

FORM ED-I - New Jersey	Asset WO # _____	Advance WO# Main _____
Water or Sewer Extension Deposit-Developer	MI No. _____	Advance WO# Srvs _____
<b>(07/2019)</b>	DS Project # _____	Agreement Type _____

**EXTENSION DEPOSIT AGREEMENT**

THIS AGREEMENT (“Agreement”), entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between New Jersey-American Water Company, Inc., a New Jersey public utility corporation having its principal offices located at 1 Water Street, Camden, NJ 08102 (the “Company”), and, **(Insert Name of Depositor)**, having its principal address located at **(Insert Address of Depositor)** (“Depositor”).

**BACKGROUND**

- A. The Depositor represents that they have previously made an application for water service and/or sewer service and has requested that the Company extend its facilities as more fully described below; and
- B. The Company has agreed to make the extensions on the terms and conditions set forth in this Agreement and pursuant to the extension rules set out in N.J.A.C. 14:3-8.1 to -8.13 et seq.

**TERMS**

In consideration of the mutual covenants and agreements contained herein and intending to be legally bound, the parties hereto agree as follows:

- 1. **Description of Extension.** On and subject to the terms and conditions contained in this Agreement, the Company will install the extension and appurtenances, as shown on the plans approved by the Company during the application review. A general description and location of the extension is as follows:

***[Insert Description – Description shall include the following minimal information: Project No. – Project Name – Location of Project (Municipality, County, State) Block and Lot Designations, Scope of Extension and Reference to Approved Plans]***

As used in this Agreement, for extensions installed for water service, the term “Extension” shall include, without limitation, all water mains, services, appurtenances, meters and any required water system facilities (e.g., sources of supply, production, storage, and treatment) to be owned by the Company necessary to support the extension. In the case of sewer extensions, the term “Extension” shall also mean, without limitation, all sewer mains, laterals, appurtenances and any sewer system facilities to be owned by the Company necessary to support the sewer extension.

The Company reserves the right in its sole judgment to install larger facilities than indicated in either the approved plans or the descriptions of the Extension contained in this Agreement. In such a case, the Company will pay the incremental difference in any increased cost related thereto.

2. Deposits. The parties acknowledge that prior to the date of this Agreement the Depositor may have been required to submit an application fee (the "Application Fee"). The Application Fee is to compensate the Company for its costs in reviewing the application of the Depositor.

The Company has determined that the total estimated cost for the Extension described herein to be (***Insert Total Estimated Cost of Extension***) (the "Initial Total Estimated Cost"). The Depositor hereby agrees to deposit with the Company the Initial Total Estimated Cost of the Extension, provided, however, that the Company, at its sole discretion, may waive the requirement for a deposit of the full Initial Total Estimated Cost and may instead elect to receive a partial deposit, in the sole discretion of the Company (such deposit, the "Initial Deposit").

After the Initial Total Estimated Cost or, in the sole discretion of the Company, the Initial Deposit has been made, the project will be sent out for bid. After bid, the Company will provide a revised estimate of the total cost of the Extension (the "Revised Total Estimated Cost"). The Revised Total Estimated cost may be higher or lower than the Initial Total Estimated Cost. Upon receipt of a notice of the Revised Total Estimated Cost, the Depositor needs to deposit the Revised Total Estimated Cost with the Company. Work on the Extension will not progress further until the entire Revised Total Estimated Cost has been deposited with the Company.

The Revised Total Estimated Cost is still an estimate and the cost of the Extension may change at any time during the construction of the Extension. If, at any time, including during the installation and construction phase of the Extension, the Company's estimated cost of the Extension exceeds the deposits received by the Company, the Company will request additional deposits to cover the estimated increased cost. The Company reserves the right to suspend any and all activities on the Extension if a deposit has not been received by the Company on the date required for such deposit to be made. The Depositor agrees to hold the Company harmless from any damages that might result from such suspension of activities.

3. Conditions to Installation of Extension. The Company will commence installation of the Extension only after the Company has determined that the Depositor has:
- a) paid in full all deposits requested by the Company and any applicable adjustments thereto;
  - b) furnished plans satisfactory to the Company in its sole discretion and approved by all governmental bodies having jurisdiction, showing the established line and grade of all proposed public rights-of-way in which the Extension is to be installed, as well as any other documents and/or information reasonably requested by the Company;
  - c) completed, or caused to be completed, all physical work (except surface restoration) including but not limited to installation of curbs, gutters, storm sewers and sanitary sewers within the proposed public rights-of way or public or private easements to the established line and approximate grade as shown on the plans required by paragraph (b) above;
  - d) executed and delivered to the Company a perpetual and recordable easement or easements in a form specified by the Company granting the Company the right to install, operate, maintain and relocate such Extension; and properly staked all applicable easements for construction;
  - e) provided to the Company all approved permits and approvals that were the responsibility of the Depositor to obtain; and

- f) provided to the Company a final approved site plan with final Lot and Block Numbers and final street names and address numbers.

In the event that the Depositor has not met conditions (a) through (f) set forth in this Paragraph 3 within one (1) year from the date of this Agreement, the Company shall have the right to terminate this Agreement and return any deposits paid by the Depositor less the expenses incurred by the Company in connection with the Extension as determined by the Company in its reasonable discretion and any amounts retained by the Company pursuant to Section 7. In addition, upon any termination of this Agreement, the Company will revoke and reallocate all of the regulated water capacity committed for the Extension.

4. Hold Harmless. After Depositor has satisfied all conditions set forth in this Agreement, the Company will proceed to install the Extension in a timely fashion. However, the Company makes no representation as to the amount of time necessary to complete installation of the Extension. In addition, Depositor agrees to hold the Company and its officers, directors, employees, contractors, agents and Affiliates harmless for any and all damages, losses, and claims, specifically including but not limited to lost profits, (a) incurred by the Depositor or any other person or entity as a result of or in connection with any delays in completing the installation of the Extension, and (b) incurred by the Company as a result of damage to the Extension prior to acceptance of the street by the municipality, other than damage caused solely by the Company or its authorized contractors.
5. IRS Expenditure Rule. If the "Expenditure Rule" contained in Internal Revenue Service Code Section 118 is not met, other than due to the sole fault of the Company, Depositor agrees to pay to the Company upon demand the full amount of any tax calculated by the Company to be due as a result of the failure to meet such test.
6. Statement of Actual Cost and Project Close. Within one hundred twenty (120) days after the final costs of the Extension have been incurred and are available, the Company will furnish to the Depositor a statement setting forth the actual cost of the Extension, such statement will include the total actual cost of labor and material for such installation plus administrative and overhead costs (the "Actual Cost"). If no setoff as described below in Section 7 has occurred and the Actual Cost of the Extension is less the sum of all deposits paid by the Depositor to the Company, then the Company will reimburse the difference to the Depositor, provided that no reimbursement will be made if any Affiliate of the Depositor owes amounts to the Company which are unpaid or past due. In that case, any such amount will be retained by the Company pursuant to the terms and conditions of Section 7.

If the Actual Cost exceeds the total sum of all Deposits made under this Extension less any setoffs taken as set forth in Section 7 below, the Depositor will deposit the difference with the Company within thirty (30) days after the Depositor receives the statement described above. If Depositor fails to pay the difference within such thirty (30) day period, Depositor forfeits all rights to refunds due under this Agreement and the Company will deny and/or suspend all water and/or sewer service to the Extension until the difference is fully paid. After the end of the thirty (30) day period, Depositor shall pay interest on the unpaid difference between the Actual Cost and the sum of all deposits made by the Depositor at the highest rate allowed by law. Any such interest shall be immediately due and payable.

7. Past Due Amounts and Setoff.

Regardless of any deposits made to the Company for any Extension, the Company will not commence work on the Extension if the Depositor or any Affiliate of the Depositor owes amounts to the Company that are unpaid or past due under this or any other agreement.

In addition, the Company has the right to set off against any deposit or reimbursement of a deposit made under this Agreement, any amount owed by the Depositor or any Affiliate of the Depositor to the Company under this or any other agreement. In addition, the Depositor agrees that the Company will have the right to set off against any refund due to Depositor under this Agreement or any other agreement between the Company or any Affiliate of the Company any amounts owed by Depositor or any Affiliate of Depositor to the Company or any Affiliate of the Company.

The term "Affiliate" shall mean with respect to either party, any individual, partnership (whether general, limited or limited liability), firm, corporation, limited liability company or corporation, association, trust, unincorporated organization or other entity, as well as any syndicate or group, that directly, or indirectly through one or more intermediaries controls, is controlled by, or is under common control with, such party. The term "Affiliate" under this definition will specifically include entities that share a common General Partner or Managing Member or whose General Partners or Managing Members are Affiliates, regardless of the ownership structure of such entities.

8. Refunds.

Definitions:

The following definitions will be used in this Section 8:

"Bona Fide Customer" is a residential or non-residential customer who: (i) has entered into an agreement for service with the Company, if applicable, (ii) receives water on a permanent basis; and, (iii) whose service lines were installed under this Agreement. Bona Fide Customers are classified as Category I or Category II according to the following guidelines:

Category I: A Bona Fide Customer receiving domestic water and/or sewer service for detached one family residences, duplexes, townhomes, condominiums or apartments, where the service line is either a one (1) inch line for water service or a four (4) inch line for sewer service; and

Category II: A Bona Fide Customer receiving private fire protection or water service and/or sewer service not meeting the standards for Category I.

Whether a customer qualifies as a Bona Fide Customer will be determined by the Company in its sole discretion.

"Revenue" is defined differently for Category I and Category II Bona Fide Customers as follows:

Category I: Average estimated annual revenue per residential customer reflected in the Company's last approved rate order for customers in the same service area; and

Category II: Actual revenues generated by such customer between the 13th and the 24<sup>th</sup> month of actual service following service activation.

Determination of Refunds:

Provided the Depositor has fully complied with Section 6 above, the total amount eligible for refunds will be the Actual Cost of the Project. The Company and Depositor fully recognize that the Actual Cost of the Project may not be fully refundable.

The Company will refund to the Depositor a one time payment for each Bona Fide Customer (Category I or Category II) directly served by infrastructure installed as part of the Project in an amount equal to the multiplier set forth in N.J.A.C. 14:3-8.10, times the Revenue from such Bona Fide Customer.

Payment of Refunds:

Category I: Payments shall be made annually if the Depositor is eligible for refund, on or about the anniversary date of this Agreement.

Category II: Payments shall be made approximately thirty (30) months following service activation, if the Depositor is eligible for refund.

No Refunds Based Upon Other Main Extension:

Notwithstanding any other provisions of this agreement, the Company shall have the absolute right at any time to construct and install other main extensions and appurtenants facilities connection to the main extension. Neither the connection of any other main extension nor any service furnished by or from another main extension shall be subject to or in any manner affect this agreement, and no Developer hereunder shall be entitled to any refund of all or portion of the deposit made hereunder by reason of the connection of such other main extensions or connections for service there form provided.

Conclusion of Refunds:

The payment of refunds will end ten (10) years after the date of execution of this Agreement. At the end of this period, any such excess remaining amounts shall become the property of the Company. In no event shall the sum of refunds made by the Company to the Depositor exceed the Actual Cost of the Project, nor shall any part of the Actual Cost of the Project which has not been refunded ten (10) years after the date of this Agreement be returned to the Depositor under any circumstances.

9. Relocation of Facilities. Any relocation, raising or lowering of any of the Company's facilities due to any variation in the final street lines or grade of such proposed public rights-of-way and/or easements prior to acceptance of the street by the municipality, shall be performed by the Company or its authorized contractors at the sole cost and expense of the Depositor.

Any of the Company's facilities damaged by Depositor, its agents, employees or contractors, shall be repaired or replaced by the Company or its authorized contractors at the Depositor's expense. The Depositor agrees the Company has the right to deduct the cost of such repair, replacement, relocation, raising or lowering from any amounts due Depositor under this Agreement or otherwise.

10. Ownership of Facilities on the Extension. The Company and its successors and assigns shall be the owner and have all rights, title and interest in the Extension installed pursuant to this Agreement whether in private property or public right-of-way.

This Agreement does not confer upon the Depositor any right to operate the Extension or to obtain water from the Extension. If any of the facilities installed on this Extension need to be operated in connection with Depositor's activities, Depositor shall contact the Company. If

Depositor requires a supply of water, Depositor shall apply to the Company for water service in accordance with the Company's Tariff in effect at such time. Theft of water shall be reported to local law enforcement.

11. Execution by the Company. This Agreement shall be valid and binding upon the Company only at the time it is executed by its duly authorized representative and the form of this Agreement can be altered, changed, replaced or superseded at any time prior thereto, and the fact that Company has provided the Depositor with a draft of this Agreement prior to that time shall have no binding or legal effect on the Company. This Agreement shall be considered invalid if not executed by both parties on or before **(Insert Date – Typically 1 year from date Agreement is offered)**
12. Successors & Assigns. This Agreement shall inure to benefit of, and be binding upon, the parties hereto and their respective heirs, executors, administrators, and permitted successors and assigns. No assignment of this Agreement or any rights or obligations hereunder may be made by Depositor without the prior written consent of the Company.
13. Notices. All notices and other communications under this Agreement shall be in writing and shall be deemed received when delivered personally, on the second business day after mailed by registered mail, return receipt requested, on the next business day after delivery to a recognized overnight courier service or when sent by telecopy at the following addresses (or to such other address as a party may have specified by notice given to the other party pursuant to this provision):  
  
If to the Company, to: AND :  
  
New Jersey-American Water Company, Inc. New Jersey-American Water Company, Inc  
1 Water Street 1 Water Street  
Camden, New Jersey 08102 Camden, New Jersey 08102  
**Attn: Legal Department** **Attn: Developer Services**  
  
If to the Depositor, to:  
  
***(Insert Depositor Name)***  
***(Insert Depositor Address)***  
***(Insert Depositor City, State and Zip Code)***
14. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey.
15. Separability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination of invalidity or unenforceability shall not render the balance of this Agreement invalid or unenforceable.
16. Waiver; Amendment. Either party may waive compliance by another with, amend, supplement or modify any provision of this Agreement. No waiver, amendment, supplement or modification of any provision shall be construed as a waiver, amendment, supplement or modification of any other provision. Any waiver, amendment, supplement or modification of this Agreement must be in writing and shall be deemed effective only with respect to the party that executes and delivers such writing.
17. Changes in Law. In the event that the Company determines that the adoption after the date hereof of any tax or other law, rule or regulation does or shall have the effect altering the terms of this Agreement, the Company shall have the right to change the terms of this

agreement to reflect such change in law, rule or regulation. To the extent such change has the effect of increasing the deposit required under this Agreement, then Depositor shall within fifteen (15) days after notice and demand from the Company (together with the certificate referred to in the next sentence) pay to the Company such additional amounts. A certificate as to the amount of such cost and showing the basis of the computation of such cost submitted by the Company to Depositor shall accompany such notice.

18. Entire Agreement. This Agreement, together with all of the schedules and exhibits hereto which are incorporated herein by reference, contains all of the promises, agreements, conditions, covenants and undertakings between the parties hereto with respect to the subject matter hereof, and supersedes all prior agreements and understandings, inducements or conditions whether express or implied, written or oral.

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

WITNESSED:

*(Insert Depositor Name)*

By:  
Title:  
Date:

WITNESSED:

NEW JERSEY-AMERICAN WATER COMPANY, INC.

By:  
Date:

By:  
Title:  
Date: