

ORDINANCE OF THE CITY OF TRENTON, IN THE COUNTY OF MERCER, NEW JERSEY AUTHORIZING THE SALE OF A PORTION OF THE CITY'S WATER UTILITY SYTEM AND AUTHORIZING THE EXECUTION OF THE FIRST AMENDMENT TO THE AGREEMENT OF SALE AND THE SECOND AMENDMENT TO THE WATER SUPPLY AGREEMENT BY AND BETWEEN THE CITY AND NEW JERSEY-AMERICAN WATER COMPANY, INC. AND THE MODIFICATION AGREEMENT REVISING THE WATER OPERATING AGREEMENT BETWEEN THE CITY AND AQUA NEW JERSEY, INC. AND DETERMINING CERTAIN OTHER MATTERS IN CONNECTION THEREWITH

WHEREAS, the City of Trenton, in the County of Mercer, New Jersey (the "City") currently owns and operates a water utility system (the "System"), the various components of which are located in the City, as well as in the Township of Ewing, and in parts of the Townships of Hamilton, Hopewell and Lawrence (collectively, the "Townships"); and

WHEREAS, the System provides services to properties located in the City and in the Townships; and

WHEREAS, the City has determined that it is advisable in the interests of public health and safety of the City and the Townships to separate the components of the System that are located in the City from the components of the System that are located in the Townships, and to sell the components of the System that are located in the Townships to a private water utility regulated by the New Jersey Board of Public Utilities (the "BPU"); and

WHEREAS, the City believes that the sale of the components of the System that are located in the Townships will enable the City to concentrate its efforts and finances on upgrading the components of the System that are located in, and serve the residents and properties located in the City, and to better address increasing regulatory concerns and requirements in connection therewith; and

WHEREAS, in connection with the proposed sale of the components of the System located in the Townships, in accordance with N.J.S.A. 40:62-3.1, the City prepared, distributed and advertised on February 27, 2007 an Invitation to Propose and made available to all prospective buyers a Request for Proposals with Attachments (the "RFP"); and

WHEREAS, on June 4, 2007 the City received Proposals from two private water utilities in response to the RFP; and

WHEREAS, after review of the Proposals it received and discussions with the proposers, the City determined that New Jersey-American Water Company, Inc. ("NJ American") had submitted the most advantageous Proposal; and

WHEREAS, the City thereafter negotiated the terms and provisions of the sale and by ordinance adopted in December, 2007 approved the Agreement of Sale by and between the City and NJ American (the “Agreement of Sale”); and

WHEREAS, the City as part of that sale, determined also to continue to provide water service through NJ American to users located in the Townships; and

WHEREAS, the sale of the components of the System located in the Townships is contingent upon NJ American’s willingness to enter into a long term agreement to purchase water from the City; and

WHEREAS, the City desires to set forth the terms and provisions of the long term agreement to provide water to NJ American in a Water Supply Agreement by and between the City and NJ American (the “Water Supply Agreement”); and

WHEREAS, the City, by ordinance adopted in December, 2007, approved the Agreement of Sale and Water Supply Agreement, respectively; and

WHEREAS, the City and NJ American submitted executed copies of both the Agreement of Sale and the Water Supply Agreement to the BPU as part of a joint petition for review and approval, which approval is required by the terms of both agreements and the provisions of N.J.S.A. 40:62-3.1; and

WHEREAS, several parties impacted by the terms of either or both agreements submitted petitions to intervene in the BPU proceedings, including the Townships, the Public Advocate, Aqua New Jersey, Inc. and other private interests and entities receiving service from the City’s System or NJ American; and

WHEREAS, as a result of various meetings and discussions between such intervening parties with the City and NJ American and representatives of the BPU, certain changes to both agreements have been agreed upon in order to settle any differences that exist among such parties and in order to obtain the approval of the BPU of both agreements; and

WHEREAS, such agreement also results in revisions to the previous emergency and operating agreement dated August 8, 2002 between the City and Aqua New Jersey, Inc. (previously known as Consumers New Jersey Water Company) (the “Aqua Operating Agreement”) which the parties desire to amend; and

WHEREAS, the City desires to approve all such agreements in their revised forms, substantially in the forms on file with the City Clerk and to authorize the appropriate City officials to execute such agreements and submit them to the BPU for approval and take all other necessary actions to complete the sale to NJ American and ratify the terms of a written stipulation (the “Stipulation”) agreed to or otherwise acknowledged by all affected parties,

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TRENTON, IN THE COUNTY OF MERCER, NEW JERSEY AS FOLLOWS:

Section 1. The City hereby approves the sale of the components of the System located in the Townships to NJ American in accordance with the First Amendment to the Agreement of Sale referenced above and to continue to supply water from the Townships pursuant to the Second Amendment to the Water Supply Agreement. To the extent that any of the components included in the sale constitute contributed property from any developments constructed in any of the Townships, title to which previously may or may not have been officially accepted by the City, the City hereby accepts such components as part of the City's System and therefore making them available for sale as provided herein and in the First Amendment to the Agreement of Sale.

Section 2. The City hereby approves the First Amendment to the Agreement of Sale, substantially in the form of that on file in the Office of the City Clerk, which is incorporated by reference as if fully set forth at length herein.

Section 3. The City hereby approves the Second Amendment to the Water Supply Agreement, substantially in the form of that on file in the Office of the City Clerk, which is incorporated by reference as if fully set forth at length herein.

Section 4. The City hereby approves the Modification Agreement Revising the Operating Agreement with Aqua New Jersey, Inc.

Section 5. The Mayor and any other appropriate officials of the City are hereby authorized to execute, and the City Clerk or any deputy City Clerk is hereby authorized to attest, the First Amendment to the Agreement of Sale, the Second Amendment to the Water Supply Agreement and the Modification Agreement Revising the Operating Agreement, as well as any other documents necessary to be executed and/or attested, including but not limited to any documents to be submitted to all appropriate state and other regulatory agencies.

Section 6. The Stipulation executed on behalf of the City by the Mayor, reflecting generally the terms of the agreements involved in the sale and submitted to the BPU, is hereby ratified and confirmed.

Section 7. The Mayor, the City Clerk or any Deputy City Clerk and any other appropriate officer of the City are hereby authorized and directed to take any and all action(s) necessary to effectuate the sale of the components of the System located in the Townships and the long term sale of water to NJ American and the related provision for the sale of the water to Aqua New Jersey, Inc.

Section 8. This ordinance will take effect as provided by law.