

UNITED STATES SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549

FORM 10-Q

(Mark One)

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934  
For the quarterly period ended March 31, 2023

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.)

**485C Route One South, Iselin, New Jersey 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	Trading Symbol(s)	Name of each exchange on which registered
Common Stock	MSEX	NASDAQ

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

Yes  No

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

Yes  No

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

Large accelerated filer

Smaller reporting company

Accelerated filer

Non-accelerated filer

Emerging growth company

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

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

Yes  No

The number of shares outstanding of each of the registrant's classes of common stock, as of April 28, 2023: Common Stock, No Par Value: 17,681,092 shares outstanding.

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

	<b>Three Months Ended March 31,</b>	
	<b>2023</b>	<b>2022</b>
Operating Revenues	\$ 38,156	\$ 36,196
Operating Expenses:		
Operations and Maintenance	20,257	19,139
Depreciation	5,986	5,622
Other Taxes	4,423	4,144
Total Operating Expenses	30,666	28,905
Gain on Sale of Subsidiary	—	5,232
Operating Income	7,490	12,523
Other Income (Expense):		
Allowance for Funds Used During Construction	813	377
Other Income, net	898	1,379
Total Other Income, net	1,711	1,756
Interest Charges	2,595	1,850
Income before Income Taxes	6,606	12,429
Income Taxes	738	329
Net Income	5,868	12,100
Preferred Stock Dividend Requirements	30	30
Earnings Applicable to Common Stock	\$ 5,838	\$ 12,070
Earnings per share of Common Stock:		
Basic	\$ 0.33	\$ 0.69
Diluted	\$ 0.33	\$ 0.68
Average Number of Common Shares Outstanding:		
Basic	17,652	17,538
Diluted	17,767	17,653

See Notes to Condensed Consolidated Financial Statements

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

		March 31, 2023	December 31, 2022
<b>ASSETS</b>			
<b>UTILITY PLANT:</b>	Water Production	\$ 250,408	\$ 249,153
	Transmission and Distribution	740,679	735,138
	General	98,201	97,581
	Construction Work in Progress	72,629	53,570
	<b>TOTAL</b>	<b>1,161,917</b>	<b>1,135,442</b>
	Less Accumulated Depreciation	219,924	214,891
	<b>UTILITY PLANT - NET</b>	<b>941,993</b>	<b>920,551</b>
<b>CURRENT ASSETS:</b>			
	Cash and Cash Equivalents	4,862	3,828
	Accounts Receivable, net of allowance for uncollectible accounts of \$2,317 and \$2,326, respectively	15,526	16,018
	Unbilled Revenues	8,660	8,659
	Materials and Supplies (at average cost)	6,559	6,177
	Prepayments	3,914	2,624
	<b>TOTAL CURRENT ASSETS</b>	<b>39,521</b>	<b>37,306</b>
<b>OTHER ASSETS:</b>			
	Operating Lease Right of Use Asset	3,662	3,826
	Preliminary Survey and Investigation Charges	2,809	2,806
	Regulatory Assets	90,203	90,046
	Non-utility Assets - Net	11,404	11,207
	Employee Benefit Plans	9,284	8,689
	Other	39	19
	<b>TOTAL OTHER ASSETS</b>	<b>117,401</b>	<b>116,593</b>
	<b>TOTAL ASSETS</b>	<b>\$ 1,098,915</b>	<b>\$ 1,074,450</b>
<b>CAPITALIZATION AND LIABILITIES</b>			
<b>CAPITALIZATION:</b>			
	Common Stock, No Par Value	\$ 235,756	\$ 233,054
	Retained Earnings	167,599	167,274
	<b>TOTAL COMMON EQUITY</b>	<b>403,355</b>	<b>400,328</b>
	Preferred Stock	2,084	2,084
	Long-term Debt	329,636	290,280
	<b>TOTAL CAPITALIZATION</b>	<b>735,075</b>	<b>692,692</b>
<b>CURRENT LIABILITIES:</b>			
	Current Portion of Long-term Debt	17,449	17,462
	Notes Payable	28,500	55,500
	Accounts Payable	27,623	24,847
	Accrued Taxes	15,996	12,162
	Accrued Interest	2,498	2,535
	Unearned Revenues and Advanced Service Fees	1,311	1,365
	Other	2,601	3,988
	<b>TOTAL CURRENT LIABILITIES</b>	<b>95,978</b>	<b>117,859</b>
<b>COMMITMENTS AND CONTINGENT LIABILITIES (Note 7)</b>			
<b>OTHER LIABILITIES:</b>			
	Customer Advances for Construction	22,297	21,382
	Lease Obligations	3,543	3,706
	Accumulated Deferred Income Taxes	79,048	77,783
	Regulatory Liabilities	47,032	46,734
	Other	837	919
	<b>TOTAL OTHER LIABILITIES</b>	<b>152,757</b>	<b>150,524</b>
<b>CONTRIBUTIONS IN AID OF CONSTRUCTION</b>		<b>115,105</b>	<b>113,375</b>
<b>TOTAL CAPITALIZATION AND LIABILITIES</b>		<b>\$ 1,098,915</b>	<b>\$ 1,074,450</b>

See Notes to Condensed Consolidated Financial Statements.

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

	<b>Three Months Ended March 31,</b>	
	<b>2023</b>	<b>2022</b>
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>		
Net Income	\$ 5,868	\$ 12,100
Adjustments to Reconcile Net Income to		
Net Cash Provided by Operating Activities:		
Depreciation and Amortization	7,201	6,825
Provision for Deferred Income Taxes and Investment Tax Credits	(611)	(2,137)
Equity Portion of Allowance for Funds Used During Construction (AFUDC)	(446)	(202)
Cash Surrender Value of Life Insurance	(102)	187
Stock Compensation Expense	360	267
Gain on Sale of Subsidiary	—	(5,232)
Changes in Assets and Liabilities:		
Accounts Receivable	492	1,831
Unbilled Revenues	(1)	(875)
Materials & Supplies	(382)	(11)
Prepayments	(1,290)	306
Accounts Payable	2,776	(3,066)
Accrued Taxes	3,834	5,408
Accrued Interest	(37)	(26)
Employee Benefit Plans	(477)	(653)
Unearned Revenue & Advanced Service Fees	(54)	(10)
Other Assets and Liabilities	(1,161)	(737)
<b>NET CASH PROVIDED BY OPERATING ACTIVITIES</b>	<b>15,970</b>	<b>13,975</b>
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>		
Utility Plant Expenditures, Including AFUDC of \$367 in 2023, \$175 in 2022	(24,515)	(16,631)
Proceeds from Sale of Subsidiary	—	3,122
<b>NET CASH USED IN INVESTING ACTIVITIES</b>	<b>(24,515)</b>	<b>(13,509)</b>
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>		
Redemption of Long-term Debt	(1,553)	(1,228)
Proceeds from Issuance of Long-term Debt	40,972	1,250
Net Short-term Bank Borrowings	(27,000)	2,000
Deferred Debt Issuance Expense	(49)	(9)
Proceeds from Issuance of Common Stock	2,342	2,906
Payment of Common Dividends	(5,513)	(5,087)
Payment of Preferred Dividends	(30)	(30)
Construction Advances and Contributions-Net	410	(507)
<b>NET CASH PROVIDED BY (USED IN) FINANCING ACTIVITIES</b>	<b>9,579</b>	<b>(705)</b>
<b>NET CHANGES IN CASH, CASH EQUIVALENTS AND RESTRICTED CASH</b>	<b>1,034</b>	<b>(239)</b>
<b>CASH, CASH EQUIVALENTS AND RESTRICTED CASH AT BEGINNING OF PERIOD</b>	<b>3,828</b>	<b>3,533</b>
<b>CASH, CASH EQUIVALENTS AND RESTRICTED CASH AT END OF PERIOD</b>	<b>\$ 4,862</b>	<b>\$ 3,294</b>
<b>SUPPLEMENTAL DISCLOSURE OF NON-CASH ACTIVITY:</b>		
Utility Plant received as Construction Advances and Contributions	\$ 2,234	\$ 2,401
Non-Cash Consideration for Sale of a Subsidiary	\$ —	\$ 2,100
<b>SUPPLEMENTAL DISCLOSURE OF CASH FLOWS INFORMATION:</b>		
Cash Paid During the Year for:		
Interest	\$ 2,812	\$ 2,038
Interest Capitalized	\$ 367	\$ 175
Income Taxes	\$ —	\$ 125

See Notes to Condensed Consolidated Financial Statements.

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

	March 31, 2023	December 31, 2022
<b>Common Stock, No Par Value</b>		
Shares Authorized - 40,000		
Shares Outstanding - 2023 - 17,671; 2022 - 17,642	\$ 235,756	\$ 233,054
Retained Earnings	167,599	167,274
<b>TOTAL COMMON EQUITY</b>	<b>\$ 403,355</b>	<b>\$ 400,328</b>
<b>Cumulative Preferred Stock, No Par Value:</b>		
Shares Authorized - 120		
Shares Outstanding - 20		
Convertible:		
Shares Outstanding, \$7.00 Series - 10	\$ 1,005	\$ 1,005
Nonredeemable:		
Shares Outstanding, \$7.00 Series - 1	79	79
Shares Outstanding, \$4.75 Series - 10	1,000	1,000
<b>TOTAL PREFERRED STOCK</b>	<b>\$ 2,084</b>	<b>\$ 2,084</b>
<b>Long-term Debt:</b>		
First Mortgage Bonds, 0.00%-5.50%, due 2023-2059	\$ 291,496	\$ 252,269
Amortizing Secured Notes, 3.94%-7.05%, due 2028-2046	44,244	44,918
State Revolving Trust Notes, 2.00%-4.22%, due 2025-2038	10,063	9,200
<b>SUBTOTAL LONG-TERM DEBT</b>	<b>345,803</b>	<b>306,387</b>
Add: Premium on Issuance of Long-term Debt	6,776	6,873
Less: Unamortized Debt Expense	(5,494)	(5,518)
Less: Current Portion of Long-term Debt	(17,449)	(17,462)
<b>TOTAL LONG-TERM DEBT</b>	<b>\$ 329,636</b>	<b>\$ 290,280</b>

See Notes to Condensed Consolidated Financial Statements.

**MIDDLESEX WATER COMPANY**  
**CONDENSED CONSOLIDATED STATEMENTS OF COMMON STOCKHOLDERS' EQUITY**  
**(Unaudited)**  
**(In thousands except per share amounts)**

	Common Stock Shares		Common Stock Amount		Retained Earnings		Total
<b>Balance at January 1, 2022</b>	17,522	\$	221,919	\$	145,807	\$	367,726
Net Income	—		—		12,100		12,100
Dividend Reinvestment & Common Stock Purchase Plan	29		2,906		—		2,906
Restricted Stock Award - Net - Employees	—		267		—		267
Cash Dividends on Common Stock (\$0.2900 per share)	—		—		(5,087)		(5,087)
Cash Dividends on Preferred Stock	—		—		(30)		(30)
<b>Balance at March 31, 2022</b>	<b>17,551</b>	<b>\$</b>	<b>225,092</b>	<b>\$</b>	<b>152,790</b>	<b>\$</b>	<b>377,882</b>
<b>Balance at January 1, 2023</b>	17,642	\$	233,054	\$	167,274	\$	400,328
Net Income	—		—		5,868		5,868
Dividend Reinvestment & Common Stock Purchase Plan	29		2,342		—		2,342
Restricted Stock Award - Net - Employees	—		360		—		360
Cash Dividends on Common Stock (\$0.3125 per share)	—		—		(5,513)		(5,513)
Cash Dividends on Preferred Stock	—		—		(30)		(30)
<b>Balance at March 31, 2023</b>	<b>17,671</b>	<b>\$</b>	<b>235,756</b>	<b>\$</b>	<b>167,599</b>	<b>\$</b>	<b>403,355</b>

See Notes to Condensed Consolidated Financial Statements.

**MIDDLESEX WATER COMPANY**  
**NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**

**Note 1 – Basis of Presentation and Recent Developments**

Middlesex Water Company (Middlesex or the Company) is the parent company and sole shareholder of Tidewater Utilities, Inc. (Tidewater), 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 are reported on a consolidated basis. All significant intercompany accounts and transactions have been eliminated.

The consolidated notes within the 2022 Annual Report on Form 10-K (the 2022 Form 10-K) are applicable to these financial statements and, in the opinion of the Company, the accompanying unaudited condensed consolidated financial statements contain all adjustments necessary (including normal recurring accruals) to present fairly the financial position as of March 31, 2023 and the results of operations and cash flows for the three month periods ended March 31, 2023 and 2022. Information included in the Condensed Consolidated Balance Sheet as of December 31, 2022, has been derived from the Company's December 31, 2022 audited financial statements included in the 2022 Form 10-K.

*Recent Developments*

**Regulatory Notice of Non-Compliance** – In September 2021, the New Jersey Department of Environmental Protection (NJDEP) issued a Notice of Non-Compliance (Notice) to Middlesex based on self-reporting by Middlesex that the level of Perfluorooctanoic Acid (PFOA) in water treated at its Park Avenue Wellfield Treatment Plant in South Plainfield, New Jersey exceeded a standard promulgated in a NJDEP regulation that became effective in 2021. The NJDEP standard for PFOA was developed based on a Health-based Maximum Contaminant Level of 14 parts per trillion. Neither the NJDEP nor Middlesex had characterized this exceedance as an acute health threat. However, Middlesex was required by the regulation to notify its affected customers and complied in November 2021.

The Notice further required the Company to take any action necessary to comply with the new standard by September 7, 2022. Prior to 2023, the Company began design for construction of an enhanced treatment process at the Park Avenue Wellfield Treatment Plant to comply with the new standard prior to the regulation being enacted. At that time, the completion of enhanced treatment process was not expected until mid-2023. Consequently, in November 2021, the Company implemented an interim solution to meet the Notice requirements, which included putting the Park Avenue Wellfield Treatment Plant in off-line status and obtaining alternate sources of supply. Subsequently, in June 2022, the Company accelerated the in-service date for a portion of the enhanced treatment project that allowed a restart of the Park Avenue Wellfield Treatment Plant and it is effectively treating the ground water to ensure compliance with all state and federal drinking water standards.

On September 13, 2022, the Company entered into an Administrative Consent Order (ACO) with the NJDEP, which requires the Company to take whatever actions are necessary to achieve and maintain compliance with the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., and the Safe Drinking Water Act regulations N.J.A.C. 7:10-1 et seq., including applicable public notifications. The Company's agreement to enter into an ACO avoided any further Notice regarding the fact that the permanent treatment solution was not in service by September 7, 2022. As prescribed in the ACO, the Company will issue periodic public notifications until the ACO is closed. In addition, in accordance with the ACO:



- On or before June 30, 2023, the Company shall complete the permanent construction of the Park Avenue Wellfield treatment upgrades, place the treatment upgrades into operation, and all water at the Park Avenue Wellfield Treatment Plant shall be treated to comply with the PFOA NJDEP standards.
- The Company must perform required sample testing and reporting for PFOA subsequent to completion of the Park Avenue Wellfield treatment upgrades.
- The Company shall submit to the NJDEP quarterly progress reports detailing the Company's compliance with the ACO.

The Company's failure to comply with the compliance schedule and/or progress reporting requirements of the ACO could lead to penalties up to \$500 per day. In addition, the NJDEP could penalize the Company for other violations, if any, of the ACO.

In November 2021, the Company was served with two PFOA-related class action lawsuits seeking restitution for medical, water replacement and other claimed related costs. These lawsuits are in the early stages of the legal process and their ultimate resolution cannot be predicted at this time. The Company's insurance provider has acknowledged coverage of potential liability which may result from these lawsuits. In May 2022, the Company impleaded 3M Company (3M) as a third-party defendant in one of these class action lawsuits. The Company had previously initiated a separate lawsuit against 3M seeking to hold 3M accountable for introduction of perfluoroalkyl substances (commonly known as "PFAS"), which include PFOA, into the Company's water supply at its Park Avenue Wellfield facility.

In January 2022, the Company filed a petition with the New Jersey Board of Public Utilities (NJBPU) seeking to establish a regulatory asset and deferred accounting treatment until its next base rate setting proceeding for all costs associated with the interim solution to comply with the Notice. The Company is currently awaiting a decision on this matter from the NJBPU.

**Coronavirus (COVID-19) Pandemic** – In January 2023, the United States Secretary of Health and Human Services renewed the determination that a nationwide health emergency exists as a result of the COVID-19 Pandemic with an announced end to the nationwide health emergency on May 11, 2023. While the Company's operations and capital construction program have not been materially disrupted to date from the pandemic, the COVID-19 impact on economic conditions nationally continues to be uncertain and could affect the Company's results of operations, financial condition and liquidity in the future. In New Jersey, the declared COVID-19 State of Emergency ended in March 2022. In Delaware, the declared COVID-19 State of Emergency Order ended in July 2021.

The NJBPU and the Delaware Public Service Commission (DEPSC) have approved the tracking of COVID-19 related incremental costs for potential recovery in customer rates in future rate proceedings. Middlesex must file a petition with the NJBPU for cost recovery of COVID-19 related incremental costs by May 15, 2023. Delaware has not established a timetable or definitive formal procedures for seeking cost recovery. The Company has increased its allowance for doubtful accounts for higher accounts receivable write-offs due to the financial impact of COVID-19 on customers. We will continue to monitor the effects of COVID-19 and evaluate its impact on the Company's results of operations, financial condition and liquidity.

#### *Recent Accounting Guidance*

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

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

**Middlesex** – In December 2021, Middlesex's base rate case was concluded, by negotiated settlement, resulting in an expected increase in annual operating revenues of \$27.7 million. The increase was implemented in two phases with \$20.7 million of the increase effective January 1, 2022 and the remaining \$7.0 million effective January 1, 2023. As part of the settlement, the Purchased Water Adjustment Clause (PWAC), which is a rate mechanism that allows for recovery of increased purchased water costs between base rate case filings, was reset to zero.

In September 2022, the NJBPU approved Middlesex's Emergency Relief Motion to reset its PWAC tariff rate to recover additional costs of \$2.7 million for the purchase of treated water from a non-affiliated water utility. The increase, effective October 1, 2022, is on an interim basis and subject to refund with interest, pending final resolution of this matter, which is expected in the second quarter of 2023.

**Pinelands** – On April 12, 2023, Pinelands Water and Pinelands Wastewater concluded their base rate case matters when the NJBPU approved a combined \$1.0 million increase in base rates, effective April 15, 2023. The requests were necessitated by capital infrastructure investments the companies have made as well as increased operations and maintenance costs.

**Twin Lakes Utilities, Inc. (Twin Lakes)** – Twin Lakes provides water services to approximately 115 residential customers in Shohola, Pennsylvania. Pursuant to the Pennsylvania Public Utility Code, Twin Lakes filed a petition requesting the Pennsylvania Public Utilities Commission (PAPUC) to order the acquisition of Twin Lakes by a capable public utility. The PAPUC assigned an Administrative Law Judge (ALJ) to adjudicate the matter and submit a recommended decision (Recommended Decision) to the PAPUC. As part of this legal proceeding the PAPUC also issued an Order in January 2021 appointing a large Pennsylvania based investor-owned water utility as the receiver (the Receiver Utility) of the Twin Lakes system until the petition is fully adjudicated by the PAPUC. In November 2021, the PAPUC issued an Order affirming the ALJ's Recommended Decision, ordering the Receiver Utility to acquire the Twin Lakes water system and for Middlesex, the parent company of Twin Lakes, to submit \$1.7 million into an escrow account within 30 days. Twin Lakes immediately filed a Petition For Review (PFR) with the Commonwealth Court of Pennsylvania (the Commonwealth Court) seeking reversal and vacation of the escrow requirement on the grounds that it violates the Pennsylvania Public Utility Code as well as the United States Constitution. In addition, Twin Lakes filed an emergency petition for stay of the PAPUC Order pending the Commonwealth Court's review of the merits arguments contained in Twin Lakes' PFR. In December 2021, the Commonwealth Court granted Twin Lakes' emergency petition, pending its review. In August 2022, the Commonwealth Court issued an opinion upholding PAPUC's November 2021 Order in its entirety. In September 2022, Twin Lakes filed a Petition For Allowance of Appeal (Appeal Petition) to the Supreme Court of Pennsylvania seeking reversal of the Commonwealth Court's decision to uphold the escrow requirement on the grounds that the Commonwealth Court erred in failing to address Twin Lakes' claims that because the \$1.7 million escrow requirement placed on Middlesex violated Middlesex's constitutional rights, Middlesex's refusal to submit this escrow payment so as not to surrender its constitutional rights would jeopardize the relief Twin Lakes was otherwise entitled to in the appointment of the Receiver Utility. In March 2023, the Supreme Court of Pennsylvania issued a decision denying Twin Lakes' Appeal Petition without addressing this claim on the merits. As a result of the Pennsylvania Courts' failure to address Twin Lakes' claim, Middlesex has subsequently filed a Complaint with the United States District Court for the Middle District of Pennsylvania to address the issue of whether the PAPUC's Order violated Middlesex's rights under the United States Constitution.

The financial results, total assets and financial obligations of Twin Lakes are not material to Middlesex.

### **Note 3 – Capitalization**

**Common Stock** – During the three months ended March 31, 2023 and 2022, there were 29,810 common shares (approximately \$2.3 million) and 29,485 common shares (approximately \$2.9 million) respectively, issued under the Middlesex Water Company Investment Plan (the Investment Plan).

In April 2023, Middlesex received approval from the NJBPU to issue and sell up to 1.0 million shares of its common stock, without par value, through December 31, 2025. Sales of additional shares of common stock are part of the Company's comprehensive financing plan to fund its multi-year utility plant infrastructure investment program. As described below in "Long-term Debt", the NJBPU also approved the debt funding component of the financing plan.

In March 2023, the Company began offering shares of its common stock for purchase at a 3% discount to participants in the Investment Plan. The discount offering will continue until 200,000 shares are purchased at the discounted price or December 1, 2023, whichever event occurs first. The discount applies to all common stock purchases made under the Investment Plan, whether by optional cash payment or by dividend reinvestment.

In February 2023, Middlesex filed a petition with the NJBPU seeking to increase the number of authorized shares under the Investment Plan by 0.7 million shares. The Company expects a decision on the request during the second quarter of 2023.

**Long-term Debt** – Subject to regulatory approval, the Company periodically issues long-term debt to fund its investments in utility plant. To the extent possible and fiscally prudent, the Company finances qualifying capital projects under State Revolving Fund (SRF) loan programs in New Jersey and Delaware. These government programs provide financing at interest rates typically below rates available in the broader financial markets. A portion of the borrowings under the New Jersey SRF is interest-free.

Under the New Jersey SRF program, borrowers first enter into a construction loan agreement with the New Jersey Infrastructure Bank (NJIB) at a below market interest rate. When construction on the qualifying project is substantially complete, NJIB will coordinate the conversion of the construction loan into a long-term securitized loan with a portion of the principal balance having a stated interest rate of zero percent (0%) and a portion of the principal balance at a market interest rate at the time of closing using the credit rating of the State of New Jersey.

Although the Company's has no current projects in the NJIB loan program, it is seeking to have several projects added to the qualified list in order to borrow under the NJIB loan program.

In April 2023, Middlesex received approval from the NJBPU to borrow up to \$300.0 million from the New Jersey SRF Program, the New Jersey Economic Development Authority, private placement and other financial institutions as needed through December 31, 2025. The Company expects to issue debt securities in a series of one or more transaction offerings over a multi-year period to help fund Middlesex's multi-year capital construction program.

In March 2023, Middlesex closed on a \$40.0 million, 5.24% private placement of First Mortgage Bonds (FMBs) with a 2043 maturity date designated as Series 2023A. Proceeds were used to reduce the Company's outstanding balances under its bank lines of credit.

Under the Delaware SRF Program, borrowers submit reimbursement requisitions during the construction period. Once the proceeds are received, Tidewater will record the debt obligation.

In April 2023, Tidewater closed on three DEPSC-approved Delaware SRF loans totaling \$10.2 million, all at interest rates of 2.0% with maturity dates in 2043 and 2044. Each of these loans are for the construction of transmission mains. Tidewater expects to begin receiving disbursements in May 2023 and that the requisitions will continue through mid-2024.

In March 2023, the DEPSC approved Tidewater's application to borrow up to \$20.0 million from CoBank, ACB (CoBank) Tidewater expects to close on this loan in May 2023 with an interest rate of 5.71% and a 2033 maturity date and fully draw all funds by June 30, 2023. Proceeds from the loan will be used to pay off Tidewater's outstanding balances under its bank lines of credit.

In November 2021, Tidewater received approval from the DEPSC to borrow up to \$5.0 million under the Delaware SRF Program for construction of a one million gallon elevated storage tank. Tidewater closed on the \$5.0 million loan at an interest rate of 2.0% in December 2021 and began receiving disbursements in January 2022. Through March 31, 2023, Tidewater has drawn a total of \$3.6 million and expects that the requisitions will continue through the third quarter of 2023. The final maturity date on the loan is 2044.

In April 2023, the NJBPU approved Pinelands Water and Pinelands Wastewater's petitions for each company to borrow up to \$4.9 million from CoBank through December 31, 2026. As allowed under the terms of the NJBPU approval, the Companies have opted to allocate the borrowing to a portion in 2023 and a portion prior to the expiration of the approval. For 2023, the companies will each borrow up to \$3.0 million in one or more draws. The interest rate will be set on a fixed basis upon each draw. The term of each loan will be 20 years with monthly principal and interest payments. Proceeds will be used by the companies to pay off outstanding intercompany loans with Middlesex and to fund their future capital expenditures.

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

	(Thousands of Dollars)			
	March 31, 2023		December 31, 2022	
	Carrying Amount	Fair Value	Carrying Amount	Fair Value
FMBs	\$ 146,496	\$ 137,983	\$ 147,269	\$ 138,756

It was not practicable to estimate their fair value on our outstanding long-term debt for which there is no quoted market price and there is not an active trading market. For details, including carrying value, interest rates and due dates on these series of long-term debt, please refer to those series noted as "Amortizing Secured Notes" and "State Revolving Trust Notes" on the Condensed Consolidated Statements of Capital Stock and Long-Term Debt). The carrying amount of these instruments was \$199.3 million and \$159.1 million at March 31, 2023 and December 31, 2022, respectively. Customer advances for construction have carrying amounts of \$22.3 million and \$21.4 million at March 31, 2023 and December 31, 2022, 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.

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.

**Note 4 – Earnings Per Share**

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

	(In Thousands Except per Share Amounts)			
	Three Months Ended March 31,		2022	
	2023	2022		
Basic:	Income	Shares	Income	Shares
Net Income	\$ 5,868	17,652	\$ 12,100	17,538
Preferred Dividend	(30)		(30)	
Earnings Applicable to Common Stock	\$ 5,838	17,652	\$ 12,070	17,538
<b>Basic EPS</b>	<b>\$ 0.33</b>		<b>\$ 0.69</b>	
<b>Diluted:</b>				
Earnings Applicable to Common Stock	\$ 5,838	17,652	\$ 12,070	17,538
\$7.00 Series Preferred Dividend	17	115	17	115
Adjusted Earnings Applicable to Common Stock	\$ 5,855	17,767	\$ 12,087	17,653
<b>Diluted EPS</b>	<b>\$ 0.33</b>		<b>\$ 0.68</b>	

**Note 5 – Business Segment Data**

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

	(In Thousands)	
	Three Months Ended	
	March 31,	
Operations by Segments:	2023	2022
<b>Revenues:</b>		
Regulated	\$ 34,953	\$ 33,325
Non – Regulated	3,342	3,009
Inter-segment Elimination	(139)	(138)
<b>Consolidated Revenues</b>	<b>\$ 38,156</b>	<b>\$ 36,196</b>
<b>Operating Income:</b>		
Regulated	\$ 6,715	\$ 11,705
Non – Regulated	775	818
<b>Consolidated Operating Income</b>	<b>\$ 7,490</b>	<b>\$ 12,523</b>
<b>Net Income:</b>		
Regulated	\$ 5,324	\$ 11,513
Non – Regulated	544	587
<b>Consolidated Net Income</b>	<b>\$ 5,868</b>	<b>\$ 12,100</b>
<b>Capital Expenditures:</b>		
Regulated	\$ 24,465	\$ 16,585
Non – Regulated	50	46
<b>Total Capital Expenditures</b>	<b>\$ 24,515</b>	<b>\$ 16,631</b>

	As of	As of
	March 31, 2023	December 31, 2022
<b>Assets:</b>		
Regulated	\$ 1,106,949	\$ 1,079,180
Non – Regulated	7,490	6,999
Inter-segment Elimination	(15,524)	(11,729)
<b>Consolidated Assets</b>	<b>\$ 1,098,915</b>	<b>\$ 1,074,450</b>

**Note 6 – Short-term Borrowings**

The Company maintains lines of credit aggregating \$140.0 million.

	(Millions)		Maximum	Credit Type	Renewal Date
	As of March 31, 2023				
	Outstanding	Available			
Bank of America	\$ 5.0	\$ 55.0	\$ 60.0	Uncommitted	January 25, 2024
PNC Bank	22.5	\$ 45.5	68.0	Committed	January 31, 2025
CoBank	1.0	11.0	12.0	Committed	November 30, 2023
	<b>\$ 28.5</b>	<b>\$ 111.5</b>	<b>\$ 140.0</b>		

The interest rates are set for borrowings under the Bank of America and PNC Bank lines of credit using the Bloomberg Short-Term Bank Yield Index and the Secured Overnight Financing Rate (SOFR), respectively, and then adding a specific financial institution credit spread. The interest rate for borrowings under the CoBank line of credit are set weekly using CoBank’s internal cost of funds index that is similar to the SOFR and adding a credit spread. There is no requirement for a compensating balance under any of the established lines of credit.

The weighted average interest rate on the outstanding borrowings at March 31, 2023 under these credit lines is 5.65%.

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

	(In Thousands)	
	Three Months	
	March 31,	
	2023	2022
Average Daily Amounts Outstanding	\$ 54,561	\$ 13,444
Weighted Average Interest Rates	5.52%	1.12%

The maturity dates for the \$28.5 million outstanding as of March 31, 2023 are in April 2023 through June 2023 and were or are expected to be extended at the discretion of the Company.

#### Note 7 – Commitments and Contingent Liabilities

**Water Supply** – Middlesex has an agreement with the New Jersey Water Supply Authority (NJWSA) for the purchase of untreated water through November 30, 2023, which provides for an average purchase of 27 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 has an agreement with a non-affiliated regulated water utility for the purchase of treated water. This agreement, which expires February 27, 2026, provides for the minimum purchase of 3 mgd of treated water with provisions for additional purchases.

Tidewater contracts with the City of Dover, Delaware to purchase 15 million gallons of treated water annually.

Purchased water costs are shown below:

	(In Thousands)	
	Three Months Ended	
	March 31,	
	2023	2022
Treated	\$ 1,383	\$ 747
Untreated	802	811
Total Costs	\$ 2,185	\$ 1,558

**Leases** – The Company determines if an arrangement is a lease at inception. Generally, a lease agreement exists if the Company determines that the arrangement gives the Company control over the use of an identified asset and obtains substantially all of the benefits from the identified asset.

The Company has entered into an operating lease of office space for administrative purposes, expiring in 2030. The Company has not entered into any finance leases. The exercise of a lease renewal option for the Company's administrative offices is solely at the discretion of the Company.

The right-of-use (ROU) asset recorded represents the Company's right to use an underlying asset for the lease term and lease liability represents the Company's obligation to make lease payments arising from the lease. Lease ROU assets and liabilities are recognized at the commencement date based on the present value of lease payments over the lease term. The Company's operating lease does not provide an implicit discount rate and as such the Company used an estimated incremental borrowing rate (4.03%) based on the information available at the commencement date in determining the present value of lease payments.

Given the impacts of accounting for regulated operations, and the resulting recognition of expense at the amounts recovered in customer rates, expenditures for operating leases are consistent with lease expense and were \$0.2 million for each of the three months ended March 31, 2023 and 2022, respectively

Information related to operating lease ROU assets and lease liabilities is as follows:

	(In Millions)	
	As of	
	March 31, 2023	December 31, 2022
ROU Asset at Lease Inception	\$ 7.3	\$ 7.3
Accumulated Amortization	(3.6)	(3.5)
Current ROU Asset	<u>\$ 3.7</u>	<u>\$ 3.8</u>

The Company's future minimum operating lease commitments as of March 31, 2023 are as follows:

	(In Millions)
2023	0.6
2024	0.8
2025	0.8
2026	0.9
2027	0.9
Thereafter	1.8
Total Lease Payments	<u>\$ 5.8</u>
Imputed Interest	(1.7)
Present Value of Lease Payments	4.1
Less Current Portion*	(0.6)
Non-Current Lease Liability	<u>\$ 3.5</u>

\*Included in Other Current Liabilities

**Construction** – The Company has forecasted to spend approximately \$111 million for its construction program in 2023. The Company has entered into several construction contracts that, in the aggregate, obligate expenditure of an estimated \$20.5 million in the future. The actual amount and timing of capital expenditures is dependent on the need for replacement of existing infrastructure, customer growth, residential new home construction and sales, project scheduling, supply chain issues and continued refinement of project scope and costs. With continued upward pressure on mortgage interest rates, as well as other financial market uncertainties, there is no assurance that projected customer growth and residential new home construction and sales will occur.

**PFOA Matter** – In November 2021, the Company was served with two PFOA-related class action lawsuits seeking restitution for medical, water replacement and other related costs and economic damages. These lawsuits are in the early stages of the legal process and their ultimate resolution cannot be predicted at this time. The Company's insurance provider has acknowledged coverage of potential liability resulting from these lawsuits (for further discussion of this matter, see *Note 1 - Regulatory Notice of Non-Compliance*).

**Contingencies** – Based on our operations in the heavily-regulated water and wastewater industries, the Company is routinely involved in disputes, claims, lawsuits and other regulatory and legal matters, including responsibility for fines and penalties relative to regulatory compliance. At this time, Management does not believe the final resolution of any such matters, whether asserted or unasserted, will have a material adverse effect on the Company's financial position, results of operations or cash flows. In addition, the Company maintains business insurance coverage that may mitigate the effect of any current or future loss contingencies.



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

**Note 8 – Employee Benefit Plans**

**Pension Benefits** – The Company’s defined benefit pension plan (Pension Plan) covers all active employees hired prior to April 1, 2007. Employees hired after March 31, 2007 are not eligible to participate in this plan, but do participate in a defined contribution plan that provides for a potential annual contribution in an amount at the discretion of the Company, based upon a percentage of the participants’ annual paid compensation. For each of the three - month periods ended March 31, 2023 and 2022, the Company did not make cash contributions to the Pension Plan. The Company expects to make cash contributions of approximately \$1.9 million over the remainder of the current year. The Company also maintains an unfunded supplemental retirement benefit plan for certain active and retired Company officers and currently pays \$0.5 million in annual benefits to the retired participants.

**Other Postretirement Benefits** – The Company’s retirement plan other than pensions (Other Benefits Plan) covers substantially all currently eligible retired employees. Employees hired after March 31, 2007 are not eligible to participate in this plan. Coverage includes healthcare and life insurance. For each of the three month periods ended March 31, 2023 and 2022, the Company did not make cash contributions to its Other Benefits Plan. The Company expects to make additional Other Benefits Plan cash contributions of \$0.9 million over the remainder of the current year.

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

	(In Thousands)			
	Pension Benefits		Other Benefits	
	Three Months Ended March 31,			
	2023	2022	2023	2022
Service Cost	\$ 388	\$ 591	\$ 98	\$ 200
Interest Cost	1,067	761	402	331
Expected Return on Assets	(1,466)	(1,760)	(771)	(887)
Amortization of Unrecognized Losses	164	418	(48)	—
<b>Net Periodic Benefit Cost (Benefit)*</b>	<b>\$ 153</b>	<b>\$ 10</b>	<b>\$ (319)</b>	<b>\$ (356)</b>

\* Service cost is included in Operations and Maintenance expense on the consolidated statements of income; all other amounts are included in Other Income (Expense), net.

**Note 9 – Revenue Recognition from Contracts with Customers**

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

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

Non-regulated service contract revenues consist of base service fees, as well as fees for additional billable services provided to customers. Fees are billed monthly and are due within 30 days after the invoice date. The Company considers the amounts billed to represent the value of these services provided to customers. These contracts expire at various times through June 2032 and contain remaining performance obligations for which the Company expects to recognize revenue in the future. These contracts also contain termination provisions.

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

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

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

	(In Thousands)	
	Three Months Ended March 31, 2023	2022
<b>Regulated Tariff Sales</b>		
Residential	\$ 19,004	\$ 19,152
Commercial	5,379	4,427
Industrial	2,839	2,595
Fire Protection	3,104	3,120
Wholesale	4,553	3,964
<b>Non-Regulated Contract Operations</b>	3,229	2,900
<b>Total Revenue from Contracts with Customers</b>	\$ 38,108	\$ 36,158
Other Regulated Revenues	74	67
Other Non-Regulated Revenues	113	109
Inter-segment Elimination	(139)	(138)
<b>Total Revenue</b>	\$ 38,156	\$ 36,196

## **Item 2. Management’s Discussion and Analysis of Financial Condition and Results of Operations**

The following discussion and analysis should be read in conjunction with the unaudited condensed consolidated financial statements of Middlesex Water Company (Middlesex or the Company) included elsewhere herein and with the Company’s Annual Report on Form 10-K for the fiscal year ended December 31, 2022.

### **Forward-Looking Statements**

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

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

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

- effects of general economic conditions;
- increases in competition for growth in non-franchised markets to be potentially served by the Company;
- ability of the Company to adequately control selected operating expenses which are necessary to maintain safe and proper utility services, and which may be beyond the Company’s control;
- availability of adequate supplies of quality water;
- actions taken by government regulators, including decisions on rate increase requests;
- new or modified water quality standards and compliance with related legal and regulatory requirements;
- weather variations and other natural phenomena impacting utility operations;
- financial and operating risks associated with acquisitions and/or privatizations;
- acts of war or terrorism;
- cyber-attacks;
- changes in the pace of new housing development;
- availability and cost of capital resources;
- timely availability of materials and supplies for operations and critical infrastructure projects;
- impact of the Novel Coronavirus (COVID-19) pandemic; and
- other factors discussed elsewhere in this report.

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

For an additional discussion of factors that may affect the Company's business and results of operations, see Item 1A. - Risk Factors in the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2022.

## Overview

Middlesex Water Company (Middlesex or the Company) has operated as a water utility in New Jersey since 1897 and in Delaware through our wholly-owned subsidiary, Tidewater Utilities, Inc. (Tidewater), since 1992. We are in the business of collecting, treating and distributing water for domestic, commercial, municipal, industrial and fire protection purposes. We operate water and wastewater systems under contract for governmental entities and private entities primarily in New Jersey and Delaware and provide regulated wastewater services in New Jersey. We are regulated by state public utility commissions as to rates charged to customers for water and wastewater services, as to the quality of water and wastewater service we provide and as to certain other matters in the states in which our regulated subsidiaries operate. Only our Utility Service Affiliates, Inc. (USA), Utility Service Affiliates (Perth Amboy), Inc. (USA-PA) and White Marsh Environmental Services, Inc. (White Marsh) subsidiaries are not regulated public utilities as related to rates and services quality. All municipal or commercial entities whose utility operations are managed by these entities however, are subject to environmental regulation at the federal and state levels.

Our principal New Jersey water utility system (the Middlesex System) provides water services to approximately 61,000 retail customers, primarily in central New Jersey. The Middlesex System also provides water sales under contract to municipalities in central New Jersey with a total population of over 0.2 million. Our Bayview subsidiary provides water services in Downe Township, New Jersey. Our other New Jersey subsidiaries, Pinelands Water Company (Pinelands Water) and Pinelands Wastewater Company (Pinelands Wastewater) (collectively, Pinelands) provide water and wastewater services to approximately 2,500 customers in Southampton Township, New Jersey.

Our Delaware subsidiaries, Tidewater and Southern Shores Water Company, LLC, provide water services to approximately 56,000 retail customers in New Castle, Kent and Sussex Counties, Delaware. Tidewater's subsidiary, White Marsh, services approximately 4,500 customers in Kent and Sussex Counties through various operations and maintenance contracts.

USA-PA operates the water and wastewater systems for the City of Perth Amboy, New Jersey (Perth Amboy) under a 10-year operations and maintenance contract expiring in 2028. In addition to performing day-to-day operations, USA-PA is also responsible for emergency response and management of capital projects funded by Perth Amboy.

USA operates the Borough of Avalon, New Jersey's (Avalon) water utility, sewer utility and storm water system under a ten-year operations and maintenance contract expiring in 2032. USA also operates the Borough of Highland Park, New Jersey's (Highland Park) water and wastewater systems under a 10-year operations and maintenance contract expiring in June 2030. In addition to performing day-to-day service operations, USA is responsible for emergency response and management of capital projects funded by Avalon and Highland Park. Under a marketing agreement with HomeServe USA Corp. (HomeServe) expiring in 2031, USA offers residential customers in New Jersey and Delaware water and wastewater related services and home maintenance programs. HomeServe is a leading national provider of such home maintenance service programs. USA receives a service fee for the billing, cash collection and other administrative matters associated with HomeServe's service contracts. USA also provides unregulated water and wastewater services under contract with several New Jersey municipalities.

## Recent Developments

**Pinelands' Base Rate Increases Approved** - On April 12, 2023, Pinelands Water and Pinelands Wastewater concluded their base rate case matters when the New Jersey Board of Public Utilities (NJBPU) approved a combined \$1.0 million increase in base rates, effective April 15, 2023. The requests were necessitated by capital infrastructure investments the companies have made as well as increased operations and maintenance costs.

## Financings

**Middlesex** - In April 2023, Middlesex received approval from the NJBPU to issue and sell up to 1.0 million shares of its common stock, without par value, through December 31, 2025. Additionally, in April 2023, Middlesex received approval from the NJBPU to borrow up to \$300.0 million from the New Jersey State Revolving Fund (SRF) Program, the New Jersey Economic Development Authority, private placement and other financial institutions as needed through December 31, 2025. The Company expects to issue equity and debt securities in a series of transaction offerings over a multi-year period to help fund Middlesex's multi-year capital construction program.

In March 2023, Middlesex closed on a \$40.0 million, 5.24% private placement of First Mortgage Bonds (FMBs) with a 2043 maturity date designated as Series 2023A. Proceeds were used to reduce the Company's outstanding balances under its bank lines of credit.

**Tidewater** - In April 2023, Tidewater closed on three Delaware Public Service Commission (DEPSC)-approved SRF loans totaling \$10.2 million, all at interest rates of 2.0% with maturity dates in 2043 and 2044. Each of these SRF loans are for the construction of transmission mains. Tidewater expects to begin receiving disbursements in May 2023 and that the requisitions will continue through mid-2024.

In March 2023, the DEPSC approved Tidewater's application to borrow up to \$20.0 million from CoBank, ACB (CoBank). Tidewater expects to close on this loan in May 2023 with an expected interest rate of 5.71% and a 2033 maturity date and fully draw all funds by June 30, 2023. Proceeds from the loan will be used to pay off Tidewater's outstanding balances under its bank lines of credit.

**Pinelands** - In April 2023, the NJBPU approved Pinelands Water and Pinelands Wastewater's petitions for each company to borrow up to \$4.9 million from CoBank through December 31, 2026. As allowed under the terms of the NJBPU approval, the companies have opted to allocate the borrowing to a portion in 2023 and a portion prior to the expiration of the approval. For 2023, the Companies will each borrow up to \$3.0 million in one or more draws. The interest rate will be set on a fixed basis upon each draw. The term of each loan will be 20 years with monthly principal and interest payments. Proceeds will be used by the companies to pay off outstanding intercompany loans with Middlesex and to fund their future capital expenditures.

**Capital Construction Program** - The Company's multi-year capital construction program encompasses numerous projects designed to upgrade and replace utility infrastructure as well as enhance the integrity and reliability of assets to maintain and improve service for the current and future generations of water and wastewater customers. The Company plans to invest approximately \$111.0 million in 2023 in connection with projects that include, but are not limited to:

- Completion of construction of a facility to provide an enhanced treatment process at the Company's largest wellfield located in South Plainfield, New Jersey to comply with new state water quality regulations relative to perfluoroalkyl substances (PFAS), and integrate surge protection to mitigate spikes in water pressures along with enhancements to corrosion control and chlorination processes;
- Replacement of approximately 24,000 linear feet of cast iron 6" water main in the Borough of Carteret and the Port Reading section of Woodbridge, New Jersey;
- Replacement of Company and customer owned lead and galvanized steel service lines;

- Interconnecting Tidewater's Angola and Meadows Districts which will provide redundant capacity and storage for both districts;
- Improvements to Pinelands Water's Well Station #2; and
- Various water main replacements and improvements.

The actual amount and timing of capital expenditures is dependent on project scheduling and refinement of engineering estimates for certain capital projects.

**Regulatory Notice of Non-Compliance** – In September 2021, the New Jersey Department of Environmental Protection (NJDEP) issued a Notice of Non-Compliance (Notice) to Middlesex based on self-reporting by Middlesex that the level of Perfluorooctanoic Acid (PFOA) in water treated at its Park Avenue Wellfield Treatment Plant in South Plainfield, New Jersey exceeded a standard promulgated in a NJDEP regulation that became effective in 2021.

Prior to 2021, the Company began design for construction of an enhanced treatment process at the Park Avenue Wellfield Treatment Plant to comply with the new standard prior to the regulation being enacted. At that time, the completion of enhanced treatment process was not expected until mid-2023. Consequently, in November 2021, the Company implemented an interim solution to meet the Notice requirements.

Subsequently, in June 2022, the Company accelerated the in-service date for a portion of the enhanced treatment project that allowed a restart of the Park Avenue Wellfield Treatment Plant and it is effectively treating the ground water to ensure compliance with all state and federal drinking water standards.

In September 2022, the Company entered into an Administrative Consent Order (ACO) with the NJDEP with respect to the Notice, which voided any further notice regarding the fact that the permanent treatment solution was not in service by September 7, 2022 as required by the Notice. The Company must comply with several other requirements of the ACO or face penalties.

In November 2021, the Company was served with two PFOA-related class action lawsuits seeking restitution for medical, water replacement and other claimed related costs. These lawsuits are in the early stages of the legal process and their ultimate resolution cannot be predicted at this time. The Company's insurance provider has acknowledged coverage of potential liability which may result from these lawsuits. In May 2022, the Company impleaded 3M Company (3M) as a third-party defendant in one of these class action lawsuits. The Company has also initiated a separate lawsuit against 3M seeking to hold 3M accountable for introduction of PFAS, which include PFOA, into the Company's water supply at its Park Avenue Wellfield facility.

## **Outlook**

Our ability to increase operating income and net income is based significantly on four factors: weather, adequate and timely rate relief, effective cost management and customer growth. These factors are discussed in the Results of Operations section below. Unfavorable weather patterns may occur at any time, which can result in lower customer demand for water.

Our investments in system infrastructure continue to grow significantly and our operating costs are anticipated to increase in 2023 in a variety of categories. Additionally, the DEPSC issued an Order requiring Tidewater to reduce its base rates charged to general metered and private fire customers by 6%, effective for service rendered on and after September 1, 2022. These factors, among others, will likely require Middlesex and Tidewater to file for base rate increases in May 2023 and the second half of 2023, respectively.

Overall, organic residential customer growth continues in our Tidewater system but is impacted by the current and evolving macroeconomic market conditions relative to residential housing. Builders and developers in our Delaware service territory are experiencing longer home sales closing cycles due to supply chain constraints, which may be further affected by inflationary trends and the federal government's ongoing efforts to mitigate inflation through increases in interest rates.

The Company has projected to spend approximately \$274 million for the 2023-2025 capital investment program, including approximately \$22 million for PFAS-related treatment upgrades, \$18 million for Lead and Copper Rule compliance in the Middlesex System, \$34 million on the RENEW Program, which is our ongoing initiative to replace water mains in the Middlesex System and \$8 million for construction of elevated storage tanks in our Tidewater and Middlesex Systems.

Our strategy for profitable growth is focused on the following key areas:

- Invest in projects, products and services that complement our core water and wastewater competencies;
- Timely and adequate recovery of infrastructure investments and other costs to maintain service quality;
- Prudent acquisitions of investor and municipally-owned water and wastewater utilities; and
- Operation of municipal and industrial water and wastewater systems on a contract basis which meet our risk profile.

### Operating Results by Segment

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

The segments in the tables included below consist of the following companies: Regulated-Middlesex, Tidewater, Pinelands and Southern Shores; Non-Regulated-USA, USA-PA, and White Marsh.

### Results of Operations – Three Months Ended March 31, 2023

	(In Thousands)					
	2023			2022		
	Regulated	Non-Regulated	Total	Regulated	Non-Regulated	Total
Revenues	\$ 34,926	\$ 3,229	\$ 38,156	\$ 33,296	\$ 2,900	\$ 36,196
Operations and maintenance expenses	17,930	2,327	20,257	17,179	1,960	19,139
Depreciation expense	5,921	65	5,986	5,563	59	5,622
Other taxes	4,360	63	4,423	4,081	63	4,144
Gain on Sale of Subsidiary	—	—	—	5,232	—	5,232
<b>Operating income</b>	<b>6,715</b>	<b>775</b>	<b>7,490</b>	<b>11,705</b>	<b>818</b>	<b>12,523</b>
Other income, net	1,668	43	1,711	1,702	54	1,756
Interest expense	2,595	—	2,595	1,850	—	1,850
Income taxes	464	274	738	44	285	329
<b>Net income</b>	<b>\$ 5,324</b>	<b>\$ 544</b>	<b>\$ 5,868</b>	<b>\$ 11,513</b>	<b>\$ 587</b>	<b>\$ 12,100</b>

### *Operating Revenues*

Operating revenues for the three months ended March 31, 2023 increased \$2.0 million from the same period in 2022 due to the following factors:

- Middlesex System revenues increased \$2.2 million due to the implementation of the final phase of the 2021 base rate case increase on January 1, 2023 and higher contract customer demand;
- Tidewater System revenues decreased \$0.5 million due to lower customer connection fees and lower revenue from a DEPSC-ordered 2022 rate deduction; and
- Non-regulated revenues increased \$0.3 million primarily due to higher supplemental contract services.

### *Operation and Maintenance Expense*

Operation and maintenance expenses for the three months ended March 31, 2023 increased \$1.1 million from the same period in 2022 due to the following factors:

- Higher customer demand for water and changes in water quality in our Middlesex system resulted in \$0.8 million of increased variable production costs;
- Labor costs rose by \$0.2 million due to the effect of the 2022 mid-year market adjustment wage increases for our hourly workers;
- Non-regulated operation and maintenance expense increased \$0.4 million, primarily due to higher supplemental contract services;
- Lower winter weather-related main break activity in our Middlesex system resulted in \$0.5 million of reduced non-labor costs; and
- All other operation and maintenance expense categories increased \$0.2 million.

### *Depreciation*

Depreciation expense for the three months ended March 31, 2023 increased \$0.4 million from the same period in 2022 due to a higher level of utility plant in service.

### *Other Taxes*

Other taxes for the three months ended March 31, 2023 increased \$0.3 million from the same period in 2022 primarily due to higher revenue related taxes on increased revenues in our Middlesex system.

### *Gain on Sale of Subsidiary*

In January 2022, Middlesex closed on the sale of its regulated Delaware wastewater subsidiary and recognized the resulting gain of \$5.2 million during the quarter ended March 31, 2022.

### *Other Income, net*

Other Income, net for the three months ended March 31, 2023 decreased \$0.1 million from the same period in 2022 due primarily to lower actuarially-determined retirement benefit plans non-service benefit offset by higher Allowance for Funds Used During Construction resulting from a higher level of capital projects in progress.

### *Interest Charges*

Interest charges for the three months ended March 31, 2023 increased \$0.7 million from the same period in 2022 due to higher average debt outstanding and an increase in average short-term borrowing rates from 1.12% in the first quarter of 2022 to 5.52% in the first quarter of 2023.

### *Income Taxes*

Income taxes for the three months ended March 31, 2023 increased by \$0.4 million from the same period in 2022, primarily due to the expiration in 2022 of income tax benefits associated with the adoption of Internal Revenue Service tangible property regulations as Middlesex was required by the NJBPU to account for the benefit of adopting these regulations over 48 months beginning in 2018. Partially offsetting this increase was lower pre-tax income due to the gain on a the sale of a subsidiary in the three months ended March 31, 2022 and greater income tax benefits associated with increased repair expenditures on tangible property in the Middlesex system.



*Net Income and Earnings Per Share*

Net income for the three months ended March 31, 2023 decreased \$6.2 million as compared with the same period in 2022. Basic earnings per share were \$0.33 and \$0.69 for the three months ended March 31, 2023 and 2022, respectively. Diluted earnings per share were \$0.33 and \$0.68 for the three months ended March 31, 2023 and 2022, respectively.

**Liquidity and Capital Resources**

*Operating Cash Flows*

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

*Operating Cash Flows*

For the three months ended March 31, 2023, cash flows from operating activities increased \$2.0 million to \$16.0 million. The increase in cash flows from operating activities primarily resulted from the timing of payments to vendors.

*Investing Cash Flows*

For the three months ended March 31, 2023, cash flows used in investing activities increased \$11.0 million to \$24.5 million due to increased utility plant expenditures in 2023 and cash received in January 2022 from the sale of Middlesex’s regulated wastewater subsidiary.

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

*Financing Cash Flows*

For the three months ended March 31, 2023, cash flows from financing activities increased \$10.3 million to \$9.6 million. The increase in cash flows provided by financing activities is due to an increase in net borrowings.

*Capital Expenditures and Commitments*

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

The capital investment program for 2023 is currently estimated to be approximately \$111 million. Through March 31, 2023 we have expended \$25 million and expect to incur approximately \$86 million for capital projects for the remainder of 2023.

We currently project that we may expend approximately \$163 million for capital projects in 2024 and 2025. The actual amount and timing of capital expenditures is dependent on the need for replacement of existing infrastructure, customer growth, residential new home construction and sales, project scheduling and continued refinement of project scope and costs.

To pay for our capital program for the remainder of 2023, we plan on utilizing some or all of the following:

- Internally generated funds;
- Short-term borrowings, as needed, through \$140 million of bank lines of credit established with multiple financial institutions. As of March 31, 2023, there was \$111.5 million of available credit under these lines (for further discussion on Company lines of credit, see *Note 6 – Short Term Borrowings*);
- Proceeds from long-term borrowing arrangements, including loans from the Delaware SRF Program, which provides cost-effective financing for projects that meet certain water quality-related and/or system improvement criteria (for further discussion on long-term borrowings, see *Recent Developments – Financings above*); and
- Proceeds from the Investment Plan.

In March 2023, the Company began offering shares of its common stock for purchase at a 3% discount to participants in the Investment Plan. The discount offering will continue until 200,000 shares are purchased at the discounted price or December 1, 2023, whichever event occurs first.

In order to fully fund the ongoing investment program in our utility plant infrastructure and maintain a balanced capital structure consistent with regulators' expectations for a regulated water utility, Middlesex may offer for sale additional shares of its common stock. The amount, the timing and the sales method of the common stock is dependent on the timing of the construction expenditures, the level of additional debt financing and financial market conditions. As approved by the NJBPU, the Company is authorized to issue and sell up to 1.0 million shares of its common stock in one or more transactions through December 31, 2025.

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

### **Item 3. Quantitative and Qualitative Disclosures of Market Risk**

We are exposed to market risk associated with changes in interest rates and commodity prices. The Company is subject to the risk of fluctuating interest rates in the normal course of business. Our policy is to manage interest rates through the use of fixed rate long-term debt and, to a lesser extent, short-term debt. The Company's interest rate risk related to existing fixed rate, long-term debt is not material due to the term of the majority of our First Mortgage Bonds, which have final maturity dates ranging from 2023 to 2059. Over the next twelve months, approximately \$17.4 million of the current portion of existing long-term debt instruments will mature. Applying a hypothetical change in the rate of interest charged by 10% on those borrowings, would not have a material effect on our earnings.

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

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

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

#### **Item 4. Controls and Procedures**

##### *Disclosure Controls and Procedures*

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

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

**PART II. OTHER INFORMATION**

**Item 1. Legal Proceedings**

The following information updates and amends the information provided in the Company's Annual Report on Form 10-K (the Form 10-K) for the year ended December 31, 2022 in Part I, Item 3—Legal Proceedings. Capitalized terms used but not otherwise defined herein have the meanings set forth in the Company's Form 10-K.

**PFOA Regulatory Notice of Non-Compliance**

*Vera et al. v. Middlesex Water Company* – On March 21, 2023, the United States District Court for the District of New Jersey issued an order remanding the case back to the Superior Court of New Jersey. Discovery is not yet underway in this matter.

**Item 1A. Risk Factors**

The information about risk factors does not differ materially from those set forth in Part I, Item 1A. of the Company's Annual Report on Form 10-K for the year ended December 31, 2022.

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

None.

**Item 3. Defaults Upon Senior Securities**

None.

**Item 4. Mine Safety Disclosures**

Not applicable.

**Item 5. Other Information**

None.

**Item 6. Exhibits**

Exhibits designated with a dagger (†) are management contracts or compensatory plans/

- (t)10.12(i) [Change in Control Termination Agreement, dated as of April 28, 2023 between the Company and Robert J. Capko.](#)
- 10.26(c) [Amendment to Loan Documents, dated March 17, 2023, between the Company, Pinelands Wastewater Company, Pinelands Water Company, Tidewater Utilities, Inc., Utility Service Affiliates \(Perth Amboy\) Inc., Utility Service Affiliates Inc. and While Marsh Environmental Systems, Inc., and PNC Bank, N.A.](#)
- 10.26(d) [Amendment to Loan Documents, dated April 5, 2023, between the Company, Pinelands Wastewater Company, Pinelands Water Company, Tidewater Utilities, Inc., Utility Service Affiliates \(Perth Amboy\) Inc., Utility Service Affiliates Inc. and While Marsh Environmental Systems, Inc., and PNC Bank, N.A.](#)
- 10.48 [Bond Purchase Agreement, dated March 2, 2023, between New York Life Insurance Company and Affiliates and the Company \(Series 2023A\).](#)
- 10.49 [Financing Agreement, dated April 5, 2023, between the Delaware Drinking Water State Revolving Fund, acting by and through the Delaware Department of Health and Social Services, Division of Public Health and Tidewater Utilities, Inc.](#)
- 10.50 [Financing Agreement, dated April 5, 2023, between the Delaware Drinking Water State Revolving Fund, acting by and through the Delaware Department of Health and Social Services, Division of Public Health and Tidewater Utilities, Inc.](#)
- 10.51 [Financing Agreement, dated April 5, 2023, between the Delaware Drinking Water State Revolving Fund, acting by and through the Delaware Department of Health and Social Services, Division of Public Health and Tidewater Utilities, Inc.](#)
- 31.1 [Section 302 Certification by Dennis W. Doll pursuant to Rules 13a-14 and 15d-14 of the Securities Exchange Act of 1934.](#)
- 31.2 [Section 302 Certification by A. Bruce O'Connor pursuant to Rules 13a-14 and 15d-14 of the Securities Exchange Act of 1934.](#)
- 32.1 [Section 906 Certification by Dennis W. Doll pursuant to 18 U.S.C. §1350, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.](#)
- 32.2 [Section 906 Certification by A. Bruce O'Connor pursuant to 18 U.S.C. §1350, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.](#)
- 101.INS XBRL Instance Document
- 101.SCH XBRL Schema Document
- 101.CAL XBRL Calculation Linkbase Document
- 101.LAB XBRL Labels Linkbase Document
- 101.PRE XBRL Presentation Linkbase Document
- 101.DEF XBRL Definition Linkbase Document
- 104 Cover Page Interactive Data File – the cover page interactive data file does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document

**SIGNATURES**

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

MIDDLESEX WATER COMPANY

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

Date: May 1, 2023

**CHANGE IN CONTROL TERMINATION AGREEMENT**

This Change in Control Termination Agreement (the “Agreement”) is entered into as of April 28, 2023, between Middlesex Water Company, a New Jersey corporation, with its principal place of business located at 485C Route One South, Suite 400, Iselin, New Jersey 08830, (the “Company”), and Robert J. Capko, residing at 100 Possum Way, New Providence, NJ 07974 (referred to as “You” in this Agreement).

**Recitals**

- A. The Company considers it essential to the best interests of its shareholders 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 shareholders.
- 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 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, while simultaneously representing the best interests of the Company’s shareholders, 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). This Agreement supersedes 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 April 28, 2023 and shall continue in effect through December 31, 2023. However, commencing on December 31, 2023, 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 or other vacation allowance provided to you by written agreement 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, to the extent you were a participant in such Plan or Plans as of the date of a Change in Control .

#### **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 President 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 & CEO

**ATTEST:**

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

/s/ Robert J. Capko  
Robert J. Capko



# Amended and Restated Revolving Line of Credit Note

(Multi-Rate Options – SOFR)

\$68,000,000.00

March 17, 2023

FOR VALUE RECEIVED, MIDDLESEX WATER COMPANY, PINELANDS WASTEWATER COMPANY, PINELANDS WATER COMPANY, TIDEWATER UTILITIES, INC., UTILITY SERVICE AFFILIATES (PERTH AMBOY) INC., UTILITY SERVICE AFFILIATES INC., and WHITE MARSH ENVIRONMENTAL SYSTEMS, INC. (individually and collectively, the “Borrower”), with an address at 1500 Ronson Road, Iselin, NJ 08830-3049, jointly and severally, promise to pay to the order of PNC BANK, NATIONAL ASSOCIATION (the “Bank”), in lawful money of the United States of America in immediately available funds at its offices located at Two Tower Center Boulevard, East Brunswick, New Jersey 08816, or at such other location as the Bank may designate from time to time, the principal sum of \$68,000,000.00 (the “Facility”) or such lesser amount as may be advanced to or for the benefit of the Borrower hereunder, together with interest accruing on the outstanding principal balance from the date hereof, all as provided below.

1. **Revolving Line of Credit Advances.** This Note evidences a revolving line of credit. The Borrower may borrow, repay and reborrow hereunder and the Bank may advance and readvance under this Note from time to time (each an “advance” and together the “advances”) until the Expiration Date, subject to the terms and conditions of this Note and the Loan Documents (as defined below). The “Expiration Date” means **January 31, 2025**, or such later date as may be designated by the Bank by written notice from the Bank to the Borrower. The Borrower acknowledges and agrees that in no event will the Bank be under any obligation to extend or renew the Facility or this Note beyond the Expiration Date. In no event shall the aggregate unpaid principal amount of advances under this Note exceed the face amount of this Note.

2. **Interest Rate.** Each advance outstanding under this Note will bear interest at a rate or rates per annum as may be selected by the Borrower from the interest rate options set forth below (each, an “Option”):

- (i) **Base Rate Option.** A rate of interest per annum equal to the Base Rate (as defined below).
- (ii) **Daily SOFR Option.** A rate of interest per annum equal to the sum of (A) Daily SOFR (as defined below) plus (B) one hundred ten basis points (1.10%).
- (iii) **Term SOFR Rate Option.** A rate of interest per annum equal to the sum of (A) the Term SOFR Rate (as defined below) plus (B) the Term SOFR Rate Spread (as defined below) for the applicable Term SOFR Interest Period (as defined below).

For purposes hereof, “Term SOFR Rate Spread” means, for each Term SOFR Interest Period set forth below, the corresponding basis points (percentage) specified below for such Term SOFR Interest Period:

Term SOFR Interest Period	Term SOFR Rate Spread in basis points(bps) (and %)
One-month	110 bps (1.10%)
Three-month	110 bps (1.10%)

The Borrower may select different Options to apply simultaneously to different portions of the advances and may select up to three (3) different interest periods to apply simultaneously to different portions of the advances bearing interest under the Fixed Rate Option(s) (as defined below).

**3. Payments.** The Borrower shall pay accrued interest on the unpaid principal balance of this Note in arrears: (a) for amounts under this Note bearing interest under the Base Rate Option or the Daily SOFR Option (if such Option is provided in the paragraph entitled "Interest Rate" above), on the first day of each month during the term of this Note, (b) for amounts hereunder bearing interest under a Fixed Rate Option, on the last day of the respective interest period for such amounts, (c) if any interest period is longer than 3 months, then also on the 3-month anniversary of the commencement of such interest period and every 3 months thereafter, and (d) for all outstanding amounts, at maturity, whether by acceleration of this Note or otherwise, and after maturity, on demand until paid in full. All outstanding principal and accrued interest under this Note shall be due and payable in full on the Expiration Date.

**4. Certain Definitions.** If the following terms are used in this Note, such terms shall have the meanings set forth below:

**"Base Rate"** means the Prime Rate.

**"Base Rate Option"** means the option of the Borrower to have portions of the advances bear interest at a rate based on the Base Rate, if such Option is provided in the paragraph entitled "Interest Rate" above.

**"Business Day"** means any day other than (A) a Saturday or Sunday or (B) a legal holiday on which commercial banks are authorized or required by law to be closed for business in Pittsburgh, Pennsylvania; provided that, when used in connection with an amount that bears interest at a rate based on SOFR or any direct or indirect calculation or determination involving SOFR, the term "Business Day" means any such day that is also a U.S. Government Securities Business Day.

**"Daily Simple SOFR"** means, for any day (a "**SOFR Rate Day**"), the interest rate per annum determined by the Bank by dividing (the resulting quotient rounded upwards, at the Bank's discretion, to the nearest 1/100th of 1%) (A) SOFR for the day (the "**SOFR Determination Date**") that is 2 Business Days prior to (i) such SOFR Rate Day if such SOFR Rate Day is a Business Day or (ii) the Business Day immediately preceding such SOFR Rate Day if such SOFR Rate Day is not a Business Day, by (B) a number equal to 1.00 minus the SOFR Reserve Percentage, in each case, as such SOFR is published by the NYFRB (or a successor administrator of the secured overnight financing rate) on the website of the NYFRB, currently at <http://www.newyorkfed.org>, or any successor source identified by the NYFRB or its successor administrator for the secured overnight financing rate from time to time. If Daily Simple SOFR as determined above would be less than the Floor, then Daily Simple SOFR shall be deemed to be the Floor. If SOFR for any SOFR Determination Date has not been published or replaced with a Benchmark Replacement (as defined below) by 5:00 p.m. (Pittsburgh, Pennsylvania time) on the second Business Day immediately following such SOFR Determination Date, then SOFR for such SOFR Determination Date will be SOFR for the first Business Day preceding such SOFR Determination Date for which SOFR was published in accordance with the definition of "SOFR"; provided that SOFR determined pursuant to this sentence shall be used for purposes of calculating Daily Simple SOFR for no more than 3 consecutive SOFR Rate Days. If and when Daily Simple SOFR as determined above changes, any applicable rate of interest based on Daily Simple SOFR will change automatically without notice to the Borrower, effective on the date of any such change.

**"Daily SOFR"** means Daily Simple SOFR.

**"Daily SOFR Option"** means the option of the Borrower to have portions of the advances bear interest at a rate based on Daily SOFR, if such Option is provided in the paragraph entitled "Interest Rate" above.

**“Default Rate”** means the rate per annum equal to the lesser of (A) the sum of 3% plus the interest rate otherwise in effect from time to time under this Note and (B) the Maximum Rate.

**“Fixed Rate Option”** means each Term SOFR Rate Option. **“Floor”** means a rate of interest per annum equal to zero.

**“Maximum Rate”** means the maximum rate of interest allowed by applicable law. **“NYFRB”** means the Federal Reserve Bank of New York.

**“Prime Rate”** means the rate publicly announced by the Bank from time to time as its prime rate. The Prime Rate is determined from time to time by the Bank as a means of pricing some loans to its borrowers. The Prime Rate is not tied to any external rate of interest or index and does not necessarily reflect the lowest rate of interest actually charged by the Bank to any particular class or category of customers.

**“SOFR”** means a rate equal to the secured overnight financing rate as administered by the NYFRB (or a successor administrator of the secured overnight financing rate).

**“SOFR Reserve Percentage”** means, for any day, the maximum effective percentage in effect on such day, if any, as prescribed by the Board of Governors of the Federal Reserve System (or any successor) for determining the reserve requirements (including, without limitation, supplemental, marginal and emergency reserve requirements) with respect to SOFR funding.

**“Term SOFR Administrator”** means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Bank in its reasonable discretion).

**“Term SOFR Interest Period”** means, with respect to any amount to which the Term SOFR Rate Option applies, a period set forth in the definition of “Term SOFR Rate Spread” (in each case, subject to the availability thereof), as selected by the Borrower, commencing on the date of disbursement of such amount (or the date of conversion of any amount to the Term SOFR Rate Option, as the case may be) and each successive period selected by the Borrower thereafter; provided that:

- (A) if a Term SOFR Interest Period would end on a day that is not a Business Day, it shall end on the next succeeding Business Day unless such day falls in the next succeeding calendar month in which case the Term SOFR Interest Period shall end on the next preceding Business Day;
- (B) the Borrower may not select a Term SOFR Interest Period that would end on a day after the Expiration Date; and
- (C) any Term SOFR Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Term SOFR Interest Period) shall end on the last Business Day of the last calendar month of such Term SOFR Interest Period.

**“Term SOFR Rate”** means, with respect to any amount to which the Term SOFR Rate Option applies, for any Term SOFR Interest Period, the interest rate per annum determined by the Bank by dividing (the resulting quotient rounded upwards, at the Bank’s discretion, to the nearest 1/100th of 1%) (A) the Term SOFR Reference Rate for a tenor comparable to such Term SOFR Interest Period, as published by the Term

SOFR Administrator on the day (the “**Term SOFR Determination Date**”) that is 2 Business Days prior to the first day of such Term SOFR Interest Period, by (B) a number equal to 1.00 minus the SOFR Reserve Percentage. If the Term SOFR Reference Rate for the applicable tenor has not been published or replaced with a Benchmark Replacement by 5:00 p.m. (Pittsburgh, Pennsylvania time) on the Term SOFR Determination Date, then the Term SOFR Reference Rate, for purposes of clause (A) in the preceding sentence, shall be the Term SOFR Reference Rate for such tenor on the first Business Day preceding such Term SOFR Determination Date for which such Term SOFR Reference Rate for such tenor was published in accordance herewith, so long as such first preceding Business Day is not more than 3 Business Days prior to such Term SOFR Determination Date. If the Term SOFR Rate, determined as provided above, would be less than the Floor, then the Term SOFR Rate shall be deemed to be the Floor. The Term SOFR Rate shall be adjusted automatically without notice to the Borrower on and as of (i) the first day of each Term SOFR Interest Period, and (ii) the effective date of any change in the SOFR Reserve Percentage.

“**Term SOFR Rate Option**” means the option of the Borrower to have portions of the advances bear interest at a rate based on the Term SOFR Rate, if such Option is provided in the paragraph entitled “Interest Rate” above.

“**Term SOFR Reference Rate**” means the forward-looking term rate based on SOFR.

“**U.S. Government Securities Business Day**” means any day except for (A) a Saturday or Sunday or (B) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

5. **Advance Procedures.** The Borrower may request advances hereunder by giving oral or written notice to the Bank by 11:00 a.m. Pittsburgh, Pennsylvania time (a) 3 Business Days prior to the proposed advance, in the case of advances to bear interest under the Term SOFR Rate Option and (b) on the day of the proposed advance, in the case of advances to bear interest under any other Option, followed promptly thereafter by the Borrower’s written confirmation to the Bank of any oral notice. If permitted by the Bank, a request for advance may be made by telephone or electronic mail, or delivered in accordance with the Bank’s security procedures through any automated platform or electronic service provided by the Bank, with such confirmation or verification (if any) as the Bank may require in its discretion from time to time. A request for advance by any Borrower shall be binding upon Borrower, jointly and severally. The Borrower authorizes the Bank to accept telephonic, email, automated and electronic requests for advances, and the Bank shall be entitled to rely upon the authority of any person providing such instructions. The Borrower hereby indemnifies and holds the Bank harmless from and against any and all damages, losses, liabilities, costs and expenses (including reasonable attorneys’ fees and expenses) which may arise or be created by the acceptance of such telephonic, email, automated and electronic requests or by the making of such advances. The Bank will enter on its books and records, which entry when made will be presumed correct, the date and amount of each advance, as well as the date and amount of each payment made by the Borrower.

6. **Interest Rate Election.** Subject to the terms and conditions of this Note, at the end of each interest period applicable to any amounts hereunder that bear interest under a Fixed Rate Option, the Borrower may renew the Option applicable to such amounts (in the case of a Term SOFR Rate Option) or convert such amounts to a different Option; provided that, during any period in which any Event of Default (as hereinafter defined) has occurred and is continuing, any amounts bearing interest under a Fixed Rate Option shall, at the Bank’s sole discretion, be converted at the end of the applicable interest period to the Base Rate Option, and any Fixed Rate Option will not be available to the Borrower with respect to any new advances (or with respect to the conversion or renewal of any other amounts) until such Event of Default has been cured by the Borrower or waived by the Bank. The Borrower shall notify the Bank of each election of an Option, each conversion from one Option to another, the amount of the portions hereunder to be allocated to each Option and where relevant the interest period therefor. In the case of converting to the Term SOFR Rate Option, such notice shall be given at least 3 Business Days prior to the commencement of any Term SOFR Interest Period. If no interest period is specified in any such notice for an

amount that is to bear interest under the Term SOFR Rate Option, the Borrower shall be deemed to have selected a Term SOFR Interest Period of one month's duration. If no notice of election, conversion or renewal is timely received by the Bank with respect to any amount hereunder, the Borrower shall be deemed to have elected the Term SOFR Rate Option having a Term SOFR Interest Period of one month's duration. Any such election shall be promptly confirmed in writing by such method as the Bank may require.

**7. Interest Calculation; Maximum Rate.** Interest will be calculated based on the actual number of days that principal is outstanding over a year of 360 days. In no event will the rate of interest hereunder exceed the Maximum Rate. Regardless of any other provision of this Note or the other Loan Documents, if for any reason the effective interest rate should exceed the Maximum Rate, the effective interest rate shall be deemed reduced to, and shall be, the Maximum Rate, and (a) the amount which would be excessive interest shall be deemed applied to the reduction of the principal balance of this Note and not to the payment of interest, and (b) if the loan evidenced by this Note has been or is thereby paid in full, the excess shall be returned to the party paying same, such application to the principal balance of this Note or the refunding of such excess to be a complete settlement and acquittance thereof.

**8. Conforming Changes; Benchmark Replacement Provisions.** The Bank shall have the right to make any technical, administrative or operational changes from time to time that the Bank decides may be appropriate to reflect the adoption and implementation of SOFR or any other Benchmark (as defined below) or to permit the use and administration thereof by the Bank in a manner substantially consistent with market practice or in such other manner as the Bank decides is reasonably necessary. Notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such technical, administrative or operational changes will become effective without any further action or consent of the Borrower. The Bank shall provide notice to the Borrower of any such amendment reasonably promptly after such amendment becomes effective.

If the applicable interest rate under this Note is based on a Benchmark and the Bank determines (which determination shall be final and conclusive) that (A) such Benchmark cannot be determined pursuant to its definition other than as a result of a Benchmark Transition Event (as defined below), or (B) any enactment, promulgation or adoption of or any change in any applicable law, rule or regulation, or any change in the interpretation or administration thereof by a governmental authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by the Bank with any guideline, request or directive (whether or not having the force of law) of any such authority, central bank or comparable agency shall make it unlawful or impracticable for the Bank to make or maintain or fund loans based on that Benchmark, then the Bank shall give notice thereof to the Borrower. Thereafter, until the Bank notifies the Borrower that the circumstances giving rise to such determination no longer exist, (a) the availability of any Option based on that Benchmark shall be suspended, and (b) the interest rate for all amounts then bearing interest under such Option shall be converted to the Base Rate Option either (i) on the last day of the then current applicable interest period(s) if the Bank may lawfully continue to maintain or fund loans based on that Benchmark to such day, or (ii) immediately if the Bank may not lawfully continue to maintain or fund loans based on that Benchmark.

Notwithstanding anything to the contrary herein or in any other Loan Document, if the Bank determines (which determination shall be final and conclusive) that a Benchmark Transition Event has occurred with respect to a Benchmark, the Bank may amend this Note to replace such Benchmark with a Benchmark Replacement; and any such amendment shall be in writing, shall specify the date that the Benchmark Replacement is effective and will not require any further action or consent of the Borrower. Until the Benchmark Replacement is effective, amounts bearing interest with reference to a Benchmark will continue to bear interest with reference to such Benchmark as long as such Benchmark is available, and otherwise such amounts automatically will bear interest at the Base Rate Option.

For purposes of this Section, the following terms have the meanings set forth below:

“**Benchmark**” means, at any time, any interest rate index (or tenor of an interest rate index) then used in the determination of an interest rate under the terms of this Note. Once a Benchmark Replacement becomes effective under this Note, it is a Benchmark.

“**Benchmark Replacement**” means, for any Benchmark, the sum of (a) an alternate benchmark rate and (b) an adjustment (which may be a positive or negative value or zero), in each case that has been selected by the Bank as the replacement for such Benchmark giving due consideration to any evolving or then- prevailing market convention, including any applicable recommendations made by the official sector or any official sector-sponsored committee or working group, for U.S. dollar-denominated credit facilities at such time; provided that, if the Benchmark Replacement as determined pursuant to the foregoing would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Note and the other Loan Documents.

“**Benchmark Transition Event**” means a public statement or publication by or on behalf of the administrator of a Benchmark, the regulatory supervisor of such administrator, the Board of Governors of the Federal Reserve System, NYFRB, an insolvency official or resolution authority with jurisdiction over the administrator for such Benchmark or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark, announcing or stating that (a) such administrator has ceased or will cease to provide such Benchmark permanently or indefinitely, provided that at the time of such statement or publication there is no successor administrator that will continue to provide such Benchmark or (b) such Benchmark is or will no longer be representative.

9. **Other Payment Terms.** If any payment under this Note is due on a day of a calendar month for which there is no numerically corresponding day in certain other months (each, a “**Non-Conforming Month**”), then the payment in a Non-Conforming Month shall be due on the last Business Day of such Non-Conforming Month. If any payment under this Note shall become due on a day other than a Business Day, such payment shall be due on the next succeeding Business Day, except that if such day falls in the next succeeding calendar month, such payment shall be due on the next preceding day that is a Business Day. Interest shall be computed to, but excluding, the date payment is due. The Borrower hereby authorizes the Bank to charge the Borrower’s deposit account at the Bank for any payment when due under this Note or any other Loan Document. Payments received will be applied to charges, fees and expenses (including attorneys’ fees), accrued interest and principal in any order the Bank may choose, in its sole discretion.

10. **Late Payments; Default Rate.** If the Borrower fails to make any payment of principal, interest or other amount coming due pursuant to the provisions of this Note within 15 calendar days of the date due and payable, the Borrower also shall pay to the Bank a late charge equal to the lesser of 5% of the amount of such payment or \$100.00 (the “**Late Charge**”). Such 15-day period shall not be construed in any way to extend the due date of any such payment. Upon maturity, whether by acceleration, demand or otherwise, and at the Bank’s option upon the occurrence of any Event of Default (as hereinafter defined) and during the continuance thereof, amounts outstanding under this Note shall bear interest at the Default Rate. The Default Rate shall continue to apply whether or not judgment shall be entered on this Note. Both the Late Charge and the Default Rate are imposed as liquidated damages for the purpose of defraying the Bank’s expenses incident to the handling of delinquent payments, but are in addition to, and not in lieu of, the Bank’s exercise of any rights and remedies hereunder, under the other Loan Documents or under applicable law, and any fees and expenses of any agents or attorneys which the Bank may employ. In addition, the Default Rate reflects the increased credit risk to the Bank of carrying a loan that is in default. The Borrower agrees that the Late Charge and Default Rate are reasonable forecasts of just compensation for anticipated and actual harm incurred by the Bank, and that the actual harm incurred by the Bank cannot be estimated with certainty and without difficulty.



11. **Prepayment.** The Borrower shall have the right to prepay any amounts outstanding hereunder at any time and from time to time, in whole or in part; subject, however, to payment of any break funding indemnification amounts owing pursuant to the paragraph entitled "Break Funding Indemnification" below.

12. **Increased Costs; Yield Protection.** On written demand, together with written evidence of the justification therefor, the Borrower agrees to pay the Bank all direct costs incurred, any losses suffered or payments made by the Bank as a result of any Change in Law (hereinafter defined), imposing any reserve, deposit, allocation of capital or similar requirement (including without limitation, Regulation D of the Board of Governors of the Federal Reserve System) on the Bank, its holding company or any of their respective assets relative to the Facility. "**Change in Law**" means the occurrence, after the date of this Note, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any governmental authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any governmental authority; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

13. **Break Funding Indemnification.** The Borrower agrees to indemnify the Bank against any liabilities, losses or expenses (including, without limitation, loss of margin, any loss or expense sustained or incurred in liquidating or employing deposits from third parties, and any loss or expense incurred in connection with funds acquired to effect, fund or maintain any amounts hereunder (or any part thereof) bearing interest under a Fixed Rate Option) which the Bank sustains or incurs as a consequence of either (i) the Borrower's failure to make a payment on the due date thereof, (ii) the Borrower's revocation (expressly, by later inconsistent notices or otherwise) in whole or in part of any notice given to Bank to request, convert, renew or prepay any amounts bearing interest under a Fixed Rate Option, or (iii) the Borrower's payment or prepayment (whether voluntary, after acceleration of the maturity of this Note or otherwise) or conversion of any amounts bearing interest under a Fixed Rate Option on a day other than the regularly scheduled due date therefor. A notice as to any amounts payable pursuant to this paragraph given to the Borrower by the Bank shall, in the absence of manifest error, be conclusive and shall be payable upon demand. The Borrower's indemnification obligations hereunder shall survive the payment in full of all amounts payable hereunder.

14. **Other Loan Documents.** This Note is issued in connection with an Amended and Restated Loan Agreement between the Borrower and the Bank, dated April 29, 2015, and the other agreements and documents executed and/or delivered in connection therewith or referred to therein, the terms of which are incorporated herein by reference (as amended, modified or renewed from time to time, collectively the "**Loan Documents**"), and is secured by the property (if any) described in the Loan Documents and by any and all mortgages, security agreements, assignments, loan agreements, pledge agreements and other documents or instruments evidencing a security interest or other lien in favor of the Bank and delivered by the Borrower or by any third party with reference to indebtedness of the Borrower, whether such documents were previously or are hereafter executed, and whether given expressly as security for payment of this Note or generally as security for any and all indebtedness of the Borrower to the Bank. Such documents may be executed contemporaneously with the execution of this Note, or they may be executed and delivered at another time. Collateral securing other obligations of the Borrower to the Bank may also secure this Note.

15. **Events of Default.** The occurrence of any of the following events will be deemed to be an "**Event of Default**" under this Note: (i) the nonpayment of any principal, interest or other indebtedness under this Note when due; (ii) the occurrence of any event of default or any default and the lapse of any notice or cure period, or any Obligor's failure to observe or perform any covenant or other agreement, under or contained in any Loan Document or any other document now or in the future evidencing or securing any debt, liability or obligation of any Obligor

to the Bank; (iii) the filing by or against any Obligor of any proceeding in bankruptcy, receivership, insolvency, reorganization, liquidation, conservatorship or similar proceeding (and, in the case of any such proceeding instituted against any Obligor, such proceeding is not dismissed or stayed within 30 days of the commencement thereof, provided that the Bank shall not be obligated to advance additional funds hereunder during such period); (iv) any assignment by any Obligor for the benefit of creditors, or any levy, garnishment, attachment or similar proceeding is instituted against any property of any Obligor held by or deposited with the Bank; (v) a default with respect to any other indebtedness of any Obligor for borrowed money, if the effect of such default is to cause or permit the acceleration of such debt; (vi) the commencement of any foreclosure or forfeiture proceeding, execution or attachment against any collateral securing the obligations of any Obligor to the Bank; (vii) the entry of a final judgment against any Obligor and the failure of such Obligor to discharge the judgment within 10 days of the entry thereof; (viii) any change in any Obligor's business, assets, operations, financial condition or results of operations that has or could reasonably be expected to have any material adverse effect on any Obligor; (ix) any Obligor ceases doing business as a going concern; (x) any representation or warranty made by any Obligor to the Bank in any Loan Document or any other documents now or in the future evidencing or securing the obligations of any Obligor to the Bank, is false, erroneous or misleading in any material respect; (xi) if this Note or any guarantee executed by any Obligor is secured, the failure of any Obligor to provide the Bank with additional collateral if in the Bank's opinion at any time or times, the market value of any of the collateral securing this Note or any guarantee has depreciated below that required pursuant to the Loan Documents or, if no specific value is so required, then in an amount deemed material by the Bank; (xii) the revocation or attempted revocation, in whole or in part, of any guarantee by any Obligor; or (xiii) the death, incarceration, indictment or legal incompetency of any individual Obligor or, if any Obligor is a partnership or limited liability company, the death, incarceration, indictment or legal incompetency of any individual general partner or member. As used herein, the term "**Obligor**" means any Borrower and any guarantor of, or any pledgor, mortgagor or other person or entity providing collateral support for, the Borrower's obligations to the Bank existing on the date of this Note or arising in the future.

Upon the occurrence of an Event of Default: (a) the Bank shall be under no further obligation to make advances hereunder; (b) if an Event of Default specified in clause (iii) or (iv) above shall occur, the outstanding principal balance and accrued interest hereunder together with any additional amounts payable hereunder shall be immediately due and payable without demand or notice of any kind; (c) if any other Event of Default shall occur, the outstanding principal balance and accrued interest hereunder together with any additional amounts payable hereunder, at the Bank's option and without demand or notice of any kind, may be accelerated and become immediately due and payable; (d) at the Bank's option, this Note will bear interest at the Default Rate from the date of the occurrence of the Event of Default; and (e) the Bank may exercise from time to time any of the rights and remedies available under the Loan Documents or under applicable law.

**16. Right of Setoff.** In addition to all liens upon and rights of setoff against the Borrower's money, securities or other property given to the Bank by law, the Bank shall have, with respect to the Borrower's obligations to the Bank under this Note and to the extent permitted by law, a contractual possessory security interest in and a contractual right of setoff against, and the Borrower hereby grants the Bank a security interest in, and hereby assigns, conveys, delivers, pledges and transfers to the Bank, all of the Borrower's right, title and interest in and to, all of the Borrower's deposits, moneys, securities and other property now or hereafter in the possession of or on deposit with, or in transit to, the Bank or any other direct or indirect subsidiary of The PNC Financial Services Group, Inc., whether held in a general or special account or deposit, whether held jointly with someone else, or whether held for safekeeping or otherwise, excluding, however, all IRA, Keogh, and trust accounts. Every such security interest and right of setoff may be exercised without demand upon or notice to the Borrower. Every such right of setoff shall be deemed to have been exercised immediately upon the occurrence of an Event of Default hereunder without any action of the Bank, although the Bank may enter such setoff on its books and records at a later time.

**17. Anti-Money Laundering/International Trade Law Compliance.** The Borrower represents, warrants and covenants to the Bank, as of the date hereof, the date of each advance of proceeds under the Facility, the date of any renewal, extension or modification of the Facility, and at all times until the Facility has been terminated and all amounts thereunder have been indefeasibly paid in full, that: (a) no Covered Entity (i) is a Sanctioned Person;

(ii) has any of its assets in a Sanctioned Jurisdiction or in the possession, custody or control of a Sanctioned Person; or (iii) does business in or with, or derives any of its operating income from investments in or transactions with, any Sanctioned Jurisdiction or Sanctioned Person; (b) the proceeds of the Facility will not be used to fund any operations in, finance any investments or activities in, or, make any payments to, a Sanctioned Jurisdiction or Sanctioned Person; (c) the funds used to repay the Facility are not derived from any unlawful activity; (d) each Covered Entity is in compliance with, and no Covered Entity engages in any dealings or transactions prohibited by, any laws of the United States, including but not limited to any Anti-Terrorism Laws; and (e) no Collateral is or will become Embargoed Property. The Borrower covenants and agrees that (a) it shall immediately notify the Bank in writing upon the occurrence of a Reportable Compliance Event; and (b) if, at any time, any Collateral becomes Embargoed Property, in addition to all other rights and remedies available to the Bank, upon request by the Bank, the Borrower shall provide substitute Collateral acceptable to the Bank that is not Embargoed Property.

As used herein: “**Anti-Terrorism Laws**” means any laws relating to terrorism, trade sanctions programs and embargoes, import/export licensing, money laundering, or bribery, all as amended, supplemented or replaced from time to time; “**Collateral**” means any collateral securing any debt, liabilities or other obligations of any Obligor to the Bank; “**Compliance Authority**” means each and all of the (a) U.S. Treasury Department/Office of Foreign Assets Control, (b) U.S. Treasury Department/Financial Crimes Enforcement Network, (c) U.S. State Department/Directorate of Defense Trade Controls, (d) U.S. Commerce Department/Bureau of Industry and Security, (e) U.S. Internal Revenue Service, (f) U.S. Justice Department, and (g) U.S. Securities and Exchange Commission; “**Covered Entity**” means the Borrower, its affiliates and subsidiaries, all guarantors, pledgors of collateral, all owners of the foregoing, and all brokers or other agents of the Borrower acting in any capacity in connection with the Facility; “**Embargoed Property**” means any property (a) in which a Sanctioned Person holds an interest; (b) beneficially owned, directly or indirectly, by a Sanctioned Person; (c) that is due to or from a Sanctioned Person; (d) that is located in a Sanctioned Jurisdiction; or (e) that would otherwise cause any actual or possible violation by the Bank of any applicable Anti-Terrorism Law if the Bank were to obtain an encumbrance on, lien on, pledge of or security interest in such property or provide services in consideration of such property; “**Reportable Compliance Event**” means (1) any Covered Entity becomes a Sanctioned Person, or is indicted, arraigned, investigated or custodially detained, or receives an inquiry from regulatory or law enforcement officials, in connection with any Anti-Terrorism Law or any predicate crime to any Anti-Terrorism Law, or self-discovers facts or circumstances implicating any aspect of its operations with the actual or possible violation of any Anti-Terrorism Law; (2) any Covered Entity engages in a transaction that has caused or may cause the Bank to be in violation of any Anti-Terrorism Laws, including a Covered Entity’s use of any proceeds of the Facility to fund any operations in, finance any investments or activities in, or, make any payments to, directly or indirectly, a Sanctioned Jurisdiction or Sanctioned Person; or (3) any Collateral becomes Embargoed Property; “**Sanctioned Jurisdiction**” means a country subject to a sanctions program maintained by any Compliance Authority; and “**Sanctioned Person**” means any individual person, group, regime, entity or thing listed or otherwise recognized as a specially designated, prohibited, sanctioned or debarred person or entity, or subject to any limitations or prohibitions (including but not limited to the blocking of property or rejection of transactions), under any order or directive of any Compliance Authority or otherwise subject to, or specially designated under, any sanctions program maintained by any Compliance Authority.

**18. Indemnity.** The Borrower agrees to indemnify each of the Bank, each legal entity, if any, who controls, is controlled by or is under common control with the Bank, and each of their respective directors, officers and employees (the “**Indemnified Parties**”), and to defend and hold each Indemnified Party harmless from and against any and all claims, damages, losses, liabilities and expenses (including all fees and charges of internal or external counsel with whom any Indemnified Party may consult and all expenses of litigation and preparation therefor) (each, a “**Claim**”) which any Indemnified Party may incur or which may be asserted against any Indemnified Party by any person, entity or governmental authority (including any person or entity claiming derivatively on behalf of the Borrower), in connection with or arising out of or relating to the matters referred to in this Note or in the other Loan Documents or the use of any advance hereunder, whether (a) arising from or incurred in connection with any breach of a representation, warranty or covenant by the Borrower, or (b) arising out of or resulting from any suit, action, claim, proceeding or governmental investigation, pending or threatened, whether based on statute, regulation

or order, or tort, or contract or otherwise, before any court or governmental authority; provided, however, that the foregoing indemnity agreement shall not apply to any Claim that is determined by a court of competent jurisdiction in a final, non-appealable judgment to have been solely attributable to an Indemnified Party's gross negligence or willful misconduct. The indemnity agreement contained in this paragraph shall survive the termination of this Note, payment of any amounts hereunder and the assignment of any rights hereunder. The Borrower may participate at its expense in the defense of any such action or claim.

**19. Miscellaneous.** All notices, demands, requests, consents, approvals and other communications required or permitted hereunder ("**Notices**") must be in writing (except as may be agreed otherwise above with respect to borrowing requests or as otherwise provided in this Note). Notices may be given in any manner to which the parties may agree. Without limiting the foregoing, first-class mail, postage prepaid, facsimile transmission and commercial courier service are hereby agreed to as acceptable methods for giving Notices. In addition, the parties agree that Notices may be sent electronically to any electronic address provided by a party from time to time or through an automated platform that the Bank provides to the Borrower. Notices may be sent to a party's address as set forth above or to such other address as any party may give to the other for such purpose in accordance with this paragraph. Notices will be effective upon receipt. For purposes hereof, "receipt" means: (i) for notices sent by U.S. mail, the third business day after the date such notice was sent; (ii) for notices delivered by hand or sent by overnight courier service, the date delivered; (iii) for notices sent by facsimile or electronic communication, the date when sent; and (iv) for notices sent by any other method, the date received. No delay or omission on the Bank's part to exercise any right or power arising hereunder will impair any such right or power or be considered a waiver of any such right or power, nor will the Bank's action or inaction impair any such right or power. The Bank's rights and remedies hereunder are cumulative and not exclusive of any other rights or remedies which the Bank may have under other agreements, at law or in equity. Except as otherwise set forth in this Note, no modification, amendment or waiver of, or consent to any departure by the Borrower from, any provision of this Note will be effective unless made in a writing signed by the Bank, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Notwithstanding the foregoing, the Bank may modify this Note for the purposes of completing missing content or correcting erroneous content, without the need for a written amendment, provided that the Bank shall send a copy of any such modification to the Borrower (which notice may be given by electronic mail). The Borrower agrees to pay on demand, to the extent permitted by law, all costs and expenses incurred by the Bank in the enforcement of its rights in this Note and in any security therefor, including without limitation reasonable fees and expenses of the Bank's counsel. If any provision of this Note is found to be invalid, illegal or unenforceable in any respect by a court, all the other provisions of this Note will remain in full force and effect. The Borrower and all other makers and indorsers of this Note hereby forever waive presentment, protest, notice of dishonor, notice of non-payment, notice of intent to accelerate and notice of acceleration, and any other notice of any kind. The Borrower also waives all defenses based on suretyship or impairment of collateral. If this Note is executed by more than one Borrower, the obligations of such persons or entities hereunder will be joint and several. This Note shall bind the Borrower and its heirs, executors, administrators, successors and assigns, and the benefits hereof shall inure to the benefit of the Bank and its successors and assigns; provided, however, that the Borrower may not assign this Note in whole or in part without the Bank's written consent and the Bank at any time may assign this Note in whole or in part.

**20. Amendment and Restatement.** This Note amends and restates, and is in substitution for, that certain Amended and Restated Committed Line of Credit Note in the original principal amount of \$68,000,000.00 payable to the order of the Bank and dated February 9, 2022 (the "**Existing Note**"). However, without duplication, this Note shall in no way extinguish, cancel or satisfy Borrower's unconditional obligation to repay all indebtedness evidenced by the Existing Note or constitute a novation of the Existing Note. Nothing herein is intended to extinguish, cancel or impair the lien priority or effect of any security agreement, pledge agreement or mortgage with respect to any Obligor's obligations hereunder and under any other document relating hereto.

**21. Governing Law and Venue.** This Note has been delivered to and accepted by the Bank and will be deemed to be made in the State where the Bank's office indicated above is located (the "**State**"). **THIS NOTE WILL BE INTERPRETED AND THE RIGHTS AND LIABILITIES OF THE BANK AND THE BORROWER DETERMINED IN**

ACCORDANCE WITH THE LAWS OF THE STATE, EXCLUDING ITS CONFLICT OF LAWS RULES, INCLUDING WITHOUT LIMITATION THE ELECTRONIC TRANSACTIONS ACT (OR EQUIVALENT) IN EFFECT IN THE STATE (OR, TO THE EXTENT CONTROLLING, THE LAWS OF THE UNITED STATES OF AMERICA, INCLUDING WITHOUT LIMITATION THE ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT). The Borrower hereby irrevocably consents to the exclusive jurisdiction of any state or federal court in the county or judicial district where the Bank's office indicated above is located; provided that nothing contained in this Note will prevent the Bank from bringing any action, enforcing any award or judgment or exercising any rights against the Borrower individually, against any security or against any property of the Borrower within any other county, state or other foreign or domestic jurisdiction. The Borrower acknowledges and agrees that the venue provided above is the most convenient forum for both the Bank and the Borrower. The Borrower waives any objection to venue and any objection based on a more convenient forum in any action instituted under this Note.

22. **Commercial Purpose.** The Borrower represents that the indebtedness evidenced by this Note is being incurred by the Borrower solely for the purpose of acquiring or carrying on a business, professional or commercial activity, and not for personal, family or household purposes.

23. **USA PATRIOT Act Notice.** To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify and record information that identifies each Borrower that opens an account. What this means: when the Borrower opens an account, the Bank will ask for the business name, business address, taxpayer identifying number and other information that will allow the Bank to identify the Borrower, such as organizational documents. For some businesses and organizations, the Bank may also need to ask for identifying information and documentation relating to certain individuals associated with the business or organization.

24. **Representation by Counsel.** The Borrower hereby represents that it has been represented by competent counsel of its choice, or has knowingly waived its right to use and retain counsel, in the negotiation and execution of this Note and the other Loan Documents; that it has read and fully understood the terms hereof; that the Borrower and any retained counsel have been afforded an opportunity to review, negotiate and modify the terms of this Note and the other Loan Documents; and that it intends to be bound hereby. In accordance with the foregoing, the general rule of construction to the effect that any ambiguities in a contract are to be resolved against the party drafting the contract shall not be employed in the construction and interpretation of this Note or any other Loan Document.

25. **Authorization to Obtain Credit Reports.** By signing below, each person, who is signing in his or her individual capacity, requests and provides written authorization to the Bank or its designee (and any assignee or potential assignee hereof) to obtain such individual's personal credit profile from one or more national credit bureaus. This authorization extends to obtaining a credit profile in (i) considering an application for credit that is evidenced, guaranteed or secured by this document, (ii) assessing creditworthiness and (iii) considering extensions of credit, including on an ongoing basis, as necessary for the purposes of (a) update, renewal or extension of such credit or additional credit, (b) reviewing, administering or collecting the resulting account and (c) reporting on the repayment and satisfaction of such credit obligations. By signing below, such individual further ratifies and confirms his or her prior requests and authorizations with respect to the matters set forth herein. For the avoidance of doubt, this provision does not apply to persons signing below in their capacities as officers or other authorized representatives of entities, organizations or governmental bodies.

26. **Counterparts; Electronic Signatures and Records.** This Note and any other Loan Document may be signed in any number of counterpart copies and by the parties hereto on separate counterparts, but all such copies shall constitute one and the same instrument. Notwithstanding any other provision herein, the Borrower agrees that this Note, the Loan Documents, any amendments thereto, and any other information, notice, signature card, agreement or authorization related thereto (each, a "Communication") may, at the Bank's option, be in the form of an electronic record. Any Communication may, at the Bank's option, be signed or executed using electronic signatures. For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use

or acceptance by the Bank of a manually signed paper Communication which has been converted into electronic form (such as scanned into PDF format) for transmission, delivery and/or retention.

27. **Unused Commitment Fee.** Beginning on the last day of the quarter after the date of this Note and continuing on the last day of each quarter thereafter until the Expiration Date, the Borrower shall pay an unused commitment fee (the “**Unused Fee**”) to the Bank, in arrears, at the rate of 0.05% per annum on the daily balance under this Note which is undisbursed and uncanceled on each day during the preceding quarter. The Unused Fee shall be computed on the basis of a year of 360 days and paid on the actual number of days elapsed. Borrower hereby authorizes and directs the Bank to charge the Borrower’s deposit account with the Bank for each Unused Fee on or after the date it is due.

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28. **WAIVER OF JURY TRIAL.** THE BORROWER IRREVOCABLY WAIVES ANY AND ALL RIGHTS THE BORROWER MAY HAVE TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR CLAIM OF ANY NATURE RELATING TO THIS NOTE, ANY DOCUMENTS EXECUTED IN CONNECTION WITH THIS NOTE OR ANY TRANSACTION CONTEMPLATED IN ANY OF SUCH DOCUMENTS. THE BORROWER ACKNOWLEDGES THAT THE FOREGOING WAIVER IS KNOWING AND VOLUNTARY.

The Borrower acknowledges that it has read and understands all the provisions of this Note, including the waiver of jury trial, and has been advised by counsel as necessary or appropriate.

WITNESS the due execution hereof as a document under seal, as of the date first written above, with the intent to be legally bound hereby.

**MIDDLESEX WATER COMPANY**

By: /s/ A. Bruce O'Connor (SEAL)

A. Bruce O'Connor  
Senior Vice President & Treasurer

**PINELANDS WASTEWATER COMPANY**

By: /s/ A. Bruce O'Connor (SEAL)

A. Bruce O'Connor  
Vice President & Treasurer

**PINELANDS WATER COMPANY**

By: /s/ A. Bruce O'Connor (SEAL)

A. Bruce O'Connor  
Vice President & Treasurer

**TIDEWATER UTILITIES, INC.**

By: /s/ A. Bruce O'Connor (SEAL)  
A. Bruce O'Connor  
President

**UTILITY SERVICE AFFILIATES (PERTHAMBOY)  
INC.**

By: /s/ A. Bruce O'Connor (SEAL)  
A. Bruce O'Connor  
Vice President & Treasurer

**UTILITY SERVICE AFFILIATES INC.**

By: /s/ A. Bruce O'Connor (SEAL)  
A. Bruce O'Connor  
Treasurer

**WHITE MARSH ENVIRONMENTAL SYSTEMS, INC.**

By: /s/ A. Bruce O'Connor (SEAL)  
A. Bruce O'Connor  
President





# Amendment to Loan Documents

**THIS AMENDMENT TO LOAN DOCUMENTS** (this "**Amendment**") is made as of April 5, 2023 by and between **MIDDLESEX WATER COMPANY, PINELANDS WASTEWATER COMPANY, PINELANDS WATER COMPANY, TIDEWATER UTILITIES, INC., UTILITY SERVICE AFFILIATES (PERTH AMBOY) INC., UTILITY SERVICE AFFILIATES INC., and WHITE MARSH ENVIRONMENTAL SYSTEMS, INC.** (individually and collectively, the "**Borrower**"), and **PNC BANK, NATIONAL ASSOCIATION** (the "**Bank**").

## BACKGROUND

A. The Borrower or another obligor has executed and delivered to the Bank (or a predecessor which is now known by the Bank's name as set forth above), one or more promissory notes, letter agreements, loan agreements, security agreements, mortgages, pledge agreements, collateral assignments, and other agreements, instruments, certificates and documents, some or all of which are more fully described on attached Exhibit A, which is made a part of this Amendment (collectively as amended from time to time, the "**Loan Documents**") which evidence or secure some or all of the indebtedness and other obligations of the Borrower to the Bank for one or more loans or other extensions of credit (as used herein, collectively, together with the Obligations, if and as defined in the Loan Documents, the "**Obligations**"). Any initially capitalized terms used in this Amendment without definition shall have the meanings assigned to those terms in the Loan Documents.

B. The Borrower and the Bank desire to amend the Loan Documents as provided for in this Amendment.

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained and intending to be legally bound hereby, the parties hereto agree as follows:

1. Certain of the Loan Documents are amended as set forth in Exhibit A. Any and all references to any Loan Document in any other Loan Document shall be deemed to refer to such Loan Document as amended by this Amendment. This Amendment is deemed incorporated into each of the Loan Documents. To the extent that any term or provision of this Amendment is or may be inconsistent with any term or provision in any Loan Document, the terms and provisions of this Amendment shall control.

2. The Borrower hereby certifies that: (a) all of its representations and warranties in the Loan Documents, as amended by this Amendment, are, except as may otherwise be stated in this Amendment: (i) true and correct as of the date of this Amendment, (ii) ratified and confirmed without condition as if made anew, and (iii) incorporated into this Amendment by reference, (b) no Event of Default or event which, with the passage of time or the giving of notice or both, would constitute an Event of Default, exists under any Loan Document which will not be cured by the execution and effectiveness of this Amendment, (c) no consent, approval, order or authorization of, or registration or filing with, any third party is required in connection with the execution, delivery and carrying out of this Amendment or, if required, has been obtained, and (d) this Amendment has been duly authorized, executed and delivered so that it constitutes the legal, valid and binding obligation of the Borrower, enforceable in accordance with its terms. The Borrower confirms that the Obligations remain outstanding without defense, set off, counterclaim, discount or charge of any kind as of the date of this Amendment.

3. The Borrower hereby confirms that any collateral for the Obligations, including liens, security interests, mortgages, and pledges granted by the Borrower or third parties (if applicable), shall continue unimpaired and in full force and effect, and shall cover and secure all of the Borrower's existing and future Obligations to the Bank, as modified by this Amendment.

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4. As a condition precedent to the effectiveness of this Amendment, the Borrower shall comply with the terms and conditions (if any) specified in Exhibit A.

5. [Intentionally Omitted].

6. This Amendment may be signed in any number of counterpart copies and by the parties to this Amendment on separate counterparts, but all such copies shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Amendment by facsimile transmission shall be effective as delivery of a manually executed counterpart. Upon written request by the other party (which may be made by electronic mail), any party so executing this Amendment by facsimile transmission shall promptly deliver a manually executed counterpart, provided that any failure to do so shall not affect the validity of the counterpart executed by facsimile transmission.

7. Notwithstanding any other provision herein or in the other Loan Documents, the Borrower agrees that this Amendment, the Loan Documents, any other amendments thereto and any other information, notice, signature card, agreement or authorization related thereto (each, a "**Communication**") may, at the Bank's option, be in the form of an electronic record. Any Communication may, at the Bank's option, be signed or executed using electronic signatures. For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance by the Bank of a manually signed paper Communication which has been converted into electronic form (such as scanned into PDF format) for transmission, delivery and/or retention. The Borrower and the Bank acknowledge and agree that the methods for delivering Communications, including notices, under the Loan Documents include electronic transmittal to any electronic address provided by either party to the other party from time to time.

8. The Bank may modify this Amendment for the purposes of completing missing content or correcting erroneous content, without the need for a written amendment, provided that the Bank shall send a copy of any such modification to the Borrower (which notice may be given by electronic mail).

9. This Amendment will be binding upon and inure to the benefit of the Borrower and the Bank and their respective heirs, executors, administrators, successors and assigns.

10. This Amendment will be interpreted and the rights and liabilities of the parties hereto determined in accordance with the laws of the State identified in and governing the Loan Documents that are being amended hereby (the "**State**"), excluding its conflict of laws rules, including without limitation the Electronic Transactions Act (or equivalent) in such State (or, to the extent controlling, the laws of the United States of America, including without limitation the Electronic Signatures in Global and National Commerce Act). This Amendment has been delivered to and accepted by the Bank and will be deemed to be made in the State.

11. Except as amended hereby, the terms and provisions of the Loan Documents remain unchanged, are and shall remain in full force and effect unless and until modified or amended in writing in accordance with their terms, and are hereby ratified and confirmed. Except as expressly provided herein, this Amendment shall not constitute an amendment, waiver, consent or release with respect to any provision of any Loan Document, a waiver of any default or Event of Default under any Loan Document, or a waiver or release of any of the Bank's rights and remedies (all of which are hereby reserved). **The Borrower expressly ratifies and confirms the confession of judgment (if applicable) and dispute resolution, waiver of jury trial or arbitration provisions, as applicable, contained in the Loan Documents, all of which are incorporated herein by reference.**

WITNESS the due execution of this Amendment as a document under seal as of the date first written above.

**MIDDLESEX WATER COMPANY**

By: /s/ A. Bruce O'Connor (SEAL)

A. Bruce O'Connor  
Senior Vice President & Treasurer

**PINELANDS WASTEWATER COMPANY**

By: /s/ A. Bruce O'Connor (SEAL)

A. Bruce O'Connor  
Vice President & Treasurer

**PINELANDS WATER COMPANY**

By: /s/ A. Bruce O'Connor (SEAL)

A. Bruce O'Connor  
Vice President & Treasurer

**TIDEWATER UTILITIES, INC.**

By: /s/ A. Bruce O'Connor (SEAL)

A. Bruce O'Connor  
President

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

By: /s/ A. Bruce O'Connor (SEAL)

A. Bruce O'Connor  
Vice President & Treasurer

**SIGNATURES CONTINUE ON FOLLOWING PAGE**

**UTILITY SERVICE AFFILIATES INC.**

By: /s/ A. Bruce O'Connor (SEAL)

A. Bruce O'Connor  
Treasurer

**WHITE MARSH ENVIRONMENTAL SYSTEMS, INC.**

By: /s/ A. Bruce O'Connor (SEAL)

A. Bruce O'Connor  
President

**PNC BANK, NATIONAL ASSOCIATION**

By: /s/ Anthony Frasso (SEAL)

Print Name: Anthony Frasso  
Title: Senior Vice President

**EXHIBIT A TO  
AMENDMENT TO LOAN DOCUMENTS  
DATED AS OF APRIL 5, 2023**

- A. **Loan Documents.** The Loan Documents that are the subject of this Amendment include the following (as each of such documents has been amended, modified or otherwise supplemented previously):
1. Amended and Restated Revolving Line of Credit Note dated March 17, 2023 (“**Note**”), and
  2. All other documents, instruments, agreements, and certificates executed and delivered in connection with the Loan Documents listed in this Section A.
- B. **Amendment(s).** The Loan Documents are amended as follows:
1. Notwithstanding anything contained in the Note, any interest rate election Option exercised pursuant to any prior note that was amended and restated by the Note shall be governed by the original option selected by the Borrower contained in the prior note and not the provisions of the Note regarding the election of interest rate election Options. Any interest rate election Options exercised on or after the date of the Note shall be governed by the Note including any renewals of any existing interest rate options before the date of the Note.
- C. **Conditions to Effectiveness of Amendment.** The Bank’s willingness to agree to the amendments set forth in this Amendment is subject to the prior satisfaction of the following conditions:
1. Execution by all parties and delivery to the Bank of this Amendment.

MIDDLESEX WATER COMPANY

\$40,000,000 First Mortgage Scheduled Interest Rate Bonds, Series 2023A,  
due March 2, 2043

\_\_\_\_\_  
BOND PURCHASE AGREEMENT  
\_\_\_\_\_

Dated as of March 2, 2023

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MIDDLESEX WATER COMPANY  
485C Route 1 South  
Iselin, New Jersey 08830

\$40,000,000 First Mortgage Scheduled Interest Rate Bonds, Series 2023A,  
due March 2, 2043

Dated as of March 2, 2023

TO EACH OF THE PURCHASERS LISTED IN  
THE PURCHASER SCHEDULE HERETO:

Ladies and Gentlemen:

MIDDLESEX WATER COMPANY, a corporation organized and existing under the laws of the State of New Jersey (the “**Company**”), agrees with each of the Purchasers as follows:

**SECTION 1. AUTHORIZATION OF SERIES 2023A BONDS.**

The Company will authorize the issue and sale of \$40,000,000 aggregate principal amount of its 5.24% First Mortgage Scheduled Interest Rate Bonds, Series 2023A, due March 2, 2043 (the “**Series 2023A Bonds**”). The Series 2023A Bonds shall be substantially in the form set out in Exhibit A to the Fifty-Eighth Supplement (as hereinafter defined). The Series 2023A Bonds will be issued under and secured by that certain Indenture of Mortgage dated April 1, 1927 (the “**Original Mortgage Indenture**”), from the Company, as grantor, to U.S. Bank Trust Company Bank, National Association (as successor in interest to U.S. Bank National Association, the successor to Wachovia Bank, National Association, the successor to First Union National Bank, the successor to Meridian Bank, the successor to United Counties Trust Company, in turn the successor to Union County Trust Company), as trustee (the “**Trustee**”), as heretofore supplemented, including as supplemented by the Fifty-Eighth Supplemental Indenture dated as of March 1, 2023 (such Fifty-Eighth Supplemental Indenture being referred to herein as the “**Fifty-Eighth Supplement**”), which will be substantially in the form attached hereto as Schedule 1. The Original Indenture, as heretofore supplemented, including by the Fifty-Eighth Supplement, and as further supplemented or amended according to its terms, is hereinafter referred to as the “**Mortgage Indenture.**” The Series 2023A Bonds constitute bonds under the Mortgage Indenture and are secured thereunder on parity with other bonds issued and outstanding under the Mortgage Indenture. Certain capitalized and other terms used in this Agreement are defined in Schedule A and, for purposes of this Agreement, the rules of construction set forth in Section 24.4 shall govern. Terms used herein but not defined herein shall have the meanings set forth in the Mortgage Indenture.

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**SECTION 2. SALE AND PURCHASE OF SERIES 2023A BONDS.**

Subject to the terms and conditions of this Agreement, the Company will issue and sell to each Purchaser and each Purchaser will purchase from the Company, at the Closing provided for in Section 3, Series 2023A Bonds in the principal amount specified opposite such Purchaser's name in the Purchaser Schedule at the purchase price of 100% of the principal amount thereof. The Purchasers' obligations hereunder are several and not joint obligations and no Purchaser shall have any liability to any Person for the performance or non-performance of any obligation by any other Purchaser hereunder.

**SECTION 3. CLOSING.**

The sale and purchase of the Series 2023A Bonds to be purchased by each Purchaser shall occur at the offices of ArentFox Schiff LLP, 1185 Avenue of the Americas, Suite 3000, New York, New York 10036, at 11:00 a.m., New York time, at a closing (the "**Closing**") on March 2, 2023 or on such other Business Day thereafter as may be agreed upon by the Company and the Purchasers. At the Closing, the Company will deliver to each Purchaser the Series 2023A Bonds to be purchased by such Purchaser in the form of a single Series 2023A Bond (or such greater number of Series 2023A Bonds in denominations of at least \$100,000 as such Purchaser may request) dated the date of the Closing and registered in such Purchaser's name (or in the name of its nominee), against delivery by such Purchaser to the Company or its order of immediately available funds in the amount of the purchase price therefor by wire transfer to the account of the Company set forth in the funding instructions delivered pursuant to Section 4.10. If at the Closing the Company shall fail to tender such Series 2023A Bonds to any Purchaser as provided above in this Section 3, or any of the conditions specified in Section 4 shall not have been fulfilled to such Purchaser's satisfaction, such Purchaser shall, at its election, be relieved of all further obligations under this Agreement, without thereby waiving any rights such Purchaser may have by reason of such failure by the Company to tender such Series 2023A Bonds or any of the conditions specified in Section 4 not having been fulfilled to such Purchaser's satisfaction.

**SECTION 4. CONDITIONS TO CLOSING.**

Each Purchaser's obligation to purchase and pay for the Series 2023A Bonds to be sold to such Purchaser at the Closing is subject to the fulfillment to such Purchaser's satisfaction, prior to or at the Closing, of the following conditions:

**Section 4.1. Representations and Warranties.** The representations and warranties of the Company in this Agreement shall be correct when made and at the Closing.

**Section 4.2. Performance; No Default.** The Company and the Trustee shall have performed and complied with all agreements and conditions contained in each Transaction Document required to be performed or complied with by such Person prior to or at the Closing. Before and after giving effect to the issue and sale of the Series 2023A Bonds (and the application of the proceeds thereof as contemplated by Section 5.14), no Default or Event of Default shall have occurred and be continuing.

**Section 4.3. Compliance Certificates.**

(a) *Officer's Certificate.* The Company shall have delivered to such Purchaser an Officer's Certificate, dated the date of the Closing, certifying that the conditions specified in Sections 4.1, 4.2 and 4.9 have been fulfilled.

(b) *Secretary's Certificate.* The Company shall have delivered to such Purchaser a certificate of its Secretary or Assistant Secretary, dated the date of the Closing, certifying as to (1) the resolutions attached thereto and other corporate proceedings relating to the authorization, execution and delivery of this Agreement, the Series 2023A Bonds and the Fifty-Eighth Supplement and (2) the Company's organizational documents as then in effect.

(c) *Certification of the Mortgage Indenture.* Each Purchaser shall have received a copy of the Mortgage Indenture (including all amendments and supplements thereto), certified by the Company as of the date of the Closing, exclusive of property exhibits, recording information and the like.

**Section 4.4. Opinions of Counsel.** Such Purchaser shall have received opinions in form and substance satisfactory to such Purchaser, dated the date of the Closing (a) from Saul Ewing LLP, counsel for the Company, covering the matters set forth in Schedule 4.4(a) and covering such other matters incident to the transactions contemplated hereby as such Purchaser or its counsel may reasonably request (and the Company hereby instructs its counsel to deliver such opinion to the Purchasers) and (b) from ArentFox Schiff LLP, the Purchasers' special counsel in connection with such transactions, substantially in the form set forth in Schedule 4.4(b) and covering such other matters incident to such transactions as such Purchaser may reasonably request.

**Section 4.5. Purchase Permitted By Applicable Law, Etc.** On the date of the Closing, such Purchaser's purchase of Series 2023A Bonds shall (a) be permitted by the laws and regulations of each jurisdiction to which such Purchaser is subject, without recourse to provisions (such as section 1405(a) (8) of the New York Insurance Law) permitting limited investments by insurance companies without restriction as to the character of the particular investment, (b) not violate any applicable law or regulation (including Regulation T, U or X of the Board of Governors of the Federal Reserve System) and (c) not subject such Purchaser to any tax, penalty or liability under or pursuant to any applicable law or regulation. If requested by such Purchaser not later than 10 days prior to the date of the Closing, such Purchaser shall have received an Officer's Certificate certifying as to such matters of fact as such Purchaser may reasonably specify to enable such Purchaser to determine whether such purchase is so permitted.

**Section 4.6. Authentication and Sale of Other Series 2023A Bonds.** The Series 2023A Bonds to be purchased by each Purchaser shall have been duly authenticated and delivered by the Trustee and contemporaneously with the Closing, the Company shall sell to each other Purchaser and each other Purchaser shall purchase the Series 2023A Bonds to be purchased by it at the Closing as specified in the Purchaser Schedule.

**Section 4.7. Payment of Special Counsel Fees.** Without limiting Section 15.1, the Company shall have paid on or before the Closing the fees, charges and disbursements of the Purchasers' special counsel referred to in Section 4.4(b) to the extent reflected in a statement of such counsel rendered to the Company at least one Business Day prior to the Closing.

**Section 4.8. Private Placement Number.** A Private Placement Number issued by CUSIP Global Services (in cooperation with the SVO) shall have been obtained for the Series 2023A Bonds.

**Section 4.9. Changes in Corporate Structure.** The Company shall not have changed its jurisdiction of incorporation or been a party to any merger or consolidation or succeeded to all or any substantial part of the liabilities of any other entity, at any time following the date of the most recent financial statements referred to in Schedule 5.5.

**Section 4.10. Funding Instructions.** At least three Business Days prior to the date of the Closing, each Purchaser shall have received written instructions signed by a Responsible Officer on letterhead of the Company directing the manner of the payment of the purchase price of the Series 2023A Bonds and setting forth (a) the name and address of the transferee bank, (b) such transferee bank's ABA number, (c) the account name and number into which the purchase price for the Series 2023A Bonds is to be deposited and (d) the name and telephone number of a Responsible Officer of the Company responsible for (1) verifying receipt of the funds and (2) the information set forth in the instructions. At the request of any Purchaser, an identifiable Responsible Officer of the Company shall confirm the written instructions by a live videoconference made available to the Purchasers no later than two Business Days prior to the date of the Closing.

**Section 4.11. Mortgage Indenture Conditions.** All conditions precedent set forth in the Mortgage Indenture with respect to the execution, delivery and authentication of the Series 2023A Bonds shall have been satisfied, and the Purchaser shall have received copies of all certificates and opinions required to be delivered to the Trustee under the Mortgage Indenture with respect to the issuance and authentication of the Series 2023A Bonds.

**Section 4.12. Execution and Delivery and Filing and Recording of the Fifty-Eighth Supplement.** The Fifty-Eighth Supplement shall have been duly executed and delivered by the Company and the Trustee, and the Company shall have filed, or delivered for recordation, the Fifty-Eighth Supplement (and financing statements in respect thereof shall have been filed, if necessary) in such manner and in such places as is required by law (and no other instruments are required to be filed) to establish, preserve, perfect and protect the direct security interest and Lien upon the mortgaged property created by the Mortgage Indenture and the Company shall have delivered to such Purchaser or its special counsel satisfactory evidence of such filings and recordings.

**Section 4.13. Proceedings and Documents.** All corporate and other proceedings in connection with the transactions contemplated by this Agreement and the Mortgage Indenture and all documents and instruments incident to such transactions shall be satisfactory to such Purchaser and its special counsel, and such Purchaser and its special counsel shall have received all such

counterpart originals or certified or other copies of such documents as such Purchaser or such special counsel may reasonably request.

**SECTION 5. REPRESENTATIONS AND WARRANTIES OF THE COMPANY.**

The Company represents and warrants to each Purchaser that:

**Section 5.1. Organization; Power and Authority.** The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of New Jersey, the only state in which the Company is required to qualify to do business. The Company has the corporate power and authority to own or hold under lease the properties it purports to own or hold under lease, to transact the business it transacts and proposes to transact, to execute and deliver this Agreement and the Series 2023A Bonds (and had the corporate power and authority to execute and deliver the Mortgage Indenture, including the Fifty-Eighth Supplement, at the time of execution and delivery thereof) and to perform the provisions of the Transaction Documents.

**Section 5.2. Authorization, Etc.** The Company has taken all necessary corporate action to authorize the execution, delivery and performance of the Transaction Documents, and the Transaction Documents (other than the Series 2023A Bonds) constitute, and when the 2023A Bonds are executed, issued and delivered by the Company and authenticated by the Trustee and paid for by the Purchasers, each Series 2023A Bond will constitute, a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except as such enforceability may be limited by (1) applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (2) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

**Section 5.3. Disclosure.** The Transaction Documents, the financial statements listed in Schedule 5.5 and the documents, certificates or other writings delivered to the Purchasers by or on behalf of the Company prior to January 11, 2023 in connection with the transactions contemplated hereby and identified in Schedule 5.3 (the Transaction Documents and such documents, certificates or other writings and such financial statements delivered to each Purchaser being referred to, collectively, as the "**Disclosure Documents**"), taken as a whole, do not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein not misleading in light of the circumstances under which they were made. Except as disclosed in the Disclosure Documents, since December 31, 2022, there has been no change in the financial condition, operations, business or properties of the Company or any Subsidiary except changes that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

**Section 5.4. Organization and Ownership of Shares of Subsidiaries; Affiliates.**

(a) Schedule 5.4 contains (except as noted therein) complete and correct lists of (1) the Company's Subsidiaries, showing, as to each Subsidiary, the name thereof, the jurisdiction of its organization, the percentage of shares of each class of its capital stock or similar equity interests outstanding owned by the Company and each other Subsidiary, (2)



the Company's Affiliates, other than Subsidiaries, and (3) the Company's directors and senior officers.

(b) All of the outstanding shares of capital stock or similar equity interests of each Subsidiary shown in Schedule 5.4 as being owned by the Company and its Subsidiaries have been validly issued, are fully paid and non-assessable and are owned by the Company or another Subsidiary free and clear of any Lien that is prohibited by this Agreement or the Mortgage Indenture.

(c) Each Subsidiary is a corporation or other legal entity duly organized, validly existing and, where applicable, in good standing under the laws of its jurisdiction of organization, and is duly qualified as a foreign corporation or other legal entity and, where applicable, is in good standing in each jurisdiction in which such qualification is required by law, other than those jurisdictions as to which the failure to be so qualified or in good standing would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Each such Subsidiary has the corporate or other power and authority to own or hold under lease the properties it purports to own or hold under lease and to transact the business it transacts and proposes to transact.

(d) No Subsidiary is subject to any legal, regulatory, contractual or other restriction (other than the agreements listed on Schedule 5.4 and customary limitations imposed by corporate law or similar statutes) restricting the ability of such Subsidiary to pay dividends out of profits or make any other similar distributions of profits to the Company or any of its Subsidiaries that owns outstanding shares of capital stock or similar equity interests of such Subsidiary.

**Section 5.5. Financial Statements; Material Liabilities.** The Company has delivered to each Purchaser copies of the financial statements of the Company and its Subsidiaries listed on Schedule 5.5. All of such financial statements (including in each case the related schedules and notes) fairly present in all material respects the consolidated financial position of the Company and its Subsidiaries as of the respective dates specified in such Schedule and the consolidated results of their operations and cash flows for the respective periods so specified and have been prepared in accordance with GAAP consistently applied throughout the periods involved except as set forth in the notes thereto (subject, in the case of any interim financial statements, to normal year-end adjustments). The Company and its Subsidiaries do not have any Material liabilities that are not disclosed in the Disclosure Documents.

**Section 5.6. Compliance with Laws, Other Instruments, Etc.** The execution, delivery and performance by the Company of the Transaction Documents (including the prior execution and delivery of the Mortgage Indenture and the Fifty-Eighth Supplement) will not (1) contravene, result in any breach of, or constitute a default under, or result in the creation of any Lien (other than the Lien of the Mortgage Indenture) in respect of any property of the Company or any Subsidiary under, any indenture, mortgage, deed of trust, loan, purchase or credit agreement, lease, corporate charter, regulations or by-laws, shareholders agreement or any other agreement or instrument to which the Company or any Subsidiary is bound or by which the Company or any Subsidiary or any of their respective properties may be bound or affected, (2) conflict with or result

in a breach of any of the terms, conditions or provisions of any order, judgment, decree or ruling of any court, arbitrator or Governmental Authority applicable to the Company or any Subsidiary or (3) violate any provision of any statute or other rule or regulation of any Governmental Authority applicable to the Company or any Subsidiary.

**Section 5.7. Governmental Authorizations, Etc.** Except for the filing of the Fifty-Eighth Supplement in the appropriate filing office in Middlesex County, New Jersey and Union County, New Jersey (which filings will be made at Closing), no consent, approval or authorization of, or registration, filing or declaration with, any Governmental Authority is required in connection with the execution, delivery or performance by the Company of this Agreement, the Fifty-Eighth Supplement or the Series 2023A Bonds.

**Section 5.8. Litigation; Observance of Statutes and Orders.**

(a) There are no actions, suits, investigations or proceedings pending or, to the best knowledge of the Company, threatened against or affecting the Company or any Subsidiary or any property of the Company or any Subsidiary in any court or before any arbitrator of any kind or before or by any Governmental Authority that would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Neither the Company nor any Subsidiary is (1) in violation of any order, judgment, decree or ruling of any court, any arbitrator of any kind or any Governmental Authority or (2) in violation of any applicable law, ordinance, rule or regulation of any Governmental Authority (including Environmental Laws, the USA PATRIOT Act or any of the other laws and regulations that are referred to in Section 5.16), which violation would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

**Section 5.9. Taxes.** The Company and its Subsidiaries have filed all tax returns that are required to have been filed in any jurisdiction, and have paid all taxes shown to be due and payable on such returns and all other taxes and assessments payable by them, to the extent such taxes and assessments have become due and payable and before they have become delinquent, except for any taxes and assessments (a) the amount of which, individually or in the aggregate, is not Material or (b) the amount, applicability or validity of which is currently being contested in good faith by appropriate proceedings and with respect to which the Company or a Subsidiary, as the case may be, has established adequate reserves in accordance with GAAP. The charges, accruals and reserves on the books of the Company and its Subsidiaries in respect of U.S. federal, state or other taxes for all fiscal periods are adequate. The U.S. federal income tax liabilities of the Company and its Subsidiaries have been finally determined (whether by reason of completed audits or the statute of limitations having run) for all fiscal years up to and including the fiscal year ended December 31, 2018.

**Section 5.10. Title to Property; Leases.** The Company and its Subsidiaries have good and sufficient title to their respective Material properties, including all such properties reflected in the most recent audited balance sheet referred to in Section 5.5 or purported to have been acquired by the Company or any Subsidiary after such date (except as sold or otherwise disposed of in the

ordinary course of business), in each case free and clear of Liens prohibited by this Agreement or the Mortgage Indenture, except for those defects in title that, individually or in the aggregate, would not have a Material Adverse Effect. All Material leases are valid and subsisting and are in full force and effect in all material respects.

**Section 5.11. Licenses, Permits, Etc.** The Company and its Subsidiaries own or possess all licenses, permits, franchises, authorizations, patents, copyrights, proprietary software, service marks, trademarks and trade names, or rights thereto, that individually or in the aggregate are Material, without known conflict with the rights of others, except for those conflicts that, individually or in the aggregate, would not have a Material Adverse Effect.

**Section 5.12. Compliance with Employee Benefit Plans.**

(a) The Company and each ERISA Affiliate have operated and administered each Plan in compliance with all applicable laws except for such instances of noncompliance as have not resulted in and could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. Neither the Company nor any ERISA Affiliate has incurred any liability pursuant to Title I or IV of ERISA (except for ongoing funding purposes) or the penalty or excise tax provisions of the Code relating to employee benefit plans (as defined in section 3 of ERISA), and no event, transaction or condition has occurred or exists that would, individually or in the aggregate, reasonably be expected to result in the incurrence of any such liability by the Company or any ERISA Affiliate, or in the imposition of any Lien on any of the rights, properties or assets of the Company or any ERISA Affiliate, in either case pursuant to Title I or IV of ERISA or to section 430(k) of the Code or to any such penalty or excise tax provisions under the Code or federal law or section 4068 of ERISA or by the granting of a security interest in connection with the amendment of a Plan, other than such liabilities or Liens as would not be individually or in the aggregate Material.

(b) The present value of the aggregate benefit liabilities under each of the Plans (other than Multiemployer Plans), determined as of the end of such Plan's most recently ended plan year on the basis of the actuarial assumptions specified for funding purposes in such Plan's most recent actuarial valuation report, did not exceed the aggregate current value of the assets of such Plan allocable to such benefit liabilities.

(c) The Company and its ERISA Affiliates do not contribute to, and have never contributed to, a Multiemployer Plan.

(d) The expected postretirement benefit obligation (determined as of the last day of the Company's most recently ended fiscal year in accordance with Financial Accounting Standards Board Accounting Standards Codification Topic 715-60, without regard to liabilities attributable to continuation coverage mandated by section 4980B of the Code) of the Company and its Subsidiaries is not Material.

(e) The execution and delivery of this Agreement and the issuance and sale of the Series 2023A Bonds hereunder will not involve any transaction that is subject to the

prohibitions of section 406 of ERISA or in connection with which a tax could be imposed pursuant to section 4975(c)(1)(A)-(D) of the Code. The representation by the Company to each Purchaser in the first sentence of this Section 5.12(e) is made in reliance upon and subject to the accuracy of such Purchaser's representation in Section 6.2 as to the sources of the funds to be used to pay the purchase price of the Series 2023A Bonds to be purchased by such Purchaser.

(f) The Company and its Subsidiaries do not have any Non-U.S. Plans.

**Section 5.13. Private Offering by the Company.** Neither the Company nor anyone acting on its behalf has offered the Series 2023A Bonds or any similar Securities for sale to, or solicited any offer to buy the Series 2023A Bonds or any similar Securities from, or otherwise approached or negotiated in respect thereof with, any Person other than the Purchasers, each of which has been offered the Series 2023A Bonds at a private sale for investment. Neither the Company nor anyone acting on its behalf has taken, or will take, any action that would subject the issuance or sale of the Series 2023A Bonds to the registration requirements of section 5 of the Securities Act or to the registration requirements of any Securities or blue sky laws of any applicable jurisdiction.

**Section 5.14. Use of Proceeds; Margin Regulations.** The Company will apply the proceeds of the sale of the Series 2023A Bonds hereunder to refinance existing indebtedness and/or for other general corporate purposes. No part of the proceeds from the sale of the Series 2023A Bonds hereunder will be used, directly or indirectly, for the purpose of buying or carrying any margin stock within the meaning of Regulation U of the Board of Governors of the Federal Reserve System (12 CFR 221), or for the purpose of buying or carrying or trading in any Securities under such circumstances as to involve the Company in a violation of Regulation X of said Board (12 CFR 224) or to involve any broker or dealer in a violation of Regulation T of said Board (12 CFR 220). Margin stock does not constitute any of the value of the consolidated assets of the Company and its Subsidiaries and the Company does not have any present intention that margin stock will constitute any of the value of such assets. As used in this Section, the terms “margin stock” and “purpose of buying or carrying” shall have the meanings assigned to them in said Regulation U.

**Section 5.15. Existing Indebtedness.**

(a) Except as described therein, Schedule 5.15 sets forth a complete and correct list of all outstanding Indebtedness of the Company and its Subsidiaries as of February 28, 2023 (including descriptions of the obligors and obligees, principal amounts outstanding, any collateral therefor and any Guaranty thereof), since which date there has been no Material change in the amounts, interest rates, sinking funds, installment payments or maturities of the Indebtedness of the Company or its Subsidiaries. Neither the Company nor any Subsidiary is in default and no waiver of default is currently in effect, in the payment of any principal or interest on any Indebtedness of the Company or such Subsidiary and no event or condition exists with respect to any Indebtedness of the Company or any Subsidiary the outstanding principal amount of which exceeds \$1,000,000 that would permit (or that with notice or the lapse of time, or both, would permit) one or more Persons to cause such Indebtedness to become due and payable before its stated maturity or before its regularly scheduled dates of payment.

(b) Neither the Company nor any Subsidiary is a party to, or otherwise subject to any provision contained in, any instrument evidencing Indebtedness of the Company or such Subsidiary, any agreement relating thereto or any other agreement (including its charter or any other organizational document) which limits the amount of, or otherwise imposes restrictions on the incurring of, Indebtedness of the Company, except as disclosed in Schedule 5.15.

**Section 5.16. Foreign Assets Control Regulations, Etc.**

(a) Neither the Company nor any Controlled Entity (1) is a Blocked Person, (2) has been notified that its name appears or may in the future appear on a State Sanctions List or (3) is a target of sanctions that have been imposed by the United Nations or the European Union.

(b) Neither the Company nor any Controlled Entity (1) has violated, been found in violation of, or been charged or convicted under, any applicable U.S. Economic Sanctions Laws, Anti-Money Laundering Laws or Anti-Corruption Laws or (2) to the Company's knowledge, is under investigation by any Governmental Authority for possible violation of any U.S. Economic Sanctions Laws, Anti-Money Laundering Laws or Anti-Corruption Laws.

(c) No part of the proceeds from the sale of the Series 2023A Bonds hereunder:

(1) constitutes or will constitute funds obtained on behalf of any Blocked Person or will otherwise be used by the Company or any Controlled Entity, directly or indirectly, (i) in connection with any investment in, or any transactions or dealings with, any Blocked Person, (ii) for any purpose that would cause any Purchaser to be in violation of any U.S. Economic Sanctions Laws or (iii) otherwise in violation of any U.S. Economic Sanctions Laws;

(2) will be used, directly or indirectly, in violation of, or cause any Purchaser to be in violation of, any applicable Anti-Money Laundering Laws; or

(3) will be used, directly or indirectly, for the purpose of making any improper payments, including bribes, to any Governmental Official or commercial counterparty in order to obtain, retain or direct business or obtain any improper advantage, in each case which would be in violation of, or cause any Purchaser to be in violation of, any applicable Anti-Corruption Laws.

(d) The Company has established procedures and controls which it reasonably believes are adequate (and otherwise comply with applicable law) to ensure that the Company and each Controlled Entity is and will continue to be in compliance with all applicable U.S. Economic Sanctions Laws, Anti-Money Laundering Laws and Anti-Corruption Laws.

**Section 5.17. Status under Certain Statutes.** Neither the Company nor any Subsidiary is subject to regulation under the Investment Company Act of 1940, the Public Utility Holding Company Act of 2005, the ICC Termination Act of 1995, or the Federal Power Act.

**Section 5.18. Environmental Matters.**

(a) Neither the Company nor any Subsidiary has knowledge of any claim or has received any notice of any claim and no proceeding has been instituted asserting any claim against the Company or any of its Subsidiaries or any of their respective real properties or other assets now or formerly owned, leased or operated by any of them, alleging any damage to the environment or violation of any Environmental Laws, except, in each case, such as could not reasonably be expected to result in a Material Adverse Effect.

(b) Neither the Company nor any Subsidiary has knowledge of any facts which would give rise to any claim, public or private, of violation of Environmental Laws or damage to the environment emanating from, occurring on or in any way related to real properties now or formerly owned, leased or operated by any of them or to other assets or their use, except, in each case, such as could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(c) Neither the Company nor any Subsidiary has stored any Hazardous Materials on real properties now or formerly owned, leased or operated by any of them in a manner which is contrary to any Environmental Law that could, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(d) Neither the Company nor any Subsidiary has disposed of any Hazardous Materials in a manner which is contrary to any Environmental Law that could, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(e) All buildings on all real properties now owned, leased or operated by the Company or any Subsidiary are in compliance with applicable Environmental Laws, except where failure to comply could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

**Section 5.19. Lien of the Mortgage Indenture.** The provisions of the Mortgage Indenture (including the Fifty-Eighth Supplement) are effective to create in favor of the Trustee, for the equal and ratable benefit of the holders of the Series 2023A Bonds and the holders of the other bonds issued and outstanding under the Mortgage Indenture, a legal, valid and enforceable Lien on, and security interest in and to, all right, title and interest of the Company in the mortgaged property. The Mortgage Indenture (including the Fifty-Eighth Supplement) has been duly recorded or filed in each place in which such recording or filing is required to protect and preserve the Lien of the Mortgage Indenture (including the Fifty-Eighth Supplement) as a valid, perfected and continuing first priority Lien (subject to Permissible Encumbrances) on, and security interest in and to, all right, title and interest of the Company in the mortgaged property and all taxes and recording or filing fees required to be paid in connection with the execution, recording or filing of the Mortgage Indenture (including the Fifty-Eighth Supplement) have been duly paid.

**Section 5.20. Series 2023A Bonds Pari Passu.** The Company's obligations under the Series 2023A Bonds rank pari passu in right of payment, without preference or priority, with the other bonds issued and outstanding under the Mortgage Indenture.

**Section 5.21. No Mortgage Indenture Default.** No "event of default" under the Mortgage Indenture exists or will exist immediately after giving effect to the transactions contemplated by this Agreement and the other Transaction Documents and the applications of the proceeds from the issue and sale of the Series 2023A Bonds.

**SECTION 6. REPRESENTATIONS OF THE PURCHASERS.**

**Section 6.1. Purchase for Investment.** Each Purchaser severally represents that (a) it is purchasing the Series 2023A Bonds for its own account or for one or more separate accounts maintained by such Purchaser or for the account of one or more pension or trust funds and not with a view to the distribution thereof, *provided* that the disposition of such Purchaser's or their property shall at all times be within such Purchaser's or their control, and (b) it is (1) a Qualified Institutional Buyer or (2) an "accredited investor" as defined in Rule 501(a)(1), (2), (3) or (7) of Regulation D under the Securities Act. Each Purchaser understands that the Series 2023A Bonds have not been registered under the Securities Act and may be resold only if registered pursuant to the provisions of the Securities Act or if an exemption from registration is available, except under circumstances where neither such registration nor such an exemption is required by law, and that the Company is not required to register the Series 2023A Bonds.

**Section 6.2. Source of Funds.** Each Purchaser severally represents that at least one of the following statements is an accurate representation as to each source of funds (a "Source") to be used by such Purchaser to pay the purchase price of the Series 2023A Bonds to be purchased by such Purchaser hereunder:

(a) the Source is an "insurance company general account" (as the term is defined in the United States Department of Labor's Prohibited Transaction Exemption ("PTE") 95-60) in respect of which the reserves and liabilities (as defined by the annual statement for life insurance companies approved by the NAIC (the "NAIC Annual Statement")) for the general account contract(s) held by or on behalf of any employee benefit plan together with the amount of the reserves and liabilities for the general account contract(s) held by or on behalf of any other employee benefit plans maintained by the same employer (or affiliate thereof as defined in PTE 95-60) or by the same employee organization in the general account do not exceed 10% of the total reserves and liabilities of the general account (exclusive of separate account liabilities) *plus* surplus as set forth in the NAIC Annual Statement filed with such Purchaser's state of domicile; or

(b) the Source is a separate account that is maintained solely in connection with such Purchaser's fixed contractual obligations under which the amounts payable, or credited, to any employee benefit plan (or its related trust) that has any interest in such separate account (or to any participant or beneficiary of such plan (including any annuitant)) are not affected in any manner by the investment performance of the separate account; or

(c) the Source is either (1) an insurance company pooled separate account, within the meaning of PTE 90-1 or (2) a bank collective investment fund, within the meaning of PTE 91-38 and, except as disclosed by such Purchaser to the Company in writing pursuant to this clause (c), no employee benefit plan or group of plans maintained by the same employer or employee organization beneficially owns more than 10% of all assets allocated to such pooled separate account or collective investment fund; or

(d) the Source constitutes assets of an “investment fund” (within the meaning of Part VI of PTE 84-14 (the “**QPAM Exemption**”)) managed by a “qualified professional asset manager” or “QPAM” (within the meaning of Part VI of the QPAM Exemption), no employee benefit plan’s assets that are managed by the QPAM in such investment fund, when combined with the assets of all other employee benefit plans established or maintained by the same employer or by an affiliate (within the meaning of Part VI(c)(1) of the QPAM Exemption) of such employer or by the same employee organization and managed by such QPAM, represent more than 20% of the total client assets managed by such QPAM, the conditions of Part I(c) and (g) of the QPAM Exemption are satisfied, neither the QPAM nor a Person controlling or controlled by the QPAM maintains an ownership interest in the Company that would cause the QPAM and the Company to be “related” within the meaning of Part VI(h) of the QPAM Exemption and (1) the identity of such QPAM and (2) the names of any employee benefit plans whose assets in the investment fund, when combined with the assets of all other employee benefit plans established or maintained by the same employer or by an affiliate (within the meaning of Part VI(c)(1) of the QPAM Exemption) of such employer or by the same employee organization, represent 10% or more of the assets of such investment fund, have been disclosed to the Company in writing pursuant to this clause (d); or

(e) the Source constitutes assets of a “plan(s)” (within the meaning of Part IV(h) of PTE 96-23 (the “**INHAM Exemption**”)) managed by an “in-house asset manager” or “INHAM” (within the meaning of Part IV(a) of the INHAM Exemption), the conditions of Part I(a), (g) and (h) of the INHAM Exemption are satisfied, neither the INHAM nor a Person controlling or controlled by the INHAM (applying the definition of “control” in Part IV(d)(3) of the INHAM Exemption) owns a 10% or more interest in the Company and (1) the identity of such INHAM and (2) the name(s) of the employee benefit plan(s) whose assets constitute the Source have been disclosed to the Company in writing pursuant to this clause (e); or

(f) the Source is a governmental plan; or

(g) the Source is one or more employee benefit plans, or a separate account or trust fund comprised of one or more employee benefit plans, each of which has been identified to the Company in writing pursuant to this clause (g); or

(h) the Source does not include assets of any employee benefit plan, other than a plan exempt from the coverage of ERISA.



As used in this Section 6.2, the terms “**employee benefit plan**,” “**governmental plan**,” and “**separate account**” shall have the respective meanings assigned to such terms in section 3 of ERISA.

**SECTION 7. INFORMATION AS TO COMPANY.**

**Section 7.1. Financial and Business Information.** The Company shall deliver to each holder of a Series 2023A Bond that is an Institutional Investor, which delivery may be made in accordance with Section 7.4:

(a) *Quarterly Statements* — within 60 days (or such shorter period as is 15 days greater than the period applicable to the filing of the Company’s Quarterly Report on Form 10-Q (the “**Form 10-Q**”) with the SEC regardless of whether the Company is subject to the filing requirements thereof) after the end of each quarterly fiscal period in each fiscal year of the Company (other than the last quarterly fiscal period of each such fiscal year), duplicate copies of

(1) a consolidated balance sheet of the Company and its Subsidiaries as at the end of such quarter, and

(2) consolidated statements of income, changes in shareholders’ equity and cash flows of the Company and its Subsidiaries, for such quarter and (in the case of the second and third quarters) for the portion of the fiscal year ending with such quarter,

setting forth in each case in comparative form the figures for the corresponding periods in the previous fiscal year, all in reasonable detail, prepared in accordance with GAAP applicable to quarterly financial statements generally, and certified by a Senior Financial Officer as fairly presenting, in all material respects, the financial position of the companies being reported on and their results of operations and cash flows, subject to changes resulting from year-end adjustments;

(b) *Annual Statements* — within 105 days (or such shorter period as is 15 days greater than the period applicable to the filing of the Company’s Annual Report on Form 10-K (the “**Form 10-K**”) with the SEC regardless of whether the Company is subject to the filing requirements thereof) after the end of each fiscal year of the Company, duplicate copies of

(1) a consolidated balance sheet of the Company and its Subsidiaries as at the end of such year, and

(2) consolidated statements of income, changes in shareholders’ equity and cash flows of the Company and its Subsidiaries for such year,

setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail, prepared in accordance with GAAP, and accompanied by an opinion

thereon (without a “going concern” or similar qualification or exception and without any qualification or exception as to the scope of the audit on which such opinion is based) of independent public accountants of recognized national standing or otherwise reasonably acceptable to the Required Holders, which opinion shall state that such financial statements present fairly, in all material respects, the financial position of the companies being reported upon and their results of operations and cash flows and have been prepared in conformity with GAAP, and that the examination of such accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards, and that such audit provides a reasonable basis for such opinion in the circumstances;

(c) *SEC and Other Reports* — promptly upon their becoming available, one copy of (1) each financial statement, report, notice, proxy statement or similar document sent by the Company or any Subsidiary (1) to its principal lending banks as a whole (excluding information sent to such banks in the ordinary course of administration of a bank facility, such as information relating to pricing and borrowing availability) or (2) to its public Securities holders generally, and (2) each regular or periodic report, each registration statement (without exhibits except as expressly requested by such holder), and each prospectus and all amendments thereto filed by the Company or any Subsidiary with the SEC;

(d) *Notice of Default or Event of Default* — promptly, and in any event within five days after a Responsible Officer becoming aware of the existence of any Default or Event of Default or “event of default” under and as defined in the Mortgage Indenture, a written notice specifying the nature and period of existence thereof and what action the Company is taking or proposes to take with respect thereto;

(e) *Employee Benefits Matters* — promptly, and in any event within 10 days after a Responsible Officer becoming aware of any of the following, a written notice setting forth the nature thereof and the action, if any, that the Company or an ERISA Affiliate proposes to take with respect thereto:

(1) with respect to any Plan, any reportable event, as defined in section 4043(c) of ERISA and the regulations thereunder, for which notice thereof has not been waived pursuant to such regulations as in effect on the date of this Agreement;

(2) the taking by the PBGC of steps to institute, or the threatening by the PBGC of the institution of, proceedings under section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan, or the receipt by the Company or any ERISA Affiliate of a notice from a Multiemployer Plan that such action has been taken by the PBGC with respect to such Multiemployer Plan;

(3) any event, transaction or condition that could result in the incurrence of any liability by the Company or any ERISA Affiliate pursuant to Title I or IV of ERISA or the penalty or excise tax provisions of the Code relating to employee

benefit plans, or in the imposition of any Lien on any of the rights, properties or assets of the Company or any ERISA Affiliate pursuant to Title I or IV of ERISA or such penalty or excise tax provisions, if such liability or Lien, taken together with any other such liabilities or Liens then existing, would reasonably be expected to have a Material Adverse Effect; or

(4) receipt of notice of the imposition of a Material financial penalty (which for this purpose shall mean any tax, penalty or other liability, whether by way of indemnity or otherwise) with respect to one or more Non-U.S. Plans;

(f) *Supplemental Indentures* — promptly, and in any event within 10 days after the execution and delivery thereof, a copy of any supplemental indenture to the Mortgage Indenture that the Company from time to time may hereafter execute and deliver which amends the Indenture in any material respect, *provided* that the Company shall not be required to deliver a copy of any supplemental indenture that is executed and delivered solely to (1) evidence a new series of bonds or (2) subject additional property to the Lien of the Mortgage Indenture;

(g) *Credit Rating* — promptly following the occurrence thereof, notice of any change in the Corporate Credit Rating or the credit rating for the Rated Bonds; and

(h) *Requested Information* — with reasonable promptness, such other data and information relating to the business, operations, affairs, financial condition, assets or properties of the Company or any of its Subsidiaries (including actual copies of the Company's Form 10-Q and Form 10-K) or relating to the ability of the Company to perform its obligations hereunder, under the Series 2023A Bonds or under any other Transaction Document as from time to time may be reasonably requested by any such holder of a Series 2023A Bond.

**Section 7.2. Officer's Certificate.** Each set of financial statements delivered to a holder of a Series 2023A Bond pursuant to Section 7.1(a) or Section 7.1(b), shall be accompanied by a certificate of a Senior Financial Officer the delivery of which may be made in accordance with Section 7.4:

(a) *Covenant Compliance* — if the Mortgage Indenture included one or more financial covenants during the quarterly or annual period covered by the financial statements then being furnished, setting forth the information from such financial statements that is required in order to establish whether the Company was in compliance with each such financial covenant during such quarterly or annual period (including with respect to each such provision that involves mathematical calculations, the information from such financial statements that is required to perform such calculations) and detailed calculations of the maximum or minimum amount, ratio or percentage, as the case may be, permissible under the terms of such financial covenant, and the calculation of the amount, ratio or percentage then in existence. In the event that the Company or any Subsidiary has made an election to measure any financial liability using fair value (which election is being disregarded for purposes of determining compliance with any such financial covenant or

this Agreement pursuant to Section 22.2) as to the period covered by any such financial statement, such Senior Financial Officer's certificate as to such period shall include a reconciliation from GAAP with respect to such election; and

(b) *Event of Default* — certifying that such Senior Financial Officer has reviewed the relevant terms hereof and of the Mortgage Indenture and has made, or caused to be made, under his or her supervision, a review of the transactions and conditions of the Company and its Subsidiaries from the beginning of the quarterly or annual period covered by the statements then being furnished to the date of the certificate and that such review shall not have disclosed the existence during such period of any condition or event that constitutes a Default or an Event of Default or an "event of default" under and as defined in the Mortgage Indenture or, if any such condition or event existed or exists, specifying the nature and period of existence thereof and what action the Company shall have taken or proposes to take with respect thereto.

**Section 7.3. Visitation.** The Company shall permit the representatives of each holder of a Series 2023A Bond that is an Institutional Investor:

(a) *No Default* — if no Default or Event of Default then exists, at the expense of such holder and upon not less than five Business Days' prior notice to the Company, to visit the principal executive office of the Company, to discuss the affairs, finances and accounts of the Company and its Subsidiaries with the Company's officers, and (with the consent of the Company, which consent will not be unreasonably withheld) to visit the other offices and properties of the Company and each Subsidiary, all at such reasonable times and as often as may be reasonably requested in writing; and

(b) *Default* — if a Default or Event of Default then exists, at the expense of the Company to visit and inspect any of the offices or properties of the Company or any Subsidiary, to examine all their respective books of account, records, reports and other papers, to make copies and extracts therefrom, and to discuss their respective affairs, finances and accounts with their respective officers and independent public accountants (and by this provision the Company authorizes said accountants to discuss the affairs, finances and accounts of the Company and its Subsidiaries), all at such times and as often as may be requested.

**Section 7.4. Electronic Delivery.** Financial statements, opinions of independent certified public accountants, other information and Officer's Certificates that are required to be delivered by the Company pursuant to Sections 7.1(a), (b), (c), (d), (e) and (f) and Section 7.2 shall be deemed to have been delivered if the Company satisfies any of the following requirements with respect thereto:

(a) such financial statements satisfying the requirements of Section 7.1(a) or (b) and related Officer's Certificate satisfying the requirements of Section 7.2 and any other information required under Section 7.1(c), (d), (e) or (f) are delivered to each holder of a Series 2023A Bond by e-mail at the e-mail address set forth in such holder's Purchaser

Schedule or as communicated from time to time in a separate writing delivered to the Company;

(b) the Company shall have timely filed such Form 10-Q or Form 10-K, satisfying the requirements of Section 7.1(a) or Section 7.1(b), as the case may be, with the SEC on EDGAR and shall have made such form and the related Officer's Certificate satisfying the requirements of Section 7.2 available on its home page on the internet, which is located at <http://www.middlesexwater.com> as of the date of this Agreement;

(c) such financial statements satisfying the requirements of Section 7.1(a) or Section 7.1(b) and related Officer's Certificate satisfying the requirements of Section 7.2 and any other information required under Section 7.1(c), (d), (e) or (f) are timely posted by or on behalf of the Company on Intralinks or on any other similar website to which each holder of Series 2023A Bonds has free access; or

(d) the Company shall have timely filed any of the items referred to in Section 7.1(c), (d), (e) or (f) with the SEC on EDGAR and shall have made such items available on its home page on the internet or on Intralinks or on any other similar website to which each holder of Series 2023A Bonds has free access;

*provided however*, that in no case shall access to such financial statements, other information and Officer's Certificates be conditioned upon any waiver or other agreement or consent (other than confidentiality provisions consistent with Section 20 of this Agreement); *provided further*, that in the case of any of clauses (b), (c) or (d), the Company shall have given each holder of a Series 2023A Bond concurrent written notice, which may be by e-mail or in accordance with Section 18, of such posting or filing in connection with each delivery.

**SECTION 8. PAYMENT AND PREPAYMENT OF THE SERIES 2023A BONDS.**

**Section 8.1. Maturity.** As provided therein, the entire unpaid principal balance of each Series 2023A Bond shall be due and payable on the Maturity Date thereof.

**Section 8.2. Optional Prepayments with Make-Whole Amount.** The Company may, at its option, upon notice as provided below, prepay at any time all, or from time to time any part of, the Series 2023A Bonds, in an amount not less than 10% of the aggregate principal amount of the Series 2023A Bonds then outstanding in the case of a partial prepayment, at 100% of the principal amount so prepaid, and the Make-Whole Amount determined for the prepayment date with respect to such principal amount. The Company will give each holder of Series 2023A Bonds written notice of each optional prepayment under this Section 8.2 not less than 10 days and not more than 60 days prior to the date fixed for such prepayment unless the Company and the Required Holders agree to another time period pursuant to Section 17. Each such notice shall specify such date (which shall be a Business Day), the aggregate principal amount of the Series 2023A Bonds to be prepaid on such date, the principal amount of each Series 2023A Bond held by such holder to be prepaid (determined in accordance with Section 8.3), and the interest to be paid on the prepayment date with respect to such principal amount being prepaid, and shall be accompanied by a certificate of a Senior Financial Officer as to the estimated Make-Whole

Amount due in connection with such prepayment (calculated as if the date of such notice were the date of the prepayment), setting forth the details of such computation. Two Business Days prior to such prepayment, the Company shall deliver to each holder of Series 2023A Bonds a certificate of a Senior Financial Officer specifying the calculation of such Make-Whole Amount as of the specified prepayment date.

**Section 8.3. Required Prepayments upon Certain Events.** If (a) all or substantially all of the mortgaged property shall have been damaged or destroyed to such extent that the Series 2023A Bonds shall be required to be redeemed pursuant to subsection B of Section 4 of Article VIII of the Second Supplement, or (b) title to, or the use of, all or substantially all of the mortgaged property shall have been taken under the exercise of the power of eminent domain, or shall be purchased, by, any governmental body or by any person, firm or corporation acting under governmental authority and the same shall require the Series 2023A Bonds to be redeemed pursuant to subsection B of Section 4 of Article VIII of the Second Supplement, then the Company shall, by notice as provided below, prepay all of the Series 2023A Bonds then outstanding at 100% of the principal amount thereof, and the Make-Whole Amount determined for the prepayment date with respect to such principal amount. The Company will give each holder of Series 2023A Bonds written notice of any required prepayment under this Section 8.3 within 90 days following the event resulting in such prepayment. Such notice shall specify the date of prepayment (which shall be a Business Day not less than 50 days nor more than 90 days after the date of such notice), the aggregate principal amount of the Series 2023A Bonds to be prepaid on such date, the principal amount of each Series 2023A Bond held by such holder to be prepaid, and the interest to be paid on the prepayment date with respect to such principal amount being prepaid, and shall be accompanied by a certificate of a Senior Financial Officer as to the estimated Make-Whole Amount due in connection with such prepayment (calculated as if the date of such notice were the date of the prepayment), setting forth the details of such computation. Two Business Days prior to such prepayment, the Company shall deliver to each holder of Series 2023A Bonds a certificate of a Senior Financial Officer specifying the calculation of such Make-Whole Amount as of the specified prepayment date.

**Section 8.4. Allocation of Partial Prepayments.** In the case of each partial prepayment of the Series 2023A Bonds pursuant to Section 8.2, the principal amount of the Series 2023A Bonds to be prepaid shall be allocated among all of the Series 2023A Bonds at the time outstanding in proportion, as nearly as practicable, to the respective unpaid principal amounts thereof not theretofore called for prepayment.

**Section 8.5. Maturity; Surrender, Etc.** In the case of each prepayment of Series 2023A Bonds pursuant to this Section 8, the principal amount of each Series 2023A Bond to be prepaid shall mature and become due and payable on the date fixed for such prepayment, together with interest on such principal amount accrued to such date and the Make-Whole Amount, if any. From and after such date, unless the Company shall fail to pay such principal amount when so due and payable, together with the interest and Make-Whole Amount, if any, as aforesaid, interest on such principal amount shall cease to accrue. Any Series 2023A Bond paid or prepaid in full shall be surrendered to the Company and cancelled and shall not be reissued, and no Series 2023A Bond shall be issued in lieu of any prepaid principal amount of any Series 2023A Bond.

**Section 8.6. Purchase of Series 2023A Bonds.** The Company will not, and will not permit any Affiliate to, purchase, redeem, prepay or otherwise acquire, directly or indirectly, any of the outstanding Series 2023A Bonds except (a) upon the payment or prepayment of the Series 2023A Bonds in accordance with this Agreement and the Series 2023A Bonds or (b) pursuant to an offer to purchase made by the Company or an Affiliate pro rata to the holders of all Series 2023A Bonds at the time outstanding upon the same terms and conditions. Any such offer shall provide each holder with sufficient information to enable it to make an informed decision with respect to such offer, and shall remain open for at least 15 Business Days. If the holders of more than 25% of the principal amount of the Series 2023A Bonds then outstanding accept such offer, the Company shall promptly notify the remaining holders of such fact and the expiration date for the acceptance by holders of Series 2023A Bonds of such offer shall be extended by the number of days necessary to give each such remaining holder at least 15 Business Days from its receipt of such notice to accept such offer. The Company will promptly cancel all Series 2023A Bonds acquired by it or any Affiliate pursuant to any payment, prepayment or purchase of Series 2023A Bonds pursuant to this Agreement and no Series 2023A Bonds may be issued in substitution or exchange for any such Series 2023A Bonds.

**Section 8.7. Make-Whole Amount.**

The term **“Make-Whole Amount”** means, with respect to any Series 2023A Bond, an amount equal to the excess, if any, of the Discounted Value of the Remaining Scheduled Payments with respect to the Called Principal of such Series 2023A Bond over the amount of such Called Principal, *provided* that the Make-Whole Amount may in no event be less than zero. For the purposes of determining the Make-Whole Amount, the following terms have the following meanings:

**“Called Principal”** means, with respect to any Series 2023A Bond, the principal of such Series 2023A Bond that is to be prepaid pursuant to Section 8.2 or Section 8.3 or has become or is declared to be immediately due and payable pursuant to Section 12.1, as the context requires.

**“Discounted Value”** means, with respect to the Called Principal of any Series 2023A Bond, the amount obtained by discounting all Remaining Scheduled Payments with respect to such Called Principal from their respective scheduled due dates to the Settlement Date with respect to such Called Principal, in accordance with accepted financial practice and at a discount factor (applied on the same periodic basis as that on which interest on the Series 2023A Bonds is payable) equal to the Reinvestment Yield with respect to such Called Principal.

**“Reinvestment Yield”** means, with respect to the Called Principal of any Series 2023A Bond, the sum of (a) 0.50% *plus* (b) the yield to maturity implied by the “Ask Yield(s)” reported as of 10:00 a.m. (New York City time) on the second Business Day preceding the Settlement Date with respect to such Called Principal, on the display designated as “Page PX1” (or such other display as may replace Page PX1) on Bloomberg Financial Markets for the most recently issued actively traded on-the-run U.S. Treasury securities (**“Reported”**) having a maturity equal to the Remaining Average Life of such Called Principal as of such Settlement Date. If there are no such U.S. Treasury securities Reported having a maturity equal to such Remaining Average Life, then such implied yield to maturity will be determined by (1) converting U.S. Treasury bill quotations

to bond equivalent yields in accordance with accepted financial practice and (2) interpolating linearly between the “Ask Yields” Reported for the applicable most recently issued actively traded on-the-run U.S. Treasury securities with the maturities (i) closest to and greater than such Remaining Average Life and (ii) closest to and less than such Remaining Average Life. The Reinvestment Yield shall be rounded to the number of decimal places as appears in the interest rate of the applicable Series 2023A Bond.

If such yields are not Reported or the yields Reported as of such time are not ascertainable (including by way of interpolation), then **“Reinvestment Yield”** means, with respect to the Called Principal of any Series 2023A Bond, the sum of (x) 0.50% *plus* (y) the yield to maturity implied by the U.S. Treasury constant maturity yields reported, for the latest day for which such yields have been so reported as of the second Business Day preceding the Settlement Date with respect to such Called Principal, in Federal Reserve Statistical Release H.15 (or any comparable successor publication) for the U.S. Treasury constant maturity having a term equal to the Remaining Average Life of such Called Principal as of such Settlement Date. If there is no such U.S. Treasury constant maturity having a term equal to such Remaining Average Life, such implied yield to maturity will be determined by interpolating linearly between (A) the U.S. Treasury constant maturity so reported with the term closest to and greater than such Remaining Average Life and (B) the U.S. Treasury constant maturity so reported with the term closest to and less than such Remaining Average Life. The Reinvestment Yield shall be rounded to the number of decimal places as appears in the interest rate of the applicable Series 2023A Bond.

**“Remaining Average Life”** means, with respect to any Called Principal, the number of years obtained by dividing (a) such Called Principal into (b) the sum of the products obtained by multiplying (1) the principal component of each Remaining Scheduled Payment with respect to such Called Principal by (2) the number of years, computed on the basis of a 360-day year comprised of twelve 30-day months and calculated to two decimal places, that will elapse between the Settlement Date with respect to such Called Principal and the scheduled due date of such Remaining Scheduled Payment.

**“Remaining Scheduled Payments”** means, with respect to the Called Principal of any Series 2023A Bond, all payments of such Called Principal and interest thereon that would be due after the Settlement Date with respect to such Called Principal if no payment of such Called Principal were made prior to its scheduled due date, *provided* that if such Settlement Date is not a date on which interest payments are due to be made under the Series 2023A Bonds, then the amount of the next succeeding scheduled interest payment will be reduced by the amount of interest accrued to such Settlement Date and required to be paid on such Settlement Date pursuant to Section 8.2 or Section 8.3 or Section 12.1.

**“Settlement Date”** means, with respect to the Called Principal of any Series 2023A Bond, the date on which such Called Principal is to be prepaid pursuant to Section 8.2 or Section 8.3 or has become or is declared to be immediately due and payable pursuant to Section 12.1, as the context requires.

**Section 8.8. Payments Due on Non-Business Days.** Anything in this Agreement or the Series 2023A Bonds to the contrary notwithstanding, (a) except as set forth in clause (b), any



payment of interest on any Series 2023A Bond that is due on a date that is not a Business Day shall be made on the next succeeding Business Day without including the additional days elapsed in the computation of the interest payable on such next succeeding Business Day; and (b) any payment of principal of or Make-Whole Amount on any Series 2023A Bond (including principal due on the Maturity Date of such Series 2023A Bond) that is due on a date that is not a Business Day shall be made on the next succeeding Business Day and shall include the additional days elapsed in the computation of interest payable on such next succeeding Business Day.

**SECTION 9. AFFIRMATIVE COVENANTS.**

The Company covenants that so long as any of the Series 2023A Bonds are outstanding:

**Section 9.1. Compliance with Laws.** Without limiting Section 10.4, the Company will, and will cause each of its Subsidiaries to, comply with all laws, ordinances or governmental rules or regulations to which each of them is subject (including ERISA, Environmental Laws, the USA PATRIOT Act and the other laws and regulations that are referred to in Section 5.16) and will obtain and maintain in effect all licenses, certificates, permits, franchises and other governmental authorizations necessary to the ownership of their respective properties or to the conduct of their respective businesses, in each case to the extent necessary to ensure that non-compliance with such laws, ordinances or governmental rules or regulations or failures to obtain or maintain in effect such licenses, certificates, permits, franchises and other governmental authorizations would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

**Section 9.2. Insurance.**

(a) The Company will, and will cause each of its Subsidiaries to, maintain, with financially sound and reputable insurers, insurance with respect to their respective properties and businesses against such casualties and contingencies, of such types, on such terms and in such amounts (including deductibles, co-insurance and self-insurance, if adequate reserves are maintained with respect thereto) as is customary in the case of entities of established reputations engaged in the same or a similar business and similarly situated.

(b) In addition to the foregoing, until payment in full of the Series 2023A Bonds, the Company will at a minimum, maintain general comprehensive liability insurance against claims for bodily injury, death or property damage occurring on, in or about the mortgaged property (such coverage to include provisions waiving subrogation) in amounts not less than \$1,000,000 with respect to bodily injury to any one person, \$3,000,000 with respect to bodily injury to two or more persons in any one accident and, \$1,000,000 with respect to property damage resulting from any one occurrence.

(c) In addition to the provisions of Section 9.2(a) and Section 9.2(b), the Company shall also comply with all insurance requirements set forth in the Mortgage Indenture.

**Section 9.3. Maintenance of Properties.** The Company will, and will cause each of its Subsidiaries to, maintain and keep, or cause to be maintained and kept, their respective properties

in good repair, working order and condition (other than ordinary wear and tear), so that the business carried on in connection therewith may be properly conducted at all times, *provided* that this Section 9.3 shall not prevent the Company or any Subsidiary from discontinuing the operation and the maintenance of any of its properties if such discontinuance is desirable in the conduct of its business and the Company has concluded that such discontinuance would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or is permitted under the Mortgage Indenture.

**Section 9.4. Payment of Taxes.** The Company will, and will cause each of its Subsidiaries to, file all tax returns required to be filed in any jurisdiction and to pay and discharge all taxes shown to be due and payable on such returns and all other taxes, assessments, governmental charges or levies payable by any of them, to the extent the same have become due and payable and before they have become delinquent, *provided* that neither the Company nor any Subsidiary need pay any such tax, assessment, charge or levy if (a) the amount, applicability or validity thereof is contested by the Company or such Subsidiary on a timely basis in good faith and in appropriate proceedings, and the Company or a Subsidiary has established adequate reserves therefor in accordance with GAAP on the books of the Company or such Subsidiary or (b) the nonpayment of all such taxes, assessments, charges and levies would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

**Section 9.5. Corporate Existence, Etc.** The Company will at all times preserve and keep its corporate existence in full force and effect. The Company will at all times preserve and keep in full force and effect the corporate existence of each of its Subsidiaries (unless merged into the Company or a Wholly-Owned Subsidiary) and all rights and franchises of the Company and its Subsidiaries unless, in the good faith judgment of the Company, the termination of or failure to preserve and keep in full force and effect such corporate existence, right or franchise would not, individually or in the aggregate, have a Material Adverse Effect.

**Section 9.6. Books and Records.** The Company will, and will cause each of its Subsidiaries to, maintain proper books of record and account in conformity with GAAP and all applicable requirements of any Governmental Authority having legal or regulatory jurisdiction over the Company or such Subsidiary, as the case may be. The Company will, and will cause each of its Subsidiaries to, keep books, records and accounts which, in reasonable detail, accurately reflect all transactions and dispositions of assets. The Company and its Subsidiaries have devised a system of internal accounting controls sufficient to provide reasonable assurances that their respective books, records, and accounts accurately reflect all transactions and dispositions of assets and the Company will, and will cause each of its Subsidiaries to, continue to maintain such system.

**Section 9.7. Compliance with Other Covenant and Conditions.** The Company will comply with all covenants, terms and conditions contained in the Mortgage Indenture (including each supplemental indenture).

**Section 9.8. Series 2023A Bonds to Rank Pari Passu.** The Company will cause all Series 2023A Bonds and all other obligations of the Company under this Agreement to at all times rank in right of payment *pari passu* with all other Indebtedness and obligations of the Company secured by the Mortgage Indenture.

**Section 9.9. Rating Requirement.**

(a) The Company will at all times maintain a credit rating from an Acceptable Rating Agency on (1) its unsecured and unenhanced general obligation debt (such rating, a **“Corporate Credit Rating”**) or (2) at least one series of its first mortgage bonds issued and outstanding under the Mortgage Indenture, which series of first mortgage bonds shall be secured equally and ratably with the Series 2023A Bonds but not have the benefit of any credit enhancement (herein, the **“Rated First Mortgage Bonds”**). If at any time the Company does not have a Corporate Credit Rating or Rated First Mortgage Bonds outstanding, then the Company shall, within six months from the first date that it does not have either a Corporate Credit Rating or Rated Mortgage Bonds outstanding, get a credit rating of the Series 2023A Bonds from an Acceptable Rating Agency (herein, the **“Rated Series 2023A Bonds”**) and, together with the Rated First Mortgage Bonds, the **“Rated Bonds”**) and shall at all times maintain a credit rating on the Series 2023A Bonds for so long as any Series 2023A Bonds are outstanding.

(b) At any time that the credit rating for the Rated Bonds maintained pursuant to clause (a)(2) above is not a public rating, the Company will provide to each holder of a Series 2023A Bond (1) at least annually (on or before each anniversary of the date of the Closing) and (2) promptly upon any change in such credit rating for the Rated Bonds, an updated Private Rating Letter evidencing such credit rating for the Rated Bonds and an updated Private Rating Rationale Report with respect to such credit rating for the Rated Bonds. In addition to the foregoing information and any information specifically required to be included in any Private Rating Letter or Private Rating Rationale Report (as set forth in the respective definitions thereof), if the SVO or any other Governmental Authority having jurisdiction over any holder of any Series 2023A Bond from time to time requires any additional information with respect to the credit rating for the Rated Bonds, the Company shall use commercially reasonable efforts to procure such information from the Acceptable Rating Agency.

**SECTION 10. NEGATIVE COVENANTS.**

The Company covenants that so long as any of the Series 2023A Bonds are outstanding:

**Section 10.1. Transactions with Affiliates.** The Company will not, and will not permit any Subsidiary to, enter into directly or indirectly any Material transaction or Material group of related transactions (including the purchase, lease, sale or exchange of properties of any kind or the rendering of any service) with any Affiliate (other than the Company or another Subsidiary), except pursuant to the reasonable requirements of the Company’s or such Subsidiary’s business and upon fair and reasonable terms no less favorable to the Company or such Subsidiary than would be obtainable in a comparable arm’s-length transaction with a Person not an Affiliate.

**Section 10.2. Merger, Consolidation, Etc.** The Company will not consolidate with or merge with any other Person or convey, transfer or lease all or substantially all of its assets in a single transaction or series of transactions to any Person unless:

(a) the successor formed by such consolidation or the survivor of such merger or the Person that acquires by conveyance, transfer or lease all or substantially all of the assets of the Company as an entirety, as the case may be, shall be (1) a solvent corporation or limited liability company with a net worth immediately following such transaction or each transaction in a series of transactions equal to or greater than the net worth of the Company immediately preceding such transaction or each transaction in such series of transactions, (2) organized and existing under the laws of the United States or any state thereof (including the District of Columbia), and, (3) if the Company is not such corporation or limited liability company, such corporation or limited liability company shall have (i) executed and delivered to each holder of any Series 2023A Bonds its assumption of the due and punctual performance and observance of each covenant and condition of this Agreement, the Series 2023A Bonds and each other Transaction Document and (ii) caused to be delivered to each holder of any Series 2023A Bonds an opinion of nationally recognized independent counsel, or other independent counsel reasonably satisfactory to the Required Holders, to the effect that all agreements or instruments effecting such assumption are enforceable in accordance with their terms and comply with the terms hereof; and

(b) immediately before and immediately after giving effect to such transaction or each transaction in any such series of transactions, no Default or Event of Default shall have occurred and be continuing.

No such conveyance, transfer or lease of substantially all of the assets of the Company shall have the effect of releasing the Company or any successor corporation or limited liability company that shall theretofore have become such in the manner prescribed in this Section 10.2, from its liability under this Agreement, the Series 2023A Bonds or any other Transaction Document.

Anything in this Agreement to the contrary notwithstanding, except to the extent prohibited by Section 9.5 or the Mortgage Indenture, the Company may create and/or dissolve or otherwise terminate the existence of Subsidiaries and Affiliates without notice to or consent of any holder of a Series 2023A Bond.

**Section 10.3. Line of Business.** The Company will not, and will not permit any Subsidiary to, engage in any business if, as a result, the general nature of the business in which the Company and its Subsidiaries, taken as a whole, would then be engaged would be substantially changed from the general nature of the business in which the Company and its Subsidiaries, taken as a whole, are engaged on the date of this Agreement.

**Section 10.4. Economic Sanctions, Etc.** The Company will not, and will not permit any Controlled Entity to (a) become (including by virtue of being owned or controlled by a Blocked Person), own or control a Blocked Person or (b) directly or indirectly have any investment in or engage in any dealing or transaction (including any investment, dealing or transaction involving the proceeds of the Series 2023A Bonds) with any Person if such investment, dealing or transaction (1) would cause any holder or any affiliate of such holder to be in violation of, or subject to sanctions under, any law or regulation applicable to such holder, or (2) is prohibited by or subject to sanctions under any U.S. Economic Sanctions Laws.

**Section 11. Events of Default.**

An “**Event of Default**” shall exist if any of the following conditions or events shall occur and be continuing:

- (a) the Company defaults in the payment of any principal or Make-Whole Amount, if any, on any Series 2023A Bond when the same becomes due and payable, whether at maturity or at a date fixed for prepayment or by declaration or otherwise; or
- (b) the Company defaults in the payment of any interest on any Series 2023A Bond for more than five Business Days after the same becomes due and payable; or
- (c) the Company defaults in the performance of or compliance with any term contained in Section 7.1(d) or Section 10; or
- (d) the Company defaults in the performance of or compliance with any term contained herein (other than those referred to in Sections 11(a), (b) and (c)) and such default is not remedied within 30 days after the earlier of (1) a Responsible Officer obtaining actual knowledge of such default and (2) the Company receiving written notice of such default from any holder of a Series 2023A Bond (any such written notice to be identified as a “notice of default” and to refer specifically to this Section 11(d)); or
- (e) any representation or warranty made in writing by or on behalf of the Company or by any officer of the Company in this Agreement or any writing furnished in connection with the transactions contemplated hereby proves to have been false or incorrect in any material respect on the date as of which made; or
- (f) the occurrence of an “event of default” under the Mortgage Indenture other than an event of default resulting from a default in the payment of any installment of the principal or interest on the Series 2023A Bonds on the date when due, and the acceleration of the Series 2023A Bonds as a result of such “event of default”;
- (g) (1) the Company or any Significant Subsidiary is in default (as principal or as guarantor or other surety) in the payment of any principal of or premium or make-whole amount or interest on any Indebtedness that is outstanding in an aggregate principal amount of at least \$25,000,000 (or its equivalent in the relevant currency of payment) beyond any period of grace provided with respect thereto, or (2) the Company or any Significant Subsidiary is in default in the performance of or compliance with any term of any evidence of any Indebtedness in an aggregate outstanding principal amount of at least \$25,000,000 (or its equivalent in the relevant currency of payment) or of any mortgage, indenture or other agreement relating thereto or any other condition exists, and as a consequence of such default or condition, such Indebtedness has become or has been declared due and payable before its stated maturity or before its regularly scheduled dates of payment; or
- (h) the Company or any Significant Subsidiary (1) is generally not paying, or admits in writing its inability to pay, its debts as they become due, (2) files, or consents by

answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy, for liquidation or to take advantage of any bankruptcy, insolvency, reorganization, moratorium or other similar law of any jurisdiction, (3) makes an assignment for the benefit of its creditors, (4) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial part of its property, (5) is adjudicated as insolvent or to be liquidated, or (6) takes corporate action for the purpose of any of the foregoing; or

(i) a court or other Governmental Authority of competent jurisdiction enters an order appointing, without consent by the Company or any of its Significant Subsidiaries, a custodian, receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial part of its property, or constituting an order for relief or approving a petition for relief or reorganization or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding-up or liquidation of the Company or any of its Significant Subsidiaries, or any such petition shall be filed against the Company or any of its Significant Subsidiaries and such petition shall not be dismissed within 60 days; or

(j) one or more final judgments or orders for the payment of money aggregating in excess of \$25,000,000 (or its equivalent in the relevant currency of payment), including any such final order enforcing a binding arbitration decision, are rendered against one or more of the Company and its Significant Subsidiaries and which judgments are not, within 60 days after entry thereof, bonded, discharged or stayed pending appeal, or are not discharged within 60 days after the expiration of such stay; or

(k) if (1) any Plan shall fail to satisfy the minimum funding standards of ERISA or the Code for any plan year or part thereof or a waiver of such standards or extension of any amortization period is sought or granted under section 412 of the Code, (2) a notice of intent to terminate any Plan shall have been or is reasonably expected to be filed with the PBGC (unless a Plan is fully funded on a termination basis) or the PBGC shall have instituted proceedings under ERISA section 4042 to terminate or appoint a trustee to administer any Plan or the PBGC shall have notified the Company or any ERISA Affiliate that a Plan may become a subject of any such proceedings, (3) there is any "amount of unfunded benefit liabilities" (within the meaning of section 4001(a)(18) of ERISA) under one or more Plans, determined in accordance with Title IV of ERISA, (4) the aggregate present value of accrued benefit liabilities under all funded Non-U.S. Plans exceeds the aggregate current value of the assets of such Non-U.S. Plans allocable to such liabilities, (5) the Company or any ERISA Affiliate shall have incurred or is reasonably expected to incur any liability pursuant to Title I or IV of ERISA (other than ongoing funding obligations) or the penalty or excise tax provisions of the Code relating to employee benefit plans, (6) the Company or any ERISA Affiliate withdraws from any Multiemployer Plan, (7) the Company or any Subsidiary establishes or amends any employee welfare benefit plan that provides post-employment welfare benefits in a manner that would increase the liability of the Company or any Subsidiary thereunder, (8) the Company or any Subsidiary fails to administer or maintain a Non-U.S. Plan in compliance with the requirements of any

and all applicable laws, statutes, rules, regulations or court orders or any Non-U.S. Plan is involuntarily terminated or wound up, or (9) the Company or any Subsidiary becomes subject to the imposition of a financial penalty (which for this purpose shall mean any tax, penalty or other liability, whether by way of indemnity or otherwise) with respect to one or more Non-U.S. Plans; and any such event or events described in clauses (1) through (9) above, either individually or together with any other such event or events, would reasonably be expected to have a Material Adverse Effect. As used in this Section 11(k), the terms “**employee benefit plan**” and “**employee welfare benefit plan**” shall have the respective meanings assigned to such terms in section 3 of ERISA; or

(l) any Transaction Document shall cease to be in full force and effect, the Company or any Person acting on behalf of the Company shall contest in any manner the validity, binding nature or enforceability of any Transaction Document, or the obligations of the Company under any Transaction Document are not or cease to be legal, valid, binding and enforceable in accordance with the terms of the Company.

## SECTION 12. REMEDIES ON DEFAULT, ETC.

**Section 12.1. Acceleration.** (a) If an Event of Default with respect to the Company described in Section 11(h) or (i) (other than an Event of Default described in clause (1) of Section 11(h) or described in clause (6) of Section 11(h) by virtue of the fact that such clause encompasses clause (1) of Section 11(h)) has occurred, all the Series 2023A Bonds then outstanding shall automatically become immediately due and payable.

(b) If any other Event of Default has occurred and is continuing, the Required Holders may at any time at its or their option, by notice or notices to the Company, declare all the Series 2023A Bonds then outstanding to be immediately due and payable.

(c) If any Event of Default described in Section 11(a) or (b) has occurred and is continuing, any holder or holders of Series 2023A Bonds at the time outstanding affected by such Event of Default may at any time, at its or their option, by notice or notices to the Company, declare all the Series 2023A Bonds held by it or them to be immediately due and payable.

Upon any Series 2023A Bonds becoming due and payable under this Section 12.1, whether automatically or by declaration, such Series 2023A Bonds will forthwith mature and the entire unpaid principal amount of such Series 2023A Bonds, *plus* (x) all accrued and unpaid interest thereon (including interest accrued thereon at the Default Rate) and (y) the Make-Whole Amount determined in respect of such principal amount, shall all be immediately due and payable, in each and every case without presentment, demand, protest or further notice, all of which are hereby waived. The Company acknowledges, and the parties hereto agree, that each holder of a Series 2023A Bond has the right to maintain its investment in the Series 2023A Bonds free from repayment by the Company (except as herein specifically provided for) and that the provision for payment of a Make-Whole Amount by the Company in the event that the Series 2023A Bonds are prepaid or are accelerated as a result of an Event of Default, is intended to provide compensation for the deprivation of such right under such circumstances.

**Section 12.2. Other Remedies.** If any Default or Event of Default has occurred and is continuing, and irrespective of whether any Series 2023A Bonds have become or have been declared immediately due and payable under Section 12.1, the holder of any Series 2023A Bond at the time outstanding may proceed to protect and enforce the rights of such holder hereunder or under any other Transaction Document by an action at law, suit in equity or other appropriate proceeding, whether for the specific performance of any agreement contained herein, in any Series 2023A Bond or in any other Transaction Document, or for an injunction against a violation of any of the terms hereof or thereof, or in aid of the exercise of any power granted hereby or thereby or by law or otherwise; *provided* that the exercise of rights and remedies in respect of the mortgaged property shall be made only in accordance with the terms of the Mortgage Indenture.

**Section 12.3. Rescission.** At any time after any Series 2023A Bonds have been declared due and payable pursuant to Section 12.1(b) or (c), the Required Holders, by written notice to the Company, may rescind and annul any such declaration and its consequences if (a) the Company has paid all overdue interest on the Series 2023A Bonds, all principal of and Make-Whole Amount, if any, on any Series 2023A Bonds that are due and payable and are unpaid other than by reason of such declaration, and all interest on such overdue principal and Make-Whole Amount, if any, and (to the extent permitted by applicable law) any overdue interest in respect of the Series 2023A Bonds, at the Default Rate, (b) neither the Company nor any other Person shall have paid any amounts which have become due solely by reason of such declaration, (c) all Events of Default and Defaults, other than non-payment of amounts that have become due solely by reason of such declaration, have been cured or have been waived pursuant to Section 17, and (d) no judgment or decree has been entered for the payment of any monies due pursuant hereto or to the Series 2023A Bonds. No rescission and annulment under this Section 12.3 will extend to or affect any subsequent Event of Default or Default or impair any right consequent thereon.

**Section 12.4. No Waivers or Election of Remedies, Expenses, Etc.** No course of dealing and no delay on the part of any holder of any Series 2023A Bond in exercising any right, power or remedy shall operate as a waiver thereof or otherwise prejudice such holder's rights, powers or remedies. No right, power or remedy conferred by this Agreement, any Series 2023A Bond or any other Transaction Document upon the holder of any Series 2023A Bond shall be exclusive of any other right, power or remedy referred to herein or therein or now or hereafter available at law, in equity, by statute or otherwise. Without limiting the obligations of the Company under Section 15, the Company will pay to the holder of each Series 2023A Bond on demand such further amount as shall be sufficient to cover all costs and expenses of such holder incurred in any enforcement or collection under this Section 12, including reasonable attorneys' fees, expenses and disbursements.

**SECTION 13. REGISTRATION; TRANSFER AND EXCHANGE; REPLACEMENT OF SERIES 2023A BONDS.**

The Company shall cause the Trustee to keep a register for the registration and registration of transfers of Series 2023A Bonds in accordance with the Fifty-Eighth Supplement. Registration of transfer or exchange of any Series 2023A Bond and replacement of any Series 2023A Bond that has been lost, stolen, destroyed or mutilated shall be done in accordance with the Mortgage Indenture.



**SECTION 14. PAYMENTS ON SERIES 2023A BONDS.**

**Section 14.1. Place of Payment.** Subject to Section 14.2, payments of principal, Make-Whole Amount, if any, and interest becoming due and payable on the Series 2023A Bonds shall be made in New York, New York at the principal office of JPMorgan Chase Bank, N.A. in such jurisdiction. The Company may at any time, by notice to each holder of a Series 2023A Bond, change the place of payment of the Series 2023A Bonds so long as such place of payment shall be either the principal office of the Company in such jurisdiction or the principal office of a bank or trust company in such jurisdiction.

**Section 14.2. Payment by Wire Transfer.** So long as any Purchaser or its nominee shall be the holder of any Series 2023A Bond, and notwithstanding anything contained in Section 14.1 or in such Series 2023A Bond to the contrary, the Company will pay all sums becoming due on such Series 2023A Bond for principal, Make-Whole Amount, if any, interest and all other amounts becoming due hereunder by the method and at the address specified for such purpose below such Purchaser's name in the Purchaser Schedule, or by such other method or at such other address as such Purchaser shall have from time to time specified to the Company in writing for such purpose, without the presentation or surrender of such Series 2023A Bond or the making of any notation thereon, except that upon written request of the Company made concurrently with or reasonably promptly after payment or prepayment in full of any Series 2023A Bond, such Purchaser shall surrender such Series 2023A Bond for cancellation, reasonably promptly after any such request, to the Company at its principal executive office or at the place of payment most recently designated by the Company pursuant to Section 14.1. Prior to any sale or other disposition of any Series 2023A Bond held by a Purchaser or its nominee, such Purchaser will, at its election, either endorse thereon the amount of principal paid thereon and the last date to which interest has been paid thereon or surrender such Series 2023A Bond to the Company in exchange for a new Series 2023A Bond or Series 2023A Bonds pursuant to Section 13. The Company will afford the benefits of this Section 14.2 to any Institutional Investor that is the direct or indirect transferee of any Series 2023A Bond purchased by a Purchaser under this Agreement and that has made the same agreement relating to such Series 2023A Bond as the Purchasers have made in this Section 14.2.

**Section 14.3. FATCA Information.** By acceptance of any Series 2023A Bond, the holder of such Series 2023A Bond agrees that such holder will with reasonable promptness duly complete and deliver to the Company, or to such other Person as may be reasonably requested by the Company, from time to time (a) in the case of any such holder that is a United States Person, such holder's United States tax identification number or other Forms reasonably requested by the Company necessary to establish such holder's status as a United States Person under FATCA and as may otherwise be necessary for the Company to comply with its obligations under FATCA and (b) in the case of any such holder that is not a United States Person, such documentation prescribed by applicable law (including as prescribed by section 1471(b)(3)(C)(i) of the Code) and such additional documentation as may be necessary for the Company to comply with its obligations under FATCA and to determine that such holder has complied with such holder's obligations under FATCA or to determine the amount, if any, to deduct and withhold from any such payment made to such holder. Nothing in this Section 14.3 shall require any holder to provide information that is confidential or proprietary to such holder unless the Company is required to obtain such

information under FATCA and, in such event, the Company shall treat any such information it receives as confidential.

**SECTION 15. EXPENSES, ETC.**

**Section 15.1. Transaction Expenses.** Whether or not the transactions contemplated hereby are consummated, the Company will pay all costs and expenses (including reasonable attorneys' fees of a special counsel and, if reasonably required by the Required Holders, local or other counsel) incurred by the Purchasers and each other holder of a Series 2023A Bond in connection with such transactions and in connection with any amendments, waivers or consents under or in respect of this Agreement, the Series 2023A Bonds or any other Transaction Document (whether or not such amendment, waiver or consent becomes effective), including: (a) the costs and expenses incurred in enforcing or defending (or determining whether or how to enforce or defend) any rights under this Agreement, the Series 2023A Bonds or any other Transaction Document or in responding to any subpoena or other legal process or informal investigative demand issued in connection with this Agreement, the Series 2023A Bonds or any other Transaction Document, or by reason of being a holder of any Series 2023A Bond, (b) the costs and expenses, including financial advisors' fees, incurred in connection with the insolvency or bankruptcy of the Company or any Subsidiary or in connection with any work-out or restructuring of the transactions contemplated hereby and by the Series 2023A Bonds and by the other Transaction Documents and (c) the costs and expenses incurred in connection with the initial filing of this Agreement and all related documents and financial information with the SVO *provided*, that such costs and expenses under this clause (c) shall not exceed \$5,000. If required by the NAIC, the Company shall obtain and maintain at its own cost and expense a Legal Entity Identifier (LEI).

The Company will pay, and will save each Purchaser and each other holder of a Series 2023A Bond harmless from, (i) all claims in respect of any fees, costs or expenses, if any, of brokers and finders (other than those, if any, retained by a Purchaser or other holder in connection with its purchase of the Series 2023A Bonds), (ii) any and all wire transfer fees that any bank or other financial institution deducts from any payment under such Series 2023A Bond to such holder or otherwise charges to a holder of a Series 2023A Bond with respect to a payment under such Series 2023A Bond and (iii) any judgment, liability, claim, order, decree, fine, penalty, cost, fee, expense (including reasonable attorneys' fees and expenses) or obligation resulting from the consummation of the transactions contemplated hereby, including the use of the proceeds of the Series 2023A Bonds by the Company; *provided* that the Company shall have no obligation under this clause (iii) to any Purchaser or any holder to the extent the relevant judgment, liability, claim, order, decree, fine, penalty, cost, fee, expense or obligation is determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Purchaser or such holder.

**Section 15.2. Certain Taxes.** The Company agrees to pay all stamp, documentary or similar taxes or fees which may be payable in respect of the execution and delivery or the enforcement of this Agreement or any other Transaction Document or the execution and delivery (but not the transfer) or the enforcement of any of the Series 2023A Bonds in the United States or any other jurisdiction where the Company has assets or of any amendment of, or waiver or consent

under or with respect to, this Agreement, any of the Series 2023A Bonds or any other Transaction Document, and to pay any value added tax due and payable in respect of reimbursement of costs and expenses by the Company pursuant to this Section 15, and will save each holder of a Series 2023A Bond to the extent permitted by applicable law harmless against any loss or liability resulting from nonpayment or delay in payment of any such tax or fee required to be paid by the Company hereunder.

**Section 15.3. Survival.** The obligations of the Company under this Section 15 will survive the payment or transfer of any Series 2023A Bond, the enforcement, amendment or waiver of any provision of this Agreement, the Series 2023A Bonds or any other Transaction Document, and the termination of this Agreement or the Mortgage Indenture.

**SECTION 16. SURVIVAL OF REPRESENTATIONS AND WARRANTIES; ENTIRE AGREEMENT.**

All representations and warranties contained herein shall survive the execution and delivery of this Agreement, the Series 2023A Bonds and the Fifty-Eighth Supplement, the purchase or transfer by any Purchaser of any Series 2023A Bond or portion thereof or interest therein and the payment of any Series 2023A Bond, and may be relied upon by any subsequent holder of a Series 2023A Bond, regardless of any investigation made at any time by or on behalf of such Purchaser or any other holder of a Series 2023A Bond. All statements contained in any certificate or other instrument delivered by or on behalf of the Company pursuant to this Agreement shall be deemed representations and warranties of the Company under this Agreement. Subject to the preceding sentence, this Agreement, the Series 2023A Bonds and the other Transaction Documents embody the entire agreement and understanding between each Purchaser and the Company and supersede all prior agreements and understandings relating to the subject matter hereof.

**SECTION 17. AMENDMENT AND WAIVER.**

**Section 17.1. Requirements.** This Agreement and the Series 2023A Bonds may be amended, and the observance of any term hereof or of the Series 2023A Bonds may be waived (either retroactively or prospectively), only with the written consent of the Company and the Required Holders, except that:

(a) no amendment or waiver of any of Sections 1, 2, 3, 4, 5, 6 or 21 hereof, or any defined term (as it is used therein), will be effective as to any Purchaser unless consented to by such Purchaser in writing; and

(b) no amendment or waiver may, without the written consent of each Purchaser and the holder of each Series 2023A Bond at the time outstanding, (1) subject to Section 12 relating to acceleration or rescission, change the amount or time of any prepayment or payment of principal of, or reduce the rate or change the time of payment or method of computation of (i) interest on the Series 2023A Bonds or (ii) the Make-Whole Amount, (2) change the percentage of the principal amount of the Series 2023A Bonds the holders of which are required to consent to any amendment or waiver, or (3) amend any of Sections 8 (except as set forth in the second sentence of Section 8.2 and Section 17.1(c)), 11(a), 11(b), 12, 17 or 20.

**Section 17.2. Solicitation of Holders of Series 2023A Bonds.**

(a) *Solicitation.* The Company will provide each holder of a Series 2023A Bond with sufficient information, sufficiently far in advance of the date a decision is required, to enable such holder to make an informed and considered decision with respect to any proposed amendment, waiver or consent in respect of any of the provisions hereof or of the Series 2023A Bonds or of any other Transaction Document. The Company will deliver executed or true and correct copies of each amendment, waiver or consent effected pursuant to this Section 17 or any other Transaction Document to each holder of a Series 2023A Bond promptly following the date on which it is executed and delivered by, or receives the consent or approval of, the requisite holders of Series 2023A Bonds.

(b) *Payment.* The Company will not directly or indirectly pay or cause to be paid any remuneration, whether by way of supplemental or additional interest, fee or otherwise, or grant any security or provide other credit support, to any holder of a Series 2023A Bond as consideration for or as an inducement to the entering into by such holder of any waiver or amendment of any of the terms and provisions hereof or any Series 2023A Bond unless such remuneration is concurrently paid, or security is concurrently granted or other credit support concurrently provided, on the same terms, ratably to each holder of a Series 2023A Bond even if such holder did not consent to such waiver or amendment.

(c) *Consent in Contemplation of Transfer.* Any consent given pursuant to this Section 17 by a holder of a Series 2023A Bond that has transferred or has agreed to transfer its Series 2023A Bond to (1) the Company, (2) any Subsidiary or any other Affiliate or (3) any other Person in connection with, or in anticipation of, such other Person acquiring, making a tender offer for or merging with the Company and/or any of its Affiliates, in each case in connection with such consent, shall be void and of no force or effect except solely as to such holder, and any amendments effected or waivers granted or to be effected or granted that would not have been or would not be so effected or granted but for such consent (and the consents of all other holders of Series 2023A Bonds that were acquired under the same or similar conditions) shall be void and of no force or effect except solely as to such holder.

**Section 17.3. Binding Effect, Etc.** Any amendment or waiver consented to as provided in this Section 17 applies equally to all holders of Series 2023A Bonds and is binding upon them and upon each future holder of any Series 2023A Bond and upon the Company without regard to whether such Series 2023A Bond has been marked to indicate such amendment or waiver. No such amendment or waiver will extend to or affect any obligation, covenant, agreement, Default or Event of Default not expressly amended or waived or impair any right consequent thereon. No course of dealing between the Company and any holder of a Series 2023A Bond and no delay in exercising any rights hereunder or under any Series 2023A Bond shall operate as a waiver of any rights of any holder of such Series 2023A Bond.

**Section 17.4. Series 2023A Bonds Held by Company, Etc.** Solely for the purpose of determining whether the holders of the requisite percentage of the aggregate principal amount of Series 2023A Bonds then outstanding approved or consented to any amendment, waiver or consent

to be given under this Agreement or the Series 2023A Bonds, or have directed the taking of any action provided herein or in the Series 2023A Bonds to be taken upon the direction of the holders of all or a specified percentage of the aggregate principal amount of Series 2023A Bonds then outstanding, Series 2023A Bonds directly or indirectly owned by the Company or any of its Affiliates shall be deemed not to be outstanding.

**SECTION 18. NOTICES.**

Except to the extent otherwise provided in Section 7.4, all notices and communications provided for hereunder shall be in writing and sent (a) by telecopy if the sender on the same day sends a confirming copy of such notice by an internationally recognized overnight delivery service (charges prepaid), (b) by registered or certified mail with return receipt requested (postage prepaid), or (c) by an internationally recognized overnight delivery service (charges prepaid). Any such notice must be sent:

- (1) if to any Purchaser or its nominee, to such Purchaser or nominee at the address specified for such communications in the Purchaser Schedule, or at such other address as such Purchaser or nominee shall have specified to the Company in writing,
- (2) if to any other holder of any Series 2023A Bond, to such holder at such address as such other holder shall have specified to the Company in writing, or
- (3) if to the Company, to the Company at its address set forth at the beginning hereof to the attention of Jay Kooper, Secretary, or at such other address as the Company shall have specified to the holder of each Series 2023A Bond in writing.

Notices under this Section 18 will be deemed given only when actually received.

**SECTION 19. REPRODUCTION OF DOCUMENTS.**

This Agreement and all documents relating hereto, including (a) consents, waivers and modifications that may hereafter be executed, (b) documents received by any Purchaser at the Closing (except the Series 2023A Bonds themselves), and (c) financial statements, certificates and other information previously or hereafter furnished to any Purchaser, may be reproduced by such Purchaser by any photographic, photostatic, electronic, digital, or other similar process and such Purchaser may destroy any original document so reproduced. The Company agrees and stipulates that, to the extent permitted by applicable law, any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made by such Purchaser in the regular course of business) and any enlargement, facsimile or further reproduction of such reproduction shall likewise be admissible in evidence. This Section 19 shall not prohibit the Company or any other holder of Series 2023A Bonds from contesting any such reproduction to the same extent that it could contest the original, or from introducing evidence to demonstrate the inaccuracy of any such reproduction.

## SECTION 20. CONFIDENTIAL INFORMATION.

For the purposes of this Section 20, “**Confidential Information**” means information delivered to any Purchaser by or on behalf of the Company or any Subsidiary in connection with the transactions contemplated by or otherwise pursuant to this Agreement that is proprietary in nature and that was clearly marked or labeled or otherwise adequately identified when received by such Purchaser as being confidential information of the Company or such Subsidiary, *provided* that such term does not include information that (a) was publicly known or otherwise known to such Purchaser prior to the time of such disclosure, (b) subsequently becomes publicly known through no act or omission by such Purchaser or any Person acting on such Purchaser’s behalf, (c) otherwise becomes known to such Purchaser other than through disclosure by the Company or any Subsidiary or (d) constitutes financial statements delivered to such Purchaser under Section 7.1 that are otherwise publicly available. Each Purchaser will maintain the confidentiality of such Confidential Information in accordance with procedures adopted by such Purchaser in good faith to protect confidential information of third parties delivered to such Purchaser, *provided* that such Purchaser may deliver or disclose Confidential Information to (1) its directors, officers, employees, agents, attorneys, trustees and affiliates (to the extent such disclosure reasonably relates to the administration of the investment represented by its Series 2023A Bonds), (2) its auditors, financial advisors and other professional advisors who agree to hold confidential the Confidential Information substantially in accordance with this Section 20, (3) any other holder of any Series 2023A Bond, (4) any Institutional Investor to which it sells or offers to sell such Series 2023A Bond or any part thereof or any participation therein (if such Person has agreed in writing prior to its receipt of such Confidential Information to be bound by this Section 20), (5) any Person from which it offers to purchase any Security of the Company (if such Person has agreed in writing prior to its receipt of such Confidential Information to be bound by this Section 20), (6) any federal or state regulatory authority having jurisdiction over such Purchaser, (7) the NAIC or the SVO or, in each case, any similar organization, or any nationally recognized rating agency that requires access to information about such Purchaser’s investment portfolio, or (8) any other Person to which such delivery or disclosure may be necessary or appropriate (i) to effect compliance with any law, rule, regulation or order applicable to such Purchaser, (ii) in response to any subpoena or other legal process, (iii) in connection with any litigation to which such Purchaser is a party or (iv) if an Event of Default has occurred and is continuing, to the extent such Purchaser may reasonably determine such delivery and disclosure to be necessary or appropriate in the enforcement or for the protection of the rights and remedies under such Purchaser’s Series 2023A Bonds, this Agreement or any other Transaction Document. Each holder of a Series 2023A Bond, by its acceptance of a Series 2023A Bond, will be deemed to have agreed to be bound by and to be entitled to the benefits of this Section 20 as though it were a party to this Agreement. On reasonable request by the Company in connection with the delivery to any holder of a Series 2023A Bond of information required to be delivered to such holder under this Agreement or requested by such holder (other than a holder that is a party to this Agreement or its nominee), such holder will enter into an agreement with the Company embodying this Section 20.

In the event that as a condition to receiving access to information relating to the Company or its Subsidiaries in connection with the transactions contemplated by or otherwise pursuant to this Agreement, any Purchaser or holder of a Series 2023A Bond is required to agree to a confidentiality undertaking (whether through Intralinks, another secure website, a secure virtual

workspace or otherwise) which is different from this Section 20, this Section 20 shall not be amended thereby and, as between such Purchaser or such holder and the Company, this Section 20 shall supersede any such other confidentiality undertaking.

**SECTION 21. SUBSTITUTION OF PURCHASER.**

Each Purchaser shall have the right to substitute any one of its Affiliates or another Purchaser or any one of such other Purchaser's Affiliates (a "**Substitute Purchaser**") as the purchaser of the Series 2023A Bonds that it has agreed to purchase hereunder, by written notice to the Company, which notice shall be signed by both such Purchaser and such Substitute Purchaser, shall contain such Substitute Purchaser's agreement to be bound by this Agreement and shall contain a confirmation by such Substitute Purchaser of the accuracy with respect to it of the representations set forth in Section 6. Upon receipt of such notice, any reference to such Purchaser in this Agreement (other than in this Section 21), shall be deemed to refer to such Substitute Purchaser in lieu of such original Purchaser. In the event that such Substitute Purchaser is so substituted as a Purchaser hereunder and such Substitute Purchaser thereafter transfers to such original Purchaser all of the Series 2023A Bonds then held by such Substitute Purchaser, upon receipt by the Company of notice of such transfer, any reference to such Substitute Purchaser as a "Purchaser" in this Agreement (other than in this Section 21), shall no longer be deemed to refer to such Substitute Purchaser, but shall refer to such original Purchaser, and such original Purchaser shall again have all the rights of an original holder of the Series 2023A Bonds under this Agreement.

**SECTION 22. MISCELLANEOUS.**

**Section 22.1. Successors and Assigns.** All covenants and other agreements contained in this Agreement by or on behalf of any of the parties hereto bind and inure to the benefit of their respective successors and assigns (including any subsequent holder of a Series 2023A Bond) whether so expressed or not, except that, subject to Section 10.2, the Company may not assign or otherwise transfer any of its rights or obligations hereunder or under the Series 2023A Bonds without the prior written consent of each holder. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto and their respective successors and assigns permitted hereby) any legal or equitable right, remedy or claim under or by reason of this Agreement.

**Section 22.2. Accounting Terms.** All accounting terms used herein which are not expressly defined in this Agreement have the meanings respectively given to them in accordance with GAAP. Except as otherwise specifically provided herein, (a) all computations made pursuant to this Agreement shall be made in accordance with GAAP, and (b) all financial statements shall be prepared in accordance with GAAP. For purposes of determining compliance with this Agreement (including Section 9, Section 10 and the definition of "Indebtedness"), any election by the Company to measure any financial liability using fair value (as permitted by Financial Accounting Standards Board Accounting Standards Codification Topic No. 825-10-25 – *Fair Value Option*, International Accounting Standard 39 – *Financial Instruments: Recognition and Measurement* or any similar accounting standard) shall be disregarded and such determination shall be made as if such election had not been made.

**Section 22.3. Severability.** Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall (to the full extent permitted by law) not invalidate or render unenforceable such provision in any other jurisdiction.

**Section 22.4. Construction, Etc.** Each covenant contained herein shall be construed (absent express provision to the contrary) as being independent of each other covenant contained herein, so that compliance with any one covenant shall not (absent such an express contrary provision) be deemed to excuse compliance with any other covenant. Where any provision herein refers to action to be taken by any Person, or which such Person is prohibited from taking, such provision shall be applicable whether such action is taken directly or indirectly by such Person.

Defined terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein) and, for purposes of the Series 2023A Bonds, shall also include any such bonds issued in substitution therefor pursuant to Section 13, (b) subject to Section 22.1, any reference herein to any Person shall be construed to include such Person’s successors and assigns, (c) the words “herein,” “hereof” and “hereunder,” and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Sections and Schedules shall be construed to refer to Sections of, and Schedules to, this Agreement, and (e) any reference to any law or regulation herein shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time.

**Section 22.5. Counterparts; Electronic Contracting.** This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute one instrument. Each counterpart may consist of a number of copies hereof, each signed by less than all, but together signed by all, of the parties hereto. The parties agree to electronic contracting and signatures with respect to this Agreement, and all other documents delivered hereunder (other than the Series 2023A Bonds). Delivery of an electronic signature to, or a signed copy of, this Agreement and all other documents delivered hereunder (other than the Series 2023A Bonds) by facsimile, email or other electronic transmission shall be fully binding on the parties to the same extent as the delivery of the signed originals and shall be admissible into evidence for all purposes. Notwithstanding the foregoing, if any Purchaser shall request manually signed counterpart signatures to any document delivered hereunder, the Company hereby agrees to use its reasonable endeavors to provide such manually signed signature pages as soon as reasonably practicable.



**Section 22.6. Governing Law.** This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the law of the State of New York excluding choice-of-law principles of the law of such State that would permit the application of the laws of a jurisdiction other than such State.

**Section 22.7. Jurisdiction and Process; Waiver of Jury Trial.**

(a) The Company irrevocably submits to the non-exclusive jurisdiction of any New York State or federal court sitting in the Borough of Manhattan, The City of New York, over any suit, action or proceeding arising out of or relating to this Agreement or the Series 2023A Bonds. To the fullest extent permitted by applicable law, the Company irrevocably waives and agrees not to assert, by way of motion, as a defense or otherwise, any claim that it is not subject to the jurisdiction of any such court, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding brought in any such court and any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

(b) The Company agrees, to the fullest extent permitted by applicable law, that a final judgment in any suit, action or proceeding of the nature referred to in Section 22.7(a) brought in any such court shall be conclusive and binding upon it subject to rights of appeal, as the case may be, and may be enforced in the courts of the United States of America or the State of New York (or any other courts to the jurisdiction of which it or any of its assets is or may be subject) by a suit upon such judgment.

(c) The Company consents to process being served by or on behalf of any holder of Series 2023A Bonds in any suit, action or proceeding of the nature referred to in Section 22.7(a) by mailing a copy thereof by registered, certified priority or express mail (or any substantially similar form of mail), postage prepaid, return receipt or delivery confirmation requested, to it at its address specified in Section 18 or at such other address of which such holder shall then have been notified pursuant to said Section. The Company agrees that such service upon receipt (1) shall be deemed in every respect effective service of process upon it in any such suit, action or proceeding and (2) shall, to the fullest extent permitted by applicable law, be taken and held to be valid personal service upon and personal delivery to it. Notices hereunder shall be conclusively presumed received as evidenced by a delivery receipt furnished by the United States Postal Service or any reputable commercial delivery service.

(d) Nothing in this Section 22.7 shall affect the right of any holder of a Series 2023A Bond to serve process in any manner permitted by law, or limit any right that the holders of any of the Series 2023A Bonds may have to bring proceedings against the Company in the courts of any appropriate jurisdiction or to enforce in any lawful manner a judgment obtained in one jurisdiction in any other jurisdiction.

(e) THE PARTIES HERETO HEREBY WAIVE TRIAL BY JURY IN ANY ACTION BROUGHT ON OR WITH RESPECT TO THIS AGREEMENT, THE SERIES 2023A BONDS OR ANY OTHER DOCUMENT EXECUTED IN CONNECTION HEREWITH OR THEREWITH.

**Section 22.8. Transaction References.** The Company agrees that each of NYL Investors LLC, the Purchasers and their respective Affiliates may (a) refer to the identity of the Company and the Series 2023A Bonds on its internet site or in marketing materials, press releases, published “tombstone” announcements or any other print or electronic medium and (b) display the Company’s corporate logo in conjunction with any such reference.

If you are in agreement with the foregoing, please sign the form of agreement on a counterpart of this Agreement and return it to the Company, whereupon this Agreement shall become a binding agreement between you and the Company.

Very truly yours,

MIDDLESEX WATER COMPANY

By /s/ A. Bruce O'Connor

Name: A. Bruce O'Connor

Title: Senior Vice President, Treasurer and  
Chief Financial Officer

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[Signature Page to Bond Purchase Agreement]

This Agreement is hereby  
accepted and agreed to as  
of the date hereof.

NEW YORK LIFE INSURANCE COMPANY

By: NYL Investors LLC, its Investment  
Manager

By /s/ Christopher H. Carey  
Name: Christopher H. Carey  
Title: Managing Director

NEW YORK LIFE INSURANCE AND ANNUITY CORPORATION

By: NYL Investors LLC, its Investment  
Manager

By /s/ Christopher H. Carey  
Name: Christopher H. Carey  
Title: Managing Director

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[Signature Page to Bond Purchase Agreement]

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## DEFINED TERMS

As used herein, the following terms have the respective meanings set forth below or set forth in the Section hereof following such term:

**“Acceptable Rating Agency”** means, (a) S&P, (b) Moody’s, (c) Fitch, (d) KBRA or (e) any other credit rating agency that is recognized as a nationally recognized statistical rating organization by the SEC and approved by the Required Holders, so long as, in each case, any such credit rating agency described in clause (a), (b), (c), (d) or (e) above continues to be a nationally recognized statistical rating organization recognized by the SEC and is approved as a “Credit Rating Provider” (or other similar designation) by the NAIC.

**“Affiliate”** means, at any time, and with respect to any Person, any other Person that at such time directly or indirectly through one or more intermediaries Controls, or is Controlled by, or is under common Control with, such first Person. Unless the context otherwise clearly requires, any reference to an “Affiliate” is a reference to an Affiliate of the Company.

**“Agreement”** means this Bond Purchase Agreement, including all Schedules attached to this Agreement.

**“Anti-Corruption Laws”** means any law or regulation in a U.S. or any non-U.S. jurisdiction regarding bribery or any other corrupt activity, including the U.S. Foreign Corrupt Practices Act and the U.K. Bribery Act 2010.

**“Anti-Money Laundering Laws”** means any law or regulation in a U.S. or any non-U.S. jurisdiction regarding money laundering, drug trafficking, terrorist-related activities or other money laundering predicate crimes, including the Currency and Foreign Transactions Reporting Act of 1970 (otherwise known as the Bank Secrecy Act) and the USA PATRIOT Act.

**“Blocked Person”** means (a) a Person whose name appears on the list of Specially Designated Nationals and Blocked Persons published by OFAC, (b) a Person, entity, organization, country or regime that is blocked or a target of sanctions that have been imposed under U.S. Economic Sanctions Laws or (c) a Person that is an agent, department or instrumentality of, or is otherwise beneficially owned by, controlled by or acting on behalf of, directly or indirectly, any Person, entity, organization, country or regime described in clause (a) or (b).

**“Business Day”** means (a) for the purposes of Section 8.6 only, any day other than a Saturday, a Sunday or a day on which commercial banks in New York City are required or authorized to be closed, and (b) for the purposes of any other provision of this Agreement, any day other than a Saturday, a Sunday or a day on which commercial banks in New York, New York are required or authorized to be closed.

**“Capital Lease”** means, at any time, a lease with respect to which the lessee is required concurrently to recognize the acquisition of an asset and the incurrence of a liability in accordance with GAAP.

SCHEDULE A  
(to Bond Purchase Agreement)

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**“Closing”** is defined in Section 3.

**“Code”** means the Internal Revenue Code of 1986 and the rules and regulations promulgated thereunder from time to time.

**“Company”** is defined in the first paragraph of this Agreement.

**“Confidential Information”** is defined in Section 20.

**“Control”** means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise; and the terms **“Controlled”** and **“Controlling”** shall have meanings correlative to the foregoing.

**“Controlled Entity”** means (a) any of the Subsidiaries of the Company and any of their or the Company’s respective Controlled Affiliates and (b) if the Company has a parent company, such parent company and its Controlled Affiliates.

**“Corporate Credit Rating”** is defined in Section 9.9(a).

**“Default”** means an event or condition the occurrence or existence of which would, with the lapse of time or the giving of notice or both, become an Event of Default.

**“Default Rate”** means, with respect to any Series 2023A Bond, the rate of interest per annum that is the greater of (a) 2.00% above the rate of interest stated in clause (a) of the first paragraph of such Series 2023A Bond or (b) 2.00% over the rate of interest publicly announced by JPMorgan Chase Bank, N.A. in New York, New York as its “base” or “prime” rate.

**“Disclosure Documents”** is defined in Section 5.3.

**“EDGAR”** means the SEC’s Electronic Data Gathering, Analysis and Retrieval System or any successor SEC electronic filing system for such purposes.

**“Environmental Laws”** means any and all federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including those related to Hazardous Materials.

**“ERISA”** means the Employee Retirement Income Security Act of 1974 and the rules and regulations promulgated thereunder from time to time in effect.

**“ERISA Affiliate”** means any trade or business (whether or not incorporated) that is treated as a single employer together with the Company under section 414 of the Code.

**“Event of Default”** is defined in Section 11.

“**FATCA**” means (a) sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), together with any current or future regulations or official interpretations thereof, (b) any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the United States of America and any other jurisdiction, which (in either case) facilitates the implementation of the foregoing clause (a), and (c) any agreements entered into pursuant to section 1471(b)(1) of the Code.

“**Fifty-Eighth Supplement**” is defined in Section 1.

“**Fitch**” means Fitch Ratings Ltd.

“**Form 10-K**” is defined in Section 7.1(b).

“**Form 10-Q**” is defined in Section 7.1(a).

“**GAAP**” means (a) generally accepted accounting principles as in effect from time to time in the United States of America and (b) for purposes of Section 9.6, with respect to any Subsidiary, generally accepted accounting principles (including International Financial Reporting Standards, as applicable) as in effect from time to time in the jurisdiction of organization of such Subsidiary.

“**Governmental Authority**” means

- (a) the government of
  - (1) the United States of America or any state or other political subdivision thereof, or
  - (2) any other jurisdiction in which the Company or any Subsidiary conducts all or any part of its business, or which asserts jurisdiction over any properties of the Company or any Subsidiary, or
- (b) any entity exercising executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, any such government.

“**Governmental Official**” means any governmental official or employee, employee of any government-owned or government-controlled entity, political party, any official of a political party, candidate for political office, official of any public international organization or anyone else acting in an official capacity.

“**Guaranty**” means, with respect to any Person, any obligation (except the endorsement in the ordinary course of business of negotiable instruments for deposit or collection) of such Person guaranteeing or in effect guaranteeing any indebtedness, dividend or other obligation of any other Person in any manner, whether directly or indirectly, including obligations incurred through an agreement, contingent or otherwise, by such Person:

(a) to purchase such indebtedness or obligation or any property constituting security therefor;

(b) to advance or supply funds (1) for the purchase or payment of such indebtedness or obligation, or (2) to maintain any working capital or other balance sheet condition or any income statement condition of any other Person or otherwise to advance or make available funds for the purchase or payment of such indebtedness or obligation;

(c) to lease properties or to purchase properties or services primarily for the purpose of assuring the owner of such indebtedness or obligation of the ability of any other Person to make payment of the indebtedness or obligation; or

(d) otherwise to assure the owner of such indebtedness or obligation against loss in respect thereof.

In any computation of the indebtedness or other liabilities of the obligor under any Guaranty, the indebtedness or other obligations that are the subject of such Guaranty shall be assumed to be direct obligations of such obligor.

**“Hazardous Materials”** means any and all pollutants, toxic or hazardous wastes or other substances that might pose a hazard to health and safety, the removal of which may be required or the generation, manufacture, refining, production, processing, treatment, storage, handling, transportation, transfer, use, disposal, release, discharge, spillage, seepage or filtration of which is or shall be restricted, prohibited or penalized by any applicable law, including asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum, petroleum products, lead based paint, radon gas or similar restricted, prohibited or penalized substances.

**“holder”** means, with respect to any Series 2023A Bond, the Person in whose name such Series 2023A Bond is registered in the register maintained by the Trustee pursuant to the Fifty-Eighth Supplement.

**“Indebtedness”** with respect to any Person means, at any time, without duplication,

(a) its liabilities for borrowed money and its redemption obligations in respect of mandatorily redeemable Preferred Stock;

(b) its liabilities for the deferred purchase price of property acquired by such Person (excluding accounts payable arising in the ordinary course of business but including all liabilities created or arising under any conditional sale or other title retention agreement with respect to any such property);

(c) (1) all liabilities appearing on its balance sheet in accordance with GAAP in respect of Capital Leases and (2) all liabilities which would appear on its balance sheet in accordance with GAAP in respect of Synthetic Leases assuming such Synthetic Leases were accounted for as Capital Leases;



(d) all liabilities for borrowed money secured by any Lien with respect to any property owned by such Person (whether or not it has assumed or otherwise become liable for such liabilities);

(e) all its liabilities in respect of letters of credit or instruments serving a similar function issued or accepted for its account by banks and other financial institutions (whether or not representing obligations for borrowed money);

(f) the aggregate Swap Termination Value of all Swap Contracts of such Person; and

(g) any Guaranty of such Person with respect to liabilities of a type described in any of clauses (a) through (f) hereof.

Indebtedness of any Person shall include all obligations of such Person of the character described in clauses (a) through (g) to the extent such Person remains legally liable in respect thereof notwithstanding that any such obligation is deemed to be extinguished under GAAP.

**“INHAM Exemption”** is defined in Section 6.2(e).

**“Institutional Investor”** means (a) any Purchaser of a Series 2023A Bond, (b) any holder of a Series 2023A Bond holding (together with one or more of its affiliates) more than 5% of the aggregate principal amount of the Series 2023A Bonds then outstanding, (c) any bank, trust company, savings and loan association or other financial institution, any pension plan, any investment company, any insurance company, any broker or dealer, or any other similar financial institution or entity, regardless of legal form, and (d) any Related Fund of any holder of any Series 2023A Bond.

**“KBRA”** means Kroll Bond Rating Agency, Inc.

**“Lien”** means, with respect to any Person, any mortgage, lien, pledge, charge, security interest or other encumbrance, or any interest or title of any vendor, lessor, lender or other secured party to or of such Person under any conditional sale or other title retention agreement or Capital Lease, upon or with respect to any property or asset of such Person (including in the case of stock, stockholder agreements, voting trust agreements and all similar arrangements).

**“Make-Whole Amount”** is defined in Section 8.7.

**“Material”** means material in relation to the business, operations, affairs, financial condition, assets or properties of the Company and its Subsidiaries taken as a whole.

**“Material Adverse Effect”** means a material adverse effect on (a) the business, operations, affairs, financial condition, assets or properties of the Company and its Subsidiaries taken as a whole, (b) the ability of the Company to perform its obligations under this Agreement, the Series 2023A Bonds and the other Transaction Documents or (c) the validity or enforceability of this Agreement, the Series 2023A Bonds or any other Transaction Document.

**“Maturity Date”** is defined in the first paragraph of each Series 2023A Bond.

**“Moody’s”** means Moody’s Investors Service, Inc.

**“Mortgage Indenture”** is defined in Section 1.

**“Multiemployer Plan”** means any Plan that is a “multiemployer plan” (as such term is defined in section 4001(a)(3) of ERISA).

**“NAIC”** means the National Association of Insurance Commissioners.

**“Non-U.S. Plan”** means any plan, fund or other similar program that (a) is established or maintained outside the United States of America by the Company or any Subsidiary primarily for the benefit of employees of the Company or one or more Subsidiaries residing outside the United States of America, which plan, fund or other similar program provides, or results in, retirement income, a deferral of income in contemplation of retirement or payments to be made upon termination of employment, and (b) is not subject to ERISA or the Code.

**“OFAC”** means the Office of Foreign Assets Control of the United States Department of the Treasury.

**“OFAC Sanctions Program”** means any economic or trade sanction that OFAC is responsible for administering and enforcing. A list of OFAC Sanctions Programs may be found at <http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>.

**“Officer’s Certificate”** means a certificate of a Senior Financial Officer or of any other officer of the Company whose responsibilities extend to the subject matter of such certificate.

**“Original Mortgage Indenture”** is defined in Section 1.

**“PBGC”** means the Pension Benefit Guaranty Corporation referred to and defined in ERISA.

**“Person”** means an individual, partnership, corporation, limited liability company, association, trust, unincorporated organization, business entity or Governmental Authority.

**“Plan”** means an “employee benefit plan” (as defined in section 3(3) of ERISA) subject to Title I of ERISA that is or, within the preceding five years, has been established or maintained, or to which contributions are or, within the preceding five years, have been made or required to be made, by the Company or any ERISA Affiliate or with respect to which the Company or any ERISA Affiliate may have any liability.

**“Preferred Stock”** means any class of capital stock of a Person that is preferred over any other class of capital stock (or similar equity interests) of such Person as to the payment of dividends or the payment of any amount upon liquidation or dissolution of such Person.

**“Private Rating Letter”** means a letter issued by an Acceptable Rating Agency in connection with any private debt rating for the Rated Bonds, which (a) sets forth the credit rating for the Rated Bonds, (b) refers to the Private Placement Number issued by CUSIP Global Services in respect of the Rated Bonds, if any, (c) addresses the likelihood of payment of both principal and interest on the Rated Bonds (which requirement shall be deemed satisfied if either (1) such letter includes confirmation that the rating reflects the Acceptable Rating Agency’s assessment of the Company’s ability to make timely payment of principal and interest on the Rated Bonds or a similar statement or (2) such letter is silent as to the Acceptable Rating Agency’s assessment of the likelihood of payment of both principal and interest and does not include any indication to the contrary), (d) includes such other information describing the relevant terms of the Rated Bonds as may be required from time to time by the SVO or any other Governmental Authority having jurisdiction over any holder of any Series 2023A Bond and (e) shall not be subject to confidentiality provisions or other restrictions which would prevent or limit the letter from being shared with the SVO or any other Governmental Authority having jurisdiction over any holder of any Series 2023A Bond.

**“Private Rating Rationale Report”** means, with respect to any Private Rating Letter, a report issued by the Acceptable Rating Agency in connection with such Private Rating Letter setting forth an analytical review of the Rated Bonds explaining the transaction structure, methodology relied upon, and, as appropriate, analysis of the credit, legal, and operational risks and mitigants supporting the assigned Private Rating Letter for the Rated Bonds, in each case, on the letterhead of the Acceptable Rating Agency or its controlled website and generally consistent with the work product that an Acceptable Rating Agency would produce for a similar publicly rated security and otherwise in form and substance generally required by the SVO or any other Governmental Authority having jurisdiction over any holder of any Series 2023A Bond from time to time. Such report shall not be subject to confidentiality provisions or other restrictions which would prevent or limit the report from being shared with the SVO or any other Governmental Authority having jurisdiction over any holder of any Series 2023A Bond.

**“property”** or **“properties”** means, unless otherwise specifically limited, real or personal property of any kind, tangible or intangible, choate or inchoate.

**“PTE”** is defined in Section 6.2(a).

**“Purchaser”** or **“Purchasers”** means each of the purchasers that has executed and delivered this Agreement to the Company and such Purchaser’s successors and assigns (so long as any such assignment complies with section 4 of the Fifty-Eighth Supplement), *provided, however*, that any Purchaser of a Series 2023A Bond that ceases to be the registered holder or a beneficial owner (through a nominee) of such Series 2023A Bond as the result of a transfer thereof pursuant to section 4 of the Fifty-Eighth Supplement shall cease to be included within the meaning of “Purchaser” of such Series 2023A Bond for the purposes of this Agreement upon such transfer.

**“Purchaser Schedule”** means the Purchaser Schedule to this Agreement listing the Purchasers of the Series 2023A Bonds and including their notice and payment information.

**“Qualified Institutional Buyer”** means any Person who is a “qualified institutional buyer” within the meaning of such term as set forth in Rule 144A(a)(1) under the Securities Act.

**“QPAM Exemption”** is defined in Section 6.2(d).

**“Rated Bonds”** is defined in Section 9.9(a).

**“Rated First Mortgage Bonds”** is defined in Section 9.9(a).

**“Rated Series 2023A Bonds”** is defined in Section 9.9(a).

**“Related Fund”** means, with respect to any holder of any Series 2023A Bond, any fund or entity that (a) invests in Securities or bank loans, and (b) is advised or managed by such holder, the same investment advisor as such holder or by an affiliate of such holder or such investment advisor.

**“Required Holders”** means at any time on or after the Closing, the holders of more than 50% in principal amount of the Series 2023A Bonds at the time outstanding (exclusive of Series 2023A Bonds then owned by the Company or any of its Affiliates).

**“Responsible Officer”** means any Senior Financial Officer and any other officer of the Company with responsibility for the administration of the relevant portion of this Agreement.

**“S&P”** means S&P Global Ratings.

**“SEC”** means the Securities and Exchange Commission of the United States of America.

**“Second Supplement”** means Second Supplemental Indenture dated October 1, 1939 between the Company and the Trustee.

**“Securities”** or **“Security”** shall have the meaning specified in section 2(1) of the Securities Act.

**“Securities Act”** means the Securities Act of 1933 and the rules and regulations promulgated thereunder from time to time in effect.

**“Senior Financial Officer”** means the chief financial officer, principal accounting officer, treasurer or comptroller of the Company.

**“Series 2023A Bonds”** is defined in Section 1.

**“Significant Subsidiary”** means at any time any Subsidiary that would at such time constitute a “significant subsidiary” (as such term is defined in Regulation S-X of the SEC as in effect on the date of the Closing) of the Company.

**“Source”** is defined in Section 6.2.

**“State Sanctions List”** means a list that is adopted by any state Governmental Authority within the United States of America pertaining to Persons that engage in investment or other commercial activities in Iran or any other country that is a target of economic sanctions imposed under U.S. Economic Sanctions Laws.

**“Subsidiary”** means, as to any Person, any other Person in which such first Person or one or more of its Subsidiaries or such first Person and one or more of its Subsidiaries owns sufficient equity or voting interests to enable it or them (as a group) ordinarily, in the absence of contingencies, to elect a majority of the directors (or Persons performing similar functions) of such second Person, and any partnership or joint venture if more than a 50% interest in the profits or capital thereof is owned by such first Person or one or more of its Subsidiaries or such first Person and one or more of its Subsidiaries (unless such partnership or joint venture can and does ordinarily take major business actions without the prior approval of such Person or one or more of its Subsidiaries). Unless the context otherwise clearly requires, any reference to a “Subsidiary” is a reference to a Subsidiary of the Company.

**“Substitute Purchaser”** is defined in Section 21.

**“SVO”** means the Securities Valuation Office of the NAIC.

**“Swap Contract”** means (a) any and all interest rate swap transactions, basis swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward foreign exchange transactions, cap transactions, floor transactions, currency options, spot contracts or any other similar transactions or any of the foregoing (including any options to enter into any of the foregoing), and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc. or any International Foreign Exchange Master Agreement.

**“Swap Termination Value”** means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amounts(s) determined as the mark-to-market values(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts.

**“Synthetic Lease”** means, at any time, any lease (including leases that may be terminated by the lessee at any time) of any property (a) that is accounted for as an operating lease under GAAP and (b) in respect of which the lessee retains or obtains ownership of the property so leased for U.S. federal income tax purposes, other than any such lease under which such Person is the lessor.

**“Transaction Documents”** means this Agreement, the Mortgage (including the Fifty-Eighth Supplement) and the Series 2023A Bonds.

**“Trustee”** is defined on Section 1.

**“United States”** or **“U.S.”** means the United States of America.

**“United States Person”** has the meaning set forth in Section 7701(a)(30) of the Code.

**“USA PATRIOT Act”** means United States Public Law 107-56, Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 and the rules and regulations promulgated thereunder from time to time in effect.

**“U.S. Economic Sanctions Laws”** means those laws, executive orders, enabling legislation or regulations administered and enforced by the United States pursuant to which economic sanctions have been imposed on any Person, entity, organization, country or regime, including the Trading with the Enemy Act, the International Emergency Economic Powers Act, the Iran Sanctions Act, the Sudan Accountability and Divestment Act and any other OFAC Sanctions Program.

**“Wholly-Owned Subsidiary”** means, at any time, any Subsidiary all of the equity interests (except directors’ qualifying shares) and voting interests of which are owned by any one or more of the Company and the Company’s other Wholly-Owned Subsidiaries at such time.

FORM OF FIFTY-EIGHTH SUPPLEMENTAL INDENTURE

[See Attached]

SCHEDULE 1  
(to Bond Purchase Agreement)

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FORM OF OPINION OF SPECIAL COUNSEL  
FOR THE COMPANY

We have acted as special counsel to Middlesex Water Company, a New Jersey corporation (the “Borrower”), in connection with the Bond Purchase Agreement dated as of March 2, 2023 (the “Agreement”), by and between the Borrower and the Purchasers named therein and the authorization, issuance, sale, execution and delivery by the Borrower of \$40,000,000 in aggregate principal amount of its First Mortgage Scheduled Interest Rate Bonds, Series 2023A (the “2023A Bonds”) to the Purchasers. All capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Agreement.

In so acting, we have examined the Constitution and laws of the State of New Jersey, including, without limitation, the “New Jersey Business Corporation Act”, P.L. 1968, c. 263, as amended (N.J.S.A. 14A:1-1 *et seq.*), the restated certificate of incorporation and by-laws of the Borrower, and the various resolutions of the Borrower identified herein. We also have examined originals, or copies certified or otherwise identified to our satisfaction, of the following:

- (a) the 2023A Bonds;
- (b) the Agreement;
- (c) the Mortgage Indenture; and
- (d) the Order of the New Jersey Board of Public Utilities dated May 5, 2020, Docket No. WF20020188, and
- (e) the Resolution (as defined herein).

We also have examined and relied as to factual matters upon originals, or copies certified or otherwise authenticated to our satisfaction, of such other records, documents, certificates and other instruments, and have made such investigation of law as in our judgment we have deemed necessary or appropriate, to enable us to render the opinions expressed below.

We are of the opinion that:

1. The Borrower is a corporation duly organized and validly existing and in good standing under the laws of the State of New Jersey and has the corporate power and authority to conduct its business as currently conducted and currently proposed to be conducted, to execute and deliver the Agreement, the Fifty-Eighth Supplement and the 2023A Bonds being issued on the date hereof and to perform the provisions thereof.

2. On February 19, 2020 and February 16, 2023, the Borrower adopted resolutions (collectively, the “Resolution”): (i) authorizing the execution and delivery by the Borrower of the Agreement and the Fifty-Eighth Supplement and the issuance, sale, execution, and delivery by the Borrower of the 2023A Bonds to the Purchasers, (ii) authorizing the Borrower to consummate the transactions contemplated by the Agreement, the Fifty-Eighth Supplement and the 2023A Bonds,

SCHEDULE 4.4(a)  
(to Bond Purchase Agreement)

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and (iii) authorizing the execution and delivery of all other certificates, agreements, documents and instruments in connection with the execution and delivery of the 2023A Bonds. The Resolutions were duly and lawfully adopted and authorized in accordance with applicable law, including, without limitation, the New Jersey Business Corporation Act, and the By-laws of the Borrower, and the Resolutions constitute all of the actions necessary to be taken by the Borrower to authorize its actions contemplated by clauses (i) through (iii) above.

3. The Agreement has been duly authorized, executed and delivered by the Borrower and constitutes a legal, valid and binding agreement of the Borrower, enforceable against the Borrower in accordance with its terms.

4. The Fifty-Eighth Supplement has been duly authorized, executed and delivered by the Borrower and constitutes a legal, valid and binding agreement of the Borrower, enforceable against the Borrower in accordance with its terms.

5. The 2023A Bonds being issued on the date hereof have been duly authorized, executed and delivered by the Borrower and, when authenticated by the Trustee, constitute the legal, valid and binding obligations of the Borrower, enforceable against the Borrower in accordance with their terms.

6. The Mortgage Indenture constitutes the legal, valid and binding agreement of the Borrower, enforceable against the Borrower in accordance with its terms.

7. All approvals, consents or authorizations of, or registrations of or filings with, any Governmental Authority required to date on the part of the Borrower in connection with the authorization, execution, delivery and performance of the Agreement and the Fifty-Eighth Supplement, the authorization, issuance, sale, execution, delivery and performance of the 2023A Bonds or the performance of the Mortgage Indenture have been obtained or made.

8. The Fifty-Eighth Supplement is in appropriate form for recording in the recording offices listed on Schedule A attached hereto. The Mortgage Indenture (excluding the Fifty-Eighth Supplement) creates, and when the Fifty-Eighth Supplement is filed in the recording offices listed on Schedule A, it will create, a valid and perfected lien on or security interest in all right, title and interest of the Borrower in (a) the real property described in the Fifty-Eighth Supplement, and (b) to the extent that a security interest in such personal property and fixtures may be created under the Uniform Commercial Code in effect in the State of New Jersey, the personal property and fixtures described in the Fifty-Eighth Supplement.

9. It is not necessary in connection with the offering, sale and delivery of the 2023A Bonds being delivered on the date hereof, under the circumstances contemplated by the Agreement, to register such 2023A Bonds under the Securities Act or to qualify an indenture in respect of such 2023A Bonds under the Trust Indenture Act of 1939, as amended.

10. The Borrower is not an “investment company” or, to our knowledge, a Person directly or indirectly controlled by or acting on behalf of an “investment company” within the meaning of the Investment Company Act of 1940, as amended.

11. None of the transactions contemplated by the Agreement (including the use of the proceeds from the sale of the 2023A Bonds being delivered on the date hereof) will violate or result in a violation of Regulation T, U or X of the Board of Governors of the United States Federal Reserve System, 12 CFR, Part 220, Part 221 and Part 224, respectively.

12. The authorization, execution and delivery by the Borrower of the Agreement and the Fifty-Eighth Supplement, the authorization, issuance, sale, execution, and delivery of the 2023A Bonds by the Borrower to the Purchasers and the observation and performance by the Borrower of its duties, covenants, obligations and agreements under the foregoing documents and under the Mortgage Indenture, including, without limitation, the repayment of the 2023A Bonds and the consummation of the transactions contemplated in the foregoing documents, do not and will not (i), result in the creation or imposition of any lien, charge or encumbrance, other than the lien created under the Mortgage Indenture, upon any properties or assets of the Borrower or any Subsidiary, (ii) result in any breach of any of the terms, conditions or provisions of, or constitute a default under, any outstanding debt or lease obligation, trust agreement, indenture, mortgage, deed of trust, loan agreement or other instrument described on Schedule 5.15 to the Agreement, or (iii) result in any violation of the provisions of the certificate of incorporation or by-laws of the Borrower, the Resolutions, or any laws, injunctions, judgments, decrees, rules, regulations or existing orders of any Governmental Authority known to us to which the Borrower or its properties or operations is subject.

This opinion is limited by, subject to and based on the following:

- (i) Each document submitted to us for review is accurate and complete; each such document submitted to us as an original is authentic; each such document submitted to us as a copy conforms to the original document.
- (ii) Parties who are natural persons, and natural persons acting on a party's behalf, have the requisite legal capacity.
- (iii) Each of the parties to the documents signed by the Borrower (the “Borrower Documents”) other than the Borrower (“Other Parties”) has satisfied all legal requirements necessary to make the Borrower Documents to which it is a party enforceable against it. Without limiting the generality of the foregoing, we have assumed that each Other Party: (a) has legal existence; (b) has taken all corporate or other action necessary to complete the transactions contemplated by the Borrower Documents; (c) has duly authorized, executed and delivered each Borrower Document to which it is a party; (d) has the power to enter into the Borrower Documents to which it is a party; and (e) has satisfied the legal requirements that are applicable to it, to the extent necessary to make the Borrower Documents to which it is a

party enforceable against it, and has complied with all legal requirements pertaining to its status as such status relates to its rights to enforce the Borrower Documents against the Borrower.

- (iv) The Other Parties will (a) act in good faith in the exercise of any rights or enforcement of any remedies under the Borrower Documents; and (b) comply with all requirements of applicable procedural and substantive law in exercising any rights or enforcing any remedies under the Borrower Documents.
- (v) The Borrower Documents accurately reflect the complete understanding of the parties with respect to the transactions contemplated thereby and the rights and obligations of the parties thereunder.
- (vi) There are no agreements or understandings among the parties, written or oral, and there is no usage of trade or course of prior dealing among the parties that would, in either case, define, supplement, modify, amend or qualify the terms of the Borrower Documents.
- (vii) There has not been any mutual mistake of fact or misunderstanding, fraud, duress or undue influence.
- (viii) We express no opinion (except as expressly set forth herein) with respect to any of the following: (a) title to any real property, personal property or fixtures; (b) the creation, perfection, or priority of any liens, encumbrances or security interests in real property, personal property or fixtures; or (c) the accuracy or sufficiency of the descriptions of any real property, personal property or fixtures.
- (ix) The Other Parties and any agent acting for the Other Parties have acted in good faith and without notice of any defense against the enforcement of any rights created by, or adverse claim to any property or security interest transferred or created as part of the Borrower Documents.

We have no actual knowledge that the foregoing assumptions are false. We have no actual knowledge of facts that, under the circumstances, would make our reliance upon the foregoing assumptions unreasonable.

(a) This opinion is limited in all respects to the laws of the State of New Jersey and applicable federal law.

(b) Except as expressly set forth herein, we have made no independent investigation as to the accuracy or completeness of any representation, warranty, data or other information, written or oral, made or furnished in connection with the Borrower Documents or otherwise, and we have assumed that neither the Borrower Documents, nor any other information

furnished to us contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements made therein not misleading.

(c) In rendering this opinion we have assumed that funds will be advanced to the Borrower pursuant to the terms of the Borrower Documents.

(d) The qualification of any opinion or statement herein by the use of the words "to our knowledge" or "known to us" means that during the course of our representation as described in this opinion letter, no information has come to the attention of the attorneys in this firm involved in the transactions described herein which would give such attorneys current actual knowledge of the existence of the facts so qualified. Except as set forth herein, we have not undertaken any investigation to determine the existence of such facts, but have relied on representations and warranties in the Borrower Documents and on information provided to us by the Borrower in connection with our preparation of this opinion letter, and no inference as to our knowledge thereof shall be drawn from the fact of our representation of any party or otherwise.

(e) We express no opinion as to the enforceability of any provisions of the Borrower Documents providing for (i) the waiver of a trial by jury, waiver of venue or forum selection, or waiver of damage claims; (ii) a right of setoff against or a waiver or release by the Borrower; (iii) the indemnification or exculpation of any person (A) in violation of public policy, (B) to the extent precluded by federal or state securities laws, or (C) purporting to indemnify or exculpate such person from the consequences of its own negligence, willful misconduct or strict liability; (iv) any party's consent to jurisdiction; (v) self-help remedies; (vi) confession of judgment provisions; (vii) waivers and releases of the benefit of procedural or substantive rights or defenses; (viii) waivers and releases of errors, defects and imperfections in proceedings; (ix) waivers and releases of obligations of good faith, fair dealing, diligence, and reasonableness; (x) provisions that entitle any party, as a matter of right, to the appointment of a receiver after the occurrence of a default; (xi) provisions imposing increased interest rates or late payment charges upon delinquency in payment or the occurrence of a default; (xii) provisions requiring that all waivers under and/or modifications of the Borrower Documents be in writing; or (xiii) provisions for the concurrent or cumulative exercise of remedies which would have the effect of compensating the Other Parties for an amount in excess of their actual loss.

(f) We also bring to your attention that the enforceability of the Borrower Documents may be limited to the extent that remedies are sought for a breach that a court concludes is immaterial or does not adversely affect the party seeking to enforce its rights thereunder. The enforceability of the Borrower Documents may also be limited by unconscionable or inequitable conduct on the part of the Other Parties, defenses arising from the Other Parties' failure to act in accordance with the terms and conditions of the Borrower Documents, defenses arising as a consequence of the passage of time, or defenses arising as a result of the Other Parties' failure to act reasonably or in good faith.

(g) We have made no examination of and express no opinion with respect to (i) title to or rights in or descriptions of the properties contemplated as security by the Borrower Documents; (ii) the filing or recording of the Borrower Documents or any financing statements or other instruments relating thereto; (iii) except as expressly set forth herein, the creation

perfection, or enforcement of any liens or security interest in any collateral; or (iv) the priority of any liens or security interest in any collateral.

(h) We express no opinion with respect to (a) permits, consents, authorizations or approvals relating to the construction, development, use or occupancy of the Property; (b) compliance of the Borrower with any law, order, rule or regulation relating to the construction, development, use or occupancy of the Property; or (c) compliance of the Property with applicable laws, including, without limitation, laws relating to subdivision, zoning, building, or environmental matters. We have assumed that the Property constitutes a separately subdivided parcel.

(i) Except as expressly set forth herein, we express no opinion with respect to compliance with, or the applicability of, any state or federal securities laws, rules or regulations to the transactions contemplated by the Borrower Documents.

This opinion is given as of the date hereof and we assume no obligation to advise you of changes that may hereafter be brought to our attention. This opinion letter is limited to the matters expressly stated herein and no opinions may be inferred or implied beyond the matters expressly stated herein. This opinion may be relied upon by each of the Purchasers and any subsequent holder of the 2023A Bonds. This opinion may be provided to your attorneys, auditors and other advisors, any Governmental Authority, including, without limitation, the National Association of Insurance Commissioners.

**FORM OF OPINION OF SPECIAL COUNSEL  
FOR THE PURCHASERS**

The closing opinion of ArentFox Schiff LLP, special counsel to the Purchasers, called for by Section 4.4(b) of the Agreement, shall be dated the date of the Closing and addressed to the Purchasers, shall be satisfactory in form and substance to the Purchasers and shall be to the effect that:

1. The Company is a corporation in good standing under the laws of the State of New Jersey.
2. The Agreement constitutes the legal, valid and binding contract of the Company, enforceable against the Company in accordance with its terms.
3. The issuance, sale and delivery of the Series 2023A Bonds being delivered on the date of the Closing under the circumstances contemplated by the Agreement do not, under existing law, require the registration of such Series 2023A Bonds under the Securities Act or the qualification of an indenture under the Trust Indenture Act of 1939.

The opinion of ArentFox Schiff LLP shall also state that the opinion of Saul Ewing LLP, counsel for the Company, is satisfactory in scope and form to ArentFox Schiff LLP and that, in their opinion, the Purchasers are justified in relying thereon.

In rendering the opinion set forth in paragraph 1 above, ArentFox Schiff LLP may rely solely upon an examination of the good standing of the Company from the Secretary of State of the State of New Jersey. The opinion of ArentFox Schiff LLP is limited to the laws of the State of New York and the federal laws of the United States.

With respect to matters of fact upon which such opinion is based, ArentFox Schiff LLP may rely on appropriate certificates of public officials and officers of the Company and upon representations of the Company and the Purchasers delivered in connection with the issuance and sale of the Series 2023A Bonds.

SCHEDULE 4.4(b)  
(to Bond Purchase Agreement)

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DISCLOSURE MATERIALS

**Documents Delivered Prior to January 11, 2023**

New Jersey Board of Public Utilities, I/M/O application of Middlesex Water Company for Authority to Issue and Sell up to \$100.0 million of Principal Amount Debt Securities, Docket No. WF20020188, Order (Issued May 5, 2020).

Middlesex Water Company List of Top 10 Largest Commercial and Industrial Customers (by 2022 Revenues).

SCHEDULE 5.3  
(to Bond Purchase Agreement)

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**SUBSIDIARIES OF THE COMPANY AND  
OWNERSHIP OF SUBSIDIARY STOCK**

(i) Subsidiaries:

<b>Name</b>	<b>Jurisdiction</b>	<b>% of Shares</b>
Tidewater Utilities, Inc.	Delaware	100
White Marsh Environmental Systems, Inc.[1]	Delaware	100
Pinelands Water Company		
Pinelands Wastewater Company	New Jersey	100
Utility Service Affiliates, Inc.	New Jersey	100
Utility Service Affiliates (Perth Amboy), Inc.	New Jersey	100
Twin Lakes Utilities, Inc.	New Jersey	100
Southern Shores Water Company, LLC[2]	New Jersey	100
	Pennsylvania	100
	Maryland/Delaware	100

(ii) Affiliates:

N/A/ (See Section (i) for Subsidiaries).

(iii) Company's Directors and Senior Officers:

**Directors**

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<sup>1</sup> Tidewater Utilities, Inc. is the direct owner of this entity.

<sup>2</sup> Tidewater Utilities, Inc. is the direct owner of this entity.



Dennis W. Doll (Chairman)  
Joshua Bershada, M.D.  
James F. Cosgrove, Jr.  
Kim C. Hanemann  
Steven M. Klein  
Amy B. Mansue  
Vaughn L. McKoy  
Ann L. Noble  
Walter G. Reinhard

**Senior Officers**

Dennis W. Doll (Chairman, President and Chief Executive Officer)  
A. Bruce O'Connor (Senior Vice President, Treasurer and Chief Financial Officer)  
Jay L. Kooper (Vice President, General Counsel and Secretary)  
G. Christian Andreasen, Jr. (Vice President, Enterprise Engineering)  
Robert K. Fullagar (Vice President, Operations)  
Lorrie B. Ginegaw (Vice President, Human Resources)  
Bernadette M. Sohler (Vice President, Corporate Affairs)  
Georgia M. Simpson (Vice President, Information Technology and Chief Technology Officer)

FINANCIAL STATEMENTS

**Middlesex Water Company**

Form 10-K – For the Fiscal Year Ended December 31, 2020

Form 10-K – For the Fiscal Year Ended December 31, 2021

Form 10-K – For the Fiscal Year Ended December 31, 2022

Form 10-Q – For the Quarterly Period Ended March 31, 2022

Form 10-Q – For the Quarterly Period Ended June 30, 2022

Form 10-Q – For the Quarterly Period Ended September 30, 2022

SCHEDULE 5.5  
(to Bond Purchase Agreement)

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EXISTING INDEBTEDNESS

[See Attached]

SCHEDULE 5.15  
(to Bond Purchase Agreement)

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INFORMATION RELATING TO PURCHASERS

NAME AND ADDRESS OF PURCHASER

PRINCIPAL AMOUNT OF  
SERIES 2023A BONDS TO BE PURCHASED

NEW YORK LIFE INSURANCE COMPANY  
51 Madison Avenue, 2<sup>nd</sup> Floor  
New York, New York 10010

\$20,000,000

*Redacted and delivered to the Company under separate cover.*

PURCHASER SCHEDULE  
(to Bond Purchase Agreement)

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NAME AND ADDRESS OF PURCHASER

PRINCIPAL AMOUNT OF  
SERIES 2023A BONDS TO BE PURCHASED

NEW YORK LIFE INSURANCE AND  
ANNUITY CORPORATION  
51 Madison Avenue, 2<sup>nd</sup> Floor  
New York, New York 10010

\$20,000,000

*Redacted and delivered to the Company under separate cover.*

PS-2

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**TIDEWATER UTILITIES, INC.**

**\$1,875,000 GENERAL OBLIGATION BOND  
(DAIRY FARM ROAD INTERCONNECTION PROJECT)  
SERIES 2023B-DWSRF**

FINANCING AGREEMENT

BETWEEN

TIDEWATER UTILITIES, INC.

AND

DELAWARE DRINKING WATER STATE REVOLVING FUND,  
ACTING BY AND THROUGH THE  
DELAWARE DEPARTMENT OF HEALTH AND SOCIAL SERVICES,  
DIVISION OF PUBLIC HEALTH

Loan No. 22000035

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## FINANCING AGREEMENT

THIS FINANCING AGREEMENT (this “Agreement”) is made as of this 5<sup>th</sup> day of April, 2023, between the DELAWARE DRINKING WATER STATE REVOLVING FUND, acting by and through the DELAWARE DEPARTMENT OF HEALTH & SOCIAL SERVICES, DIVISION OF PUBLIC HEALTH, a public agency of The State of Delaware (the “Department”) and TIDEWATER UTILITIES, INC., a corporation organized under the laws of The State of Delaware (the “Borrower”).

Pursuant to Title 29 Delaware Code Section 7903 (the “Act”), the General Assembly established a permanent and perpetual fund known as the “Delaware Drinking Water State Revolving Fund” (the “Fund”) and empowered the Secretary of the Department of Health & Social Services to administer such Fund. From the Fund, the Department from time to time makes loans to and acquires obligations of eligible persons in Delaware to finance the costs of drinking water facilities in accordance with the Federal Safe Drinking Water Act. General information on Drinking Water State Revolving Funds can be found at: <https://www.epa.gov/dwsrf>.

The Borrower requested a loan (the “Loan”) from the Fund and will evidence its obligation to repay the Loan by the signing of this Agreement and by the delivery of its General Obligation Bond (Dairy Farm Road Interconnection Project), Series 2023B-DWSRF (the “Bond”). The Borrower will use the Loan Proceeds from the Fund to: (i) finance a second distribution main by continuing a 12" main +/-9,170 along Sweetbriar Road and Dairy Farm Road to interconnect with an existing 16" main located on Beaver Dam Road, as more fully described in **Exhibit A** and (ii) if desired, pay certain administrative costs and costs of issuing the Bond (collectively, the “Project”).

### ARTICLE I DEFINITIONS

#### Section 1.1. Definitions.

The capitalized terms contained in this Agreement shall have the meanings set forth below unless the context requires otherwise and any capitalized terms not otherwise defined herein shall have the meaning assigned to such terms in the Act:

“Agreement” means this Financing Agreement between the Department and the Borrower, together with any amendments or supplements hereto.

“Authorized Representative” means the President, Vice President, Chairman, Treasurer, and Secretary of the Borrower or any employee of the Borrower authorized by resolution or certificate of the Borrower to perform the act or sign the document in question.

“Business Day” means a day of the year which is not a Saturday or Sunday or a day on which banking institutions located in New York or Delaware are required or authorized to remain closed or on which the New York Stock Exchange is closed.

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“Closing Date” means the date this Agreement is executed and delivered by the Borrower and the Department.

“Commitment Letter” shall mean the commitment letter from the Department to the Borrower dated January 23, 2023 and all extensions and amendments thereto.

“Consulting Engineer” means any firm of independent consulting engineers of recognized standing and experienced in the field of environmental engineering and registered to do business in Delaware. Any such firm shall be subject to the reasonable approval of the Department.

“Department” means the Department of Health and Social Services, Division of Public Health.

“Event of Default” shall have the meaning set forth in Section 9.1.

“Fiscal Year” means the period of twelve months established by the Borrower as its annual accounting period.

“Loan” means the loan from the Department to the Borrower pursuant to this Agreement.

“Loan Proceeds” means the funds applied to make the loan to the Borrower pursuant to this Agreement.

“Notice to Proceed” means a written notice given by the Borrower and signed by an Authorized Representative issued to each construction contractor fixing the date on which construction, equipping, acquisition, expansion or renovation of the Project as described in **Exhibit A** will commence, a copy of which must be furnished to the Department by the Borrower within one year of the Closing Date.

“Penalty” shall have the meaning set forth in Section 3.3.

“Project” means, collectively, the various improvements and upgrades to the System of the Borrower, as more fully described in **Exhibit A**, the costs of the construction, acquisition or equipping of which are to be financed in whole or in part with the Loan Proceeds.

“Project Budget” means the budget for the financing of the Project, a copy of which is attached to this Agreement as **Exhibit B**.

“Project Costs” means the costs of the construction, acquisition or equipping of the Project, as further described in the Project Budget, and such other costs as may be approved in writing by the Department, provided such costs are permitted by the Act.

“System” means all plants, systems, facilities, equipment or property, of which the Project constitutes the whole or a part, owned, operated or maintained by the Borrower and used in connection with the drinking water services for the systems which comprise the Project, all as described in Exhibit A.

Section 1.2. Rules of Construction.

The following rules shall apply to the construction of this Agreement unless the context requires otherwise:

(a) Singular words shall connote the plural number as well as the singular and vice versa.

(b) All references in this Agreement to particular Sections or Exhibits are references to Sections or Exhibits of this Agreement unless otherwise indicated.

(c) The headings and table of contents as used in this Agreement are solely for convenience of reference and shall not constitute a part of this Agreement nor shall they affect its meaning, construction or effect.

ARTICLE II  
REPRESENTATIONS

Section 2.1. Representations by Borrower.

The Borrower makes the following representations as the basis for its undertakings under this Agreement:

(a) The Borrower is a duly organized and validly existing corporation in good standing under the laws of the State of Delaware.

(b) The Borrower has full right, power and authority to (i) execute this Agreement and the other documents related thereto, (ii) own and operate the System, (iii) construct, acquire or equip the Project and finance the Project Costs by borrowing money for such purpose pursuant to this Agreement, and (iv) carry out and consummate all of the transactions contemplated by this Agreement.

(c) All permits, licenses, registrations, certificates, authorizations and approvals required to have been obtained as of the date of signing of this Agreement have been obtained for (i) the execution by the Borrower of this Agreement, (ii) the performance and enforcement of the obligations of the Borrower thereunder, (iii) the acquisition, construction, equipping, occupation, operation and use of the Project, and (iv) the operation and use of the System. The Borrower knows of no reason why any other necessary permits or approvals cannot be obtained as required.

(d) This Agreement has been executed by a duly authorized officer of the Borrower and constitutes the legal, valid and binding obligation of the Borrower enforceable against the Borrower in accordance with the terms of this Agreement.

(e) There are not pending nor, to the best of the knowledge of the undersigned officer of the Borrower, threatened, any actions, suits, proceedings or investigations of a legal, equitable, regulatory, administrative or legislative nature, in which a judgment, order or resolution may have a material adverse effect on the Borrower, or its business, assets, condition (financial or otherwise), operations or prospects or in its ability to perform its obligations under this Agreement.

(f) There have been no material defaults by any contractor or subcontractor under any contract made in connection with the construction or equipping of the Project.

(g) No material adverse change has occurred in the financial condition of the Borrower from that indicated in the financial statements, application and other information furnished to the Department in connection with this Agreement.

(h) No Event of Default has occurred and is continuing.

(i) Except as may otherwise be approved by the Department or permitted by the terms hereof, the Project and the System at all times will be owned by the Borrower and will not be operated or controlled by any other entity or person.

(j) The Project will be a part of the System.

(k) The Loan Proceeds and funds available from the other sources specified in the Project Budget will be sufficient to pay the estimated Project Costs.

(l) The Borrower has received or has commitments to obtain all funds and other financing for the Project as contemplated in the Project Budget.

(m) The Borrower expects to complete the acquisition, construction and equipping of the Project on or before the projected date of June 30, 2023. The Borrower expects to adhere to the estimated drawdown schedule attached hereto as **Exhibit D** and certified to in the "Certificate of the Borrower and Projected Drawdown Schedule of the Project" attached hereto as **Exhibit F** and made a part hereof. This projected date of completion is subject to an extension if such extension is mutually agreed upon by the Department and the Borrower. Noncompliance with this Section 2.1(m) may cause loan funds to become de-obligated and reallocated to other drinking water projects at the discretion of the Department.

ARTICLE III  
ADVANCE AND USE OF LOAN PROCEEDS; CONSTRUCTION OF PROJECT

Section 3.1. Advance of Loan Proceeds.

The Department agrees to advance to the Borrower pursuant to this Agreement up to One Million Eight Hundred Seventy-Five Thousand Dollars (\$1,875,000) to pay Project Costs in accordance with the Project Budget.

Section 3.2. Application of Loan Proceeds.

(a) The Borrower agrees to apply the Loan Proceeds solely and exclusively to the payment, or the reimbursement of the Borrower for the payment, of Project Costs and further agrees, upon the request of the Department, to exhibit to the Department, vouchers, statements, bills of sale or other evidence of the actual payment of such Project Costs. The Department shall disburse the Loan Proceeds to or for the account of the Borrower upon execution of this Agreement and upon receipt by the Department of the following:

(1) A requisition (upon which the Department shall be entitled to rely) signed by an Authorized Representative and containing all information called for by, and otherwise being in the form of, **Exhibit C** attached hereto.

(2) If such requisition includes an item for payment for labor or to contractors, builders or materialmen (i) a certificate, signed by an Authorized Representative, stating that such work was actually performed or such materials, supplies or equipment were actually furnished or installed in or about the construction of the Project; and (ii) a certificate signed by an Authorized Representative stating either that such materials, supplies or equipment are not subject to any lien or security interest or that such lien or security interest will be released or discharged upon payment of the requisition.

Upon receipt of each such requisition and accompanying certificate or certificates, the Department shall disburse Loan Proceeds hereunder to or for the account of the Borrower in accordance with such requisition in an amount and to the extent approved by the Department. The Borrower expects to adhere to the estimated drawdown schedule attached hereto as **Exhibit D**. The Department shall have no obligation to disburse any such Loan Proceeds if the Borrower is in default hereunder, nor shall the Department have any obligation to approve any requisition if the Borrower is not in compliance with the terms of this Agreement.

(b) The Borrower shall comply with all applicable State of Delaware and federal laws. Except as may otherwise be approved by the Department, disbursements shall be held at ninety-five percent (95%) of the maximum amount authorized hereunder to ensure satisfactory completion of the Project. Upon receipt from the Borrower of the certificate specified in Section 3.4 and a final requisition detailing all retainages to which the Borrower is then entitled, the Department, to the extent approved by the Department and subject to the provisions of this Section and Section 3.4, will disburse Loan Proceeds to or for the account of the Borrower to the extent of such approval.

(c) The Department may apply Loan Proceeds to pay any Penalty assessed pursuant to Section 3.3.

(d) The Department shall have no obligation to disburse Loan Proceeds in excess of the amount necessary to pay for approved Project Costs.

(e) The Borrower shall comply in all respects with all applicable federal laws, regulations and other requirements related to or arising out of or in connection with the Project and the funding thereto by the Fund. The Borrower shall also comply in all respects with the Federal Single Audit Act, 2 CFR 200 Subpart F, as a sub-recipient of Federal funds.

(f) The Borrower shall comply with the Delaware Department of Labor Prevailing Wage Rate Regulations.

(g) The Borrower shall comply with the Delaware Drinking Water State Revolving Fund's Davis-Bacon Wage Rate Act Requirement as set forth in the closing documents. The Borrower agrees that all contractors or subcontractors utilized by the Borrower in the Project will complete and file the U.S. Department of Labor's payroll form WH-347.

(h) As a recipient of Fund assistance, the Borrower shall comply with the Prohibition on Certain Telecommunication and Video Surveillance Services or Equipment located in 2 CFR 200.216, as such regulation relates to the Project. The Borrower agrees that none of the Loan Proceeds shall be used to procure, enter into, extend or renew contracts or obtain equipment, services or systems that use "covered telecommunications equipment or services," as identified in the regulation, as a substantial or essential component of any system, or as critical technology as part of any system.

(i) As a recipient of Fund assistance, the Borrower agrees that none of the Loan Proceeds made available to the Borrower shall be used for the Project for the construction, alteration, maintenance, or repair of the System unless all of the iron and steel products used in the Project are produced in the United States ("American Iron and Steel Requirement"), unless: (i) the Borrower has requested and obtained a waiver from the Environmental Protection Agency pertaining to the Project or (ii) the Department has otherwise advised the Borrower in writing that the American Iron and Steel Requirement is not applicable to the Project. The American Iron and Steel Requirement shall not apply in any case or category of cases in which the Administrator of the Environmental Protection Agency finds that: (i) applying the requirement would be inconsistent with the public interest; (ii) iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (iii) inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

In this section 3.2(i), the term "iron and steel products" means the following products made primarily of iron or steel-lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials. "Steel" means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

The Bipartisan Infrastructure Law of 2021, also known as the Infrastructure Investment and Jobs Act of 2021 ("IIJA"), established the Build America Buy America (BABA) Act domestic sourcing requirements for federal financial assistance programs for infrastructure, including the Fund, and the Borrower must comply with the BABA provision. BABA also creates expanded American Iron and Steel requirements to include construction materials and manufactured goods for domestic preference and sourcing requirements.

In procuring materials for public works projects, entities using taxpayer-financed Federal assistance should give a commonsense procurement preference for the materials and

products produced by companies and workers in the United States in accordance with the high ideals embodied in the environmental, worker, workplace safety, and other regulatory requirements of the United States. The benefits of domestic content procurement preferences extend beyond economics. Common construction materials used in public works infrastructure projects, including steel, iron, manufactured products, non-ferrous metals, plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables), glass (including optic glass), lumber, and drywall are not adequately covered by a domestic content procurement preference, thus limiting the impact of taxpayer purchases to enhance supply chains in the United States.

(j) The Borrower agrees to comply with all federal requirements applicable to the Loan Proceeds received (including those imposed by IJIA, Public Law No. 117-58) which the Borrower understands includes, but is not limited to, the following requirements: that all of the iron and steel, manufactured products, and construction materials used in the Project are to be produced in the United States (“Build America, Buy America Requirements”) unless (i) the Borrower has requested and obtained a waiver from the Department pertaining to the Project or the Project is otherwise covered by a general applicability waiver; or (ii) the Department has otherwise advised the Borrower in writing that the Build America, Buy America Requirements are not applicable to the Project.

(k) The Borrower, as a sub-recipient of Federal funds, agrees that when collecting and managing environmental data under this Agreement, it will protect the data by following all applicable State of Delaware law cybersecurity requirements, if the Borrower’s network or information system is connected to the Environmental Protection Agency networks to transfer data to the Environmental Protection Agency using systems other than the Environmental Information Exchange Network or the Environmental Protection Agency’s Central Data Exchange.

### Section 3.3. Agreement to Draw Loan Proceeds and Penalty for Delay.

The Borrower agrees after the Closing Date to commence work in earnest on the Project and make draws on the Loan Proceeds of at least ten percent (10%) of the Project Costs within one year of the Closing Date. The Borrower further agrees to provide a Notice to Proceed within one year of the Closing Date.

If by April 5, 2024, which is one year from the Closing Date, (i) the Borrower has not submitted requisition(s), in the manner required by Section 3.2, for more than ten percent (10%) of the Project Costs, and (ii) the Department has not received a Notice to Proceed, the Department may in its discretion assess a penalty equal to one percent (1%) of the Loan Proceeds (the “Penalty”). Such Penalty may be drawn by the Department from the Loan Proceeds. It is within the Department’s complete discretion whether to impose the Penalty based upon its review of affirmative steps taken by the Borrower to commence and complete the Project and the totality of the circumstances surrounding any such delay in requesting disbursement of Loan Proceeds.

### Section 3.4. Agreement to Accomplish Project.

The Borrower will cause the Project to be acquired, constructed, expanded, renovated or equipped as described in **Exhibit A** and in accordance with the Project Budget and

the plans, specifications and designs prepared by the Consulting Engineer and approved by the Department. The Borrower will complete the Project by the date set forth in Section 2.1(m). All plans, specifications and designs have been approved by all applicable regulatory agencies. The Borrower agrees to maintain complete and accurate books and records of the Project Costs and permit the Department through its duly authorized representatives to inspect such books and records at any reasonable time. The Borrower and the Department may amend the description of the Project set forth in **Exhibit A**.

The Borrower will deliver to the Department a certificate signed by an Authorized Representative of the Borrower and by the Consulting Engineer stating (i) that the Project has been completed substantially in accordance with this Section, the plans and specifications as amended from time to time, as approved by the Department, and in substantial compliance with all material applicable laws, ordinances, rules and regulations, (ii) the date of such completion, (iii) that all certificates of occupancy or other material permits necessary for the Project's use, occupancy and operation have been issued or obtained, and (iv) the amount, if any, to be reserved for payment of Project Costs.

#### Section 3.5. Permits.

The Borrower, at its sole cost and expense, shall comply with, and shall obtain all permits, consents and approvals required by local, state or federal laws, ordinances, rules, regulations or requirements in connection with the acquisition, construction, equipping, occupation, operation or use of the Project. The Borrower shall, upon request, promptly furnish to the Department copies of all such permits, consents and approvals. The Borrower shall also comply with all lawful program or procedural guidelines or requirements duly promulgated and amended as of the date hereof by the Department in connection with the acquisition, construction, equipping, occupation, operation or use of projects financed by the Fund under the Act. The Borrower shall also comply in all respects with all applicable State of Delaware and federal laws, regulations and other requirements relating to or arising out of or in connection with the Project and the funding thereof by the Fund.

#### Section 3.6. Construction Contractors.

Each construction contractor employed in the accomplishment of the Project shall be required in the construction contract to furnish a performance bond and a payment bond, each in an amount equal to one hundred percent (100%) of the particular contract price. Such bonds shall list the Borrower as beneficiary. Each contractor shall be required to maintain, during the construction period covered by the particular construction contract, builder's risk insurance, workers compensation insurance, public liability insurance, property damage insurance and vehicle liability insurance in amounts and on terms customarily maintained on such projects. Upon request of the Department, the Borrower shall cause each contractor to furnish evidence of such bonds and insurance to the Department. In addition to the foregoing,

(a) Each construction contractor employed in the accomplishment of the Project is required to comply with the Anti-Kickback Act (and is required to insert similar requirements in all subcontracts) and all other applicable federal laws and regulations.



(b) All construction contracts and contractors' estimate forms will be prepared so that materials and equipment may be readily itemized and identified as to eligible and noneligible costs.

(c) Any change in a construction contract that will alter the contract price or completion time or will substantially modify the proposed use of the Project must be submitted to the Department for prior approval via a change order in the form of the change order attached hereto as **Exhibit E**.

(d) The construction of the Project facilities will conform to applicable federal, state and local laws, ordinances and regulations.

(e) The Borrower will proceed expeditiously and complete the Project facilities in accordance with the approved application, project schedule, surveys, plans, profiles, cross-sections, specifications and amendments approved by the Department.

Recipients and sub-recipients of Fund assistance, including the Borrower, shall not make any award or permit any award (sub-grant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension." Grantees and sub-grantees, including the Borrower, shall refer to the "List of Parties Excluded From Federal Procurement and Non-Procurement Programs" to insure that the contractor or subcontracts are not on this list. A search for exclusion records can be made at the official US Government System for Award Management website at <https://www.sam.gov>. For assistance visit the Federal Service Desk online at [www.fsd.gov](http://www.fsd.gov) or by calling (866) 606-8220.

#### Section 3.7. Engineering Services.

The Borrower has retained or employed the Consulting Engineer to provide engineering services covering planning and design, operation of the System, and the supervision and inspection of the construction of the Project. The Consulting Engineer will provide to the Department the certificate required by Section 3.4.

#### Section 3.8. Borrower Required to Complete Project.

Subject to the provisions of Section 8.5 hereof, if the Loan Proceeds are not sufficient to pay in full the cost of the Project, the Borrower will complete the Project at its own expense and shall not be entitled to any reimbursement therefor from the Department or the Fund or to any abatement, diminution or postponement of the Borrower's repayments under this Agreement.

#### Section 3.9. Inclusion of Eligible Project Reimbursement Costs Within The Loan.

Project Costs incurred prior to the initiation of construction and after approval of the Project by the Department are eligible for reimbursement from Loan Proceeds provided that the Project continues to meet all the criteria and requirements set forth by the Department. Notwithstanding anything to the contrary herein, costs incurred and associated with the initial

stages of the Project, such as planning and design, are eligible for reimbursement regardless of when such costs were incurred.

ARTICLE IV  
REPAYMENT OF LOAN; GENERAL OBLIGATION

Section 4.1. Repayment of Loan.

The Borrower shall repay the Loan pursuant to the terms of the Bond issued to the Department.

Section 4.2. General Obligation.

The Borrower's repayment obligation constitutes a general obligation of the Borrower, secured by a pledge of its full faith, revenue and credit.

Section 4.3. [RESERVED]

ARTICLE V  
PREPAYMENTS

Section 5.1. Prepayments of Loan.

At its option and upon providing prior written notice to the Department, the Borrower may prepay the Loan, in whole or in part, without penalty, at any time. Such prior written notice shall specify the date on which the Borrower will make such prepayment and whether the Loan will be prepaid in full or in part, and if in part, the principal amount to be prepaid. Any such prepayment shall be applied against Loan principal installments then outstanding as shall be directed by the Borrower.

ARTICLE VI  
OPERATION AND USE OF SYSTEM

Section 6.1. Inspection of System and Borrower's Books and Records.

The Department and its duly authorized representatives and agents shall have such reasonable rights of access to the System as may be necessary to determine whether the Borrower is in compliance with the requirements of this Agreement and shall have the right at all reasonable times and upon reasonable prior notice to the Borrower to examine and copy the books and records of the Borrower insofar as such books and records relate to the System.

The Borrower agrees to comply with all record keeping and reporting requirements under all applicable legal authorities, including any reports required by the Department, such as performance indicators of program deliverables and information on costs and project progress. The Borrower understands that (i) each contract and subcontract related to the Project is subject to audit by appropriate federal and state entities and (ii) failure to comply with the applicable legal requirements and this Agreement may result in a default hereunder that results in a repayment of Loan Proceeds in advance of the maturity of the Bond and/or other remedial actions.

Section 6.2. Performance Certification.

The Borrower will notify the Department when the Project is completed and operation commenced on or before the date set out in Section 2.1(m).

Section 6.3. Operation, Maintenance and Use of System.

At its own cost and expense, the Borrower shall operate the System in a proper, sound and economical manner and in compliance with all legal requirements, shall maintain the System in good repair and operating condition and from time to time shall make all necessary repairs, renewals and replacements.

ARTICLE VII  
INSURANCE, DAMAGE AND DESTRUCTION

Section 7.1. Insurance.

Unless the Department otherwise agrees in writing, the Borrower shall maintain or cause to be maintained insurance against such risks as are customarily insured against by owners of systems similar in size and character to the System.

ARTICLE VIII  
SPECIAL COVENANTS

Section 8.1. Maintenance of Existence.

The Borrower shall maintain its existence as a "Person" (as defined in the Federal Safe Drinking Water Act) and, without consent of the Department, which consent shall not be unreasonably withheld, shall not dissolve or otherwise dispose of all or substantially all of its assets or consolidate or merge with or into another entity. Notwithstanding the foregoing, the Borrower may consolidate or merge with or into, or sell or otherwise transfer all or substantially all of its assets to a political subdivision of The State of Delaware, and the Borrower thereafter may dissolve, if the surviving, resulting or transferee political subdivision, if other than the Borrower, assumes, in written form acceptable to the Department, all of the obligations of the Borrower contained in this Agreement, and there is furnished to the Department an Opinion of Counsel acceptable to the Department subject to customary exceptions and qualifications, to the effect that such assumption constitutes the legal, valid and binding obligations of the surviving, resulting or transferee entity in accordance with its terms.

Section 8.2. Financial Records and Statements.

The Borrower shall maintain proper books of record and account in which proper entries shall be made in accordance with generally accepted accounting principles, consistently applied, of all its business and affairs related to the System. The Borrower shall have an annual audit made by an independent certified public accountant within one hundred twenty (120) days after the end of each Fiscal Year. Such report shall include either (a) disclosure language

confirming the Borrower's continued compliance with its loan and mortgage covenants and restrictions or (b) a certificate of the accountants to the effect that, during the course of such accountant's regular examination of the Borrower's financial condition, nothing came to such accountant's attention that would constitute an Event of Default hereunder. A copy of the audited annual report shall be forwarded to the Department when completed.

Section 8.3. Certificate as to No Default.

The Borrower shall deliver to the Department, within one hundred twenty (120) days after the close of each Fiscal Year, a certificate signed by an Authorized Representative stating that, during such year and as of the date of such certificate, no event or condition has happened or existed, or is happening or existing, which constitutes an Event of Default, or if such an event or condition has happened or existed, or is happening or existing, specifying the nature and period of such event or condition and what action the Borrower has taken, is taking or proposes to take to rectify it.

Section 8.4. Further Assurances.

The Borrower shall to the fullest extent permitted by law pass, make, do, execute, acknowledge and deliver such further resolutions, acts, deeds, conveyances, assignments, transfers and assurances as may be necessary or desirable for the better assuring, conveying, granting, assigning and confirming the rights of the Department under this Agreement, or as may be required to carry out the purpose of this Agreement. The Borrower shall at all times, to the fullest extent permitted by law, defend, preserve and protect all rights of the Department under this Agreement against all claims and demands of all persons.

Section 8.5. Other Indebtedness.

In the event that the Borrower is required to borrow additional funds in order to complete the Project, the Borrower agrees to consult with the Department before borrowing any such additional funds. The Borrower agrees to pay when due all amounts required by any other bonded indebtedness and to perform all of its obligations in connection therewith.

Section 8.6. Assignment by Borrower.

The Borrower may not assign its rights under this Agreement without the prior written consent of the Department, which consent shall not be unreasonably withheld. If the Borrower desires to assign its rights under this Agreement to another "Person" (as defined in the Federal Safe Drinking Water Act), the Borrower shall give notice of such fact to the Department. If the Department consents to the proposed assignment, the Borrower may proceed with the proposed assignment, but such assignment shall not become effective until the Department is furnished: (i) an assumption agreement in form and substance satisfactory to the Department by which the assignee agrees to assume all of the Borrower's obligations under this Agreement, and (ii) an Opinion of Counsel to the assignee, subject to customary exceptions and qualifications, that the assumption agreement and this Agreement constitute legal, valid and binding obligations of the assignee enforceable against the assignee in accordance with their terms and that the assignment and assumption comply in all respects with the provisions of this Agreement.

Notwithstanding the foregoing, the assignment of the rights of the Borrower under this Agreement or the assumption of the obligations thereunder by the assignee shall in no way be construed as releasing the Borrower's obligations unless specifically agreed to by the Department.

ARTICLE IX  
DEFAULTS AND REMEDIES

Section 9.1. Events of Default.

Each of the following events shall be an "Event of Default" hereunder:

(a) The failure to pay any payment of principal, interest and/or any administrative fee when due hereunder or under the Bond;

(b) The Borrower's failure to perform or observe any of the other covenants, agreements or conditions of this Agreement and the continuation of such failure for a period of thirty (30) days after the Department gives the Borrower written notice specifying such failure and requesting that it be cured, unless the Department shall agree in writing to an extension of such time prior to its expiration; *provided, however*, if the failure stated in the notice is correctable but cannot be corrected within the applicable period, the Department will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the Borrower within the applicable period and diligently pursued until the default is corrected;

(c) Any warranty, representation or other statement by or on behalf of Borrower contained in this Agreement or in any instrument furnished in compliance with or in reference to this Agreement is false or misleading in any material respect;

(d) An order or decree shall be entered, with the Borrower's consent or acquiescence, appointing a receiver or receivers of the System or any part thereof or of the income thereof, or if such order or decree, having been entered without the Borrower's consent or acquiescence, shall not be vacated, discharged or stayed on appeal within ninety (90) days after the entry thereof;

(e) Any proceeding shall be instituted, with the Borrower's consent or acquiescence, for the purpose of effecting a composition between the Borrower and its creditors, pursuant to any federal or state statute now or hereafter enacted, if the claims of such creditors are under any circumstances payable from the revenues of the System; or

(f) Any bankruptcy, insolvency or other similar proceeding shall be instituted by or against the Borrower under any federal or state bankruptcy or insolvency law now or hereinafter in effect and, if instituted against the Borrower, is not dismissed within ninety (90) days after filing.

Section 9.2. Notice of Default.

The Borrower agrees to give the Department prompt written notice if any order, decree or proceeding referred to in Section 9.1(d) through (f), inclusive, is entered or instituted against the Borrower or of the occurrence of any other event or condition which constitutes an Event of Default immediately upon becoming aware of the existence thereof.

Section 9.3. Remedies on Default.

Whenever any Event of Default referred to in Section 9.1 shall have happened and be continuing, the Department shall, in addition to any other remedies provided herein or by law, have the right, at its option without any further demand or notice, to take one or both of the following remedial steps:

(a) Discontinue advances of Loan Proceeds hereunder;

(b) Declare immediately due and payable all payments due or to become due under this Agreement or under the Bond, and upon notice to the Borrower, the same shall become immediately due and payable by the Borrower without further notice or demand; and

(c) Take whatever other action at law or in equity may appear necessary or desirable to collect the payments then due and thereafter to become due under this Agreement or to enforce any other of the Department's rights under this Agreement or to enforce performance by the Borrower of its covenants, agreements or undertakings contained herein.

Section 9.4. Delay and Waiver.

No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient. No waiver of any Event of Default under this Agreement shall extend to or shall affect any subsequent Event of Default or shall impair any rights or remedies consequent thereto.

Section 9.5. Right to Cure Default.

If the Borrower shall fail to make any payment or to perform any act required by it under this Agreement, the Department without prior notice to or demand upon the Borrower and without waiving or releasing any obligation or default, may (but shall be under no obligation to) make such payment or perform such act. All amounts so paid by the Department and all costs, fees and expenses so incurred shall be payable by the Borrower as an additional obligation under this Agreement, together with interest thereon at the rate of interest of five percent (5%) per annum until paid. The Borrower's obligation under this Section shall survive the repayment of the Bond.

ARTICLE X  
MISCELLANEOUS

Section 10.1. Successors and Assigns.

This Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

Section 10.2. Amendments.

The Department and the Borrower shall have the right to amend from time to time any of the terms and conditions of this Agreement, *provided* that all amendments shall be in writing and shall be signed by or on behalf of the Department and the Borrower.

Section 10.3. Limitation of Liability of Borrower's Officers.

No present or future director, official, officer, employee or agent of the Borrower shall be liable personally in respect of this Agreement or for any other action taken by such individual pursuant to or in connection with the financing provided for in this Agreement.

Section 10.4. Applicable Law.

This Agreement shall be governed by the applicable laws of The State of Delaware.

Section 10.5. Severability.

If any clause, provision, or section of this Agreement shall be held illegal or invalid by any court, the illegality or invalidity of such clause, provision or Section shall not affect the remainder of this Agreement which shall be construed and enforced as if such illegal or invalid clause, provision or section had not been contained in this Agreement. If any agreement or obligation contained in this Agreement is held to be in violation of law, then such agreement or obligation shall be deemed to be the agreement or obligation of the Department and the Borrower, as the case may be, only to the extent permitted by law.

Section 10.6. Notice.

Unless otherwise provided for herein, all demands, notices, approvals, consents, requests, opinions and other communications under this Agreement shall be in writing and shall be deemed to have been given when delivered in person or mailed by first class registered or certified mail, postage prepaid, addressed as follows:

Department: Delaware Department of Health and Social Services  
Division of Public Health  
Office of Drinking Water  
Jesse Cooper Building  
417 Federal Street – Room 226  
Dover, DE 19901  
Attention: DWSRF Program Director

With a copy to:

Delaware Department of Natural Resources  
& Environmental Control, on behalf of the Delaware Department  
of Health and Social Services  
Office Of The Secretary, Environmental Finance  
97 Commerce Way, Suite 106  
Dover, DE 19904  
Attention: Laura Robbins, Chief of Administration

and

Borrower: Tidewater Utilities, Inc.  
1100 South Little Creek Road  
Dover, DE 19901  
Attention: Mr. Robert J. Capko, Treasurer

With a copy to:

Middlesex Water Company  
485C Route One South, Suite 400  
Iselin, NJ 08830  
Attn: Jay L. Kooper, Vice President, General Counsel & Secretary

The Department, and the Borrower may designate, by notice given hereunder, any further or different addresses to which subsequent demands, notices, approvals, consents, requests, opinion or other communications shall be sent or persons to whose attention the same shall be directed.

Section 10.7. Headings.

The headings of the several articles and sections of this Agreement are inserted for convenience only and do not comprise a part of this Agreement.

Section 10.8. Terms of Agreement.

This Agreement shall be effective upon its execution and delivery by the Borrower and the Department. Except as otherwise specified, the Borrower's obligations under this Agreement shall expire upon payment in full of the Bond and all other amounts payable by the Borrower under this Agreement.

Section 10.9. Counterparts.

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



WITNESS the following signatures, all duly authorized.

FOR THE DELAWARE DRINKING WATER STATE REVOLVING FUND, ACTING BY AND THROUGH THE DELAWARE DEPARTMENT OF HEALTH AND SOCIAL SERVICES, DIVISION OF PUBLIC HEALTH

By: /s/ Laura Robbins  
Laura Robbins  
DNREC, Chief of Administration  
Delaware Department of Natural Resources and  
Environmental Control, on behalf of the  
Delaware Department of Health and Social  
Services

TIDEWATER UTILITIES, INC.

By: /s/ Robert J. Capko  
Name: Robert J. Capko  
Title: Treasurer

(SEAL)

Attest:

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

[SIGNATURE PAGE TO FINANCING AGREEMENT – DAIRY FARM ROAD]

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**EXHIBIT A**

**Project Description**

The Borrower's Rehoboth water system is located along the Rt. 1 corridor from the area of Cave Neck Road, southeast to Rehoboth Bay and southwest to Love Creek and beyond. The northwestern portion of the system is highly dependent on a single 12" water main running along Rt. 1.

This single main is the sole interconnection between the northeastern portions of the system, including a major water supply facility at Paynter's Mill, and the remainder of the Rehoboth service area.

System growth has extended a 12" water main down a significant portion of Sweetbriar Road parallel to Rt. 1. The Borrower has determined that it would be beneficial to continue this 12" main +/-9,170 along Sweetbriar Road and Dairy Farm Road to interconnect with an existing 16" main located on Beaver Dam Road.

All existing mains within the project will be relocated and upgraded as appropriate. New mains will be installed in areas where new infrastructure has been planned, including a new connection along Dairy Farm Road, interconnecting with an existing 16" main located on Beaver Dam Road.

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**EXHIBIT B**

Project Budget

<b><u>Project Budget:</u></b>	<b><u>Total Cost</u></b>
Engineering	\$ 33,000.00
Construction	\$1,674,546.00
Contingency	\$ 167,454.00
<b>Total Budget</b>	<b><u>\$1,875,000.00</u></b>
Source of Funds:	
DWSRF Loan	<b><u>\$1,875,000.00</u></b>

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**EXHIBIT C**

Form of Requisition

**PROJECT NAME:** \_\_\_\_\_

**FUNDING RECIPIENT:** \_\_\_\_\_

**UNITED STATES  
DEPARTMENT OF AGRICULTURE  
RURAL DEVELOPMENT**

**AND/ STATE OF DELAWARE  
OR DHSS**

E. I. # \_\_\_\_\_

REQUISITION NO: \_\_\_\_\_

DATE: \_\_\_\_\_

USDA LOAN NO \_\_\_\_\_

LOAN NO \_\_\_\_\_

USDA GRANT NO. \_\_\_\_\_ **SEPARATELY OR  
JOINTLY FUNDED PROJECT**

STATE GRANT NO. \_\_\_\_\_

**ACCOUNT SUMMARY AND REQUEST FOR LOAN/GRANT DISBURSEMENT**

DISBURSEMENT ITEMS	AMOUNT BUDGETED	PREVIOUS DISBURSEMENTS	THIS PERIOD	TOTAL TO DATE	REMAINING FUNDS
CONSTRUCTION					
CONTRACT NAME OR #					
CONTRACT NAME OR #					
CONTRACT NAME OR #					
LAND AND R.O.W.					
LEGAL AND ADMIN					
ENGINEERING FEES					
INTEREST					
CONTINGENCIES					
INITIAL O & M					
OTHER (describe)					
DISBURSEMENT TOTALS					
SOURCES OF FUNDING					
USDA LOAN					
USDA GRANT					
STATE LOAN					
STATE GRANT					
OTHER (describe)					
OTHER (describe)					
OTHER (describe)					
SOURCE TOTALS (must equal disbursement totals above)					

**See Notes on Page 2 (other side)**

\_\_\_\_\_  
 PREPARED BY (BORROWER/GRANTEE) DATE

\_\_\_\_\_  
 APPROVED BY (DHSS/ODW) DATE

\_\_\_\_\_  
 APPROVED BY (ARCHITECT/ENGINEER) DATE

\_\_\_\_\_  
 APPROVED BY (USDA/RD) DATE

Borrower/Grantee's Certification	Consulting Engineer's Certification
<p>The undersigned certifies that (1) the amounts requested by this requisition will be applied solely and exclusively to the payment, or the reimbursement of the recipient for the payment, of Project Costs, and (2) any materials, supplies or equipment covered by this requisition are not subject to any lien or security interest or such lien or security interest will be released upon payment of this requisition.</p>	<p>The undersigned Consulting Engineer for the Recipient hereby Certifies that insofar as the amounts covered by this Requisition include payment for labor or to contractors, builders or materialmen, such work was actually performed or such materials, supplies or equipment were actually furnished to or installed in the Project.</p>
<p>_____            Recipient's Authorized Representative Name, Title (PRINTED)</p>	<p>_____            Title and Company Name (PRINTED)</p>
<p>_____            Recipient's Authorized Representative Signature Date</p>	<p>_____            Consulting Engineer's Name (PRINTED)</p>
	<p>_____            Authorized Consulting Engineer Signature Date</p>

- NOTES:**
1. Include copies of all invoices or other acceptable documentation to support above request. Provide one (1) set for each funding agency.
  2. On jointly funded projects, disbursements will not be processed until this document is approved by authorized representatives of both the U. S. Department of Agriculture and the State of Delaware, Department of Health and Social Services.

**EXHIBIT D**

**Schedule of Disbursements**

<u>Date</u>	<u>Amount (\$)</u>
Apr-23	705,000
May-23	775,000
Jun-23	395,000
Total:	<u>1,875,000</u>

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**EXHIBIT E**

Form of Change Order

**UNITED STATES  
DEPARTMENT OF AGRICULTURE  
RURAL DEVELOPMENT**

**AND/ STATE OF DELAWARE  
OR DHSS**

ORDER NO: \_\_\_\_\_

DATE: \_\_\_\_\_

STATE: \_\_\_\_\_

COUNTY: \_\_\_\_\_ **SEPARATELY OR JOINTLY FUNDED PROJECT**

**CONTRACT CHANGE ORDER**

CONTRACT FOR: \_\_\_\_\_

OWNER \_\_\_\_\_

To: \_\_\_\_\_  
(Contractor)

You are hereby requested to comply with the following changes from the contract plans and specifications:

Description of Changes (Supplemental Plans and Specifications Attached)	DECREASE in Contract Price	INCREASE In Contract Price
	\$	\$
TOTALS	\$	\$
NET CHANGE IN CONTRACT PRICE	\$	\$

JUSTIFICATION: Explain (Differing Site Conditions) (Errors or Omissions in Drawings or Specifications) (Changes in Regulatory Requirements) (Design Changes) (Over run or Under run in Quantities) (Factors Affecting Time of Completion) (Other: Describe below)

\_\_\_\_\_  
\_\_\_\_\_

The original amount of the Contract: \_\_\_\_\_  
Dollars (\$ \_\_\_\_\_)

The amount of the Contract as adjusted by all previously approved Change Orders: \_\_\_\_\_  
Dollars (\$ \_\_\_\_\_)

The amount of the Contract will be (Decreased) (Increased) through this Change Order by the sum of: \_\_\_\_\_  
Dollars (\$ \_\_\_\_\_)

The Contract Total including this and all previous Change Orders will be: \_\_\_\_\_  
Dollars (\$ \_\_\_\_\_)

The Contract Period provided for completion will be (Increased) (Decreased) (Unchanged) by: \_\_\_\_\_ Calendar Days



This document will become a supplement to the contract and all provisions will apply hereto.

Requested: \_\_\_\_\_  
(Owner) (Date)

Recommended: \_\_\_\_\_  
(Owner's Architect/Engineer) (Date)

Accepted: \_\_\_\_\_  
(Contractor) (Date)

Approved by State of Delaware: \_\_\_\_\_  
(Date)

Approved by U. S. Department of Agriculture: \_\_\_\_\_  
(Date)

After all five (5) copies of the Change Order have been signed and dated by authorized representatives of all the applicable parties in the spaces provided above, transmit one (1) copy to each party as listed below.

- ( ) U. S. Department of Agriculture's Copy
- ( ) State of Delaware's Copy
- ( ) Contractor's Copy
- ( ) Borrower/Grantee's Copy
- ( ) Architect/Engineer's Copy



**EXHIBIT "F"**

**CERTIFICATE OF THE BORROWER AND  
PROJECTED DRAWDOWN SCHEDULE OF THE  
PROJECT**

The undersigned, as representatives of Tidewater Utilities, Inc. (the "Borrower") in connection with the issuance of its \$1,875,000 General Obligation Bond (Dairy Farm Road Interconnection Project), Series 2023B-DWSRF, have reviewed the estimated drawdown schedule prepared by the Borrower, attached hereto as Exhibit D and made a part hereof.

We hereby certify as of April 5, 2023 that the estimated drawdown schedule attached hereto as Exhibit D and statements made under Section 2.1(m) "Representations by Borrower" in the foregoing Financing Agreement between the Borrower and the Delaware Drinking Water State Revolving Fund, acting by and through the Delaware Department of Health and Social Services, Division of Public Health, are to the best of our knowledge true and correct as of the date hereof.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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TIDEWATER UTILITIES, INC.

By: /s/ Robert J. Capko  
Robert J. Capko  
Treasurer

Attest:

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

*[SIGNATURE PAGE TO EXHIBIT F - CERTIFICATE AS TO PROJECTED DRAWDOWN SCHEDULE – DAIRY FARM ROAD]*

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**TIDEWATER UTILITIES, INC.**  
**\$3,302,000 GENERAL OBLIGATION BOND**  
**(DELDOT SR 24-LOVE CREEK TO MULBERRY KNOLL PROJECT)**  
**SERIES 2023C-DWSRF**

FINANCING AGREEMENT

BETWEEN

TIDEWATER UTILITIES, INC.

AND

DELAWARE DRINKING WATER STATE REVOLVING FUND,  
ACTING BY AND THROUGH THE  
DELAWARE DEPARTMENT OF HEALTH AND SOCIAL SERVICES,  
DIVISION OF PUBLIC HEALTH

Loan No. 22000036

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## FINANCING AGREEMENT

THIS FINANCING AGREEMENT (this “Agreement”) is made as of this 5<sup>th</sup> day of April, 2023, between the DELAWARE DRINKING WATER STATE REVOLVING FUND, acting by and through the DELAWARE DEPARTMENT OF HEALTH & SOCIAL SERVICES, DIVISION OF PUBLIC HEALTH, a public agency of The State of Delaware (the “Department”) and TIDEWATER UTILITIES, INC., a corporation organized under the laws of The State of Delaware (the “Borrower”).

Pursuant to Title 29 Delaware Code Section 7903 (the “Act”), the General Assembly established a permanent and perpetual fund known as the “Delaware Drinking Water State Revolving Fund” (the “Fund”) and empowered the Secretary of the Department of Health & Social Services to administer such Fund. From the Fund, the Department from time to time makes loans to and acquires obligations of eligible persons in Delaware to finance the costs of drinking water facilities in accordance with the Federal Safe Drinking Water Act. General information on Drinking Water State Revolving Funds can be found at: <https://www.epa.gov/dwsrf>.

The Borrower requested a loan (the “Loan”) from the Fund and will evidence its obligation to repay the Loan by the signing of this Agreement and by the delivery of its General Obligation Bond (DelDOT SR 24-Love Creek to Mulberry Knoll Project), Series 2023C-DWSRF (the “Bond”). The Borrower will use the Loan Proceeds from the Fund to: (i) finance the installation of new mains in areas along the project route where new infrastructure has been planned, including a new connection along Mulberry Knoll Road, which will interconnect the South Rehoboth elevated storage tank currently under construction, as more fully described in Exhibit A and (ii) if desired, pay certain administrative costs and costs of issuing the Bond (collectively, the “Project”).

### ARTICLE I DEFINITIONS

#### Section 1.1. Definitions.

The capitalized terms contained in this Agreement shall have the meanings set forth below unless the context requires otherwise and any capitalized terms not otherwise defined herein shall have the meaning assigned to such terms in the Act:

“Agreement” means this Financing Agreement between the Department and the Borrower, together with any amendments or supplements hereto.

“Authorized Representative” means the President, Vice President, Chairman, Treasurer, and Secretary of the Borrower or any employee of the Borrower authorized by resolution or certificate of the Borrower to perform the act or sign the document in question.

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“Business Day” means a day of the year which is not a Saturday or Sunday or a day on which banking institutions located in New York or Delaware are required or authorized to remain closed or on which the New York Stock Exchange is closed.

“Closing Date” means the date this Agreement is executed and delivered by the Borrower and the Department.

“Commitment Letter” shall mean the commitment letter from the Department to the Borrower dated January 23, 2023 and all extensions and amendments thereto.

“Consulting Engineer” means any firm of independent consulting engineers of recognized standing and experienced in the field of environmental engineering and registered to do business in Delaware. Any such firm shall be subject to the reasonable approval of the Department.

“Department” means the Department of Health and Social Services, Division of Public Health.

“Event of Default” shall have the meaning set forth in Section 9.1.

“Fiscal Year” means the period of twelve months established by the Borrower as its annual accounting period.

“Loan” means the loan from the Department to the Borrower pursuant to this Agreement.

“Loan Proceeds” means the funds applied to make the loan to the Borrower pursuant to this Agreement.

“Notice to Proceed” means a written notice given by the Borrower and signed by an Authorized Representative issued to each construction contractor fixing the date on which construction, equipping, acquisition, expansion or renovation of the Project as described in **Exhibit A** will commence, a copy of which must be furnished to the Department by the Borrower within one year of the Closing Date.

“Penalty” shall have the meaning set forth in Section 3.3.

“Project” means, collectively, the various improvements and upgrades to the System of the Borrower, as more fully described in **Exhibit A**, the costs of the construction, acquisition or equipping of which are to be financed in whole or in part with the Loan Proceeds.

“Project Budget” means the budget for the financing of the Project, a copy of which is attached to this Agreement as **Exhibit B**.

“Project Costs” means the costs of the construction, acquisition or equipping of the Project, as further described in the Project Budget, and such other costs as may be approved in writing by the Department, provided such costs are permitted by the Act.

“System” means all plants, systems, facilities, equipment or property, of which the Project constitutes the whole or a part, owned, operated or maintained by the Borrower and used in connection with the drinking water services for the systems which comprise the Project, all as described in **Exhibit A**.

Section 1.2. Rules of Construction.

The following rules shall apply to the construction of this Agreement unless the context requires otherwise:

- (a) Singular words shall connote the plural number as well as the singular and vice versa.
- (b) All references in this Agreement to particular Sections or Exhibits are references to Sections or Exhibits of this Agreement unless otherwise indicated.
- (c) The headings and table of contents as used in this Agreement are solely for convenience of reference and shall not constitute a part of this Agreement nor shall they affect its meaning, construction or effect.

ARTICLE II  
REPRESENTATIONS

Section 2.1. Representations by Borrower.

The Borrower makes the following representations as the basis for its undertakings under this Agreement:

- (a) The Borrower is a duly organized and validly existing corporation in good standing under the laws of the State of Delaware.
- (b) The Borrower has full right, power and authority to (i) execute this Agreement and the other documents related thereto, (ii) own and operate the System, (iii) construct, acquire or equip the Project and finance the Project Costs by borrowing money for such purpose pursuant to this Agreement, and (iv) carry out and consummate all of the transactions contemplated by this Agreement.
- (c) All permits, licenses, registrations, certificates, authorizations and approvals required to have been obtained as of the date of signing of this Agreement have been obtained for (i) the execution by the Borrower of this Agreement, (ii) the performance and enforcement of the obligations of the Borrower thereunder, (iii) the acquisition, construction, equipping, occupation, operation and use of the Project, and (iv) the operation and use of the System. The Borrower knows of no reason why any other necessary permits or approvals cannot be obtained as required.



(d) This Agreement has been executed by a duly authorized officer of the Borrower and constitutes the legal, valid and binding obligation of the Borrower enforceable against the Borrower in accordance with the terms of this Agreement.

(e) There are not pending nor, to the best of the knowledge of the undersigned officer of the Borrower, threatened, any actions, suits, proceedings or investigations of a legal, equitable, regulatory, administrative or legislative nature, in which a judgment, order or resolution may have a material adverse effect on the Borrower, or its business, assets, condition (financial or otherwise), operations or prospects or in its ability to perform its obligations under this Agreement.

(f) There have been no material defaults by any contractor or subcontractor under any contract made in connection with the construction or equipping of the Project.

(g) No material adverse change has occurred in the financial condition of the Borrower from that indicated in the financial statements, application and other information furnished to the Department in connection with this Agreement.

(h) No Event of Default has occurred and is continuing.

(i) Except as may otherwise be approved by the Department or permitted by the terms hereof, the Project and the System at all times will be owned by the Borrower and will not be operated or controlled by any other entity or person.

(j) The Project will be a part of the System.

(k) The Loan Proceeds and funds available from the other sources specified in the Project Budget will be sufficient to pay the estimated Project Costs.

(l) The Borrower has received or has commitments to obtain all funds and other financing for the Project as contemplated in the Project Budget.

(m) The Borrower expects to complete the acquisition, construction and equipping of the Project on or before the projected date of June 30, 2024. The Borrower expects to adhere to the estimated drawdown schedule attached hereto as **Exhibit D** and certified to in the "Certificate of the Borrower and Projected Drawdown Schedule of the Project" attached hereto as **Exhibit F** and made a part hereof. This projected date of completion is subject to an extension if such extension is mutually agreed upon by the Department and the Borrower. Noncompliance with this Section 2.1(m) may cause loan funds to become de-obligated and reallocated to other drinking water projects at the discretion of the Department.

ARTICLE III  
ADVANCE AND USE OF LOAN PROCEEDS; CONSTRUCTION OF PROJECT

Section 3.1. Advance of Loan Proceeds.

The Department agrees to advance to the Borrower pursuant to this Agreement up to Three Million Three Hundred Two Thousand Dollars (\$3,302,000) to pay Project Costs in accordance with the Project Budget.

Section 3.2. Application of Loan Proceeds.

(a) The Borrower agrees to apply the Loan Proceeds solely and exclusively to the payment, or the reimbursement of the Borrower for the payment, of Project Costs and further agrees, upon the request of the Department, to exhibit to the Department, vouchers, statements, bills of sale or other evidence of the actual payment of such Project Costs. The Department shall disburse the Loan Proceeds to or for the account of the Borrower upon execution of this Agreement and upon receipt by the Department of the following:

(1) A requisition (upon which the Department shall be entitled to rely) signed by an Authorized Representative and containing all information called for by, and otherwise being in the form of, Exhibit C attached hereto.

(2) If such requisition includes an item for payment for labor or to contractors, builders or materialmen (i) a certificate, signed by an Authorized Representative, stating that such work was actually performed or such materials, supplies or equipment were actually furnished or installed in or about the construction of the Project; and (ii) a certificate signed by an Authorized Representative stating either that such materials, supplies or equipment are not subject to any lien or security interest or that such lien or security interest will be released or discharged upon payment of the requisition.

Upon receipt of each such requisition and accompanying certificate or certificates, the Department shall disburse Loan Proceeds hereunder to or for the account of the Borrower in accordance with such requisition in an amount and to the extent approved by the Department. The Borrower expects to adhere to the estimated drawdown schedule attached hereto as Exhibit D. The Department shall have no obligation to disburse any such Loan Proceeds if the Borrower is in default hereunder, nor shall the Department have any obligation to approve any requisition if the Borrower is not in compliance with the terms of this Agreement.

(b) The Borrower shall comply with all applicable State of Delaware and federal laws. Except as may otherwise be approved by the Department, disbursements shall be held at ninety-five percent (95%) of the maximum amount authorized hereunder to ensure satisfactory completion of the Project. Upon receipt from the Borrower of the certificate specified in Section 3.4 and a final requisition detailing all retainages to which the Borrower is then entitled, the Department, to the extent approved by the Department and subject to the provisions of this Section and Section 3.4, will disburse Loan Proceeds to or for the account of the Borrower to the extent of such approval.

(c) The Department may apply Loan Proceeds to pay any Penalty assessed pursuant to Section 3.3.

(d) The Department shall have no obligation to disburse Loan Proceeds in excess of the amount necessary to pay for approved Project Costs.

(e) The Borrower shall comply in all respects with all applicable federal laws, regulations and other requirements related to or arising out of or in connection with the Project and the funding thereto by the Fund. The Borrower shall also comply in all respects with the Federal Single Audit Act, 2 CFR 200 Subpart F, as a sub-recipient of Federal funds.

(f) The Borrower shall comply with the Delaware Department of Labor Prevailing Wage Rate Regulations.

(g) The Borrower shall comply with the Delaware Drinking Water State Revolving Fund's Davis-Bacon Wage Rate Act Requirement as set forth in the closing documents. The Borrower agrees that all contractors or subcontractors utilized by the Borrower in the Project will complete and file the U.S. Department of Labor's payroll form WH-347.

(h) As a recipient of Fund assistance, the Borrower shall comply with the Prohibition on Certain Telecommunication and Video Surveillance Services or Equipment located in 2 CFR 200.216, as such regulation relates to the Project. The Borrower agrees that none of the Loan Proceeds shall be used to procure, enter into, extend or renew contracts or obtain equipment, services or systems that use "covered telecommunications equipment or services," as identified in the regulation, as a substantial or essential component of any system, or as critical technology as part of any system.

(i) As a recipient of Fund assistance, the Borrower agrees that none of the Loan Proceeds made available to the Borrower shall be used for the Project for the construction, alteration, maintenance, or repair of the System unless all of the iron and steel products used in the Project are produced in the United States ("American Iron and Steel Requirement"), unless: (i) the Borrower has requested and obtained a waiver from the Environmental Protection Agency pertaining to the Project or (ii) the Department has otherwise advised the Borrower in writing that the American Iron and Steel Requirement is not applicable to the Project. The American Iron and Steel Requirement shall not apply in any case or category of cases in which the Administrator of the Environmental Protection Agency finds that: (i) applying the requirement would be inconsistent with the public interest; (ii) iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (iii) inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

In this section 3.2(i), the term "iron and steel products" means the following products made primarily of iron or steel-lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials. "Steel" means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

The Bipartisan Infrastructure Law of 2021, also known as the Infrastructure Investment and Jobs Act of 2021 (“IIJA”), established the Build America Buy America (BABA) Act domestic sourcing requirements for federal financial assistance programs for infrastructure, including the Fund, and the Borrower must comply with the BABA provision. BABA also creates expanded American Iron and Steel requirements to include construction materials and manufactured goods for domestic preference and sourcing requirements.

In procuring materials for public works projects, entities using taxpayer-financed Federal assistance should give a commonsense procurement preference for the materials and products produced by companies and workers in the United States in accordance with the high ideals embodied in the environmental, worker, workplace safety, and other regulatory requirements of the United States. The benefits of domestic content procurement preferences extend beyond economics. Common construction materials used in public works infrastructure projects, including steel, iron, manufactured products, non-ferrous metals, plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables), glass (including optic glass), lumber, and drywall are not adequately covered by a domestic content procurement preference, thus limiting the impact of taxpayer purchases to enhance supply chains in the United States.

(j) The Borrower agrees to comply with all federal requirements applicable to the Loan Proceeds received (including those imposed by IIJA, Public Law No. 117-58) which the Borrower understands includes, but is not limited to, the following requirements: that all of the iron and steel, manufactured products, and construction materials used in the Project are to be produced in the United States (“Build America, Buy America Requirements”) unless (i) the Borrower has requested and obtained a waiver from the Department pertaining to the Project or the Project is otherwise covered by a general applicability waiver; or (ii) the Department has otherwise advised the Borrower in writing that the Build America, Buy America Requirements are not applicable to the Project.

(k) The Borrower, as a sub-recipient of Federal funds, agrees that when collecting and managing environmental data under this Agreement, it will protect the data by following all applicable State of Delaware law cybersecurity requirements, if the Borrower’s network or information system is connected to the Environmental Protection Agency networks to transfer data to the Environmental Protection Agency using systems other than the Environmental Information Exchange Network or the Environmental Protection Agency’s Central Data Exchange.

### Section 3.3. Agreement to Draw Loan Proceeds and Penalty for Delay.

The Borrower agrees after the Closing Date to commence work in earnest on the Project and make draws on the Loan Proceeds of at least ten percent (10%) of the Project Costs within one year of the Closing Date. The Borrower further agrees to provide a Notice to Proceed within one year of the Closing Date.

If by April 5, 2024, which is one year from the Closing Date, (i) the Borrower has not submitted requisition(s), in the manner required by Section 3.2, for more than ten percent (10%) of the Project Costs, and (ii) the Department has not received a Notice to Proceed, the Department may in its discretion assess a penalty equal to one percent (1%) of the Loan Proceeds

(the "Penalty"). Such Penalty may be drawn by the Department from the Loan Proceeds. It is within the Department's complete discretion whether to impose the Penalty based upon its review of affirmative steps taken by the Borrower to commence and complete the Project and the totality of the circumstances surrounding any such delay in requesting disbursement of Loan Proceeds.

#### Section 3.4. Agreement to Accomplish Project.

The Borrower will cause the Project to be acquired, constructed, expanded, renovated or equipped as described in **Exhibit A** and in accordance with the Project Budget and the plans, specifications and designs prepared by the Consulting Engineer and approved by the Department. The Borrower will complete the Project by the date set forth in Section 2.1(m). All plans, specifications and designs have been approved by all applicable regulatory agencies. The Borrower agrees to maintain complete and accurate books and records of the Project Costs and permit the Department through its duly authorized representatives to inspect such books and records at any reasonable time. The Borrower and the Department may amend the description of the Project set forth in **Exhibit A**.

The Borrower will deliver to the Department a certificate signed by an Authorized Representative of the Borrower and by the Consulting Engineer stating (i) that the Project has been completed substantially in accordance with this Section, the plans and specifications as amended from time to time, as approved by the Department, and in substantial compliance with all material applicable laws, ordinances, rules and regulations, (ii) the date of such completion, (iii) that all certificates of occupancy or other material permits necessary for the Project's use, occupancy and operation have been issued or obtained, and (iv) the amount, if any, to be reserved for payment of Project Costs.

#### Section 3.5. Permits.

The Borrower, at its sole cost and expense, shall comply with, and shall obtain all permits, consents and approvals required by local, state or federal laws, ordinances, rules, regulations or requirements in connection with the acquisition, construction, equipping, occupation, operation or use of the Project. The Borrower shall, upon request, promptly furnish to the Department copies of all such permits, consents and approvals. The Borrower shall also comply with all lawful program or procedural guidelines or requirements duly promulgated and amended as of the date hereof by the Department in connection with the acquisition, construction, equipping, occupation, operation or use of projects financed by the Fund under the Act. The Borrower shall also comply in all respects with all applicable State of Delaware and federal laws, regulations and other requirements relating to or arising out of or in connection with the Project and the funding thereof by the Fund.

#### Section 3.6. Construction Contractors.

Each construction contractor employed in the accomplishment of the Project shall be required in the construction contract to furnish a performance bond and a payment bond, each in an amount equal to one hundred percent (100%) of the particular contract price. Such bonds shall list the Borrower as beneficiary. Each contractor shall be required to maintain, during the construction period covered by the particular construction contract, builder's risk insurance,

workers compensation insurance, public liability insurance, property damage insurance and vehicle liability insurance in amounts and on terms customarily maintained on such projects. Upon request of the Department, the Borrower shall cause each contractor to furnish evidence of such bonds and insurance to the Department. In addition to the foregoing,

(a) Each construction contractor employed in the accomplishment of the Project is required to comply with the Anti-Kickback Act (and is required to insert similar requirements in all subcontracts) and all other applicable federal laws and regulations.

(b) All construction contracts and contractors' estimate forms will be prepared so that materials and equipment may be readily itemized and identified as to eligible and noneligible costs.

(c) Any change in a construction contract that will alter the contract price or completion time or will substantially modify the proposed use of the Project must be submitted to the Department for prior approval via a change order in the form of the change order attached hereto as **Exhibit E**.

(d) The construction of the Project facilities will conform to applicable federal, state and local laws, ordinances and regulations.

(e) The Borrower will proceed expeditiously and complete the Project facilities in accordance with the approved application, project schedule, surveys, plans, profiles, cross-sections, specifications and amendments approved by the Department.

Recipients and sub-recipients of Fund assistance, including the Borrower, shall not make any award or permit any award (sub-grant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension." Grantees and sub-grantees, including the Borrower, shall refer to the "List of Parties Excluded From Federal Procurement and Non-Procurement Programs" to insure that the contractor or subcontracts are not on this list. A search for exclusion records can be made at the official US Government System for Award Management website at <https://www.sam.gov>. For assistance visit the Federal Service Desk online at [www.fsd.gov](http://www.fsd.gov) or by calling (866) 606-8220.

#### Section 3.7. Engineering Services.

The Borrower has retained or employed the Consulting Engineer to provide engineering services covering planning and design, operation of the System, and the supervision and inspection of the construction of the Project. The Consulting Engineer will provide to the Department the certificate required by Section 3.4.

#### Section 3.8. Borrower Required to Complete Project.

Subject to the provisions of Section 8.5 hereof, if the Loan Proceeds are not sufficient to pay in full the cost of the Project, the Borrower will complete the Project at its own expense and shall not be entitled to any reimbursement therefor from the Department or the Fund

or to any abatement, diminution or postponement of the Borrower's repayments under this Agreement.

Section 3.9. Inclusion of Eligible Project Reimbursement Costs Within The Loan.

Project Costs incurred prior to the initiation of construction and after approval of the Project by the Department are eligible for reimbursement from Loan Proceeds provided that the Project continues to meet all the criteria and requirements set forth by the Department. Notwithstanding anything to the contrary herein, costs incurred and associated with the initial stages of the Project, such as planning and design, are eligible for reimbursement regardless of when such costs were incurred.

ARTICLE IV  
REPAYMENT OF LOAN; GENERAL OBLIGATION

Section 4.1. Repayment of Loan.

The Borrower shall repay the Loan pursuant to the terms of the Bond issued to the Department.

Section 4.2. General Obligation.

The Borrower's repayment obligation constitutes a general obligation of the Borrower, secured by a pledge of its full faith, revenue and credit.

Section 4.3. [RESERVED]

ARTICLE V  
PREPAYMENTS

Section 5.1. Prepayments of Loan.

At its option and upon providing prior written notice to the Department, the Borrower may prepay the Loan, in whole or in part, without penalty, at any time. Such prior written notice shall specify the date on which the Borrower will make such prepayment and whether the Loan will be prepaid in full or in part, and if in part, the principal amount to be prepaid. Any such prepayment shall be applied against Loan principal installments then outstanding as shall be directed by the Borrower.

ARTICLE VI  
OPERATION AND USE OF SYSTEM

Section 6.1. Inspection of System and Borrower's Books and Records.

The Department and its duly authorized representatives and agents shall have such reasonable rights of access to the System as may be necessary to determine whether the Borrower is in compliance with the requirements of this Agreement and shall have the right at all reasonable

times and upon reasonable prior notice to the Borrower to examine and copy the books and records of the Borrower insofar as such books and records relate to the System.

The Borrower agrees to comply with all record keeping and reporting requirements under all applicable legal authorities, including any reports required by the Department, such as performance indicators of program deliverables and information on costs and project progress. The Borrower understands that (i) each contract and subcontract related to the Project is subject to audit by appropriate federal and state entities and (ii) failure to comply with the applicable legal requirements and this Agreement may result in a default hereunder that results in a repayment of Loan Proceeds in advance of the maturity of the Bond and/or other remedial actions.

Section 6.2. Performance Certification.

The Borrower will notify the Department when the Project is completed and operation commenced on or before the date set out in Section 2.1(m).

Section 6.3. Operation, Maintenance and Use of System.

At its own cost and expense, the Borrower shall operate the System in a proper, sound and economical manner and in compliance with all legal requirements, shall maintain the System in good repair and operating condition and from time to time shall make all necessary repairs, renewals and replacements.

ARTICLE VII  
INSURANCE, DAMAGE AND DESTRUCTION

Section 7.1. Insurance.

Unless the Department otherwise agrees in writing, the Borrower shall maintain or cause to be maintained insurance against such risks as are customarily insured against by owners of systems similar in size and character to the System.

ARTICLE VIII  
SPECIAL COVENANTS

Section 8.1. Maintenance of Existence.

The Borrower shall maintain its existence as a "Person" (as defined in the Federal Safe Drinking Water Act) and, without consent of the Department, which consent shall not be unreasonably withheld, shall not dissolve or otherwise dispose of all or substantially all of its assets or consolidate or merge with or into another entity. Notwithstanding the foregoing, the Borrower may consolidate or merge with or into, or sell or otherwise transfer all or substantially all of its assets to a political subdivision of The State of Delaware, and the Borrower thereafter may dissolve, if the surviving, resulting or transferee political subdivision, if other than the Borrower, assumes, in written form acceptable to the Department, all of the obligations of the Borrower contained in this Agreement, and there is furnished to the Department an Opinion of Counsel acceptable to the Department subject to customary exceptions and qualifications, to the effect that



such assumption constitutes the legal, valid and binding obligations of the surviving, resulting or transferee entity in accordance with its terms.

Section 8.2. Financial Records and Statements.

The Borrower shall maintain proper books of record and account in which proper entries shall be made in accordance with generally accepted accounting principles, consistently applied, of all its business and affairs related to the System. The Borrower shall have an annual audit made by an independent certified public accountant within one hundred twenty (120) days after the end of each Fiscal Year. Such report shall include either (a) disclosure language confirming the Borrower's continued compliance with its loan and mortgage covenants and restrictions or (b) a certificate of the accountants to the effect that, during the course of such accountant's regular examination of the Borrower's financial condition, nothing came to such accountant's attention that would constitute an Event of Default hereunder. A copy of the audited annual report shall be forwarded to the Department when completed.

Section 8.3. Certificate as to No Default.

The Borrower shall deliver to the Department, within one hundred twenty (120) days after the close of each Fiscal Year, a certificate signed by an Authorized Representative stating that, during such year and as of the date of such certificate, no event or condition has happened or existed, or is happening or existing, which constitutes an Event of Default, or if such an event or condition has happened or existed, or is happening or existing, specifying the nature and period of such event or condition and what action the Borrower has taken, is taking or proposes to take to rectify it.

Section 8.4. Further Assurances.

The Borrower shall to the fullest extent permitted by law pass, make, do, execute, acknowledge and deliver such further resolutions, acts, deeds, conveyances, assignments, transfers and assurances as may be necessary or desirable for the better assuring, conveying, granting, assigning and confirming the rights of the Department under this Agreement, or as may be required to carry out the purpose of this Agreement. The Borrower shall at all times, to the fullest extent permitted by law, defend, preserve and protect all rights of the Department under this Agreement against all claims and demands of all persons.

Section 8.5. Other Indebtedness.

In the event that the Borrower is required to borrow additional funds in order to complete the Project, the Borrower agrees to consult with the Department before borrowing any such additional funds. The Borrower agrees to pay when due all amounts required by any other bonded indebtedness and to perform all of its obligations in connection therewith.

Section 8.6. Assignment by Borrower.

The Borrower may not assign its rights under this Agreement without the prior written consent of the Department, which consent shall not be unreasonably withheld. If the

Borrower desires to assign its rights under this Agreement to another "Person" (as defined in the Federal Safe Drinking Water Act), the Borrower shall give notice of such fact to the Department. If the Department consents to the proposed assignment, the Borrower may proceed with the proposed assignment, but such assignment shall not become effective until the Department is furnished: (i) an assumption agreement in form and substance satisfactory to the Department by which the assignee agrees to assume all of the Borrower's obligations under this Agreement, and (ii) an Opinion of Counsel to the assignee, subject to customary exceptions and qualifications, that the assumption agreement and this Agreement constitute legal, valid and binding obligations of the assignee enforceable against the assignee in accordance with their terms and that the assignment and assumption comply in all respects with the provisions of this Agreement. Notwithstanding the foregoing, the assignment of the rights of the Borrower under this Agreement or the assumption of the obligations thereunder by the assignee shall in no way be construed as releasing the Borrower's obligations unless specifically agreed to by the Department.

ARTICLE IX  
DEFAULTS AND REMEDIES

Section 9.1. Events of Default.

Each of the following events shall be an "Event of Default" hereunder:

- (a) The failure to pay any payment of principal, interest and/or any administrative fee when due hereunder or under the Bond;
- (b) The Borrower's failure to perform or observe any of the other covenants, agreements or conditions of this Agreement and the continuation of such failure for a period of thirty (30) days after the Department gives the Borrower written notice specifying such failure and requesting that it be cured, unless the Department shall agree in writing to an extension of such time prior to its expiration; *provided, however*, if the failure stated in the notice is correctable but cannot be corrected within the applicable period, the Department will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the Borrower within the applicable period and diligently pursued until the default is corrected;
- (c) Any warranty, representation or other statement by or on behalf of Borrower contained in this Agreement or in any instrument furnished in compliance with or in reference to this Agreement is false or misleading in any material respect;
- (d) An order or decree shall be entered, with the Borrower's consent or acquiescence, appointing a receiver or receivers of the System or any part thereof or of the income thereof, or if such order or decree, having been entered without the Borrower's consent or acquiescence, shall not be vacated, discharged or stayed on appeal within ninety (90) days after the entry thereof;
- (e) Any proceeding shall be instituted, with the Borrower's consent or acquiescence, for the purpose of effecting a composition between the Borrower and its creditors, pursuant to any federal or state statute now or hereafter enacted, if the claims of such creditors are under any circumstances payable from the revenues of the System; or

(f) Any bankruptcy, insolvency or other similar proceeding shall be instituted by or against the Borrower under any federal or state bankruptcy or insolvency law now or hereinafter in effect and, if instituted against the Borrower, is not dismissed within ninety (90) days after filing.

Section 9.2. Notice of Default.

The Borrower agrees to give the Department prompt written notice if any order, decree or proceeding referred to in Section 9.1(d) through (f), inclusive, is entered or instituted against the Borrower or of the occurrence of any other event or condition which constitutes an Event of Default immediately upon becoming aware of the existence thereof.

Section 9.3. Remedies on Default.

Whenever any Event of Default referred to in Section 9.1 shall have happened and be continuing, the Department shall, in addition to any other remedies provided herein or by law, have the right, at its option without any further demand or notice, to take one or both of the following remedial steps:

(a) Discontinue advances of Loan Proceeds hereunder;

(b) Declare immediately due and payable all payments due or to become due under this Agreement or under the Bond, and upon notice to the Borrower, the same shall become immediately due and payable by the Borrower without further notice or demand; and

(c) Take whatever other action at law or in equity may appear necessary or desirable to collect the payments then due and thereafter to become due under this Agreement or to enforce any other of the Department's rights under this Agreement or to enforce performance by the Borrower of its covenants, agreements or undertakings contained herein.

Section 9.4. Delay and Waiver.

No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient. No waiver of any Event of Default under this Agreement shall extend to or shall affect any subsequent Event of Default or shall impair any rights or remedies consequent thereto.

Section 9.5. Right to Cure Default.

If the Borrower shall fail to make any payment or to perform any act required by it under this Agreement, the Department without prior notice to or demand upon the Borrower and without waiving or releasing any obligation or default, may (but shall be under no obligation to) make such payment or perform such act. All amounts so paid by the Department and all costs, fees and expenses so incurred shall be payable by the Borrower as an additional obligation under this Agreement, together with interest thereon at the rate of interest of five percent (5%) per annum until paid. The Borrower's obligation under this Section shall survive the repayment of the Bond.

ARTICLE X  
MISCELLANEOUS

Section 10.1. Successors and Assigns.

This Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

Section 10.2. Amendments.

The Department and the Borrower shall have the right to amend from time to time any of the terms and conditions of this Agreement, *provided* that all amendments shall be in writing and shall be signed by or on behalf of the Department and the Borrower.

Section 10.3. Limitation of Liability of Borrower's Officers.

No present or future director, official, officer, employee or agent of the Borrower shall be liable personally in respect of this Agreement or for any other action taken by such individual pursuant to or in connection with the financing provided for in this Agreement.

Section 10.4. Applicable Law.

This Agreement shall be governed by the applicable laws of The State of Delaware.

Section 10.5. Severability.

If any clause, provision, or section of this Agreement shall be held illegal or invalid by any court, the illegality or invalidity of such clause, provision or Section shall not affect the remainder of this Agreement which shall be construed and enforced as if such illegal or invalid clause, provision or section had not been contained in this Agreement. If any agreement or obligation contained in this Agreement is held to be in violation of law, then such agreement or obligation shall be deemed to be the agreement or obligation of the Department and the Borrower, as the case may be, only to the extent permitted by law.

Section 10.6. Notice.

Unless otherwise provided for herein, all demands, notices, approvals, consents, requests, opinions and other communications under this Agreement shall be in writing and shall be deemed to have been given when delivered in person or mailed by first class registered or certified mail, postage prepaid, addressed as follows:

Department: Delaware Department of Health and Social Services  
Division of Public Health  
Office of Drinking Water  
Jesse Cooper Building  
417 Federal Street – Room 226  
Dover, DE 19901  
Attention: DWSRF Program Director

With a copy to:

Delaware Department of Natural Resources  
& Environmental Control, on behalf of the Delaware Department  
of Health and Social Services  
Office Of The Secretary, Environmental Finance  
97 Commerce Way, Suite 106  
Dover, DE 19904  
Attention: Laura Robbins, Chief of Administration

and

Borrower: Tidewater Utilities, Inc.  
1100 South Little Creek Road  
Dover, DE 19901  
Attention: Mr. Robert J. Capko, Treasurer

With a copy to:

Middlesex Water Company  
485C Route One South, Suite 400  
Iselin, NJ 08830  
Attn: Jay L. Kooper, Vice President, General Counsel & Secretary

The Department, and the Borrower may designate, by notice given hereunder, any further or different addresses to which subsequent demands, notices, approvals, consents, requests, opinion or other communications shall be sent or persons to whose attention the same shall be directed.

Section 10.7. Headings.

The headings of the several articles and sections of this Agreement are inserted for convenience only and do not comprise a part of this Agreement.

Section 10.8. Terms of Agreement.

This Agreement shall be effective upon its execution and delivery by the Borrower and the Department. Except as otherwise specified, the Borrower's obligations under this

Agreement shall expire upon payment in full of the Bond and all other amounts payable by the Borrower under this Agreement.

Section 10.9. Counterparts.

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

WITNESS the following signatures, all duly authorized.

FOR THE DELAWARE DRINKING WATER STATE REVOLVING FUND, ACTING BY AND THROUGH THE DELAWARE DEPARTMENT OF HEALTH AND SOCIAL SERVICES, DIVISION OF PUBLIC HEALTH

By: /s/ Laura Robbins  
Laura Robbins  
DNREC, Chief of Administration  
Delaware Department of Natural Resources and  
Environmental Control, on behalf of the  
Delaware Department of Health and Social  
Services

TIDEWATER UTILITIES, INC.

By: /s/ Robert J. Capko  
Name: Robert J. Capko  
Title: Treasurer

(SEAL)

Attest:

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

[SIGNATURE PAGE TO FINANCING AGREEMENT – DELDOT SR 24-LOVE CREEK/MULBERRY KNOLL]

## EXHIBIT A

### Project Description

The Delaware Department of Transportation (“DelDOT”) is currently in the process of upgrading portions of State Route 24 (“SR 24”) southwest of Rt. 1. This project will improve the section of SR 24 from Love Creek to a point just beyond Mulberry Knoll Rd. The Borrower has significant existing and proposed infrastructure throughout the proposed project. As a part of this project, existing mains within the project will be upgraded with new larger mains as appropriate. In addition, new mains will be installed in areas along the project route where new infrastructure has been planned, including a new connection along Mulberry Knoll Road, which will interconnect the South Rehoboth elevated storage tank currently under construction. In all, the project will include +/-8,040 LF of relocated, upgraded and new 12”, 20”, and 24” main.

In accordance with DelDOT’s current business model and the Borrower’s procedures, the construction of the Borrower’s water main within the project are included as part of the DelDOT road improvement project. The Borrower engages an engineering firm to design the proposed water main work, who also provides utility coordination support to DelDOT during their design. When complete, the Borrower’s construction plans will be incorporated into the DelDOT project contract documents. The project is then publicly bid, and the selected contractor is approved by the Borrower and DelDOT.

DelDOT follows guidelines very similar to DWSRF project requirements (public bidding, AIS, wage rates, disadvantage business, etc.). Therefore, it has been determined that the DelDOT construction project (including the Borrower’s water main work) meets all DWSRF requirements, and payment of the design and construction cost reimbursement to DelDOT would be DWSRF eligible.

All existing mains within the project will be relocated and upgraded as appropriate. New mains will be installed in areas where new infrastructure has been planned, including a new connection along Mulberry Knoll Road, interconnecting the South Rehoboth elevated storage tank, which is currently under construction.

---



**EXHIBIT B**

Project Budget

<b><u>Project Budget:</u></b>	<b><u>Total Cost</u></b>
Engineering	\$ 50,000.00
Construction	\$2,956,365.00
Contingency	<u>\$ 295,635.00</u>
<b>Total Budget</b>	<b><u><u>\$3,302,000.00</u></u></b>
Source of Funds:	
DWSRF Loan	<b><u><u>\$3,302,000.00</u></u></b>

---

**EXHIBIT C**

Form of Requisition

**PROJECT NAME:** \_\_\_\_\_

**FUNDING RECIPIENT:** \_\_\_\_\_

**UNITED STATES** AND/ **STATE OF DELAWARE**  
**DEPARTMENT OF AGRICULTURE** OR **DHSS**  
**RURAL DEVELOPMENT**

E. I. # \_\_\_\_\_

REQUISITION NO: \_\_\_\_\_

DATE: \_\_\_\_\_

USDA LOAN NO \_\_\_\_\_

LOAN NO \_\_\_\_\_

USDA GRANT NO. \_\_\_\_\_ **SEPARATELY OR**  
**JOINTLY FUNDED PROJECT**

STATE GRANT NO. \_\_\_\_\_

**ACCOUNT SUMMARY AND REQUEST FOR LOAN/GRANT DISBURSEMENT**

DISBURSEMENT ITEMS	AMOUNT BUDGETED	PREVIOUS DISBURSEMENTS	THIS PERIOD	TOTAL TO DATE	REMAINING FUNDS
CONSTRUCTION					
CONTRACT NAME OR #					
CONTRACT NAME OR #					
CONTRACT NAME OR #					
LAND AND R.O.W.					
LEGAL AND ADMIN					
ENGINEERING FEES					
INTEREST					
CONTINGENCIES					
INITIAL O & M					
OTHER (describe)					
DISBURSEMENT TOTALS					
SOURCES OF FUNDING					
USDA LOAN					
USDA GRANT					
STATE LOAN					
STATE GRANT					
OTHER (describe)					
OTHER (describe)					
OTHER (describe)					
SOURCE TOTALS (must equal disbursement totals above)					

**See Notes on Page 2 (other side)**

\_\_\_\_\_  
 PREPARED BY (BORROWER/GRANTEE) DATE

\_\_\_\_\_  
 APPROVED BY (DHSS/ODW) DATE

\_\_\_\_\_  
 APPROVED BY (ARCHITECT/ENGINEER) DATE

\_\_\_\_\_  
 APPROVED BY (USDA/RD) DATE

Borrower/Grantee's Certification	Consulting Engineer's Certification
<p>The undersigned certifies that (1) the amounts requested by this requisition will be applied solely and exclusively to the payment, or the reimbursement of the recipient for the payment, of Project Costs, and (2) any materials, supplies or equipment covered by this requisition are not subject to any lien or security interest or such lien or security interest will be released upon payment of this requisition.</p>	<p>The undersigned Consulting Engineer for the Recipient hereby Certifies that insofar as the amounts covered by this Requisition include payment for labor or to contractors, builders or materialmen, such work was actually performed or such materials, supplies or equipment were actually furnished to or installed in the Project.</p>
<p>_____            Recipient's Authorized Representative Name, Title (PRINTED)</p>	<p>_____            Title and Company Name (PRINTED)</p>
<p>_____            Recipient's Authorized Representative Signature Date</p>	<p>_____            Consulting Engineer's Name (PRINTED)</p>
	<p>_____            Authorized Consulting Engineer Signature Date</p>

- NOTES:**
1. Include copies of all invoices or other acceptable documentation to support above request. Provide one (1) set for each funding agency.
  2. On jointly funded projects, disbursements will not be processed until this document is approved by authorized representatives of both the U. S. Department of Agriculture and the State of Delaware, Department of Health and Social Services.

**EXHIBIT D**

Schedule of Disbursements

<u>Date</u>	<u>Amount (\$)</u>
Apr-23	60,000
June-24	3,242,000
Total:	<u>3,302,000</u>

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**EXHIBIT E**

Form of Change Order

**UNITED STATES  
DEPARTMENT OF AGRICULTURE  
RURAL DEVELOPMENT**

**AND/ STATE OF DELAWARE  
OR DHSS**

ORDER NO: \_\_\_\_\_

DATE: \_\_\_\_\_

STATE: \_\_\_\_\_

COUNTY: \_\_\_\_\_ **SEPARATELY OR JOINTLY FUNDED PROJECT**

**CONTRACT CHANGE ORDER**

CONTRACT FOR: \_\_\_\_\_

OWNER \_\_\_\_\_

To: \_\_\_\_\_  
(Contractor)

You are hereby requested to comply with the following changes from the contract plans and specifications:

Description of Changes (Supplemental Plans and Specifications Attached)	DECREASE in Contract Price	INCREASE In Contract Price
	\$	\$
TOTALS	\$	\$
NET CHANGE IN CONTRACT PRICE	\$	\$

JUSTIFICATION: Explain (Differing Site Conditions) (Errors or Omissions in Drawings or Specifications) (Changes in Regulatory Requirements) (Design Changes) (Over run or Under run in Quantities) (Factors Affecting Time of Completion) (Other: Describe below)

\_\_\_\_\_  
\_\_\_\_\_

The original amount of the Contract: \_\_\_\_\_  
\_\_\_\_\_ Dollars (\$ \_\_\_\_\_)

The amount of the Contract as adjusted by all previously approved Change Orders: \_\_\_\_\_  
\_\_\_\_\_ Dollars (\$ \_\_\_\_\_)

The amount of the Contract will be (Decreased) (Increased) through this Change Order by the sum of: \_\_\_\_\_  
\_\_\_\_\_ Dollars (\$ \_\_\_\_\_)

The Contract Total including this and all previous Change Orders will be: \_\_\_\_\_  
\_\_\_\_\_ Dollars (\$ \_\_\_\_\_)

The Contract Period provided for completion will be (Increased) (Decreased) (Unchanged) by: \_\_\_\_\_ Calendar Days

\_\_\_\_\_

This document will become a supplement to the contract and all provisions will apply hereto.

Requested: \_\_\_\_\_  
(Owner) (Date)

Recommended: \_\_\_\_\_  
(Owner's Architect/Engineer) (Date)

Accepted: \_\_\_\_\_  
(Contractor) (Date)

Approved by State of Delaware: \_\_\_\_\_  
(Date)

Approved by U. S. Department of Agriculture: \_\_\_\_\_  
(Date)

After all five (5) copies of the Change Order have been signed and dated by authorized representatives of all the applicable parties in the spaces provided above, transmit one (1) copy to each party as listed below.

- U. S. Department of Agriculture's Copy
- State of Delaware's Copy
- Contractor's Copy
- Borrower/Grantee's Copy
- Architect/Engineer's Copy

**EXHIBIT "F"**

**CERTIFICATE OF THE BORROWER AND  
PROJECTED DRAWDOWN SCHEDULE OF THE  
PROJECT**

The undersigned, as representatives of Tidewater Utilities, Inc. (the "Borrower") in connection with the issuance of its \$3,302,000 General Obligation Bond (DelDOT SR 24-Love Creek to Mulberry Knoll Project), Series 2023C-DWSRF, have reviewed the estimated drawdown schedule prepared by the Borrower, attached hereto as Exhibit D and made a part hereof.

We hereby certify as of April 5, 2023 that the estimated drawdown schedule attached hereto as Exhibit D and statements made under Section 2.1(m) "Representations by Borrower" in the foregoing Financing Agreement between the Borrower and the Delaware Drinking Water State Revolving Fund, acting by and through the Delaware Department of Health and Social Services, Division of Public Health, are to the best of our knowledge true and correct as of the date hereof.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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TIDEWATER UTILITIES, INC.

By: /s/ Robert J. Capko  
Robert J. Capko  
Treasurer

Attest:

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

*[SIGNATURE PAGE TO EXHIBIT F - CERTIFICATE AS TO PROJECTED DRAWDOWN SCHEDULE DELDOT SR 24-LOVE CREEK/MULBERRY  
KNOLL]*

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**TIDEWATER UTILITIES, INC.**

**\$4,998,000 GENERAL OBLIGATION BOND  
(ANGOLA MEADOWS INTERCONNECTION PROJECT)  
SERIES 2023A-DWSRF**

FINANCING AGREEMENT

BETWEEN

TIDEWATER UTILITIES, INC.

AND

DELAWARE DRINKING WATER STATE REVOLVING FUND,  
ACTING BY AND THROUGH THE  
DELAWARE DEPARTMENT OF HEALTH AND SOCIAL SERVICES,  
DIVISION OF PUBLIC HEALTH

Loan No. 22000034

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## FINANCING AGREEMENT

THIS FINANCING AGREEMENT (this “Agreement”) is made as of this 5<sup>th</sup> day of April, 2023, between the DELAWARE DRINKING WATER STATE REVOLVING FUND, acting by and through the DELAWARE DEPARTMENT OF HEALTH & SOCIAL SERVICES, DIVISION OF PUBLIC HEALTH, a public agency of The State of Delaware (the “Department”) and TIDEWATER UTILITIES, INC., a corporation organized under the laws of The State of Delaware (the “Borrower”).

Pursuant to Title 29 Delaware Code Section 7903 (the “Act”), the General Assembly established a permanent and perpetual fund known as the “Delaware Drinking Water State Revolving Fund” (the “Fund”) and empowered the Secretary of the Department of Health & Social Services to administer such Fund. From the Fund, the Department from time to time makes loans to and acquires obligations of eligible persons in Delaware to finance the costs of drinking water facilities in accordance with the Federal Safe Drinking Water Act. General information on Drinking Water State Revolving Funds can be found at: <https://www.epa.gov/dwsrf>.

The Borrower requested a loan (the “Loan”) from the Fund and will evidence its obligation to repay the Loan by the signing of this Agreement and by the delivery of its General Obligation Bond (Angola Meadows Interconnection Project), Series 2023A-DWSRF (the “Bond”). The Borrower will use the Loan Proceeds from the Fund to: (i) finance the linking of the water supply and storage assets of the Meadows and Angola systems, and along with the Rehoboth District, completing the connection of the Borrower's 3 large districts north of the inlet, as more fully described in Exhibit A and (ii) if desired, pay certain administrative costs and costs of issuing the Bond (collectively, the “Project”).

### ARTICLE I DEFINITIONS

#### Section 1.1. Definitions.

The capitalized terms contained in this Agreement shall have the meanings set forth below unless the context requires otherwise and any capitalized terms not otherwise defined herein shall have the meaning assigned to such terms in the Act:

“Agreement” means this Financing Agreement between the Department and the Borrower, together with any amendments or supplements hereto.

“Authorized Representative” means the President, Vice President, Chairman, Treasurer, and Secretary of the Borrower or any employee of the Borrower authorized by resolution or certificate of the Borrower to perform the act or sign the document in question.

“Business Day” means a day of the year which is not a Saturday or Sunday or a day on which banking institutions located in New York or Delaware are required or authorized to remain closed or on which the New York Stock Exchange is closed.

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“Closing Date” means the date this Agreement is executed and delivered by the Borrower and the Department.

“Commitment Letter” shall mean the commitment letter from the Department to the Borrower dated January 23, 2023 and all extensions and amendments thereto.

“Consulting Engineer” means any firm of independent consulting engineers of recognized standing and experienced in the field of environmental engineering and registered to do business in Delaware. Any such firm shall be subject to the reasonable approval of the Department.

“Department” means the Department of Health and Social Services, Division of Public Health.

“Event of Default” shall have the meaning set forth in Section 9.1.

“Fiscal Year” means the period of twelve months established by the Borrower as its annual accounting period.

“Loan” means the loan from the Department to the Borrower pursuant to this Agreement.

“Loan Proceeds” means the funds applied to make the loan to the Borrower pursuant to this Agreement.

“Notice to Proceed” means a written notice given by the Borrower and signed by an Authorized Representative issued to each construction contractor fixing the date on which construction, equipping, acquisition, expansion or renovation of the Project as described in **Exhibit A** will commence, a copy of which must be furnished to the Department by the Borrower within one year of the Closing Date.

“Penalty” shall have the meaning set forth in Section 3.3.

“Project” means, collectively, the various improvements and upgrades to the System of the Borrower, as more fully described in **Exhibit A**, the costs of the construction, acquisition or equipping of which are to be financed in whole or in part with the Loan Proceeds.

“Project Budget” means the budget for the financing of the Project, a copy of which is attached to this Agreement as **Exhibit B**.

“Project Costs” means the costs of the construction, acquisition or equipping of the Project, as further described in the Project Budget, and such other costs as may be approved in writing by the Department, provided such costs are permitted by the Act.

“System” means all plants, systems, facilities, equipment or property, of which the Project constitutes the whole or a part, owned, operated or maintained by the Borrower and used in connection with the drinking water services for the systems which comprise the Project, all as described in **Exhibit A**.

Section 1.2. Rules of Construction.

The following rules shall apply to the construction of this Agreement unless the context requires otherwise:

- (a) Singular words shall connote the plural number as well as the singular and vice versa.
- (b) All references in this Agreement to particular Sections or Exhibits are references to Sections or Exhibits of this Agreement unless otherwise indicated.
- (c) The headings and table of contents as used in this Agreement are solely for convenience of reference and shall not constitute a part of this Agreement nor shall they affect its meaning, construction or effect.

ARTICLE II  
REPRESENTATIONS

Section 2.1. Representations by Borrower.

The Borrower makes the following representations as the basis for its undertakings under this Agreement:

- (a) The Borrower is a duly organized and validly existing corporation in good standing under the laws of the State of Delaware.
- (b) The Borrower has full right, power and authority to (i) execute this Agreement and the other documents related thereto, (ii) own and operate the System, (iii) construct, acquire or equip the Project and finance the Project Costs by borrowing money for such purpose pursuant to this Agreement, and (iv) carry out and consummate all of the transactions contemplated by this Agreement.
- (c) All permits, licenses, registrations, certificates, authorizations and approvals required to have been obtained as of the date of signing of this Agreement have been obtained for (i) the execution by the Borrower of this Agreement, (ii) the performance and enforcement of the obligations of the Borrower thereunder, (iii) the acquisition, construction, equipping, occupation, operation and use of the Project, and (iv) the operation and use of the System. The Borrower knows of no reason why any other necessary permits or approvals cannot be obtained as required.
- (d) This Agreement has been executed by a duly authorized officer of the Borrower and constitutes the legal, valid and binding obligation of the Borrower enforceable against the Borrower in accordance with the terms of this Agreement.

(e) There are not pending nor, to the best of the knowledge of the undersigned officer of the Borrower, threatened, any actions, suits, proceedings or investigations of a legal, equitable, regulatory, administrative or legislative nature, in which a judgment, order or resolution may have a material adverse effect on the Borrower, or its business, assets, condition (financial or otherwise), operations or prospects or in its ability to perform its obligations under this Agreement.

(f) There have been no material defaults by any contractor or subcontractor under any contract made in connection with the construction or equipping of the Project.

(g) No material adverse change has occurred in the financial condition of the Borrower from that indicated in the financial statements, application and other information furnished to the Department in connection with this Agreement.

(h) No Event of Default has occurred and is continuing.

(i) Except as may otherwise be approved by the Department or permitted by the terms hereof, the Project and the System at all times will be owned by the Borrower and will not be operated or controlled by any other entity or person.

(j) The Project will be a part of the System.

(k) The Loan Proceeds and funds available from the other sources specified in the Project Budget will be sufficient to pay the estimated Project Costs.

(l) The Borrower has received or has commitments to obtain all funds and other financing for the Project as contemplated in the Project Budget.

(m) The Borrower expects to complete the acquisition, construction and equipping of the Project on or before the projected date of November 30, 2023. The Borrower expects to adhere to the estimated drawdown schedule attached hereto as **Exhibit D** and certified to in the "Certificate of the Borrower and Projected Drawdown Schedule of the Project" attached hereto as **Exhibit F** and made a part hereof. This projected date of completion is subject to an extension if such extension is mutually agreed upon by the Department and the Borrower. Noncompliance with this Section 2.1(m) may cause loan funds to become de-obligated and reallocated to other drinking water projects at the discretion of the Department.

ARTICLE III  
ADVANCE AND USE OF LOAN PROCEEDS; CONSTRUCTION OF PROJECT

Section 3.1. Advance of Loan Proceeds.

The Department agrees to advance to the Borrower pursuant to this Agreement up to Four Million Nine Hundred Ninety-Eight Thousand Dollars (\$4,998,000) to pay Project Costs in accordance with the Project Budget.

Section 3.2. Application of Loan Proceeds.

(a) The Borrower agrees to apply the Loan Proceeds solely and exclusively to the payment, or the reimbursement of the Borrower for the payment, of Project Costs and further agrees, upon the request of the Department, to exhibit to the Department, vouchers, statements, bills of sale or other evidence of the actual payment of such Project Costs. The Department shall disburse the Loan Proceeds to or for the account of the Borrower upon execution of this Agreement and upon receipt by the Department of the following:

(1) A requisition (upon which the Department shall be entitled to rely) signed by an Authorized Representative and containing all information called for by, and otherwise being in the form of, **Exhibit C** attached hereto.

(2) If such requisition includes an item for payment for labor or to contractors, builders or materialmen (i) a certificate, signed by an Authorized Representative, stating that such work was actually performed or such materials, supplies or equipment were actually furnished or installed in or about the construction of the Project; and (ii) a certificate signed by an Authorized Representative stating either that such materials, supplies or equipment are not subject to any lien or security interest or that such lien or security interest will be released or discharged upon payment of the requisition.

Upon receipt of each such requisition and accompanying certificate or certificates, the Department shall disburse Loan Proceeds hereunder to or for the account of the Borrower in accordance with such requisition in an amount and to the extent approved by the Department. The Borrower expects to adhere to the estimated drawdown schedule attached hereto as **Exhibit D**. The Department shall have no obligation to disburse any such Loan Proceeds if the Borrower is in default hereunder, nor shall the Department have any obligation to approve any requisition if the Borrower is not in compliance with the terms of this Agreement.

(b) The Borrower shall comply with all applicable State of Delaware and federal laws. Except as may otherwise be approved by the Department, disbursements shall be held at ninety-five percent (95%) of the maximum amount authorized hereunder to ensure satisfactory completion of the Project. Upon receipt from the Borrower of the certificate specified in Section 3.4 and a final requisition detailing all retainages to which the Borrower is then entitled, the Department, to the extent approved by the Department and subject to the provisions of this Section and Section 3.4, will disburse Loan Proceeds to or for the account of the Borrower to the extent of such approval.

(c) The Department may apply Loan Proceeds to pay any Penalty assessed pursuant to Section 3.3.

(d) The Department shall have no obligation to disburse Loan Proceeds in excess of the amount necessary to pay for approved Project Costs.

(e) The Borrower shall comply in all respects with all applicable federal laws, regulations and other requirements related to or arising out of or in connection with the Project and the funding thereto by the Fund. The Borrower shall also comply in all respects with the Federal Single Audit Act, 2 CFR 200 Subpart F, as a sub-recipient of Federal funds.



(f) The Borrower shall comply with the Delaware Department of Labor Prevailing Wage Rate Regulations.

(g) The Borrower shall comply with the Delaware Drinking Water State Revolving Fund's Davis-Bacon Wage Rate Act Requirement as set forth in the closing documents. The Borrower agrees that all contractors or subcontractors utilized by the Borrower in the Project will complete and file the U.S. Department of Labor's payroll form WH-347.

(h) As a recipient of Fund assistance, the Borrower shall comply with the Prohibition on Certain Telecommunication and Video Surveillance Services or Equipment located in 2 CFR 200.216, as such regulation relates to the Project. The Borrower agrees that none of the Loan Proceeds shall be used to procure, enter into, extend or renew contracts or obtain equipment, services or systems that use "covered telecommunications equipment or services," as identified in the regulation, as a substantial or essential component of any system, or as critical technology as part of any system.

(i) As a recipient of Fund assistance, the Borrower agrees that none of the Loan Proceeds made available to the Borrower shall be used for the Project for the construction, alteration, maintenance, or repair of the System unless all of the iron and steel products used in the Project are produced in the United States ("American Iron and Steel Requirement"), unless: (i) the Borrower has requested and obtained a waiver from the Environmental Protection Agency pertaining to the Project or (ii) the Department has otherwise advised the Borrower in writing that the American Iron and Steel Requirement is not applicable to the Project. The American Iron and Steel Requirement shall not apply in any case or category of cases in which the Administrator of the Environmental Protection Agency finds that: (i) applying the requirement would be inconsistent with the public interest; (ii) iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (iii) inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

In this section 3.2(i), the term "iron and steel products" means the following products made primarily of iron or steel-lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials. "Steel" means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

The Bipartisan Infrastructure Law of 2021, also known as the Infrastructure Investment and Jobs Act of 2021 ("IIJA"), established the Build America Buy America (BABA) Act domestic sourcing requirements for federal financial assistance programs for infrastructure, including the Fund, and the Borrower must comply with the BABA provision. BABA also creates expanded American Iron and Steel requirements to include construction materials and manufactured goods for domestic preference and sourcing requirements.

In procuring materials for public works projects, entities using taxpayer-financed Federal assistance should give a commonsense procurement preference for the materials and products produced by companies and workers in the United States in accordance with the high ideals embodied in the environmental, worker, workplace safety, and other regulatory requirements of the United States. The benefits of domestic content procurement preferences extend beyond economics. Common construction materials used in public works infrastructure projects, including steel, iron, manufactured products, non-ferrous metals, plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables), glass (including optic glass), lumber, and drywall are not adequately covered by a domestic content procurement preference, thus limiting the impact of taxpayer purchases to enhance supply chains in the United States.

(j) The Borrower agrees to comply with all federal requirements applicable to the Loan Proceeds received (including those imposed by IIJA, Public Law No. 117-58) which the Borrower understands includes, but is not limited to, the following requirements: that all of the iron and steel, manufactured products, and construction materials used in the Project are to be produced in the United States (“Build America, Buy America Requirements”) unless (i) the Borrower has requested and obtained a waiver from the Department pertaining to the Project or the Project is otherwise covered by a general applicability waiver; or (ii) the Department has otherwise advised the Borrower in writing that the Build America, Buy America Requirements are not applicable to the Project.

(k) The Borrower, as a sub-recipient of Federal funds, agrees that when collecting and managing environmental data under this Agreement, it will protect the data by following all applicable State of Delaware law cybersecurity requirements, if the Borrower’s network or information system is connected to the Environmental Protection Agency networks to transfer data to the Environmental Protection Agency using systems other than the Environmental Information Exchange Network or the Environmental Protection Agency’s Central Data Exchange.

### Section 3.3. Agreement to Draw Loan Proceeds and Penalty for Delay.

The Borrower agrees after the Closing Date to commence work in earnest on the Project and make draws on the Loan Proceeds of at least ten percent (10%) of the Project Costs within one year of the Closing Date. The Borrower further agrees to provide a Notice to Proceed within one year of the Closing Date.

If by April 5, 2024, which is one year from the Closing Date, (i) the Borrower has not submitted requisition(s), in the manner required by Section 3.2, for more than ten percent (10%) of the Project Costs, and (ii) the Department has not received a Notice to Proceed, the Department may in its discretion assess a penalty equal to one percent (1%) of the Loan Proceeds (the “Penalty”). Such Penalty may be drawn by the Department from the Loan Proceeds. It is within the Department’s complete discretion whether to impose the Penalty based upon its review of affirmative steps taken by the Borrower to commence and complete the Project and the totality of the circumstances surrounding any such delay in requesting disbursement of Loan Proceeds.

#### Section 3.4. Agreement to Accomplish Project.

The Borrower will cause the Project to be acquired, constructed, expanded, renovated or equipped as described in **Exhibit A** and in accordance with the Project Budget and the plans, specifications and designs prepared by the Consulting Engineer and approved by the Department. The Borrower will complete the Project by the date set forth in Section 2.1(m). All plans, specifications and designs have been approved by all applicable regulatory agencies. The Borrower agrees to maintain complete and accurate books and records of the Project Costs and permit the Department through its duly authorized representatives to inspect such books and records at any reasonable time. The Borrower and the Department may amend the description of the Project set forth in **Exhibit A**.

The Borrower will deliver to the Department a certificate signed by an Authorized Representative of the Borrower and by the Consulting Engineer stating (i) that the Project has been completed substantially in accordance with this Section, the plans and specifications as amended from time to time, as approved by the Department, and in substantial compliance with all material applicable laws, ordinances, rules and regulations, (ii) the date of such completion, (iii) that all certificates of occupancy or other material permits necessary for the Project's use, occupancy and operation have been issued or obtained, and (iv) the amount, if any, to be reserved for payment of Project Costs.

#### Section 3.5. Permits.

The Borrower, at its sole cost and expense, shall comply with, and shall obtain all permits, consents and approvals required by local, state or federal laws, ordinances, rules, regulations or requirements in connection with the acquisition, construction, equipping, occupation, operation or use of the Project. The Borrower shall, upon request, promptly furnish to the Department copies of all such permits, consents and approvals. The Borrower shall also comply with all lawful program or procedural guidelines or requirements duly promulgated and amended as of the date hereof by the Department in connection with the acquisition, construction, equipping, occupation, operation or use of projects financed by the Fund under the Act. The Borrower shall also comply in all respects with all applicable State of Delaware and federal laws, regulations and other requirements relating to or arising out of or in connection with the Project and the funding thereof by the Fund.

#### Section 3.6. Construction Contractors.

Each construction contractor employed in the accomplishment of the Project shall be required in the construction contract to furnish a performance bond and a payment bond, each in an amount equal to one hundred percent (100%) of the particular contract price. Such bonds shall list the Borrower as beneficiary. Each contractor shall be required to maintain, during the construction period covered by the particular construction contract, builder's risk insurance, workers compensation insurance, public liability insurance, property damage insurance and vehicle liability insurance in amounts and on terms customarily maintained on such projects. Upon request of the Department, the Borrower shall cause each contractor to furnish evidence of such bonds and insurance to the Department. In addition to the foregoing,

(a) Each construction contractor employed in the accomplishment of the Project is required to comply with the Anti-Kickback Act (and is required to insert similar requirements in all subcontracts) and all other applicable federal laws and regulations.

(b) All construction contracts and contractors' estimate forms will be prepared so that materials and equipment may be readily itemized and identified as to eligible and noneligible costs.

(c) Any change in a construction contract that will alter the contract price or completion time or will substantially modify the proposed use of the Project must be submitted to the Department for prior approval via a change order in the form of the change order attached hereto as **Exhibit E**.

(d) The construction of the Project facilities will conform to applicable federal, state and local laws, ordinances and regulations.

(e) The Borrower will proceed expeditiously and complete the Project facilities in accordance with the approved application, project schedule, surveys, plans, profiles, cross-sections, specifications and amendments approved by the Department.

Recipients and sub-recipients of Fund assistance, including the Borrower, shall not make any award or permit any award (sub-grant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension." Grantees and sub-grantees, including the Borrower, shall refer to the "List of Parties Excluded From Federal Procurement and Non-Procurement Programs" to insure that the contractor or subcontracts are not on this list. A search for exclusion records can be made at the official US Government System for Award Management website at <https://www.sam.gov>. For assistance visit the Federal Service Desk online at [www.fsd.gov](http://www.fsd.gov) or by calling (866) 606-8220.

#### Section 3.7. Engineering Services.

The Borrower has retained or employed the Consulting Engineer to provide engineering services covering planning and design, operation of the System, and the supervision and inspection of the construction of the Project. The Consulting Engineer will provide to the Department the certificate required by Section 3.4.

#### Section 3.8. Borrower Required to Complete Project.

Subject to the provisions of Section 8.5 hereof, if the Loan Proceeds are not sufficient to pay in full the cost of the Project, the Borrower will complete the Project at its own expense and shall not be entitled to any reimbursement therefor from the Department or the Fund or to any abatement, diminution or postponement of the Borrower's repayments under this Agreement.

Section 3.9. Inclusion of Eligible Project Reimbursement Costs Within The Loan.

Project Costs incurred prior to the initiation of construction and after approval of the Project by the Department are eligible for reimbursement from Loan Proceeds provided that the Project continues to meet all the criteria and requirements set forth by the Department. Notwithstanding anything to the contrary herein, costs incurred and associated with the initial stages of the Project, such as planning and design, are eligible for reimbursement regardless of when such costs were incurred.

ARTICLE IV  
REPAYMENT OF LOAN; GENERAL OBLIGATION

Section 4.1. Repayment of Loan.

The Borrower shall repay the Loan pursuant to the terms of the Bond issued to the Department.

Section 4.2. General Obligation.

The Borrower's repayment obligation constitutes a general obligation of the Borrower, secured by a pledge of its full faith, revenue and credit.

Section 4.3. [RESERVED]

ARTICLE V  
PREPAYMENTS

Section 5.1. Prepayments of Loan.

At its option and upon providing prior written notice to the Department, the Borrower may prepay the Loan, in whole or in part, without penalty, at any time. Such prior written notice shall specify the date on which the Borrower will make such prepayment and whether the Loan will be prepaid in full or in part, and if in part, the principal amount to be prepaid. Any such prepayment shall be applied against Loan principal installments then outstanding as shall be directed by the Borrower.

ARTICLE VI  
OPERATION AND USE OF SYSTEM

Section 6.1. Inspection of System and Borrower's Books and Records.

The Department and its duly authorized representatives and agents shall have such reasonable rights of access to the System as may be necessary to determine whether the Borrower is in compliance with the requirements of this Agreement and shall have the right at all reasonable times and upon reasonable prior notice to the Borrower to examine and copy the books and records of the Borrower insofar as such books and records relate to the System.

The Borrower agrees to comply with all record keeping and reporting requirements under all applicable legal authorities, including any reports required by the Department, such as performance indicators of program deliverables and information on costs and project progress. The Borrower understands that (i) each contract and subcontract related to the Project is subject to audit by appropriate federal and state entities and (ii) failure to comply with the applicable legal requirements and this Agreement may result in a default hereunder that results in a repayment of Loan Proceeds in advance of the maturity of the Bond and/or other remedial actions.

Section 6.2. Performance Certification.

The Borrower will notify the Department when the Project is completed and operation commenced on or before the date set out in Section 2.1(m).

Section 6.3. Operation, Maintenance and Use of System.

At its own cost and expense, the Borrower shall operate the System in a proper, sound and economical manner and in compliance with all legal requirements, shall maintain the System in good repair and operating condition and from time to time shall make all necessary repairs, renewals and replacements.

ARTICLE VII  
INSURANCE, DAMAGE AND DESTRUCTION

Section 7.1. Insurance.

Unless the Department otherwise agrees in writing, the Borrower shall maintain or cause to be maintained insurance against such risks as are customarily insured against by owners of systems similar in size and character to the System.

ARTICLE VIII  
SPECIAL COVENANTS

Section 8.1. Maintenance of Existence.

The Borrower shall maintain its existence as a "Person" (as defined in the Federal Safe Drinking Water Act) and, without consent of the Department, which consent shall not be unreasonably withheld, shall not dissolve or otherwise dispose of all or substantially all of its assets or consolidate or merge with or into another entity. Notwithstanding the foregoing, the Borrower may consolidate or merge with or into, or sell or otherwise transfer all or substantially all of its assets to a political subdivision of The State of Delaware, and the Borrower thereafter may dissolve, if the surviving, resulting or transferee political subdivision, if other than the Borrower, assumes, in written form acceptable to the Department, all of the obligations of the Borrower contained in this Agreement, and there is furnished to the Department an Opinion of Counsel acceptable to the Department subject to customary exceptions and qualifications, to the effect that such assumption constitutes the legal, valid and binding obligations of the surviving, resulting or transferee entity in accordance with its terms.

Section 8.2. Financial Records and Statements.

The Borrower shall maintain proper books of record and account in which proper entries shall be made in accordance with generally accepted accounting principles, consistently applied, of all its business and affairs related to the System. The Borrower shall have an annual audit made by an independent certified public accountant within one hundred twenty (120) days after the end of each Fiscal Year. Such report shall include either (a) disclosure language confirming the Borrower's continued compliance with its loan and mortgage covenants and restrictions or (b) a certificate of the accountants to the effect that, during the course of such accountant's regular examination of the Borrower's financial condition, nothing came to such accountant's attention that would constitute an Event of Default hereunder. A copy of the audited annual report shall be forwarded to the Department when completed.

Section 8.3. Certificate as to No Default.

The Borrower shall deliver to the Department, within one hundred twenty (120) days after the close of each Fiscal Year, a certificate signed by an Authorized Representative stating that, during such year and as of the date of such certificate, no event or condition has happened or existed, or is happening or existing, which constitutes an Event of Default, or if such an event or condition has happened or existed, or is happening or existing, specifying the nature and period of such event or condition and what action the Borrower has taken, is taking or proposes to take to rectify it.

Section 8.4. Further Assurances.

The Borrower shall to the fullest extent permitted by law pass, make, do, execute, acknowledge and deliver such further resolutions, acts, deeds, conveyances, assignments, transfers and assurances as may be necessary or desirable for the better assuring, conveying, granting, assigning and confirming the rights of the Department under this Agreement, or as may be required to carry out the purpose of this Agreement. The Borrower shall at all times, to the fullest extent permitted by law, defend, preserve and protect all rights of the Department under this Agreement against all claims and demands of all persons.

Section 8.5. Other Indebtedness.

In the event that the Borrower is required to borrow additional funds in order to complete the Project, the Borrower agrees to consult with the Department before borrowing any such additional funds. The Borrower agrees to pay when due all amounts required by any other bonded indebtedness and to perform all of its obligations in connection therewith.

Section 8.6. Assignment by Borrower.

The Borrower may not assign its rights under this Agreement without the prior written consent of the Department, which consent shall not be unreasonably withheld. If the Borrower desires to assign its rights under this Agreement to another "Person" (as defined in the Federal Safe Drinking Water Act), the Borrower shall give notice of such fact to the Department.

If the Department consents to the proposed assignment, the Borrower may proceed with the proposed assignment, but such assignment shall not become effective until the Department is furnished: (i) an assumption agreement in form and substance satisfactory to the Department by which the assignee agrees to assume all of the Borrower's obligations under this Agreement, and (ii) an Opinion of Counsel to the assignee, subject to customary exceptions and qualifications, that the assumption agreement and this Agreement constitute legal, valid and binding obligations of the assignee enforceable against the assignee in accordance with their terms and that the assignment and assumption comply in all respects with the provisions of this Agreement. Notwithstanding the foregoing, the assignment of the rights of the Borrower under this Agreement or the assumption of the obligations thereunder by the assignee shall in no way be construed as releasing the Borrower's obligations unless specifically agreed to by the Department.

ARTICLE IX  
DEFAULTS AND REMEDIES

Section 9.1. Events of Default.

Each of the following events shall be an "Event of Default" hereunder:

- (a) The failure to pay any payment of principal, interest and/or any administrative fee when due hereunder or under the Bond;
- (b) The Borrower's failure to perform or observe any of the other covenants, agreements or conditions of this Agreement and the continuation of such failure for a period of thirty (30) days after the Department gives the Borrower written notice specifying such failure and requesting that it be cured, unless the Department shall agree in writing to an extension of such time prior to its expiration; *provided, however*, if the failure stated in the notice is correctable but cannot be corrected within the applicable period, the Department will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the Borrower within the applicable period and diligently pursued until the default is corrected;
- (c) Any warranty, representation or other statement by or on behalf of Borrower contained in this Agreement or in any instrument furnished in compliance with or in reference to this Agreement is false or misleading in any material respect;
- (d) An order or decree shall be entered, with the Borrower's consent or acquiescence, appointing a receiver or receivers of the System or any part thereof or of the income thereof, or if such order or decree, having been entered without the Borrower's consent or acquiescence, shall not be vacated, discharged or stayed on appeal within ninety (90) days after the entry thereof;
- (e) Any proceeding shall be instituted, with the Borrower's consent or acquiescence, for the purpose of effecting a composition between the Borrower and its creditors, pursuant to any federal or state statute now or hereafter enacted, if the claims of such creditors are under any circumstances payable from the revenues of the System; or



(f) Any bankruptcy, insolvency or other similar proceeding shall be instituted by or against the Borrower under any federal or state bankruptcy or insolvency law now or hereinafter in effect and, if instituted against the Borrower, is not dismissed within ninety (90) days after filing.

Section 9.2. Notice of Default.

The Borrower agrees to give the Department prompt written notice if any order, decree or proceeding referred to in Section 9.1(d) through (f), inclusive, is entered or instituted against the Borrower or of the occurrence of any other event or condition which constitutes an Event of Default immediately upon becoming aware of the existence thereof.

Section 9.3. Remedies on Default.

Whenever any Event of Default referred to in Section 9.1 shall have happened and be continuing, the Department shall, in addition to any other remedies provided herein or by law, have the right, at its option without any further demand or notice, to take one or both of the following remedial steps:

(a) Discontinue advances of Loan Proceeds hereunder;

(b) Declare immediately due and payable all payments due or to become due under this Agreement or under the Bond, and upon notice to the Borrower, the same shall become immediately due and payable by the Borrower without further notice or demand; and

(c) Take whatever other action at law or in equity may appear necessary or desirable to collect the payments then due and thereafter to become due under this Agreement or to enforce any other of the Department's rights under this Agreement or to enforce performance by the Borrower of its covenants, agreements or undertakings contained herein.

Section 9.4. Delay and Waiver.

No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient. No waiver of any Event of Default under this Agreement shall extend to or shall affect any subsequent Event of Default or shall impair any rights or remedies consequent thereto.

Section 9.5. Right to Cure Default.

If the Borrower shall fail to make any payment or to perform any act required by it under this Agreement, the Department without prior notice to or demand upon the Borrower and without waiving or releasing any obligation or default, may (but shall be under no obligation to) make such payment or perform such act. All amounts so paid by the Department and all costs, fees and expenses so incurred shall be payable by the Borrower as an additional obligation under this Agreement, together with interest thereon at the rate of interest of five percent (5%)

per annum until paid. The Borrower's obligation under this Section shall survive the repayment of the Bond.

ARTICLE X  
MISCELLANEOUS

Section 10.1. Successors and Assigns.

This Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

Section 10.2. Amendments.

The Department and the Borrower shall have the right to amend from time to time any of the terms and conditions of this Agreement, *provided* that all amendments shall be in writing and shall be signed by or on behalf of the Department and the Borrower.

Section 10.3. Limitation of Liability of Borrower's Officers.

No present or future director, official, officer, employee or agent of the Borrower shall be liable personally in respect of this Agreement or for any other action taken by such individual pursuant to or in connection with the financing provided for in this Agreement.

Section 10.4. Applicable Law.

This Agreement shall be governed by the applicable laws of The State of Delaware.

Section 10.5. Severability.

If any clause, provision, or section of this Agreement shall be held illegal or invalid by any court, the illegality or invalidity of such clause, provision or Section shall not affect the remainder of this Agreement which shall be construed and enforced as if such illegal or invalid clause, provision or section had not been contained in this Agreement. If any agreement or obligation contained in this Agreement is held to be in violation of law, then such agreement or obligation shall be deemed to be the agreement or obligation of the Department and the Borrower, as the case may be, only to the extent permitted by law.

Section 10.6. Notice.

Unless otherwise provided for herein, all demands, notices, approvals, consents, requests, opinions and other communications under this Agreement shall be in writing and shall be deemed to have been given when delivered in person or mailed by first class registered or certified mail, postage prepaid, addressed as follows:

Department: Delaware Department of Health and Social Services  
Division of Public Health  
Office of Drinking Water  
Jesse Cooper Building  
417 Federal Street – Room 226  
Dover, DE 19901  
Attention: DWSRF Program Director

With a copy to:

Delaware Department of Natural Resources  
& Environmental Control, on behalf of the Delaware Department  
of Health and Social Services  
Office Of The Secretary, Environmental Finance  
97 Commerce Way, Suite 106  
Dover, DE 19904  
Attention: Laura Robbins, Chief of Administration

and

Borrower: Tidewater Utilities, Inc.  
1100 South Little Creek Road  
Dover, DE 19901  
Attention: Mr. Robert J. Capko, Treasurer

With a copy to:

Middlesex Water Company  
485C Route One South, Suite 400  
Iselin, NJ 08830  
Attn: Jay L. Kooper, Vice President, General Counsel & Secretary

The Department, and the Borrower may designate, by notice given hereunder, any further or different addresses to which subsequent demands, notices, approvals, consents, requests, opinion or other communications shall be sent or persons to whose attention the same shall be directed.

Section 10.7. Headings.

The headings of the several articles and sections of this Agreement are inserted for convenience only and do not comprise a part of this Agreement.

Section 10.8. Terms of Agreement.

This Agreement shall be effective upon its execution and delivery by the Borrower and the Department. Except as otherwise specified, the Borrower's obligations under

this Agreement shall expire upon payment in full of the Bond and all other amounts payable by the Borrower under this Agreement.

Section 10.9. Counterparts.

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

WITNESS the following signatures, all duly authorized.

FOR THE DELAWARE DRINKING WATER STATE REVOLVING FUND, ACTING BY AND THROUGH THE DELAWARE DEPARTMENT OF HEALTH AND SOCIAL SERVICES, DIVISION OF PUBLIC HEALTH

By: /s/ Laura Robbins  
Laura Robbins  
DNREC, Chief of Administration  
Delaware Department of Natural Resources and  
Environmental Control, on behalf of the  
Delaware Department of Health and Social  
Services

TIDEWATER UTILITIES, INC.

By: /s/ Robert J. Capko  
Name: Robert J. Capko  
Title: Treasurer

(SEAL)

Attest:

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

[SIGNATURE PAGE TO FINANCING AGREEMENT – ANGOLA MEADOWS]

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## EXHIBIT A

### Project Description

The Angola and Meadows districts currently serve a combined total of 24,225 customers, which are located along the Route 24 corridor, south of the Rehoboth and Lewes area.

Continued growth of the Angola and Meadows water distribution systems has brought the two systems within proximity so that interconnection is considered feasible and appropriate. The Borrower has already completed two projects (Phase 1 and 2A to bring water to new projects in coordination with a proposed interconnection). The completion of the interconnection (Phase 2B) will provide resiliency by linking the water supply and storage assets of the Meadows and Angola systems, and along with the Rehoboth District will complete the connection of the Borrower's three large districts north of the inlet.

Phase 2B of the Angola Meadows interconnection will extend a 20" main +/-2,1000 LF south along Rt. 24 from the termination of Phase 2A, in the Angola District, to the intersection of Banks Road and Rt. 24. From that point a dual alignment with redundant parallel interconnections of: +/-6,500 LF of 16" main south along Rt. 24 to a connection with the existing main at the entrance to the Pines of Long Neck; and +/-10,700 LF of 12" main along Banks Road to a connection with the existing main termination just north of the Long Neck Road.

The proposed interconnection will provide resiliency and redundancy for consumption and fire protection. The project will ensure that adequate water supply is available under all operating scenarios.

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**EXHIBIT B**

Project Budget

<b><u>Project Budget:</u></b>	<b><u>Total Cost</u></b>
Engineering	\$ 48,400.00
Construction	\$4,499,635.00
Contingency	\$ 449,965.00
<b>Total Budget</b>	<b><u><u>\$4,998,000.00</u></u></b>
Source of Funds:	
DWSRF Loan	<b><u><u>\$4,998,000.00</u></u></b>

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EXHIBIT C

Form of Requisition

Source of Funds:		
<b>DWSRF Loan</b>	<b>\$</b>	<b><u>1,875,000.00</u></b>

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**EXHIBIT C**

Form of Requisition

**PROJECT NAME:** \_\_\_\_\_

**FUNDING RECIPIENT:** \_\_\_\_\_

**UNITED STATES  
DEPARTMENT OF AGRICULTURE  
RURAL DEVELOPMENT**

**AND/ STATE OF DELAWARE  
OR DHSS**

E. I. # \_\_\_\_\_

REQUISITION NO: \_\_\_\_\_

DATE: \_\_\_\_\_

USDA LOAN NO \_\_\_\_\_

LOAN NO \_\_\_\_\_

USDA GRANT NO. \_\_\_\_\_  
**JOINTLY FUNDED PROJECT**

**SEPARATELY OR**

STATE GRANT NO. \_\_\_\_\_

**ACCOUNT SUMMARY AND REQUEST FOR LOAN/GRANT DISBURSEMENT**

DISBURSEMENT ITEMS	AMOUNT BUDGETED	PREVIOUS DISBURSEMENTS	THIS PERIOD	TOTAL TO DATE	REMAINING FUNDS
CONSTRUCTION					
CONTRACT NAME OR #					
CONTRACT NAME OR #					
CONTRACT NAME OR #					
LAND AND R.O.W.					
LEGAL AND ADMIN					
ENGINEERING FEES					
INTEREST					
CONTINGENCIES					
INITIAL O & M					
OTHER (describe)					
DISBURSEMENT TOTALS					
SOURCES OF FUNDING					
USDA LOAN					
USDA GRANT					
STATE LOAN					
STATE GRANT					
OTHER (describe)					
OTHER (describe)					
OTHER (describe)					
SOURCE TOTALS (must equal disbursement totals above)					

**See Notes on Page 2 (other side)**

\_\_\_\_\_  
 PREPARED BY (BORROWER/GRANTEE) DATE

\_\_\_\_\_  
 APPROVED BY (DHSS/ODW) DATE

\_\_\_\_\_  
 APPROVED BY (ARCHITECT/ENGINEER) DATE

\_\_\_\_\_  
 APPROVED BY (USDA/RD) DATE

Borrower/Grantee's Certification	Consulting Engineer's Certification
<p>The undersigned certifies that (1) the amounts requested by this requisition will be applied solely and exclusively to the payment, or the reimbursement of the recipient for the payment, of Project Costs, and (2) any materials, supplies or equipment covered by this requisition are not subject to any lien or security interest or such lien or security interest will be released upon payment of this requisition.</p>	<p>The undersigned Consulting Engineer for the Recipient hereby Certifies that insofar as the amounts covered by this Requisition include payment for labor or to contractors, builders or materialmen, such work was actually performed or such materials, supplies or equipment were actually furnished to or installed in the Project.</p>
<p>_____            Recipient's Authorized Representative Name, Title (PRINTED)</p>	<p>_____            Title and Company Name (PRINTED)</p>
<p>_____            Recipient's Authorized Representative Signature Date</p>	<p>_____            Consulting Engineer's Name (PRINTED)</p>
	<p>_____            Authorized Consulting Engineer Signature Date</p>

- NOTES:**
1. Include copies of all invoices or other acceptable documentation to support above request. Provide one (1) set for each funding agency.
  2. On jointly funded projects, disbursements will not be processed until this document is approved by authorized representatives of both the U. S. Department of Agriculture and the State of Delaware, Department of Health and Social Services.

**EXHIBIT D**

**Schedule of Disbursements**

<u>Date</u>	<u>Amount (\$)</u>
Apr-23	79,000
May-23	20,000
Jul-23	1,800,000
Aug-23	1,400,000
Sep-23	700,000
Oct-23	550,000
Nov-23	449,000
Total:	<u>4,998,000</u>

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**EXHIBIT E**

Form of Change Order

**UNITED STATES  
DEPARTMENT OF AGRICULTURE  
RURAL DEVELOPMENT**

**AND/ STATE OF DELAWARE  
OR DHSS**

ORDER NO: \_\_\_\_\_

DATE: \_\_\_\_\_

STATE: \_\_\_\_\_

COUNTY: \_\_\_\_\_ **SEPARATELY OR JOINTLY FUNDED PROJECT**

**CONTRACT CHANGE ORDER**

CONTRACT FOR: \_\_\_\_\_

OWNER \_\_\_\_\_

To: \_\_\_\_\_  
(Contractor)

You are hereby requested to comply with the following changes from the contract plans and specifications:

Description of Changes (Supplemental Plans and Specifications Attached)	DECREASE in Contract Price	INCREASE In Contract Price
	\$	\$
TOTALS	\$	\$
NET CHANGE IN CONTRACT PRICE	\$	\$

JUSTIFICATION: Explain (Differing Site Conditions) (Errors or Omissions in Drawings or Specifications) (Changes in Regulatory Requirements) (Design Changes) (Over run or Under run in Quantities) (Factors Affecting Time of Completion) (Other: Describe below)

\_\_\_\_\_  
\_\_\_\_\_

The original amount of the Contract: \_\_\_\_\_  
\_\_\_\_\_ Dollars (\$ \_\_\_\_\_)

The amount of the Contract as adjusted by all previously approved Change Orders: \_\_\_\_\_  
\_\_\_\_\_ Dollars (\$ \_\_\_\_\_)

The amount of the Contract will be (Decreased) (Increased) through this Change Order by the sum of: \_\_\_\_\_  
\_\_\_\_\_ Dollars (\$ \_\_\_\_\_)

The Contract Total including this and all previous Change Orders will be: \_\_\_\_\_  
\_\_\_\_\_ Dollars (\$ \_\_\_\_\_)

The Contract Period provided for completion will be (Increased) (Decreased) (Unchanged) by: \_\_\_\_\_ Calendar Days



This document will become a supplement to the contract and all provisions will apply hereto.

Requested: \_\_\_\_\_ (Date)  
(Owner)

Recommended: \_\_\_\_\_ (Date)  
(Owner's Architect/Engineer)

Accepted: \_\_\_\_\_ (Date)  
(Contractor)

Approved by State of Delaware: \_\_\_\_\_ (Date)

Approved by U. S. Department of Agriculture: \_\_\_\_\_ (Date)

After all five (5) copies of the Change Order have been signed and dated by authorized representatives of all the applicable parties in the spaces provided above, transmit one (1) copy to each party as listed below.

- U. S. Department of Agriculture's Copy
- State of Delaware's Copy
- Contractor's Copy
- Borrower/Grantee's Copy
- Architect/Engineer's Copy

**EXHIBIT "F"**

**CERTIFICATE OF THE BORROWER AND  
PROJECTED DRAWDOWN SCHEDULE OF THE  
PROJECT**

The undersigned, as representatives of Tidewater Utilities, Inc. (the "Borrower") in connection with the issuance of its \$4,998,000 General Obligation Bond (Angola Meadows Interconnection Project), Series 2023A-DWSRF, have reviewed the estimated drawdown schedule prepared by the Borrower, attached hereto as Exhibit D and made a part hereof.

We hereby certify as of April 5, 2023 that the estimated drawdown schedule attached hereto as Exhibit D and statements made under Section 2.1(m) "Representations by Borrower" in the foregoing Financing Agreement between the Borrower and the Delaware Drinking Water State Revolving Fund, acting by and through the Delaware Department of Health and Social Services, Division of Public Health, are to the best of our knowledge true and correct as of the date hereof.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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TIDEWATER UTILITIES, INC.

By: /s/ Robert J. Capko  
Robert J. Capko  
Treasurer

Attest:

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

*[SIGNATURE PAGE TO EXHIBIT F - CERTIFICATE AS TO PROJECTED DRAWDOWN SCHEDULE – ANGOLA MEADOWS]*

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

I, Dennis W. Doll, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Middlesex Water Company;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any changes in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the 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: May 1, 2023

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

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

1. I have reviewed this quarterly report on Form 10-Q of Middlesex Water Company;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d. Disclosed in this report any changes in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the 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: May 1, 2023

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**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: May 1, 2023

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.

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**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: May 1, 2023

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.

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