

THIS AGREEMENT made this 20th day of May, 1976,

BETWEEN THE STATE OF NEW JERSEY, acting by and through the DEPARTMENT OF ENVIRONMENTAL PROTECTION, Division of Water Resources

hereinafter called the "Department",

AND ELIZABETHTOWN WATER COMPANY, a corporation of the State of New Jersey,

hereinafter called the "Water Company";

WHEREAS, The Water Company desires to construct, operate and maintain 1285 feet more or less of new 16-inch diameter ductile iron and steel water main to be buried adjacent to and under the Delaware and Raritan Canal southerly from a point in the public Right-of-Way of Province Line Road (Mercer County, Rte. 533) which point is approximately thirty-seven feet south of the Delaware and Raritan Canal bridge on Province Line Road in Lawrence Township, Mercer County, State of New Jersey;

NOW THEREFORE, In consideration of the payments and privileges herein named, the Department, acting through its Division of Water Resources, under the authority of N.J.S.A. 13:13-10 hereby grants to the Water Company the right to construct, use, and maintain the said 16-inch water main at the said location upon and under the following terms and conditions, namely;

First: This Agreement shall continue in effect for a period of 25 years with the right given the Water Company to renew this Agreement for an additional period of 25 years. The Water Company agrees to pay the Department a charge of \$650.00 per year for the first 5 year period of this Agreement. Such payment shall be made annually in advance, as billed, at the office of the Department's Division of Water Resources. The Department reserves the right to review the charges at the end of said 5 year period and at the end of each succeeding 5 year period thereafter to the end of the term, or renewal thereof, for the purpose of determining a new charge, if necessary, based on current rates established by the Department for pipe line crossings of the Delaware and Raritan Canal.

Second: The Water Company agrees at its own sole cost and expense to construct, maintain, renew, revise, repair and operate the new 16-inch water main on, under and adjacent to Canal property in good order and condition, so that it shall not interfere with Canal flow, recreational use of the Canal and its environs, impair, pollute, or prevent the safe use of the Canal and Canal property.

Third: The location and manner of construction of the new water line shall be as shown and specified on the drawings entitled (1) "Proposed Province Line Road, 16" Main Extension, Lawrence Twp., Mercer County, Elizabethtown Water Company, Plainfield, NJ, Norbert Wagner PE #15966, Date 11-22-1975, File No. 80-103" sheets 1, 2 and 3/3 and (2) "Plan and Cross Section, Proposed 16" Water Main Crossing, Delaware and Raritan Canal, Lawrence Twp., Mercer County, Elizabethtown Water Company, Plainfield, NJ, Norbert Wagner PE #15966, Dwn. No. E-76-233, Date Jan. 15, 1976, File No. 80-104, 1 Rev., Revised per request: State Div. of Water Facilities, 3-23-1976" one sheet,

Fourth: Those sections of the water line adjacent to the Canal shall consist of new 16" diameter ductile iron pipe and that section of the water main under the Canal shall consist of new 16" diameter cement lined all steel pipe with welded joints, coated and wrapped. Shut off valves and thrust blocks shall be provided on both sides of the crossing under the Canal. The pipe shall be so placed under the Canal that the top shall be not less than three (3) feet below the bottom of the Canal which is at Elevation 46.0 and the clay liner of the Canal shall be restored where trenching for construction purposes occurs.

Fifth: Excavation and backfilling shall be done using equipment and procedures selected for minimum damage to flora, fauna and water quality. Trees shall not be removed unless the Water Company has obtained approval in each instance from the Department's Division of Water Resources. Excess material shall be removed to an authorized disposal area and the Canal restored to its normal cross section after the said water line is constructed and installed. Those portions of the new water main constructed on the side of the Canal shall be laid in such a manner as to present, after completion, no interference with the passage of construction equipment along the towpath and/or access to the Canal. Trenches shall be backfilled with suitable material free from large rocks and stumps, well compacted and incorporated with the surrounding Canal embankments conforming to contour of terrain and existing grade as approved by the Department. Construction sites and banks will be fertilized, seeded and mulched to prevent erosion due to run off.

Sixth: If the Water Company desires or is required as herein provided to revise, renew, add to or alter in any manner whatsoever the new 16-inch water main installed on Canal property it agrees to submit plans therefor to the Department's Division of Water Resources and the Water Company further agrees not to perform any work or alterations of said water main until the plans shall have been approved in writing by said Division.

Seventh: During construction and in the event of future renewal, repairs or revision of the water main, the Water Company agrees to provide for maintenance of such Canal flows as the Division of Water Resources may specify in writing.

Eighth: The Water Company agrees to make such repairs to the water main and construction sites, within ten days after receipt of written notice from the Department's Division of Water Resources, as may be required to eliminate any leakage from the Canal, or pollution of the Canal or other potential damage to the Canal or Canal property occasioned by the construction, operation or maintenance of said main. On its failure to do so said Division may make such repairs at the cost and expense of the Water Company, which cost and expense the Water Company hereby expressly agrees to pay upon demand. In the event of an emergency requiring immediate action to preserve the safety of Canal operations when prior notice cannot be given, such notice shall be waived and said Division may take such emergency action at the cost and expense of the Water Company as may be required. Said Division shall immediately notify the Water Company of such action.

Ninth: The Water Company agrees to make at its own sole cost and expense such changes in the location of the water main as may in the future be required by the Department's Division of Water Resources in order to provide for changes of Canal grade, alignment, recreational uses or operating conditions.

Tenth: The Water Company expressly reserves the right to terminate this agreement upon written notice of not less than ninety days. Any notice of termination by the Water Company shall be deemed lawfully served if served by certified mail to the Commissioner of Environmental Protection. Upon termination of the agreement for any reason the Water Company shall, unless otherwise agreed upon by the Department's Division of Water Resources in writing, remove within ninety days all items installed and covered under the terms of this agreement and shall restore the Canal and property administered by said Division to its former conditions in a manner satisfactory to said Division, or on its failure to do so said Division may make such removal and restoration at the cost and expense of the Water Company which cost and expense the Water Company hereby expressly agrees to pay upon demand.

In the event the Water Company shall at any time exercise its right to terminate this agreement without breach of covenant on the part of the Water Company, any rent paid in advance for that portion of the unexpired term remaining shall not be refunded to the Water Company.

Eleventh: The Water Company will indemnify the State of New Jersey and any of its departments, divisions, councils, bureaus, or other agencies or subdivisions, as the case may be, for any damage to Canal property arising through the construction, operation, maintenance or removal of the aforesaid facilities whether or not the damage is caused by the negligence of the Water Company or its servants or contractors, or otherwise, and it shall and will save and keep harmless and indemnify the State of New Jersey and any of its departments, divisions, councils, bureaus, or other agencies or subdivisions, as the case may be, against any claim, liability or loss for personal injury, property damage, or workmen's compensation, or any other type of claim wheresoever cognizable, arising through the construction, operation, maintenance or removal of the aforesaid facilities whether or not the damage is caused by the negligence of the Water Company or by its servants, or contractors, or otherwise.

Twelfth: The Water Company shall maintain public liability and property damage insurance on the water line covered by this agreement with an insurance company authorized to do business in the State of New Jersey in the following amounts, and naming the State as additionally insured:

\$100,000/\$300,000 - Personal Injury
\$50,000 - Property Damage

Certificates of such coverage shall be delivered to the Department evidencing said coverage.

Thirteenth: This agreement grants no other right or privilege except as stated herein and the Water Company agrees to obtain any and all other approvals as may be required by Federal, State, County and Local authorities before proceeding with the project.

Fourteenth: The rights hereby conferred upon the Water Company shall not be assigned or transferred by it without the prior written approval of the Department's Division of Water Resources.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate the day and year first above written.

Attest:

STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL
PROTECTION

Virginia J. Dombrowski

By

Russell P. ...
Acting Commissioner

Attest:

ELIZABETHTOWN WATER COMPANY

J. Kemp

Secretary-Treasurer

By

Walter C. ...
Vice President

The aforementioned agreement has been reviewed and approved as to form.

WILLIAM F. HYLAND
Attorney General of New Jersey

By

... ..
Deputy Attorney General