon prior written notice, and a copy of such annual audit(s) therefor, including all written comments and recommendations of such accountant, shall be furnished to the State within 150 days of the close of the fiscal year being so audited or, with the consent of the State, such additional period as may be provided by law.

(ii) Within 30 days following receipt of any Loan proceeds, including without limitation the "Allowance for Administrative Costs" or the "Allowance for Planning and Design" set forth in Exhibit B hereto, the Borrower shall allocate such proceeds to an expenditures in a manner that satisfies the requirements of Treasury Regulation §1.148-6(d) and transmit a copy of each such allocation to the State. No portion of the Allowance for Administrative Costs will be allocated to a cost other than a cost described in N.J.A.C. 7:22-5.11(a) 3, 4 or 6. No portion of the Allowance for Planning and Design will be allocated to a cost other than a cost described N.J.A.C. 7:22-5.12, or other costs of the Borrower's Environmental Infrastructure System which are "capital expenditures," within the meaning of Treasury Regulations §1.150-1. The Borrower shall retain records of such allocations for at least until the date that is three years after the scheduled maturity date of the Loan. The Borrower shall make such records available to the State within 15 days of any request by the State.

(i) Inspections; Information. The Borrower shall permit the State and any party designated by the State, at any and all reasonable times during construction of the Project and thereafter upon prior written notice, to examine, visit and inspect the property, if any, constituting the Project and to inspect and make copies of any accounts, books and records, including (without limitation) its records regarding receipts, disbursements, contracts, investments and any other matters relating thereto and to its financial standing, and shall supply such reports and information as the State may reasonably require in connection therewith.

(j) Insurance. The Borrower shall maintain or cause to be maintained, in force, insurance policies with responsible insurers or self-insurance programs providing against risk of direct physical loss, damage or destruction of its Environmental Infrastructure System at least to the extent that similar insurance is usually carried by utilities constructing, operating and maintaining Environmental Infrastructure Facilities of the nature of the Borrower's Environmental Infrastructure System, including liability coverage, all to the extent available at reasonable cost but in no case less than will satisfy all applicable regulatory requirements.

(k) Cost of Project. The Borrower certifies that the building cost of the Project, as listed in Exhibit B hereto and made a part hereof, is a reasonable and accurate estimation thereof, and it will supply to the State a certificate from a licensed professional engineer authorized to practice in the State stating that such building cost is a reasonable and accurate estimation and that the useful life of the Project exceeds the maturity date of the Borrower Bond.

(l) Delivery of Documents. Concurrently with the delivery of this Loan Agreement (as previously authorized, executed and attested) at the Loan Closing, the Borrower will cause to be delivered to the State each of the following items:

(i) an opinion of the Borrower's bond counsel substantially in the form of Exhibit E hereto; provided, however, that the State may permit portions of such opinion to be rendered by general counsel to the Borrower and may permit variances in such opinion from the form set forth in Exhibit E if such variances are acceptable to the State;

(ii) counterparts of this Loan Agreement as previously executed and attested by the parties hereto;

(iii) copies of those resolutions finally adopted by the board of directors of the Borrower and requested by the State, including, without limitation, (A) the resolution of the Borrower authorizing the execution, attestation and delivery of this Loan Agreement, (B) the Borrower Bond Resolution, as amended and supplemented as of the date of the Loan Closing, authorizing the execution, attestation, authentication, sale and delivery of the Borrower Bond to the State, (C) the resolution of the Borrower confirming the details of the sale of the Borrower Bond to the State, each of said resolutions of the Borrower being certified by an Authorized Officer of the Borrower as of the date of the Loan Closing, (D) the resolution of the BPU approving the issuance by the Borrower of the Borrower Bond to the State and setting forth any other approvals required therefor by the BPU, if applicable, and (E) any other Proceedings; and

(iv) the certificates of insurance coverage as required pursuant to the terms of Section 3.06(c) hereof and such other certificates, documents, opinions and information as the State may require in Exhibit F hereto, if any.

(m) Execution and Delivery of Borrower Bond. Concurrently with the delivery of this Loan Agreement at the Loan Closing, the Borrower shall also deliver to the State the Borrower Bond, as previously executed, attested and, if applicable, authenticated.

(n) Notice of Material Adverse Change. The Borrower shall promptly notify the State of any material adverse change in the properties, activities, prospects or condition (financial or otherwise) of the Borrower or its Environmental Infrastructure System, or in the ability of the Borrower to make all Loan Repayments and otherwise to observe and perform its duties, covenants, obligations and agreements under this Loan Agreement and the Borrower Bond.

(o) Continuing Representations. The representations of the Borrower contained herein shall be true at the time of the execution of this Loan Agreement and at all times during the term of this Loan Agreement.

(p) Additional Covenants and Requirements. (i) No later than the Loan Closing and, if necessary, in connection with the making of the Loan, additional covenants and requirements have been included in Exhibit F hereto and made a part hereof. Such covenants and requirements may include, but need not be limited to, the maintenance of specified levels of Environmental Infrastructure System rates, the issuance of additional debt of the Borrower and the transfer of revenues and receipts from the Borrower's Environmental Infrastructure System. The Borrower agrees to observe and comply with each such additional covenant and requirement, if any, included in Exhibit F hereto. (ii) Additional defined terms, covenants, representations and requirements have been included in Schedule A attached hereto and made a part hereof. Such additional defined terms, covenants, representations and requirements are incorporated in this Loan Agreement by reference thereto as if set forth in full herein and the Borrower hereby agrees to observe and comply with each such additional term, covenant, representation and requirement included in Schedule A as if the same were set forth in its entirety where reference thereto is made in this Loan Agreement.

### ARTICLE III

#### LOAN TO BORROWER; AMOUNTS PAYABLE; GENERAL AGREEMENTS

**SECTION 3.01. Loan; Loan Term.** The State hereby agrees to make the Loan as described in Exhibit A-2 hereof and to disburse proceeds of the Loan to the Borrower in accordance with Section 3.02 and Exhibit C hereof, and the Borrower hereby agrees to borrow and accept the Loan from the State upon the terms set forth in Exhibit A-2 attached hereto and made a part hereof; provided, however, that the State shall be under no obligation to make the Loan if (a) at the Loan Closing, the Borrower does not deliver to the State a Borrower Bond and such other documents required under Section 2.02(l) hereof, or (b) an Event of Default has occurred and is continuing under this Loan Agreement. Although the State intends to disburse proceeds of the Loan to the Borrower at the times and up to the amounts set forth in Exhibit C to pay a portion of the Cost of the Project, due to unforeseen circumstances there may not be sufficient Federal Funds on deposit on any date to make the disbursement in such amount. Nevertheless, the Borrower agrees that the aggregate principal amount set forth in Exhibit A-2 hereto shall constitute the initial principal amount of the Loan (as the same may be adjusted downward in accordance with the definition thereof), and the State shall have no obligation thereafter to loan any additional amounts to the Borrower.

The Borrower shall have no legal or equitable interest in the Federal Funds received by and available to the State or in moneys from repayments of loans previously made from Federal Funds by the State.

The Borrower shall use the proceeds of the Loan strictly in accordance with Section 2.01(h) hereof.

The payment obligations created under this Loan Agreement and the obligations to pay the principal of and other amounts due under the Borrower Bond are each direct, general, irrevocable and unconditional obligations of the Borrower payable from any source legally available to the Borrower in accordance with the terms of and to the extent provided in the Borrower Bond Resolution.

**SECTION 3.02. Disbursement of Loan Proceeds.** (a) The State shall disburse Federal Funds earmarked for the Loan to the Borrower in accordance with the terms hereof. Before each and every disbursement of the proceeds of the Loan by the State to the Borrower, the Borrower shall in accordance with the procedures set forth in the Regulations submit to the State a requisition executed by an Authorized Officer of the Borrower.

(b) The State shall not be under any obligation to disburse any Loan proceeds to the Borrower under this Loan Agreement, unless:

- (i) the Loan Closing shall have occurred on the date established therefor by the State;

(ii) there shall be Federal Funds available from time to time to fund the Loan, as determined solely by the State;

(iii) in accordance with the "New Jersey Environmental Infrastructure Trust Act", P.L. 1985, c. 334, as amended (N.J.S.A. 58:11B-1 *et seq.*), and the Regulations, the Borrower shall have timely applied for, shall have been awarded and, prior to or simultaneously with the Loan Closing, shall have closed a Trust Loan for a portion of the Allowable Costs (as defined in such Regulations) of the Project in an amount not in excess of the amount of Allowable Costs of the Project financed by the Loan from the State, plus the amount of: (i) capitalized interest during the Project construction period, if any, (ii) the cost of funding reserve capacity for the Project, if any, as well as that portion of the Debt Service Reserve Fund (as defined in the Trust Loan Agreement) (to the extent the Trust establishes a Debt Service Reserve Fund pursuant to the Bond Resolution) attributable to the cost of funding such reserve capacity for the Project, and (iii) certain issuance expenses related thereto, including, if applicable, a municipal bond insurance policy premium;

(iv) the Borrower shall have on hand moneys to pay for the greater of (A) that portion of the total cost of the Project that is not eligible to be funded from the Loan or the Trust Loan, or (B) that portion of the total cost of the Project that exceeds the actual amounts of the loan commitments made by the State and the Trust, respectively, for the Loan and the Trust Loan; and

(v) no Event of Default nor any event that, with the passage of time or service of notice or both, would constitute an Event of Default shall have occurred and be continuing hereunder.

**SECTION 3.03. Amounts Payable.** (a) The Borrower shall repay the Loan at zero-interest in principal installments payable to the Trustee semiannually on the Principal Payment Dates, in accordance with the schedule set forth in Exhibit A-2 attached hereto and made a part hereof, as the same may be amended or modified by the State, in particular, without limitation, to make any adjustments to the amount of the Loan in accordance with the definition thereof; provided, however, that the amount of any reduction in the principal amount of the Loan pursuant to N.J.A.C. 7:22-3.26 shall be credited to the principal payments set forth in Exhibit A-2 in inverse order of their maturity. The obligations of the Borrower under the Borrower Bond shall be deemed to be amounts payable under this Section 3.03. Each payment made to the Trustee pursuant to the Borrower Bond shall be deemed to be a credit against the corresponding obligation of the Borrower under this Section 3.03, and any such payment made to the Trustee shall fulfill the Borrower's obligation to pay such amount hereunder and under the Borrower Bond. Each payment made to the Trustee pursuant to this Section 3.03 shall be applied to the principal of the Loan.

(b) In addition to the principal payments on the Loan required by subsection (a) of this Section 3.03, the Borrower shall pay a late charge for any such payment that is received by the Trustee later than the tenth (10th) day following its due date in an amount equal to the greater of twelve percent (12%) per annum or the Prime Rate plus one half of one percent per annum on

such late payment from its due date to the date actually paid; provided, however, that such late charge payable on the Loan shall not be in excess of the maximum interest rate permitted by law.

(c) In addition to the Loan Repayments payable under subsections (a) and (b) of this Section 3.03, the Borrower shall pay one-half of the Administrative Fee, if any, to the Trustee semiannually on each Principal Payment Date, commencing with the first Principal Payment Date subsequent to the Loan Closing.

**SECTION 3.03A. Amounts on Deposit in Project Loan Account after Completion of Project Draws.** (a) If, on the date which is one hundred eighty (180) days following the final date for which a disbursement of Loan proceeds is scheduled to be made pursuant to Exhibit C hereto, any amounts remain on deposit in the Borrower's Project Loan Account, the Borrower must provide to the Trust and the Department a certificate of an Authorized Officer of the Borrower (i) stating that the Borrower has not yet completed the Project, (ii) stating that the Borrower intends to complete the Project, (iii) setting forth the amount of remaining Loan Proceeds required to complete the Project, and (iv) providing a revised draw schedule, in a form similar to Exhibit C hereto and approved by the Department.

(b) If, on the date which is one hundred eighty (180) days following the final date for which a disbursement of Loan proceeds is scheduled to be made pursuant to a revised draw schedule certified to the Trust and the Department in accordance with Section 3.03A(a) hereof, any amounts remain on deposit in the Borrower's Project Loan Account, the Borrower must provide to the Trust and the Department a certificate of an Authorized Officer of the Borrower (i) stating that the Borrower has not yet completed the Project, (ii) stating that the Borrower intends to complete the Project, (iii) setting forth the amount of remaining Loan Proceeds required to complete the Project, and (iv) providing a revised draw schedule, in a form similar to Exhibit C hereto and approved by the Department.

(c) If the Borrower fails to provide the certificate described in paragraphs (a) or (b) of this Section 3.03A, when due, or if such certificate states that the Borrower does not require all or any portion of the amount on deposit in the Project Loan Account to complete the Project, such amounts on deposit in the Project Loan Account which are not certified by an Authorized Officer of the Borrower as being required to complete the Project ("Excess Project Funds") shall be applied by the State as a prepayment of the Borrower's Loan Repayments, and shall be applied to the principal payments (including premium, if any) on the Loan in inverse order of their maturity.

**SECTION 3.04. 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 or to any extent whatsoever while any Loan Repayments remain unpaid, for any reason, 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 State to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with the Project or this Loan Agreement, or any rights of set-off, recoupment, abatement or counterclaim that the Borrower might otherwise have against the State, the Trustee or any other party or parties; provided, however, that payments hereunder shall not constitute a waiver of any such rights. The Borrower shall not be obligated to make any payments required to be made by any other Borrowers under separate Loan Agreements.

**SECTION 3.05. Loan Agreement to Survive Loan.** The Borrower acknowledges that its duties, covenants, obligations and agreements set forth in Sections 3.06(a) and (b) hereof shall survive the payment in full of the Loan.

**SECTION 3.06. Disclaimer of Warranties and Indemnification.** (a) The Borrower acknowledges and agrees that: (i) the State does not make any warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for any use of the Environmental Infrastructure System or the Project or any portions thereof or any other warranty or representation with respect thereto; (ii) in no event shall the State or its agents be liable or responsible for any incidental, indirect, special or consequential damages in connection with or arising out of this Loan Agreement or the Project or the existence, furnishing, functioning or use of the Environmental Infrastructure System or the Project or any item or products or services provided for in this Loan Agreement; and (iii) to the fullest extent permitted by law, the Borrower shall indemnify and hold the State harmless against, and the Borrower shall pay any and all, liability, loss, cost, damage, claim, judgment or expense of any and all kinds or nature and however arising and imposed by law, which the State may sustain, be subject to or be caused to incur by reason of any claim, suit or action based upon personal injury, death or damage to property, whether real, personal or mixed, or upon or arising out of contracts entered into by the Borrower, the Borrower's ownership of the Environmental Infrastructure System or the Project, or the acquisition, construction or installation of the Project.

(b) It is mutually agreed by the Borrower and the State that the State and its commissioners, officers, agents, servants or employees shall not be liable for, and shall be indemnified and saved harmless by the Borrower in any event from, any action performed under this Loan Agreement and any claim or suit of whatsoever nature, except in the event of loss or damage resulting from their own negligence or willful misconduct.

(c) In connection with its obligation to provide the insurance required under Section 2.02(j) hereof: (i) the Borrower shall include, or cause to be included, the State and its employees and officers as additional "named insureds" on (A) any certificate of liability insurance procured by the Borrower (or other similar document evidencing the liability insurance coverage procured by the Borrower) and (B) any certificate of liability insurance procured by any contractor or subcontractor for the Project, and from the later of the date of the Loan Closing or the date of the initiation of construction of the Project until the date the Borrower receives the written certificate of Project completion from the State, the Borrower shall maintain said liability insurance covering the State and said employees and officers in good standing; and (ii) the

Borrower shall include the State as an additional "named insured" on any certificate of insurance providing against risk of direct physical loss, damage or destruction of the Environmental Infrastructure System, and during the Loan Term the Borrower shall maintain said insurance covering the State in good standing.

The Borrower shall provide the State with a copy of each of any such original, supplemental, amendatory or reissued certificates of insurance (or other similar documents evidencing the insurance coverage) required pursuant to this Section 3.06(c).

**SECTION 3.07. Option to Prepay Loan Repayments.** The Borrower may prepay the Loan Repayments, in whole or in part, upon not less than ninety (90) days' prior written notice to the State; provided, however, that, with respect to any prepayment other than those required by Section 3.03A hereof, any such full or partial prepayment may only be made (i) if the Borrower is not then in arrears on its Trust Loan, (ii) if the Borrower is contemporaneously making a full or partial prepayment of the Trust Loan such that, after the prepayment of the Loan and the Trust Loan, the Trust gives its consent required under Section 3.07(iii) of the Trust Loan Agreement, and (iii) upon the prior written approval of the State. Prepayments shall be applied to the principal payments on the portion of the Loan to be prepaid in inverse order of their maturity.

**SECTION 3.08. Priority of Loan and Trust Loan.** (a) The Borrower hereby agrees that, to the extent allowed by law, including, without limitation, the appropriations act of the New Jersey State Legislature authorizing the expenditure of Trust bond proceeds to finance a portion of the Cost of the Project, or the Borrower Bond Resolution, any loan repayments then due and payable on the Borrower's Trust Loan, including, without limitation, any administrative fees and any late payment charges then due and payable under the Trust Loan Agreement, shall be satisfied by the Trustee before any Loan Repayments then due and payable hereunder on the Loan shall be satisfied by the Trustee. The Borrower agrees not to interfere with any such action by the Trustee.

(b) The Borrower hereby acknowledges that in the event the Borrower fails or is unable to pay promptly to the Trust in full any loan repayments on the Trust Loan, then any Loan Repayments paid by the Borrower on the Loan under this Loan Agreement and received by the Trustee during the time of any such loan repayment deficiency under the Trust Loan Agreement shall be applied by the Trustee *first* to satisfy such Trust Loan Agreement loan repayment deficiency as a credit against the obligations of the Borrower to make loan repayments of that portion of interest under the Trust Loan Agreement that is allocable to the interest payable on the Trust Bonds (as defined in the Trust Loan Agreement) and to make payments of that portion of interest under the bond or note issued by the Borrower to the Trust that is allocable to the interest payable on the Trust Bonds, *second*, to the extent available, to make loan repayments of principal under the Trust Loan Agreement and payments of principal on the bond or note issued by the Borrower to the Trust pursuant to the Trust Loan Agreement, *third*, to the extent available, to the payment of the administrative fee payable under the Trust Loan Agreement and to make payments of that portion of interest under the bond or note issued by the Borrower to the Trust that is allocable to the administrative fee payable under the Trust Loan Agreement, *fourth*, to the extent available, to the payment of late charges payable under the Trust Loan Agreement and to make payments of that portion of interest under the bond or note issued by the Borrower to the

Trust that is allocable to the late charges payable under the Trust Loan Agreement, and *finally*, to the extent available, to make Loan Repayments on the Loan.

(c) The Borrower hereby further acknowledges that any Loan Repayments paid by the Borrower on the Loan under this Loan Agreement shall be applied according to the provisions of the Master Program Trust Agreement.

**SECTION 3.09. Approval of the New Jersey State Treasurer.** The Borrower and the State hereby acknowledge that prior to or simultaneously with the Loan Closing the New Jersey State Treasurer, in satisfaction of the requirements of Section 9a of the Act, issued the “Certificate of the New Jersey State Treasurer Regarding the Approval of the Trust Loan and the Fund Loan” (the “Treasurer’s Certificate”). Pursuant to the terms of the Treasurer’s Certificate, the New Jersey State Treasurer approved the Loan and the terms and conditions thereof as established by the provisions of this Loan Agreement.

**ARTICLE IV**

**ASSIGNMENT OF LOAN AGREEMENT AND BORROWER BOND**

**SECTION 4.01. Assignment and Transfer by State.** The Borrower hereby approves and consents to any assignment or transfer of this Loan Agreement and the Borrower Bond that the State deems to be necessary in connection with the environmental infrastructure loan program of the State under the Regulations.

**SECTION 4.02. Assignment by Borrower.** Neither this Loan Agreement nor the Borrower Bond may be assigned by the Borrower for any reason, unless the following conditions shall be satisfied: (i) the State shall have approved said assignment in writing; (ii) the assignee shall have expressly assumed in writing the full and faithful observance and performance of the Borrower's duties, covenants, obligations and agreements under this Loan Agreement and, to the extent permitted under applicable law, the Borrower Bond; and (iii) immediately after such assignment, the assignee shall not be in default in the observance or performance of any duties, covenants, obligations or agreements of the Borrower under this Loan Agreement or the Borrower Bond.

## ARTICLE V

### EVENTS OF DEFAULT AND REMEDIES

**SECTION 5.01. Events of Default.** If any of the following events occur, it is hereby defined as and declared to be and to constitute an "Event of Default":

- (a) failure by the Borrower to pay, or cause to be paid, any Loan Repayment required to be paid hereunder when due, which failure shall continue for a period of fifteen (15) days;
- (b) failure by the Borrower to make, or cause to be made, any required payments of principal, redemption premium, if any, and interest on any bonds, notes or other obligations of the Borrower issued under the Borrower Bond Resolution (other than the Loan and the Borrower Bond) or otherwise secured by all or a portion of the property pledged under the Borrower Bond Resolution, after giving effect to the applicable grace period;
- (c) failure by the Borrower to pay, or cause to be paid, any late charges incurred hereunder or any portion thereof when due or to observe and perform any duty, covenant, obligation or agreement on its part to be observed or performed under this Loan Agreement, other than as referred to in subsection (a) of this Section 5.01 or other than the obligations of the Borrower contained in Section 2.02(d)(ii) hereof and in Exhibit F hereto, which failure shall continue for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, is given to the Borrower by the State, unless the State shall agree in writing to an extension of such time prior to its expiration; provided, however, that if the failure stated in such notice is correctable but cannot be corrected within the applicable period, the State may not unreasonably withhold its consent to an extension of such time up to 120 days from the delivery of the written notice referred to above if corrective action is instituted by the Borrower within the applicable period and diligently pursued until the Event of Default is corrected;
- (d) any representation made by or on behalf of the Borrower contained in this Loan Agreement, or in any instrument furnished in compliance with or with reference to this Loan Agreement or the Loan, is false or misleading in any material respect;
- (e) 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 Loan Agreement 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 (including, without limitation, a receiver, liquidator or trustee) 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;
- (f) the Borrower shall generally fail to pay its debts as such debts become due; and

(g) failure of the Borrower to observe or perform such additional duties, covenants, obligations, agreements or conditions as are required by the State and specified in Exhibit F attached hereto and made a part hereof.

**SECTION 5.02. Notice of Default.** The Borrower shall give the State prompt telephonic notice of the occurrence of any Event of Default referred to in Section 5.01(d) or (e) hereof and of the occurrence of any other event or condition that constitutes an Event of Default at such time as any senior administrative or financial officer of the Borrower becomes aware of the existence thereof.

**SECTION 5.03. Remedies on Default.** Whenever an Event of Default referred to in Section 5.01 hereof shall have occurred and be continuing, the State shall have the right to take whatever action at law or in equity may appear necessary or desirable 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.

In addition, if an Event of Default referred to in Section 5.01(a) hereof shall have occurred and be continuing, the State shall, to the extent allowed by applicable law, have the right to declare all Loan Repayments and all other amounts due hereunder (including, without limitation, payments under the Borrower Bond) to be immediately due and payable, and upon notice to the Borrower the same shall become due and payable without further notice or demand.

**SECTION 5.04. Attorneys' Fees and Other Expenses.** The Borrower shall on demand pay to the State 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 by the State in the collection of Loan Repayments or any other sum due hereunder or in the enforcement of the observation or performance of any other duties, covenants, obligations or agreements of the Borrower upon an Event of Default.

**SECTION 5.05. Application of Moneys.** Any moneys collected by the State pursuant to Section 5.03 hereof shall be applied (a) *first* to pay any attorneys' fees or other fees and expenses owed by the Borrower pursuant to Section 5.04 hereof, (b) *second*, to the extent available, to pay principal due and payable on the Loan (to the extent permitted by Section 3.08(b) hereof, (c) *third*, to the extent available, to pay any other amounts due and payable hereunder, and (d) *fourth*, to the extent available, to pay principal on the Loan and other amounts payable hereunder as such amounts become due and payable.

**SECTION 5.06. No Remedy Exclusive; Waiver; Notice.** No remedy herein conferred upon or reserved to the State is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Loan Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right, remedy or power accruing upon any Event of Default shall impair any such right, remedy or power or shall be construed to be a waiver thereof, but any such right, remedy or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the State to exercise any remedy reserved to it in this Article V, it shall not be necessary to give any notice other than such notice as may be required in this Article V.

**SECTION 5.07. Retention of State's Rights.** Notwithstanding any assignment or transfer of this Loan Agreement pursuant to the provisions hereof, or anything else to the contrary contained herein, the State shall have the right upon the occurrence of an Event of Default to take any action, including (without limitation) bringing an action against the Borrower at law or in equity, as the State may, in its discretion, deem necessary to enforce the obligations of the Borrower to the State pursuant to Section 5.03 hereof.

## ARTICLE VI

### MISCELLANEOUS

**SECTION 6.01. Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when hand delivered or mailed by registered or certified mail, postage prepaid, to the Borrower at the address specified in Exhibit A-1 attached hereto and made a part hereof and to the State and the Trustee at the following addresses:

(a) State:

New Jersey Department of Environmental Protection  
Municipal Finance and Construction Element  
401 East State Street – 3rd Floor  
Trenton, New Jersey 08625-0425  
Attention: Assistant Director

New Jersey Department of the Treasury  
Office of Public Finance  
State Street Square – 5th Floor  
Trenton, New Jersey 08625-0002  
Attention: Director

(b) Trustee:

The Bank of New York Mellon  
385 Rifle Camp Road  
West Paterson, New Jersey 07424  
Attention: Corporate Trust Department

Any of the foregoing parties may designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent by notice in writing given to the others.

**SECTION 6.02. Binding Effect.** This Loan Agreement shall inure to the benefit of and shall be binding upon the State and the Borrower and their respective successors and assigns.

**SECTION 6.03. Severability.** In the event any provision of this Loan Agreement shall be 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.

**SECTION 6.04. Amendments, Supplements and Modifications.** This Loan Agreement may not be amended, supplemented or modified without the prior written consent of the State and the Borrower.



**SECTION 6.05. Execution in Counterparts.** This Loan Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**SECTION 6.06. Applicable Law and Regulations.** This Loan Agreement shall be governed by and construed in accordance with the laws of the State, including the Regulations, which Regulations are, by this reference thereto, incorporated herein as part of this Loan Agreement.

**SECTION 6.07. Consents and Approvals.** Whenever the written consent or approval of the State shall be required under the provisions of this Loan Agreement, such consent or approval may only be given by the State.

**SECTION 6.08. Captions.** The captions or headings in this Loan Agreement are for convenience only and shall not in any way define, limit or describe the scope or intent of any provisions or sections of this Loan Agreement.

**SECTION 6.09. Further Assurances.** The Borrower shall, at the request of the State, authorize, execute, attest, acknowledge and deliver such further resolutions, conveyances, transfers, assurances, financing statements and other 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 Loan Agreement and the Borrower Bond.

IN WITNESS WHEREOF, the State and the Borrower have caused this Loan Agreement to be executed, sealed and delivered as of the date first above written.

**THE STATE OF NEW JERSEY,  
ACTING BY AND THROUGH THE  
NEW JERSEY DEPARTMENT OF  
ENVIRONMENTAL PROTECTION**

[SEAL]

ATTEST:

/s/ Stanley V. Cach, Jr. P.E., P.P.  
Stanley V. Cach, Jr. P.E., P.P.  
Assistant Director,  
Municipal Finance and Construction Element,  
Department of Environmental Protection

By: /s/ Lisa P. Jackson  
Lisa P. Jackson  
Commissioner, Department of  
Environmental Protection

[SEAL]

ATTEST:

/s/ Kenneth J. Quinn  
Kenneth J. Quinn  
VP, Secretary & Treasurer

**MIDDLESEX WATER COMPANY**

By: /s/ A. Bruce O'Connor  
A. Bruce O'Connor  
VP & Chief Financial Officer

[Signature Page]

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## SCHEDULE A

### Certain Additional Loan Agreement Provisions

In addition to the terms defined in subsection (a) of Section 1.01 of this Loan Agreement, certain additional capitalized terms used in this Loan Agreement shall, unless the context clearly requires otherwise, have the meanings ascribed to such additional capitalized terms in this Schedule A.

#### Additional Definitions:

**“Borrower”** means Middlesex Water Company, a corporation duly created and validly existing under the laws of the State of New Jersey.

**“Borrower Bond Resolution”** means the indenture of the Borrower entitled “INDENTURE OF MORTGAGE” dated as of April 1, 1927, as amended and supplemented from time to time, in particular by a indenture detailing the terms of the Borrower Bond, dated as of November 1, 2008 and entitled “THIRTY-SIXTH SUPPLEMENTAL INDENTURE”, pursuant to which the Borrower Bond has been issued.

**“Principal Payment Dates”** means February 1 and August 1 of each year, commencing on August 1, 2009.

#### SECTION 2.02(e):

Disposition of Environmental Infrastructure System. The Borrower shall not permit the disposition of all or substantially all of its Environmental Infrastructure System, directly or indirectly, including, without limitation, by means of sale, lease, abandonment, sale of stock, statutory merger or otherwise (collectively, a "Disposition"), except on ninety (90) days' prior written notice to the State, and, in any event, shall not permit a Disposition unless the Borrower shall, in accordance with Section 4.02 hereof, assign this Loan Agreement and the Borrower Bond and its rights and interests hereunder and thereunder to the purchaser or lessee of the Environmental Infrastructure System, and such purchaser or lessee shall assume all duties, covenants, obligations and agreements of the Borrower under this Loan Agreement and the Borrower Bond.

**EXHIBIT A-1**

1) **Name and Address of Local Unit:**

Middlesex Water Company  
1500 Ronson Road  
Iselin, New Jersey 08830-0452

Attention: Ronald F. Williams P.E. Vice President - Operations

2) **Description of the Project:**

The proposed project will involve cleaning/relining and spot replacement of water mains, hydrants, service lines, and valves. Approximately forty five thousand feet of 4, 6, 8, 10, 12, 16 and 20-inch diameter water mains will be relined. The project will occur in the City of South Amboy, and Woodbridge Township.

3) **Description of the Water Supply System:**

The Middlesex Water Company is an investor-owned water utility that provides water service to retail customers primarily in eastern Middlesex County. Water services are now furnished to approximately 58,000 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 and the Borough of South Plainfield and the City of South Amboy in Middlesex County, and a portion of the Township of Clark in Union County.

The Middlesex Water 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**

**Description of Loan**

See Exhibit A-2 to Specimen Borrower Bond (Exhibit D hereto)

**EXHIBIT B**

**Basis for Determination of Allowable Project Costs**

B-1

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**EXHIBIT B**

**Basis for the Determination of Allowable Costs**

The determination of the costs allowable for assistance from the New Jersey Environmental Infrastructure Financing Program is presented below.

| <b><u>Cost Classification</u></b>    | <b><u>Application Amount</u></b> | <b><u>Allowable Costs</u></b> |
|--------------------------------------|----------------------------------|-------------------------------|
| 1. Administrative Expenses           | \$ 89,100                        | \$ 89,100                     |
| 2. Other Costs                       | 0                                | 0                             |
| 3. Engineering Fees                  | 160,000                          | 160,000                       |
| 4. Building Costs                    | 2,970,000                        | 2,970,000                     |
| 5. Contingencies                     | 148,500                          | 148,500                       |
| 6. Allowance for Planning and design | 132,400                          | 132,400                       |
| 7. Sub-total                         | 3,500,000                        | 3,500,000                     |
| 8. DEP Fee                           |                                  | 70,000                        |
| 9. Total Project Costs               |                                  | \$3,570,000                   |

As a result of the review by the New Jersey Department of Environmental Protection, 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 on the application was \$89,100. The amount requested is for water main cleaning/relining. The allowable administrative expenses are authorized to be three percent of the allowable building costs. Therefore, the total amount for this line item is  $\$2,970,000 \times 0.03 = \$89,100$ .

Allowable Administrative Expenses are \$89,100.

**3. Engineering Fees**

The amount requested for this line item on the application was \$160,000. This amount is for engineering services for this project and the full amount is allowable.

Allowable Engineering Fees are \$160,000.

4. **Building Costs**

The total amount requested for this line item was \$2,970,000. The allowable cost analysis (as per N.J.A.C. 7:22-5.8) has determined that the entire amount requested for this line item is allowable. Therefore, the Allowable Cost Ratio (ACR) is one (1.0). In addition the project does not provide any reserve capacity. Therefore, the Reserve Capacity Cost Ratio (RCCR) is one (1.0). Thus, the entire requested amount is allowable.

Allowable Building Costs are \$2,970,000.

5. **Contingencies**

The total amount requested on the application was \$148,500. The allowable amount for this line item is five percent of the allowable building costs. Therefore, the total allowable cost for this line item is  $\$2,970,000 \times 0.05 = \$148,500$ .

Allowable Contingencies are \$148,500.

6. **Allowance for Planning and Design**

The total amount requested for this line item was \$132,400. The allowable amount for this line item based on an allowable building cost is:  $\$250,000 + (\$2,970,000 - \$1,000,000) \times 0.12 = \$486,400$ . However, the applicant has requested \$132,400 for this line item.

Allowance for Planning and Design for this project is \$132,400.

7. **Sub-total**

The subtotal for project costs applied for is 3,500,000. The actual cost was adjusted to \$3,500,000.

Therefore, the Sub-total is \$3,500,000.

8. **DEP Fee**

DEP Fee =  $\$3,500,000 \times 2\% = \$70,000$

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 2008 Financing Program of the Trust. As a portion of the cost of the borrower's project that represents a condition precedent to the inclusion of the borrower's project in the 2008 Financing Program of the Trust, the DEP Loan Surcharge or Loan Origination Fee represents a program expense of the 2008 Financing Program of the Trust and will be financed for the borrower as part of the Trust loan made by the Trust to the borrower from the proceeds of the Trust bonds, the Trust shall direct the trustee for the Trust bonds to transfer to DEP from the Project Fund the DEP Loan Surcharge or Loan Origination Fee allocable to the borrower. The DEP's authority to assess a Loan Surcharge or Loan Origination Fee was established pursuant to P.L. 2002, c.34 approved on July 1, 2002.

9. **Total Project Costs:**

The total project costs are \$3,570,000

I. Disbursement to Borrower is: \$3,500,000.

Fund Share is \$1,750,000.

Trust Share is \$1,750,000.

II. Disbursement to DEP is \$70,000.

EXHIBIT C

Estimated Disbursement Schedule

C-1

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**EXHIBIT C**

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

| Year | Month     | Fund Share<br>Borrower<br>Disbursement | Trust Share<br>Borrower<br>Disbursement | Trust Share<br>DEP<br>Disbursement | Total             |
|------|-----------|--|---|------------------------------------|-------------------|
| 2008 | November  | \$ 0                                   | \$ 0                                    | \$ *70,000                         | \$ *70,000        |
|      | November  |  |   |                                    |                   |
|      | December  |  |   |                                    |                   |
| 2009 | January   | 0                                      | 0                                       |                                    | 0                 |
|      | February  | 0                                      | 0                                       |                                    | 0                 |
|      | March     | 262,500                                | 262,500                                 |                                    | 525,000           |
|      | April     | 225,000                                | 225,000                                 |                                    | 450,000           |
|      | May       | 275,000                                | 275,000                                 |                                    | 550,000           |
|      | June      | 275,000                                | 275,000                                 |                                    | 550,000           |
|      | July      | 225,000                                | 225,000                                 |                                    | 450,000           |
|      | August    | 300,000                                | 300,000                                 |                                    | 600,000           |
|      | September | 93,750                                 | 93,750                                  |                                    | 187,500           |
|      | October   | 93,750                                 | 93,750                                  |                                    | 187,500           |
|      |           | <b>TOTAL</b>                           | <b>\$ 1,750,000</b>                     | <b>\$ 1,750,000</b>                | <b>\$ *70,000</b> |

\*This is the DEP loan origination fee. No action is required on the part of the borrower.

The trust will make a single transfer to DEP, through the Trust's Trustee, on behalf of all of the Borrowers in 2008 Financing Program.

**EXHIBIT D**

**Specimen Borrower Bond**

D-1

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**EXHIBIT E**

**Opinions of Borrower's Bond and General Counsels**

E-1

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**EXHIBIT F**

**Additional Covenants and Requirements**

None.

F-1

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**EXHIBIT G**

**General Administrative Requirements for the  
State Environmental Infrastructure Financing Program**

G-1

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**EXHIBIT G**

**General Administrative and Special Requirements**

The following General Administrative Requirements are applicable to this Loan. The listing of these requirements does not limit, or otherwise alter, the project sponsor's obligations under the Federal Safe Drinking Water Act, the New Jersey Safe Drinking Water Act, the State rules under N.J.A.C. 7:22, the Fund and Trust Loan Agreements, or the Special Requirements. The Special Requirements specific to this project are found in this Exhibit after the listing of General Administrative Requirements.

**1. Operation and Maintenance Manual (O&M Manual)**

During construction (i.e., prior to initiation of operation), the project sponsor shall certify to the Trust, in the case of a Trust Loan, and to the New Jersey Department of Environmental Protection (Department), in the case of a Fund Loan, that a final Plan of Operation, and an O&M Manual have been developed for the project.

**2. Project Performance**

The project sponsor shall comply with the project performance provisions of N.J.A.C. 7:22-3.30 and 7:22-4.30. As a minimum, unless further specified, the project performance standards shall consist of N.J.A.C. 7.10-11, "Standards for Construction of Public Community Systems".

**3. Flood Insurance**

The project sponsor shall acquire or have the construction contractor acquire, as appropriate flood insurance made available under the National Flood Insurance Act of 1968, as amended. Insurance coverage shall begin with the period of construction and continue for the entire useful life of the facility. The insurance shall be in an amount at least equal to the allowable improvements or the maximum limit of coverage made available to the project sponsor under the National Flood Insurance Act, whichever is less. The project sponsor must comply with this requirement prior to the release of the initial payment for construction work.



4. **Audit**

The project sponsor shall have an annual financial audit performed if the project sponsor expended \$500,000 or more in State and/or Federal financial assistance during the project sponsor's fiscal year. The audit shall be performed in accordance with the Single Audit Act, Federal OMB Circular No. A-133, and State Policy OMB Circular 04-04-OMB. Copies of all audit reports must be submitted to the New Jersey Department of Environmental Protection, Office of Audit, P.O. Box 402, Trenton, New Jersey 08625.

If the project sponsor expended less than \$500,000 in State and/or Federal financial assistance within their fiscal year, but expend \$100,000 or more in State and/or Federal financial assistance within their fiscal year, the project sponsor shall have either a financial statement audit performed in accordance with Government Auditing Standards (Yellow Book) or a program-specific audit performed in accordance with the Act, Amendments, OMB Circular No. A-133 Revised and State policy.

Program-specific audits in accordance with OMB Circular No. A-133 Revised can be elected when a project sponsor expends Federal or State financial assistance under only one Federal or State program and the Federal or State program's laws, regulations, or grant agreements do not require a financial statement audit of the grantee."

4. **Socially and Economically Disadvantaged Individuals Utilization Plan**

The project sponsor shall ensure that the contractor provides a Socially and Economically Disadvantaged Individuals (SED) Utilization Plan in accordance with N.J.A.C. 7:22-9.1 et seq. which outlines the entire contract work, each significant segment of the contract on which SEDs will or may participate and a description of how SEDs will be contracted. This plan shall be submitted no later than 30 days after the contract award.

**SPECIAL REQUIREMENTS****Project Schedule:**

The project sponsor unit shall expeditiously initiate and complete the project in accordance with the project schedule, which was submitted as part of the application and is repeated below. Failure to promptly initiate and complete the project may result in the imposition of sanctions under N.J.A.C. 7:22-3.4 through 3.44 and N.J.A.C. 7:22-4.40 through 4.44. In addition, failure to promptly award all sub agreement(s) for building the project within 12 months of date of this loan may result in limitation of allowable costs as provided by N.J.A.C. 7:22-5.4(d) 5. This limitation on allowable costs incurred under contract awarded after 12 months from the date of this loan are unallowable unless a special extension has been granted by the Department, in the case of a Fund Loan and the Trust, in the case of a Trust Loan.

**EVENT****DATE****ADVERTISEMENT:**

Clean and Line Water Mains December 19, 2008

**BID RECEIPT:**

Clean and Line Water Mains January 20, 2009

**AWARD:**

Clean and Line Water Mains February 20, 2009

**ISSUANCE OF NOTICE TO PROCEED:**

Clean and Line Water Mains March 27, 2009

**COMPLETION OF CONSTRUCTION:**

Clean and Line Water Mains October 27, 2009

**INITIATION OF OPERATION:**

Clean and Line Water Mains October 27, 2009

**CERTIFICATION OF PROJECT:**

Clean and Line Water Mains October 27, 2010

Middlesex Water Company

Subsidiaries

**Jurisdiction of  
Organization**

Tidewater Utilities, Inc.  
Tidewater Environmental Services, Inc.  
Pinelands Water Company  
Pinelands Wastewater Company  
Utility Service Affiliates (Perth Amboy) Inc.  
Utility Service Affiliates, Inc.

Delaware  
Delaware  
New Jersey  
New Jersey  
New Jersey  
New Jersey

**Consent of Independent Registered Public Accounting Firm**

We hereby consent to the incorporation by reference in the Registration Statements on Form S-3 (No. 33-11717) and Form S-8 (No. 333-156269) of Middlesex Water Company of our reports dated March 13, 2009, relating to the consolidated financial statements and the effectiveness of internal control over financial reporting, which appear in this Form 10-K.

/s/ Beard Miller Company LLP

Beard Miller Company LLP  
Reading, Pennsylvania  
March 13, 2009

**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 annual report on Form 10-K 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 At 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: March 13, 2009

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 annual report on Form 10-K 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 At 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: March 13, 2009

**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: March 13, 2009

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.

**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: March 13, 2009

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.