

AGREEMENT FOR THE SUPPLY OF WATER

BETWEEN

THE TOWNSHIP OF MARLBORO

AND

GORDON'S CORNER WATER COMPANY

This **AGREEMENT** (hereinafter referred to as the "Agreement") is entered into as of the 1st day of **April, 2010**,

between

THE TOWNSHIP OF MARLBORO,

**[Successor-In-Interest to the formerly constituted Marlboro Township
Municipal Utilities Authority, a component unit of Marlboro Township]**

a municipal corporation of the State of New Jersey, maintaining its administrative offices at, and having a mailing address of, 1979 Township Drive, Marlboro, Monmouth County, New Jersey 07746 (hereinafter sometimes referred to as the "Township" or "Marlboro");

and

GORDON'S CORNER WATER COMPANY,

a public utility and corporation, organized under the laws of the State of New Jersey, maintaining its principal place of business at 27 Vanderburg Road, in the Township of Marlboro, County of Monmouth and State of New Jersey, and having a mailing address of P. O. Box 145, Marlboro, New Jersey 07746 (hereinafter sometimes referred to as the "Company" or "GCWC").

WITNESSETH:

WHEREAS, the Township and the Company each own and operate separate public community water supply and distribution systems, which said systems are adjacent, and/or in close proximity, to each other at several points within the Township of Marlboro; and

WHEREAS, the Company has requested the Township to provide GCWC with a supply of water for private and public uses in accordance with the terms of this Agreement; and

WHEREAS, the Township's predecessor-in-interest, the Marlboro Township Municipal Utilities Authority (herein sometimes referred to as the "MTMUA"), has been providing a supply of water to GCWC, since in or about November, 1991, pursuant to an agreement, dated as of September 1, 1987, as amended and supplemented, including a certain supplemental agreement, dated as of July 6, 1993 (herein sometimes referred to as the "1987 Water Supply Agreement"); and

WHEREAS, the initial term of the 1987 Water Supply Agreement was scheduled to expire on December 31, 2009, but may only be terminated upon not less than 365 days advance written notice from GCWC to the MTMUA; and

WHEREAS, no termination notice, relative to the 1987 Water Supply Agreement, having been provided to the MTMUA or the Township by GCWC, said Agreement remains in full force and effect for an additional minimum period of at least 365 days on a continuous rolling basis; and

WHEREAS, rather than contemplating any termination of the 1987 Water Supply Agreement, the Company has, by letter dated January 9, 2008, provided the MTMUA with written and formal notice of its intention to renew the 1987 Water Supply Agreement upon terms and conditions to be agreed upon between the respective parties; and

WHEREAS, the Township, as the successor-in-interest to the MTMUA, is willing to continue the supply of potable water to the Company as provided for herein; and

WHEREAS, the parties hereto have determined that it is in their mutual best interests to amend and restate their agreement and understanding relating to the supply of water as aforesaid,

and, in that regard, the provisions of this Agreement are designed and intended to accomplish such purpose and to replace and supersede any and all prior and/or existing agreements between the parties regarding the supply of water;

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants and promises herein contained and for other good and valuable consideration, it is hereby agreed by and between the Township and GCWC as follows:

1. **Supply of Water.**

The Township agrees to supply the Company with a continuous supply of potable water, and the Company agrees to accept such water upon the terms and conditions set forth herein.

2. **Effective Date and Term of this Agreement.**

Regardless of the actual execution date(s) of this Agreement by the respective parties, the provisions of this Agreement shall be deemed effective and applicable to all sales/purchases of water from on and after April 1, 2010 (the "Effective Date"). This Agreement shall continue in full force and effect from on and after the Effective Date and shall be subject to termination on March 31, 2022 (the "Termination Date") with an option to renew for an additional ten (10) years on the terms set forth in this Agreement.

Provided the Township has renewed its own water supply agreement with Middlesex Water Company, or has secured additional and sufficient supplies of water from some other source, GCWC shall have the right and option of renewing this Agreement for an additional period of ten (10) years from the Termination Date. The Company must exercise said option by notifying the Township, in writing, of its intention to renew at least three hundred sixty five (365) days prior to the Termination Date (meaning on or before April 1, 2021).

Notwithstanding anything contained herein to the contrary, the parties hereto, by mutual written agreement, may elect to adopt and approve other provisions relating to the term of this Agreement.

3. **Rates.**

The Company shall pay the Township at a rate that is the sum of two (2) components hereinafter referred to as the Middlesex Water Company Component (the "MWC Rate Component") and the Marlboro Component (the "Marlboro Rate Component"). A third component ("Wheeling Charges") shall be introduced on March 31, 2022 to cover and defray debt service costs that have already been incurred as of April 1, 2010 and future debt service costs. All Rate Components are per MG.

The MWC Rate Component

The MWC Rate Component shall consist of the following three (3) sub-components:

A. The rate charged by Middlesex Water Company ("MWC") for *Service Under Contract - SC* pursuant to Rate Schedule No. 5 of MWC's tariff (the "**Service Rate**"); **PLUS**

B. Any Purchased Water Adjustment Clause charges assessed and imposed by MWC under Rate Schedule No. 5 of MWC's tariff ("**PWAC Charges**"); **PLUS**

C. The rate charged by MWC for *Transmission Service South River Basin - TR - SRB* pursuant to Rate Schedule No. 7 of MWC's tariff (the "**Transmission Rate**"). See below for effective transmission rate to GCWC.

The MWC Rate Component shall be as follows:

(a)	Service Rate (approved by BPU as of 3/17/2010) per MG	\$ 1,937.90
(b)	Transmission Rate (approved by BPU as of 3/17/2010)	\$ 610.36
	$\$508.63 \times 4.5 \text{ mgd} / 3.75 \text{ mgd} = \610.36 per MG	
(c)	Purchase Water Adjustment Clause (PWAC) Rate/MG (approved by BPU as of 8/28/2011)	<u>\$ 16.93</u>
	Total MWC Component/MG	\$ 2,565.19

It is specifically and expressly understood and agreed that the MWC Rate Component shall be increased each and every time the New Jersey Board of Public Utilities (the "BPU") approves an increase in the Service Rate or Transmission Rate, or both, and/or if PWAC Charges are imposed,

and the amount of the increase in the MWC Rate Component shall be equal to the amount of each BPU-approved increase and/or the amount of each PWAC assessment. Further, effective Transmission Rate shall be calculated as follows:

If BPU approved Transmission Rate = \$600.00 per MG, than the Effective
Transmission Rate to GCWC would be $\$600.00 \times 4.5/3.75 = \720.00 per MG

If transmission daily minimum is reduced, then GCWC's share of transmission charge shall be adjusted accordingly. For example, if transmission daily minimum is reduced from 4.5 to 4.0, then transmission rate would be as follows: $\$508.63 \times 4.0 \text{ mgd}/3.75\text{mgd}=\542.53 . Township shall notify GCWC of any change or modification in transmission daily minimum approved by BPU.

With respect to the MWC Rate Component, the parties hereto hereby acknowledge and understand that the Township intends to use and rely upon supplies of water to be purchased from MWC, at a cost equal to the Service Rate and Transmission Rate, as well as all PWAC Charges, if applicable (effectively, the MWC Rate Component), in order to provide water service to the Company.

It is specifically agreed that the Township shall provide the Company with written notification of all rate increase petitions or other proceedings, which may affect the Service Rate or the Transmission Rate, that are filed by MWC with BPU. Marlboro shall provide said written notification within thirty (30) days of the Township's receipt of written notice of any such petitions or proceedings from MWC. In the event that the Township provides GCWC with notification that MWC has filed a petition or proceeding for a rate increase more than 30 days after it receives notice thereof, then the pass through of any MWC increase to GCWC shall be suspended to the extent of Township's delay. By way of example, if Township notifies GCWC that MWC has filed a petition or proceeding for a rate increase 60 days after Township receives written notification thereof, then Township shall not be permitted to pass through to GCWC any applicable increase in the MWC cost components for 30 days after the new MWC rates are approved by BPU and the start date of the increase to GCWC shall be extended accordingly. If Township fails to provide GCWC with any notice of a MWC rate proceeding, then the start date of any increase to GCWC shall be 150 days after the new MWC rates are approved by the BPU.

It is expressly understood and agreed that the MWC Rate Component shall **NOT** be subject to increase, except as, if and when the BPU approves increases in the **Service Rate** and/or **Transmission Rate**, as hereinabove set forth, or if **PWAC Charges** become effective and are assessed

against the Township. The start date of any BPU-approved MWC's rate increase for GCWC shall be the same as the start date for the said MWC's rate increase for the Township.

The Marlboro Rate Component

The Marlboro Rate Component is intended to cover and defray various costs and expenses that will be incurred by the Township and/or that are associated with the use of the Township's Water System in providing water service to the Company, including power, chemical, labor, overhead and other administrative expenses, as well as expenses related to the amortization of certain capital costs attributable to the purveying of water supplies to GCWC.

As of the Effective Date of this Agreement the Marlboro Component has been established as **\$1,170.00** [\$720.00 relative to debt service + \$450.00 relative to administrative, power, chemicals, labor expense etc.] **per million gallons**, which is expressly predicated upon the Company's obligation to "take-or-pay" for a minimum of 1.50 million gallons ("MG") of water each and every day. In that regard, if the Company's minimum obligation was less than 1.50 MG per day, then the Marlboro Component would have to be adjusted higher and, conversely, if the Company's minimum obligation was more than 1.50 MG per day, then the Marlboro Component would be subject to a downward adjustment. The \$720.00 debt service component shall not be increased during the term of agreement and will fully abate and cease at contract termination date, March 31, 2022.

A cost component, in the amount of **\$450.00 per MG**, is established to offset the administrative and operating costs associated with the operation of the Tennent Road Pump Station and the purveying of water supplies to GCWC. This sub-component (\$450.00) of the Marlboro Rate Component shall be increased by three (3%) percent every year (first increase starting on April 1, 2016).

The Company shall pay the Township at the aforementioned Rates (MWC Rate Component plus the Marlboro Rate Component) for the greater of: (A) the Contract Daily Minimum Quantity of Water (as defined in this Agreement); or (B) for all water delivered to the Meter Stations (as defined in this Agreement).

The total rate as of April 1, 2012 shall be:

MWC Component	\$2,565.19/MG
Marlboro Component	<u>\$1,170.00/MG</u>
TOTAL	\$3,735.19/MG

"Wheeling Charges" (A third sub-component to be introduced on March 31,2022

A third sub-component, "Wheeling Charges", of Marlboro's component shall be introduced on March 31, 2022 to cover and defray debt service costs that have already incurred as of April 1, 2010 and any new debt service costs that will be incurred after April 1,2010 through March 31,2022 and thereafter. The said Wheeling Charges sub-component shall be eight (8%) percent of the sum of MWC's transmission base rate (\$508.63 as of April 1,2010) and Service base rate (\$1,937.90 as of April 1,2010). This cost component replaces the \$720.00 per MG capital cost component which expires on March 31,2022. The said Wheeling Charges shall not be applicable and enforceable during the current 12 year contract term (from April 1, 2010 thru March 31, 2022) . However,in the event a successor contract is not executed prior to the March 31,2022 expiration date , it is expressly understood that the Township will continue to bill and that GCWC will continue to pay in accordance with the existing contract terms (Marlboro component less \$720/MG + MWC component including PWAC charges) plus the said Wheeling Charges.

For example: If wheeling charges were to be introduced on April 1, 2010, the said wheeling charge would be:

\$ 508.63 per MG
+ \$ 1,937.90 per MG
\$ 2,446.53 per MG

Wheeling Charges = \$2,446.53 x 0.08 = \$195.73 per MG

MWC's PWAC charges shall not be included in computing wheeling charges.

4. **Delivery Systems.**

It is hereby understood and acknowledged that there are multiple existing interconnections between the respective water systems of the Township and GCWC; however, it is expressly agreed that the water service contemplated by this Agreement shall continue to be delivered through a single point of connection, which has been used as the sole means of the conveyance of water from the Township [and its predecessor-in-interest] to the Company since 1991.

The aforesaid point of connection is located at or near the intersection of Monmouth County Route

520 and Wyncrest Road in the Township of Marlboro (herein sometimes referred to as the "Wyncrest Road Interconnection"). [The other existing interconnections are intended solely for emergent and extraordinary circumstances]. For purposes of clarifying ownership of the appurtenances that comprise the Wyncrest Road Interconnection, it is hereby affirmed, acknowledged and agreed that the Township is the sole owner of the 24" diameter water transmission main that extends in or along Monmouth County Route 520 to Wyncrest Road and, in particular, up to and including the valve on the inlet side of the Wyncrest Road Interconnection. In addition, the Township is the sole owner of the water meter or water meters, as well as an electrical box or panel, together with certain wiring, that are presently situated in the meter pit at the Wyncrest Road Interconnection. The aforesaid electrical box or panel and wiring provide a means of transmitting information regarding water flows to the Township's utility operations center(s). Aside from the aforesaid water meter(s) and water flow transmitting electrical elements or appurtenances, GCWC is vested with exclusive ownership of the entire Wyncrest Road Interconnection from the discharge side of the aforementioned inlet valve [but **NOT** the inlet valve, itself], including the meter pit and the valves interior thereto.

The foregoing notwithstanding, the Township, at its own cost and expense, shall be entitled to construct and install other control panels, a pressure recorder and/or other instrumentation within, at, or near the meter pit that may be connected to the Township's utility operations center(s) by telemetry, radio signals/SCADA, or other means of communication. The actual locations of any such installations shall be subject to the reasonable approval of GCWC. If installed, all such instrumentation and/or appurtenances shall constitute and remain the sole property of the Township.

Each party shall be solely responsible for maintaining, repairing and replacing its own property, facilities, equipment and appurtenances. Both parties shall fully cooperate with each other and, to the extent practicable, assist each other relative to the continuous operation and maintenance of the Wyncrest Road Interconnection.

The Township shall maintain a minimum Hydraulic Gradient of 310.00 at the GCWC meter installed in the GCWC meter pit and interconnection at Wyncrest Road and Route 520. With respect to the foregoing, it is hereby agreed that the parties shall utilize all reasonable efforts and cooperative practices in endeavoring to maintain the said hydraulic gradient. The Township shall use its best efforts to maintain a constant pressure of 70-71 psi at the meter in the meter pit. Calculation for 70-71 psi is based on assumed USGS elevation of 165.00 for the meter in the pit. Relative thereto, the parties hereby acknowledge and affirm that water service has been continuously provided by the Township [and its predecessor-in-interest] to GCWC through the Wyncrest Road Interconnection

since 1991, and that, since July 1, 2000, the minimum daily quantities of water sold and purchased through said Interconnection have been 1.5 MG. The parties further acknowledge that since 1991, the Township has delivered and GCWC has taken nearly 99% of the contractual minimum quantities and that while there is occasional under usage and/or excess usage, the variations have been less than one (1%) percent on a monthly basis. Furthermore, since the Company replaced or modified the Company-owned flow-regulating valve located in the meter pit approximately two (2) years ago, the monthly variance in the delivery and receipt of water supplies, vis-à-vis the contract minimum requirement, has been no more than two/tenths (0.20%) of a percentage point.

The aforementioned circumstances notwithstanding, the Township will continue to assist the Company in achieving its goal of actually receiving all quantities of water for which minimum payments are remitted. In that regard the following principles and standards shall be applied in reconciling minimum payment obligations with the quantities of water actually delivered and taken:

A. If the actual quantities of water taken by GCWC during any particular month are less than the contract minimum, the Company shall, nonetheless, be required to abide by and fulfill its Minimum Payment Obligations under this Agreement. The sole exception to the foregoing shall be a discontinuance of or interruption in water service that is not caused by or contributed to by GCWC. In such event, the Company shall only be obligated to pay for the amount of water that is delivered by the Township and received by GCWC.

B. If actual water usage exceeds the contractual minimum obligations during any particular month, GCWC shall remit payment for all water so used and taken.

C. Subject to the limitations set forth herein, in the event of a monthly over-usage or under-usage of water (which is not attributable to a discontinuance of, or interruption in, water service by the Township) the following is agreed to by both parties:

(1) Each monthly invoice shall be stand-alone and an under-usage amount shall not be "banked" for the future months.

(2) Readings are taken every Friday and on the first of the month. The monthly invoice shall reflect both over-usage (in excess of 1.5 MGD) and under-usage (less than 1.5 MGD) for the month based on available readings.

Following are two (2) examples based on actual February, 2012 and March, 2012 water purchases:

GCWC's February 2012 Water Purchases Were:

	Purchases	Contract Daily Minimum (CDM)	Over CDM	Under CDM
Day 1 & 2 (2 days)	3,040,000	3,000,000	40,000	N/A
Day 3 through 9 (7 days)	10,590,000	10,500,000	90,000	N/A
Day 10 through 16 (7 days)	10,508,000	10,500,000	8,000	N/A
Day 17 through 23 (7 days)	10,400,000	10,500,000	N/A	100,000
Day 24 through 29 (6 days)	8,947,000	9,000,000	N/A	53,000
Total 29 Days	43,485,000	43,500,000	138,000	153,000

Total Actual Purchase 43,485,000 gallons
 Total Monthly CDM 43,500,000 gallons
 Over-Usage 138,000 gallons
 Under-Usage 153,000
 Net Over-Usage 0*

**Net over-usage is zero (0) when under-usage is greater than over-usage.*

In this instance, GCWC shall pay for Total Contract Monthly Minimum [29 days x 1.5MGD = 43,500,000]. The difference between under-usage (153,000 gallons) and over-usage (138,000 gallons) is 15,000 gallons which cannot be "banked".

GCWC's March 2012 Water Purchases Were:

	Purchases	Contract Daily Minimum	Over CDM	Under CDM
Day 1	1,538,000	1,500,000	38,000	N/A
Day 2 through 8 (7 days)	10,593,000	10,500,000	93,000	N/A
Day 9 through 15 (7 days)	10,289,000	10,500,000	N/A	211,000
Day 16 through 22 (7 days)	10,604,000	10,500,000	104,000	N/A
Day 23 through 29 (7 days)	10,545,000	10,500,000	45,000	N/A
Day 30 & 31 (2 days)	2,991,000	3,000,000	N/A	9,000
Total 31 Days	46,560,000	46,500,000	280,000	220,000

Total Actual Purchase 46,560,000 gallons
 Total Monthly CDM 46,500,000 gallons
 Over-Usage 280,000 gallons
 Credit Under-Usage 220,000 gallons
 GCWC pays for net over-usage 60,000 gallons

In this instance, GCWC shall pay for 46,560,000 gallons for the month of March, 2012.

5. Source of Water

It is hereby expressly understood and agreed that the Township's ability to continuously deliver the supplies of water contemplated by and provided for under the terms of this Agreement are predicated upon the Township receiving sufficient supplies of water from MWC. In that regard, water service from MWC has, since 1991, served as the underlying source of supply of water for the Township [and its predecessor-in-interest] to enable Marlboro to deliver water to GCWC. The foregoing does not mean, and should not be construed as meaning, that all water actually delivered to GCWC is exclusively derived from MWC. In purveying water to GCWC, the Township

pumps water out of its 10 MG Tennent Road Water Storage Tank, which is primarily filled with water purchased from MWC, but which may also contain treated groundwater from the Township's own water production and treatment facilities. The foregoing notwithstanding, in delivering water supplies to GCWC on an annualized basis, the Township relies upon the purchase of matching quantities of water from MWC.

6. **Meter Stations/Points of Delivery.**

The parties understand and agree that delivery of all water supplies shall be made and metered through a meter station forming part of the Wyncrest Road Interconnection, as well as through any other points of delivery as may, from time to time, be reasonably agreed upon between the parties (hereinafter referred to as the "Meter Stations"). All water so supplied shall be metered at the Meter Stations.

The parties acknowledge that the ownership rights and maintenance obligations relative to the various elements and components of the Wyncrest Road Interconnection are fully set forth in paragraph 4, above. It is hereby reaffirmed and acknowledged that the water meter(s) in the meter pit shall belong to and constitute the property of the Township.

The Township shall maintain and verify the accuracy of all meters on an annual basis, including the recalibration thereof. In that regard, the accuracy of such meters shall comply with all standards, rules and regulations of the New Jersey Department of Weights and Measures and, to the extent applicable, the New Jersey Board of Public Utilities, as well as all applicable water industry protocols. GCWC shall receive reasonable advance written notice of all scheduled meter tests to be performed by the Township and the Company shall be entitled to witness all such meter tests. Moreover, the Township shall provide all meter test reports, including calibration reports, to GCWC on a timely basis. The Company shall have the right to have the meters tested by a certified meter technician at any reasonable time upon advance written notice.

Both the Company and the Township shall have and maintain a key or keys to all Meter Stations so that daily access thereto is possible for meter reading and other necessary functions.

7. **Minimum Payment Obligation; Allowable Excess Purchases and Maximum Limitations.**

The Company and the Township hereby specifically understand and agree that the Company shall be obligated to pay for a daily minimum quantity of water (herein referred to as the "Contract Daily Minimum"), regardless of whether the Company actually takes such quantities of water on a daily basis. The Contract Daily Minimum, as of the Effective Date of this Agreement, shall be a total of **one million five hundred thousand gallons of water a day (1.50 mgd).**

The total daily quantity of water taken by the Company at the Meter Stations may exceed the Contract Daily Minimum by up to fifty (50%) percent on a 24-hour basis. Subject to the other provisions of this Agreement, The Township guarantees this excess supply of water or increase in daily volume. That is to say, for so long as the Contract Daily Minimum is 1.50 mgd, the total daily quantity of water that may be taken by the Company shall be up to 2.25 mgd. The Company shall not be allowed to take daily supplies of water in excess of the Contract Daily Minimum plus fifty (50%) percent of the Contract Daily Minimum unless the Township notifies the Company that such excess supplies of water are available. In the event the Company is desirous of receiving or taking daily quantities of water that are in excess of the aforementioned limitation, a written request for such additional amounts shall be submitted to the Township for consideration and either approval or denial. In the absence of any such approval, the Company shall maintain the valves, settings and/or other appurtenances at the Meter Stations in such a manner so as to reasonably ensure that the limitations set forth herein are not exceeded. If, for any reason, the daily supplies of water delivered to and/or taken by the Company exceed the Contract Daily Minimum plus fifty (50%) percent thereof, the Company shall reduce the daily supplies of water being taken so that same do not exceed the Contract Daily Minimum plus fifty (50%) percent thereof immediately upon the receipt of written notification from the Township to do so.

In addition to the foregoing, the quantity of water taken by the Company during the maximum peak hour multiplied by twenty four (24) shall not exceed the Contract Daily Minimum by more than one hundred (100%) percent unless the Company receives written notice from the Township that such excess quantities, or rate of flow, are available. Even if prior approval is given by the Township with respect to any excess quantities or rate of flow, same shall be subject to immediate cessation upon further written notification from the Township to the Company relative thereto.

8. Peaking Charges

Regardless of whether consent therefor is given by the Township, if the daily supplies of water delivered to and/or taken by the Company exceed the Contract Daily Minimum plus fifty (50%) percent thereof, or if the quantity of water taken by the Company during the maximum peak hour multiplied by twenty four (24) exceeds the Contract Daily Minimum by more than one hundred (100%) percent, then GCWC shall be subject to and shall pay the following Peaking Charges:

A. If the quantity of water taken in a 24-hour period exceeds the Contract Daily Minimum by more than 50%, then such excess shall be referred to as the Daily Peaking Excess, and GCWC shall pay for all water comprising the Daily Peaking Excess at a rate (the "Daily Peaking Rate") determined by the following formula:

(1) A fraction (the *numerator* of which is the **actual daily usage** and the *denominator* of which is the applicable **Contract Daily Minimum then in effect multiplied by 1.5**) **multiplied** by the MWC Rate Component. For example, if the actual daily usage is 2.50 million gallons, and the Contract Daily Minimum is 1.50 million gallons and the MWC Rate Component is \$2,446.53, then:

$$\frac{2.5}{1.5 \times 1.5} \times \$2,446.53$$

$$1.111 \times \$2,446.53 = \$2,718.09 \text{ (Daily Peaking Rate)}$$

In this example, the charge for the Daily Peaking Excess would be \$679.52 calculated as follows:

$$2.50 - 2.25 \text{ (Contract Daily Minimum X 150\%)} = 0.25 \text{ (Daily Peaking Excess)}$$

$$0.25 \times \$2,718.09 = \$679.52$$

B. If the quantity of water supplied during the maximum peak hour multiplied by 24 exceeds the Contract Daily Minimum by more than 100%, then such excess shall be

referred to as the Hourly Peaking Excess, and GCWC shall pay for all water comprising the Hourly Peaking Excess at a rate (the "Hourly Peaking Rate") determined by the following formula:

(1) A fraction (the *numerator* of which is the **quantity of water supplied during the maximum peak hour multiplied by 24** and the *denominator* of which is the applicable **Contract Daily Minimum then in effect multiplied by 2.0**) multiplied by the MWC Rate Component. For example, if the actual quantity of water supplied during the maximum peak hour multiplied by 24 is 4.0 million gallons, and the Contract Daily Minimum is 1.50 million gallons and the MWC Rate Component is \$2,446.53, then:

$$\frac{4.0}{1.5 \times 2} \times \$2,446.53$$

$$1.333 \times \$2,446.53 = \$3,261.22 \text{ (Hourly Peaking Rate)}$$

In this example, the charge for the Hourly Peaking Excess would be \$3,261.22 calculated as follows:

$$4.0 - 3.0 \text{ (Contract Daily Minimum} \times 200\%) = 1.0 \text{ (Daily Peaking Excess)}$$

$$1.0 \times \$3,261.22 = \$3,261.22$$

9. **Increase in Contract Daily Minimum.**

At any time during the original or any renewed or extended term of this Agreement, the Company may request an increase of the Contract Daily Minimum. All such requests shall be in writing and the Township must respond to each such request in writing within sixty (60) days of the receipt thereof. The parties hereto hereby acknowledge that, in order to grant such a request the Township may be obligated to increase its minimum purchase obligations from MWC and, further, the Township may be unable to approve a requested increase if MWC is unable to increase its supply of water to the Township.

The Company may also request a decrease of the Contract Daily Minimum, which such requests shall also be in writing. As with requests for increase, any request for a decrease must be responded to by the Township, in writing, within sixty (60) days of the receipt thereof. The foregoing

notwithstanding, it is expressly understood and agreed that, under no circumstances, shall the Company be permitted to decrease the Contract Daily Minimum below the initial amount of 1.50 mgd. Furthermore, any otherwise permitted requests for a decrease of the Contract Daily Minimum [after an approved increase] cannot and will not be approved unless the Township is able to secure a corresponding decrease in its daily minimum purchase obligations from MWC.

The approval or denial of all requests for either an increase or decrease shall be subject to the reasonable discretion of the Township and, in the event the Township approves a requested increase or decrease of the Contract Daily Minimum, the resulting new Contract Daily Minimum shall remain in effect indefinitely until further increased or decreased.

10. **Payment.**

Water service charges shall be computed on a daily basis in conformity with the other provisions of this Agreement. On a monthly basis, the Township shall submit a billing statement to the Company, together with any supporting voucher that may be requested by the Company. Payment thereof shall be made by GCWC within thirty (30) days.

11. **Combined Charge.**

In the event water supplies are purveyed to or through more than one point of delivery, payments for water service (in excess of the Contract Daily Minimum) shall, nonetheless, be determined on the basis of the **combined** total daily quantities of water supplied through all of the Meter Stations as determined by meter readings at said Meter Stations.

12. **Meter Readings.**

For all water supplied to the Company at each Meter Station then in operation, the Township shall remotely monitor/read the meters on a daily basis (at or about 10:00 a. m.), utilizing the flow recording instrumentation that transmits information to the Township's utility operations center(s) via telemetry/SCADA or other means. In addition, with respect to each Meter Station then in operation, Township personnel shall perform manual meter readings on each Friday (at or about 10:00 a. m.). Finally, monthly meter readings, for billing purposes, shall be performed manually by

Township personnel on the first day of each month (again, at or about 10:00 a. m.). The Company shall have the right of access to all meter readings taken by the Township.

13. **Definitions.**

Throughout this Agreement the following words, terms or phrases shall have the following meanings:

- A. "Daily" or "24-hours" shall refer to the 24-hour period between daily meter readings.
- B. "Daily Minimum" shall have the same meaning as Contract Daily Minimum.
- C. "Force Majeure" shall mean the inability of a party to perform due to: acts of God; orders of the government of the United States or the State of New Jersey, or any agency or instrumentality thereof; orders of any other governmental or quasi-governmental agency having jurisdiction over water supplies to be furnished hereunder; acts of terrorism; insurrections; riots; epidemics; landslides; lightening; earthquakes; fires; hurricanes; storms; floods; washouts; droughts; explosions; breakage or accidents to machinery, pipelines, dams or canals, or partial or entire failure or contamination of a water supply, not resulting from the negligence of the party claiming such occurrence as the reason for the inability to perform; arrests; civil disturbances; acts of any public enemy; and any other causes not reasonably within the control of the party claiming such inability to perform.

14. **Water Quality.**

All water delivered by the Township to the Company shall comply with all Federal and State requirements for safe drinking water and, to the extent applicable, both parties shall comply with all associated testing, notice and other requirements. Each party shall be entitled to perform water quality tests at all points of interconnection. All water quality tests shall be performed only by State of New Jersey certified laboratories. Subject to the foregoing, neither party shall be responsible for contamination or degradation in the quality of the water passing beyond the point of any interconnection between the water systems of the respective parties. Upon request therefor, either party shall be entitled to receive copies of water quality test reports associated with tests performed at or near the Meter Stations. In the event that the Township fails to comply with any Federal and State

requirements for safe drinking water, then GCWC may suspend receiving water supplies from the Township and, during the period of suspension, the Company's minimum payment obligations shall be abated. Normal service and all payment obligations associated therewith shall resume when water quality compliance has been confirmed and NJDEP has authorized the resumption of water service.

15. **Scheduling.**

The Township shall have the right to modify its rate of delivery to manage its Water System requirements in accordance with accepted operating procedures. The Township will use its reasonable best efforts to minimize such occurrences, as well as the duration thereof. To the extent practicable, reasonable advance notification of any such modifications, specifically including, but not limited to, service interruptions, shall be provided to the Company by the Township. In addition, the Company shall provide the Township with reasonable advance notification of any anticipated departures from its then normal water usage.

16. **Excused Performance.**

The Township agrees to provide a continuous, regular and uninterrupted supply of water at the Meter Stations, subject to interruptions in service resulting from events of Force Majeure. The Township shall not be liable for damages to the Company by reason of inadequate pressure or volume or quality or failure to provide water for any cause, whatsoever, provided that the same does not arise out of the negligent acts or omissions of the Township. In the event of an interruption in service, the Township agrees to act diligently, within the bounds of normal operating procedures, to return service to normal.

17. **Indemnification.**

The Company shall completely indemnify, protect and save the Township harmless from any and all costs, expenses, liability, losses, claims, suits and proceedings of any nature, whatsoever, arising out of the water service provided by the Company to the Company's customers. In conjunction with the foregoing and provided same is not prohibited by GCWC's insurance programming, the Township shall be designated as an "Additional Insured" relative to GCWC's liability insurance coverage(s), but only as the Township's interests may appear. If it is possible to

confer "Additional Insured" status upon the Township, GCWC shall provide the Township with a Certificate of Insurance evidencing such designation. However, as to claims involving water quality, the foregoing provisions are not intended to apply to water delivered by the Township that does not comply with any Federal and State requirements for safe drinking water before it is delivered to the Company, provided that there is proximate causation between any such claims and the deficiencies in water quality attributable to the Township.

The Township shall completely indemnify, protect and save the Company harmless from any and all costs, expenses, liability, losses, claims, suits and proceedings of any nature, whatsoever, caused by any breach by the Township of its obligations under this Agreement. In conjunction with the foregoing and provided same is not prohibited by the Township's insurance programming, GCWC shall be designated as an "Additional Insured" relative to the Township's liability insurance coverage(s), but only as the Company's interests may appear. If it is possible to confer "Additional Insured" status upon GCWC, the Township shall provide the Company with a Certificate of Insurance evidencing such designation.

Notwithstanding anything contained herein to the contrary, each party's aggregate liability to the other party arising out of or in connection with this Agreement shall not exceed an amount of money equal to one (1) year's gross revenues required to be paid by the Company to the Township based upon the Contract Daily Minimum in effect at the time of the occurrence giving rise to the liability, and each party hereby releases the other party from any liability in excess thereof. The foregoing limitation does not apply to either party's liability to third parties or duty of either party to indemnify the other party against third party claims.

18. **Regulatory Approvals.**

This Agreement shall be filed with and, if applicable, subject to approval by the New Jersey Department of Environmental Protection as may be required by law. The Township shall expeditiously initiate the said filing for any such approval and both parties agree to cooperate and act in good faith in connection with obtaining such approval, as well as any other regulatory authorizations. The Township shall initiate any required filings and process them to conclusion, at its own sole cost. The Township shall provide GCWC with a Consumer Confidence Report each year by April 1st in conformity with NJDEP regulations.

19. **Binding Effect.**

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. This Agreement may not be assigned by either party without the prior written approval of the other party, which said approval shall not be unreasonably withheld. This Agreement does not create, nor shall it be deemed to create, any rights to any other party as a third-party beneficiary.

20. **Notices.**

All notices and demands of any kind ("Notice") permitted or required to be given by either party to the other party shall be in writing. All such Notices may be given by: personal service; facsimile transmission; regular mail; certified mail, return receipt requested; or by nationally recognized overnight courier service (such as Federal Express or Express Mail) and must be properly addressed and directed to the party to receive the same as follows:

As to the Company:

GORDON'S CORNER WATER COMPANY
27 Vanderburg Road
P. O. Box 145
Marlboro, New Jersey 07746

As to the Township:

THE TOWNSHIP OF MARLBORO
1979 Township Drive
Marlboro, New Jersey 07746

In the case of overnight courier service or certified mail, service of the Notice shall be deemed completed upon the placement of the Notice in the mail or with the overnight courier service. Service by any other means shall be deemed completed upon receipt by the Company or the Township, as the case may be, which shall include the receipt of the Notice by any of the respective agents, servants or employees of either the Company or the Township at the respective addresses

specified herein. Either party may change the address for the receipt of Notices upon written Notice to the other party as provided for herein.

21. **Validity; Severability; Enforcement.**

In the event that one or more of the provisions of this Agreement shall, for any reason, be held to be illegal or invalid by a court of competent jurisdiction, it is the intent of the parties hereto that such illegality or invalidity shall not affect any other provision hereof, and this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein, unless a court of competent jurisdiction holds that such provision(s) are not severable from all other provisions of the Agreement or that the deletion materially alters the substance of this Agreement.

22. **Law Governing.**

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

23. **Miscellaneous.**

To the extent not inconsistent with the provisions and intent of this Agreement, all of the provisions of the Township's duly adopted Ordinances and Rules and Regulations, governing Marlboro's Water Utility Division, shall be deemed to govern water service hereunder.

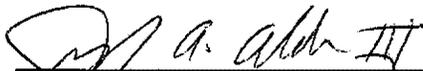
24. **Entire Agreement.**

This Agreement, including all schedules and exhibits hereto, if any, constitutes the entire understanding between the parties relative to the subject matter hereof, and the parties shall not be bound by any other prior agreements, understandings or conditions, whether written or oral, respecting the subject matter hereof, other than those expressly set forth and stipulated herein. This Agreement may only be amended by a writing executed by both parties. In particular, this Agreement shall supersede the previous agreement, dated September 1, 1987, as amended and supplemented, including the July 6, 1993 Settlement Agreement, which was entered into between the Company and the formerly constituted MTMUA.

IN WITNESS WHEREOF, the parties have caused the foregoing Agreement, consisting of twenty-two (22) pages, including this page, to be signed by their proper corporate officers and their proper corporate seals to be affixed the day and year first above written.

ATTEST:

GORDON'S CORNER WATER COMPANY



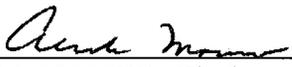
Joseph A. Aldi III, Assist. Secretary

BY: 

David G. Ern, Vice President

ATTEST:

THE TOWNSHIP OF MARLBORO



ALIDA MANCO, Clerk

BY: 

JONATHAN I. HORNIK, Mayor

RESOLUTION # 2012-251

AUTHORIZING THE MAYOR AND TOWNSHIP CLERK TO EXECUTE A RENEWAL AGREEMENT FOR THE SUPPLY OF WATER BY THE TOWNSHIP OF MARLBORO WATER UTILITY DIVISION TO THE GORDONS CORNER WATER COMPANY

WHEREAS, the Township of Marlboro's predecessor-in-interest, the Marlboro Township Municipal Utilities Authority ("MTMUA") has been providing a supply of water to the Gordons Corner Water Company ("GCWC") since November 1991 pursuant to an agreement dated September 1, 1987, as amended and supplemented, including a certain supplemental agreement, dated as of July 6, 1993; and

WHEREAS, the Township as successor-in-interest to the MTMUA wishes to continue the supply of water to GCWC; and

WHEREAS, the Township has negotiated a successor agreement with GCWC which it believes is in the best interest of the Township Water Utility customers and Marlboro customers of GCWC.

NOW, THEREFORE, BE IT RESOLVED by the Municipal Council of the Township of Marlboro that the Mayor and Township Clerk are hereby authorized to execute a renewal agreement with the Gordons Corner Water Company for the supply of water.

OFFERED BY: MAZZOLA AYES: 4

SECONDED BY: LA ROCCA NAYS: 0



ALIDA MANCO,
MUNICIPAL CLERK



SCOTT METZGER,
COUNCIL VICE PRESIDENT

CERTIFICATION

6/7/12

I hereby certify the above to be a true and exact copy of a Resolution adopted by the Township Council of the Township of Marlboro at a meeting held on 6-7-12



Township Clerk