AGENDA
Livingston Township Council
Meeting #2 Regular
Livingston Town Hall—357 S. Livingston Avenue—8:15 p.m.
Monday, January 27, 2020
Notice of this meeting has been given in accordance with the "Open Public Meetings Law." "Annual Notice" was faxed to the West Essex Tribune and the Star-Ledger on January 2, 2020.

Statement of Decorum
Pursuant to Township Code Section 2-15, while the Township Council is in session, any person who desires to address the Council must first be recognized by the presiding officer. Recognized speakers must make their statements within six cumulative minutes, unless such time is extended by the Council. Appropriate decorum is to be observed at all times.

1. Roll Call
2. Silent Meditation and Pledge of Allegiance
3. Presentations
   a) Swearing-in of Officer Savino Balducci
5. Public Comments on Agenda Items
6. * Resolution - Consent Agenda [Includes All Items Marked ***] R-20-67
7. * Approval of Minutes
   a) January 6, 2020
8. * Approval of Licenses
9. Final Hearing Ordinances
   a) Ord. 1-2020 Amending Chapter 170, Land Use, Article X, Flood Hazard Areas of the Code of the Township of Livingston
   b) Ord. 2-2020 Repealing Section 170-71 and Enacting a New Section 170-71 Subdivision Plat and Site Plan Details
10. Proposed Ordinances
   a) Ord. 3-2020 Amending and Supplementing Chapter 29 Traffic and Parking
   b) Ord. 4-2020 Amending and Supplementing Chapter 316 Water by Adding an Amended Section Special Permit from Division of Water and Sewers
11. Resolutions
   a) R-20-68 Approving Commodity-Demand Regional Water Sales Agreement
   b) R-20-69 Designating Area in Need of Rehabilitation Pursuant to N.J.S.A. 40a:12A-14
   c) R-20-70 Authorizing Approval of Change Order 1 and Final with Iron Hills Construction, Inc.
   d) R-20-71 Authorizing Participation in Section 10 Program for Procurement of Federal Surplus Property from the Department of Defense and Delegating Authority for Local Administration of Participation in the Program and Equipment
   e) R-20-72 Auth. Contract with Matrix New World, Inc.
   f) R-20-73 Transfer Resolution
   g) R-20-74 Amending R-19-164 (Appointing Antonelli Kantor PC as Special Counsel)
12. Public Comment
13. Recess

GLENN R. TURTLETAUB
Township Clerk
RESOLUTION

Accepting, Approving and/or Adopting the Consent Agenda of January 27, 2020

WHEREAS, the Township Council of the Township of Livingston has determined that certain items on its agenda which have the unanimous approval of all Councilmembers and do not require comment shall be termed the "Consent Agenda"; and

WHEREAS, the Township Council has determined that to increase its efficiency, the Consent Agenda shall be adopted with one resolution;

NOW, THEREFORE, BE IT RESOLVED by the Township Council that the items on the regular agenda for January 27, 2020, attached hereto, which are preceded by an "k" are the Consent Agenda and are hereby accepted, approved and/or adopted.

Approved as to form:  
Rufino Fernandez, Jr. Mayor

Sharon L. Weiner Township Attorney

Glenn R. Turtletaub, Township Clerk

Adopted: 1/27/20
ORDINANCE NO. 1-2020

ORDINANCE OF THE TOWNSHIP COUNCIL OF THE TOWNSHIP OF LIVINGSTON AMENDING CHAPTER 170, LAND USE, ARTICLE X, FLOOD HAZARD AREAS, OF THE CODE OF THE TOWNSHIP OF LIVINGSTON

WHEREAS, in order to continue Township participation in the National Flood Insurance Program, it is necessary for the Township to amend the Flood Hazard Areas Ordinance to comply with revised Federal Emergency Management (FEMA) guidelines,

NOW, THEREFORE, BE IT ORDAINED by the Township Council of the Township of Livingston, in the County of Essex, State of New Jersey, that the following sections of the Code of the Township of Livingston shall be revised to read as follows:

SECTION 1.0

ARTICLE X, Flood Hazard Areas [Amended by Ord. No. XX-2020]

§ 170-76. Statutory Authorization, Findings of Fact, Purpose and Objectives.

A. Statutory Authorization.

The Legislature of the State of New Jersey has in N.J.S.A. 40:48-1, et seq., delegated the responsibility to local governmental units to adopt regulations designed to promote public health, safety, and general welfare of its citizenry. Therefore, the Township Council of the Township of Livingston of Essex County, New Jersey does ordain as follows:

B. Findings of Fact. The Township Council finds that:

1. The flood hazard areas of the Township of Livingston are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

2. These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazard which increase flood heights and velocities, and when inadequately anchored, causes damage in other areas. Uses that are inadequately floodproofed, elevated or otherwise protected from flood damage also contribute to the flood loss.

C. Statement of Purpose.

It is the purpose of this ordinance, Article X, to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

1. Protect human life and health;

2. Minimize expenditure of public money for costly flood control projects;
(3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

(4) Minimize prolonged business interruptions;

(5) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets, and bridges located in areas of special flood hazard;

(6) Help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;

(7) Ensure that potential buyers are notified that property is in an area of special flood hazard; and

(8) Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

D. Methods of Reducing Flood Losses.

In order to accomplish its purposes, this ordinance, Article X, includes methods and provisions for:

(1) Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;

(2) Requiring that uses vulnerable to floods including facilities which serve such uses, be protected against flood damage at the time of initial construction;

(3) Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;

(4) Controlling filling, grading, dredging, and other development which may increase flood damage; and,

(5) Preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards in other areas.

§ 170-77. Definitions.

Unless specifically defined below, words or phrases used in this ordinance, Article X, shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application:

**AH Zone**- Areas subject to inundation by 1-percent-annual-chance shallow flooding (usually areas of ponding) where average depths are between one and three feet. Base Flood Elevations (BFEs) derived from detailed hydraulic analyses are shown in this zone.

**AO Zone**- Areas subject to inundation by 1-percent-annual-chance shallow flooding (usually sheet flow on sloping terrain) where average depths are between one and three feet.
**Appeal** — A request for a review of the Township Engineer's interpretation of any provision of this ordinance or a request for a variance.

**Area of Shallow Flooding** — A designated AO or AH zone on the Township’s Flood Insurance Rate Map (FIRM) with a one percent annual or greater chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

**Area of Special Flood Hazard** — Land in the floodplain within the Township subject to a one percent or greater chance of flooding in any given year. It is shown on the FIRM as Zone V, VE, V1-30, A, AO, A1-A30, AE, A99, or AH.

**Base Flood** — A flood having a one percent chance of being equaled or exceeded in any given year.

**Base Flood Elevation (BFE)** — The flood elevation shown on a published Flood Insurance Study (FIS) including the Flood Insurance Rate Map (FIRM). For zones AE, AH, AO, and A1-30 the elevation represents the water surface elevation resulting from a flood that has a 1-percent or greater chance of being equaled or exceeded in any given year.

**Basement** — Any area of the building having its floor subgrade (below ground level) on all sides.

**Best Available Flood Hazard Data** — The most recent available preliminary flood risk guidance FEMA has provided. The Best Available Flood Hazard Data may be depicted on but not limited to Advisory Flood Hazard Area Maps, Work Maps or Preliminary FIS and FIRM.

**Best Available Flood Hazard Data Elevation** — The most recent available preliminary flood elevation guidance FEMA has provided. The Best Available Flood Hazard Data Elevation may be depicted on an Advisory Flood Hazard Area Map, Work Map or Preliminary FIS and FIRM.

**Breakaway Wall** — A wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or supporting foundation system.

**Development** — Any man made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials located within the area of special flood hazard.

**Elevated Building** — A non-basement building (a) built, in the case of a building in an Area of Special Flood Hazard, to have the top of the elevated floor elevated above the base flood elevation plus freeboard by means of piling, columns (posts and piers), or shear walls parallel to the flow of the water, and (b) adequately anchored so as not to impair the structural integrity of the building during a flood up to the magnitude of the base flood. In an Area of Special Flood Hazard "elevated building" also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of flood waters.
Elevation Certificate — An administrative tool of the National Flood Insurance Program (NFIP) that can be used to provide elevation information, to determine the proper insurance premium rate, and to support a Letter of Map Amendment (LOMA) or Letter of Map Revision based on fill (LOMR-F).

Erosion — The process of gradual wearing away of land masses.

Existing Manufactured Home Park or Subdivision — A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

FEMA Publication — Any publication authored or referenced by FEMA related to building science, building safety, or floodplain management related to the NFIP. Publications shall include but are not limited to technical bulletins, desk references, and American Society of Civil Engineers (ASCE) Standards documents.

Flood Design Class — An ASCE classification of buildings and other structures for determination of flood loads and conditions and determination of minimum elevation requirements on the basis of risk associated with unacceptable performance.

Flood or Flooding — A general and temporary condition of partial or complete inundation of normally dry land areas from:

- A. The overflow of inland or tidal waters; and/or
- B. The unusual and rapid accumulation or runoff of surface waters from any source.

Flood Insurance Rate Map (FIRM) — The official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the Township.

Flood Insurance Study (FIS) — The official report in which the Federal Insurance Administration has provided flood profiles, as well as the Flood Insurance Rate Map(s) and the water surface elevation of the base flood.

Floodplain Management Regulations — Zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term describes such State or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

Floodproofing — Any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Floodproofing Certificate — Certification by an engineer or architect to certify a floodproofing design for a non-residential building.
Floodway — The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than 0.2 foot.

Freeboard — A factor of safety usually expressed in feet above a flood level for purposes of flood plain management. “Freeboard” tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed.

Highest Adjacent Grade — The highest natural elevation of the ground surface prior to construction next to the proposed or existing walls of a structure.

Historic Structure — Any structure that is:

A. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

B. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

C. Individually listed on a State inventory of historic places in States with historic preservation programs which have been approved by the Secretary of the Interior; or

D. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
   
   (1) By an approved State program as determined by the Secretary of the Interior; or

   (2) Directly by the Secretary of the Interior in States without approved programs.

Lowest Floor — The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for the parking of vehicles, building access or storage in an area other than a basement is not considered a building's lowest floor provided that such enclosure is not built so to render the structure in violation of other applicable non-elevation design requirements of 44 CFR Section 60.3.

Manufactured Home — A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

Manufactured Home Park or Manufactured Home Subdivision — A parcel (or contiguous parcels) of land divided into two (2) or more manufactured home lots for rent or sale.

New Construction — Structures for which the start of construction commenced on or after the effective date of a floodplain regulation adopted by the Township and includes any subsequent improvements to such structures.
New Manufactured Home Park or Subdivision — A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of the floodplain management regulations adopted by the Township.

Preliminary Flood Insurance Rate Map— The draft version of the FIRM released for public comment before finalization and adoption.

Recreational Vehicle — A vehicle which is:

A. Built on a single chassis;

B. Four hundred square feet or less when measured at the longest horizontal projections;

C. Designed to be self-propelled or permanently towable by a light duty truck; and

D. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Start of Construction — (For other than new construction or substantial improvements under the Coastal Barrier Resources Act (P.L. No. 97-348)) includes substantial improvements and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site such as the pouring of a slab or footings, the installation of pilings, the construction of columns, or any work beyond the stage of excavation, or the placement of a manufactured home on a foundation.

Permanent construction does not include land preparation, such as clearing, grading and filling nor does it include the installation of streets and/or walkways, nor does it include excavation for a basement, footings or piers, or foundations or the erection of temporary forms, nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure — A walled and roofed building, a manufactured home, or a gas or liquid storage tank that is principally above ground.

Substantial Damage — Damage of any origin sustained by a structure whereby the cost of restoring the structure to its condition before damage would equal or exceed fifty (50) percent of the market value of the structure before the damage occurred.

Substantial Improvement — Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures.
which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either:

A. Any project for improvement of a structure to correct existing violations of State or local health, sanitary or safety code specifications which have been identified by the local code enforcement officer and which are the minimum necessary to assure safe living conditions; or

B. Any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure".

**Variance** — A grant of relief from the requirements of this ordinance, Article X, that permits construction in a manner that would otherwise be prohibited by this ordinance.

**Violation** — The failure of a structure or other development to be fully compliant with this ordinance, Article X. A new or substantially improved structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in 44 CFR § 60.3(b)(5), (c)(4), (c)(10), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

**Water Surface Elevation** — the height, in relation to the North American Vertical Datum (NAVD) of 1988, (or other datum, where specified) of floods of various magnitudes and frequencies in the flood plains of coastal or riverine areas.

§ 170-78. Limitation of definitions to Article X.

The definitions set forth in § 170-77 are applicable solely to this Article X, and the various terms defined in § 170-77 have been included for purposes of consistency with model ordinances prepared by the New Jersey Department of Environmental Protection. The inclusion of any term within § 170-77 shall not be interpreted to authorize or permit a use or structure which is not expressly permitted by other articles of this Chapter 170.

§ 170-79. General Provisions. Applicability; basis for establishing areas of special flood hazard; penalties; abrogation and greater restrictions; interpretation; warning and disclaimer.

A. Lands to which Article X Applies.

This ordinance shall apply to all areas of special flood hazards within the jurisdiction of the Township of Livingston, Essex County, New Jersey.

B. Basis for Establishing the Areas of Special Flood Hazard.

The areas of special flood hazard for the Township of Livingston, Community No. 340185, are identified and defined on the following documents prepared by the Federal Emergency Management Agency:


(3) Best Available Flood Hazard Data. These documents shall take precedence over effective panels and FIS in construction and development regulations only. Where the effective mapping or Base Flood Elevation conflict or overlap with the Best Available Flood Hazard Data, whichever imposes the more stringent requirement, shall prevail.

The above documents are hereby adopted and declared to be a part of this ordinance, Article X. The Flood Insurance Study, maps and advisory documents are on file at the Township Hall, 357 South Livingston Avenue, Livingston, New Jersey 07039.

C. Penalties for Noncompliance.

No structure or land shall hereafter be constructed, re-located to, extended, converted, or altered without full compliance with the terms of this ordinance, Article X, and other applicable regulations. Violation of the provisions of this ordinance by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall upon conviction thereof be fined not more than $1,000 or imprisoned for not more than 30 days, or both, for each violation, and in addition shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent the Township of Livingston, from taking such other lawful action as is necessary to prevent or remedy any violation.

D. Abrogation and Greater Restrictions.

This ordinance, Article X, is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and other ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

E. Interpretation.

In the interpretation and application of this ordinance, Article X, all provisions shall be:

(1) Considered as minimum requirements;

(2) Liberally construed in favor of the governing body; and,

(3) Deemed neither to limit nor repeal any other powers granted under State statutes.

F. Warning and Disclaimer of Liability.

The degree of flood protection required by this ordinance, Article X, is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside
the area of special flood hazards or uses permitted within such areas will be free from
flooding or flood damages.

This ordinance, Article X, shall not create liability on the part of the Township of
Livingston, any officer or employee thereof, or the Federal Insurance Administration, for
any flood damages that result from reliance on this ordinance or any administrative decision
lawfully made thereunder.


The Township of Livingston shall establish and maintain a local development permitting
system to determine whether such proposed construction or other development is reasonably
safe from flooding. A local Development Permit shall be obtained before construction or
development begins, including placement of manufactured homes, within any area of special
flood hazard established in § 170-79B. Application for a Development Permit shall be made on
forms furnished by the Township Engineer and may include, but not be limited to; plans in
duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in
question; existing or proposed structures, fill, storage of materials, drainage facilities; a
description of the flood design class, and the location of the foregoing. Specifically, the
following information is required:

A. Elevation in relation to 0 foot elevation NAVD 88 datum, of the lowest floor (including
   basement) of all structures;

B. Elevation in relation to 0 foot elevation NAVD 88 datum to which any structure has
   been floodproofed;

C. Certification by a registered professional engineer or architect that the floodproofing
   methods for any nonresidential structure meet the floodproofing criteria in § 170-84B;

D. Description of the extent to which any watercourse will be altered or relocated as a
   result of proposed development; and,

E. Any forms, plans, or information required pursuant to any applicable FEMA
   publication.

§ 170-81 Designation of the Local Administrator. Duties and Responsibilities of the
Administrator.

The Township Engineer is hereby appointed to administer and implement this ordinance,
Article X, by granting or denying development permit applications in accordance with its
provisions. Duties of the Township Engineer shall include, but not be limited to:

A. Permit Review.

   (1) Review all development permits to determine that the permit requirements of this
   ordinance have been satisfied.
(2) Review all development permits to determine that all necessary permits have been obtained from those Federal, State or local governmental agencies from which prior approval is required.

(3) Review all development permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment provisions of § 170-84D(1) are met.

(4) Review all permit applications to determine whether proposed building sites are reasonably safe from flooding;

(5) Review all permit applications to determine whether development complies with all applicable FEMA Publications;

(6) Review all permit applications to determine whether development complies with all applicable New Jersey Land Use requirements;

B. Use of Other Base Flood and Floodway Data.

When base flood elevation and floodway data has not been provided in accordance with section § 170-79B, Basis for establishing the areas of special flood hazard, the Township Engineer shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a Federal, State or other source, in order to administer § 170-84A, Specific Standards, Residential Construction, and § 170-84B, Specific Standards, Nonresidential Construction.

C. Information to be Obtained and Maintained

(1) Obtain and record on a current Elevation Certificate the actual elevation (in relation to 0 foot elevation NAVD 88 datum) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement;

(2) For all new or substantially improved floodproofed structures:

   (a) Verify and record on a Floodproofing Certificate the actual elevation (in relation to 0 foot elevation NAVD 88 datum);

   (b) Maintain the floodproofing certifications required in §170-80C.

(3) Record the study date of the Best Available Flood Hazard Data (and other documents) used to determine the actual elevation of the lowest floor (including basement) of all new or substantially improved structures; and

(4) Maintain for public inspection all records pertaining to the provisions of this ordinance, Article X.

D. Alteration of Watercourses.

(1) Notify adjacent communities and the New Jersey Department of Environmental Protection, Bureau of Flood Engineering and the Land Use Regulation Program prior to
any alteration or relocation of a watercourse, and submit evidence of such notification to
the Federal Insurance Administration.

(2) Require that maintenance is provided within the altered or relocated portion of said
watercourse so the flood carrying capacity is not diminished.

E. Substantial Damage Review.

(1) After an event resulting in building damages, assess the damage to structures due to
flood and non-flood causes.

(2) Record and maintain the flood and non-flood damage of substantial damage structures
and provide a letter of Substantial Damage Determination to the owner and the New
Jersey Department of Environmental Protection, Bureau of Flood Engineering.

(3) Ensure substantial improvements meet the requirements of §170-84A, Specific
Standards, Residential Construction, §170-84B, Specific Standards, Nonresidential
Construction and §170-84C, Specific Standards, Manufactured Homes.

F. Interpretation of Firm Boundaries.

Make interpretations where needed, as to the exact location of the boundaries of the areas of
special flood hazards (for example, where there appears to be a conflict between a mapped
boundary and actual field conditions). The person contesting the location of the boundary shall
be given a reasonable opportunity to appeal the interpretation as provided in §170-82.

G. Report Changes in Flooding Conditions.

Obtain and record changes in flooding conditions and report the technical or scientific data to
the Federal Insurance Administrator on a six (6) month basis or sooner in accordance with
Volume 44 Code of Federal Regulations Section 65.3.

§ 170-82. Variance and Appeal Procedure.

A. Appeal Board.

(1) The Planning Board as established by the Township Council shall hear and decide
appeals and requests for variances from the requirements of this ordinance, Article X.

(2) The Planning Board shall hear and decide appeals when it is alleged there is an error in
any requirement, decision, or determination made by the Township Engineer in the
enforcement or administration of this ordinance, Article X.

(3) Those aggrieved by the decision of the Planning Board, or any taxpayer, may appeal
such decision to the Superior Court, as provided by law.

(4) In passing upon such applications, the Planning Board, shall consider all technical
evaluations, all relevant factors, and all standards specified in other sections of this
ordinance, Article X, and:

(a) The danger that materials may be swept onto other lands to the injury of others;
b) The danger to life and property due to flooding or erosion damage;

c) The susceptibility of the proposed facility and its contents to flood damage and the
effect of such damage on the individual owner;

d) The importance of the services provided by the proposed facility to the community;

e) The necessity to the facility of a waterfront location, where applicable;

f) The availability of alternative locations for the proposed use which are not subject to
flooding or erosion damage;

(g) The compatibility of the proposed use with existing and anticipated development;

(h) The relationship of the proposed use to the comprehensive plan and floodplain
management program of that area;

(i) The safety of access to the property in times of flood for ordinary and emergency
vehicles;

(j) The expected heights, velocity, duration, rate of rise, and sediment transport of the
flood waters and the effects of wave action, if applicable, expected at the site; and,

(k) The costs of providing governmental services during and after flood conditions,
including maintenance and repair of public utilities and facilities such as sewer, gas,
electrical, and water systems, and streets and bridges.

(5) Upon consideration of the factors of §170-82A(4) and the purposes of this ordinance,
Article X, the Planning Board may attach such conditions to the granting of variances as
it deems necessary to further the purposes of this ordinance.

(6) The Township Engineer shall maintain the records of all appeal actions, including
technical information, the justification for their issuance, and report any variances to the
Federal Insurance Administration upon request.

B. Conditions for Variances.

(1) Generally, variances may be issued for new construction and substantial improvements
to be erected on a lot of one-half acre or less in size contiguous to and surrounded by
lots with existing structures constructed below the base flood level, providing items in §
170-82A(4)(a) through (k) have been fully considered. As the lot size increases beyond
the one-half acre, the technical justification required for issuing the variance increases.

(2) Variances may be issued for the repair or rehabilitation of historic structures upon a
determination that the proposed repair or rehabilitation will not preclude the structure's
continued designation as a historic structure and the variance is the minimum necessary
to preserve the historic character and design of the structure.
(3) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

(4) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(5) Variances shall only be issued upon:

(a) A showing of good and sufficient cause;

(b) A determination that failure to grant the variance would result in exceptional hardship to the applicant; and,

(c) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public as identified in § 170-82A(4), or conflict with existing local laws or ordinances.

(6) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.


In all areas of special flood hazards, compliance with the applicable requirements of the Uniform Construction Code (N.J.A.C. 5:23) and the following standards, whichever is more restrictive, is required:

A. Anchoring.

(1) All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.

(2) All manufactured homes to be placed or substantially improved shall be anchored to resist flotation, collapse or lateral movement. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

B. Construction Materials and Methods.

(1) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

(2) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

C. Utilities.
(1) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;

(2) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters;

(3) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding; and

(4) For all new construction and substantial improvements the electrical, heating, ventilation, plumbing and air-conditioning equipment and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

D. Subdivision Proposals.

(1) All subdivision proposals and other proposed new development shall be consistent with the need to minimize flood damage;

(2) All subdivision proposals and other proposed new development shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;

(3) All subdivision proposals and other proposed new development shall have adequate drainage provided to reduce exposure to flood damage; and,

(4) Base flood elevation data shall be provided for subdivision proposals and other proposed new development which contain at least fifty (50) lots or five (5) acres (whichever is less).

E. Enclosure Openings.

All new construction and substantial improvements having fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria: A minimum of two (2) openings in at least two (2) exterior walls of each enclosed area, having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one (1) foot above grade. Openings may be equipped with screens, louvers, or other covering or devices provided that they permit the automatic entry and exit of floodwaters.

§ 170-84. Provision for Flood Hazard Reduction. Specific Standards.

In all areas of special flood hazards where base flood elevation data have been provided as set forth in § 170-79B, Basis for establishing the areas of special flood hazard or in § 170-81B, Use of other base flood and floodway data, the following standards are required:
A. Residential Construction.

New construction and substantial improvement of any residential structure located in an A, AE, AO or AH zone shall have the lowest floor, including basement together with the attendant utilities (including all electrical, heating, ventilating, air-conditioning and other service equipment) and sanitary facilities, elevated at or above the more restrictive of the following:

(1) For A or AE zones:

   (a) Base flood elevation (published FIS/FIRM) plus one (1) foot,

   (b) The best available flood hazard data elevation plus one (1) foot,

   (c) As required by ASCE/SEI 24-14, Table 2-1, or

   (d) As required by N.J.A.C. 7:13-3.

(2) For AO or AH zones on the municipality's FIRM to elevate above the depth number specified in feet plus one (1) foot, above the highest adjacent grade (at least three (3) feet if no depth number is specified). And, require adequate drainage paths around structures on slopes to guide floodwaters around and away from proposed structures.

(3) Record the method and elevation used above and, the Best Available Flood Hazard Design Data elevation, date and revision in the local Development Permit.

B. Nonresidential Construction

In an Area of Special Flood Hazard, all new construction and substantial improvement of any commercial, industrial or other nonresidential structure located in an A, AE, AO or AH zone shall have the lowest floor, including basement together with the attendant utilities and sanitary facilities as well as all electrical, heating, ventilating, air-conditioning and other service equipment:

Either:

(1) Elevated at or above the more restrictive of the following:

   (a) For A or AE zones:

      [1] Base flood elevation (published FIS/FIRM) plus one (1),

      [2] The best available flood hazard data elevation plus one (1) foot,

      [3] As required by ASCE/SEI 24-14, Table 2-1, or

(b) For AO or AH zones on the municipality's FIRM to elevate above the depth number specified in feet plus one (1) foot, above the highest adjacent grade (at least three (3) feet if no depth number is specified). And, require adequate drainage paths around structures on slopes to guide floodwaters around and away from proposed structures;

(c) Record the method and elevation used above and, the Best Available Flood Hazard Design Data elevation, date and revision in the local Development Permit.

or:

(2) Be floodproofed so that below the more restrictive of the following:

(a) For A or AE zones:

[1] Base flood elevation (published FIS/FIRM) plus one (1) foot,

[2] The best available flood hazard data elevation plus one (1),

[3] As required by ASCE/SEI 24-14, Table 6-1, or


[5] AO or AH zone elevation based upon the highest adjacent grade, plus the depth number specified in feet, plus one (1) foot, (at least three (3) feet if no depth number is specified). And, require adequate drainage paths around structures on slopes to guide floodwaters around and away from proposed structures,

(b) The structure is watertight with walls substantially impermeable to the passage of water;

(c) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and,

(d) Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the applicable provisions of this subsection. Such certification shall be provided to the official as set forth in § 170-81C(2)(b).

(e) Record the method and elevation used above and, the Best Available Flood Hazard Design Data elevation, date and revision in the local Development Permit.

C. Manufactured Homes

(1) Manufactured homes shall be anchored in accordance with § 170-83A(2).
(2) All manufactured homes to be placed or substantially improved within an area of special flood hazard shall:

a. Be consistent with the need to minimize flood damage,

b. Be constructed to minimize flood damage,

c. Have adequate drainage provided to reduce exposure to flood damage,

d. Be elevated on a permanent foundation such that the top of the lowest floor is at or above the more restrictive of the following:

[1] Base flood elevation (published FIS/FIRM) plus one (1) foot,

[2] The best available flood hazard data elevation plus one (1) foot, or

[3] As required by ASCE/SEI 24-14, Table 2-1,


[5] AO or AH zone elevation based upon the highest adjacent grade, plus the depth number specified in feet, plus one (1) foot (at least three (3) feet if no depth number is specified). And, require adequate drainage paths around structures on slopes to guide floodwaters around and away from proposed structures,

e. Record the method and elevation used above and, the Best Available Flood Hazard Design Data elevation, date and revision in the local Development Permit.

(3) All recreational vehicles located within an area of special flood hazard shall either:

a. Be on site for fewer than 180 consecutive days,

b. Be fully licensed and ready for highway use, or

c. Meet the requirements of § 170-80 and § 170-84C(1) and (2) above.

D. Floodways.

Located within areas of special flood hazard established in § 170-79B are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

(1) Prohibit encroachments, including fill, new construction, substantial improvements, and other development unless a technical evaluation demonstrates that encroachment shall not result in any increase in flood levels during the occurrence of the base flood discharge.
(2) If § 170-84D(1) is satisfied, all new construction and substantial improvements must comply with § 170-83, Provisions for flood hazard reduction, general standards, and § 170-84, Provisions for flood hazard reduction, specific standards.

(3) In all areas of special flood hazard in which base flood elevation data has been provided and no floodway has been designated, no new construction, substantial improvements, fill, or other development shall be permitted, unless it is demonstrated that the cumulative effect of any proposed development, when combined with all other existing and anticipated development, shall not increase the water surface elevation of the base flood more than two-tenths (0.2) of a foot at any point.

SECTION 2.0

Severability

If any section, subsection, paragraph, sentence, clause, or phrase of this Ordinance, Article X, shall be declared invalid for any reason whatsoever, such a decision shall not affect the remaining portions of the Ordinance, which shall remain in full force and effect, and for this purpose the provisions of this Ordinance are hereby declared to be severable.

Section 3.0

Enactment

This Ordinance shall take effect upon final passage and twenty days after publication in accordance with the law and shall remain in force until modified, amended or rescinded by the Township of Livingston, Essex County, New Jersey.

ENACTED AND ADOPTED by the Township Council this [day] day of [month], [year].

ATTEST: Township Council of the Township of Livingston

______________________________
Rufino Fernandez, Jr., Mayor

______________________________
Glenn R. Turtletaub, Township Clerk

Approved as to form:

______________________________
Sharon L. Weiner, Township Attorney
ordinance no. 2-2020

Ordinance of the Township of Livingston repealing section 170-71 of the code of the Township of Livingston and enacting a new section 170-71 subdivision plat and site plan details

Whereas, under the Municipal Land Use Law completeness of applications for development is predicated upon the provision of data via checklists that call for information required by a municipal ordinance; and

Whereas, the relevant ordinance was last revised in 1989 and is in need of extensive modernization; and

Whereas, the Township Council of the Township of Livingston has found it appropriate that section 170-71 of the Code of the Township of Livingston be replaced in its entirety through enactment of a new ordinance;

Now, therefore, be it ordained by the Township Council of the Township of Livingston, in the County of Essex, State of New Jersey, as follows:

Section 1. §170-71 of Chapter 170 of the Code of the Township of Livingston is hereby repealed in its entirety as of the effective date of this ordinance; provided, however, that any checklist then already submitted with a filed application for development shall remain in full force and effect in respect of such application.

Section 2. The following language shall be added to Chapter 170 of the Code of the Township of Livingston in replacement of the language repealed:

§ 170-71. Subdivision plat and site plan details.

A. Concept plan. The concept plan for any application for development shall be based on Tax Map information or some other similarly accurate information and shall be drawn by a New Jersey licensed professional engineer, land surveyor, architect, professional planner or landscape architect, as required by the New Jersey Administrative Code, and shall show the name and address of the preparer and the following information:

(1) Concept plan for a subdivision:

(a) The location of that portion which is to be subdivided in relation to the entire tract.

(b) All existing structures and wooded areas within the portion to be subdivided and within 200 feet thereof.
B. Minor Subdivision plat. The minor subdivision plat shall be drawn by a licensed New Jersey professional engineer or land surveyor as required by the New Jersey Administrative Code and shall be based on Tax Map information or some other similarly accurate base, at a scale of not more than one inch equals 50 feet, and shall show or include the following information:

(1) The location of that portion which is to be subdivided in relation to the entire tract.

(2) All existing structures, wooded areas and wetlands on the tract.

(3) The name(s) and address(es) of the owner(s) and the names of all adjoining property owners, as disclosed by the most recent Township tax records.

(4) The Tax Map sheet, block and lot number of the property to be subdivided.

(5) The original and proposed lot layout, lot dimensions, total area of each lot, and metes and bounds description for each lot within the subdivision.

(6) Topographic data if steep slopes or other physical conditions of the land are likely to result in drainage problems or otherwise cause concern in connection with the future development of the property.

(7) The name and address of the person preparing the map, the scale, reference meridian and North arrow.

(8) Present zoning districts of the property to be subdivided and of adjoining properties.

(9) Certification from the Township Tax Collector that no taxes, or assessments for local improvements, are due or delinquent.

(10) Soil erosion and sediment control plan if required in accordance with N.J.S.A. 4:24-39 et seq. or successor legislation. Said plan shall be submitted to the Soil Conservation District in accordance with said statute, and approval of the application shall be conditioned upon certification of the soil erosion and sediment control plan by the district.

(11) A key map showing the proposed minor subdivision and its relation to surrounding areas within 500 feet of the extreme limits thereof.
owning at least 10% of its stock of any class or at least 10% of the interest in the partnership, as the case may be.

(8) The names of adjacent subdivisions, if any, and of the owners of adjoining parcels of unsubdivided land.

(9) The acreage of the tract to be subdivided to the nearest 10th of an acre.

(10) Certification from the Township Tax Collector that no taxes, or assessments for local improvements, are due or delinquent on the subject property.

(11) Existing contours with intervals of not more than five feet where the slope is greater than 10%, and not more than two feet where the slope is less than 10%. Elevations are to be based on sea level datum. Inquiry respecting such datum shall first be made at the office of the Township Engineer.

(12) The location of and principal dimensions for all proposed streets, sidewalks, alleys, rights-of-way, easements, lot lines, drainage rights-of-way and areas to be reserved for public use.

(13) Plans for utility systems such as water, gas, storm and sanitary sewers, telephone, cable and electricity, if underground, and showing location of poles where telephone, cable and electric service are overhead. Connections to existing or proposed utility systems should be shown.

(14) Plans and profiles of all proposed streets and sidewalks within the subdivision, and profiles of existing or future continuing streets, a minimum distance of 200 feet beyond the subdivision boundaries. The central angle of all arcs and curves along all street lines shall be shown.

(15) A copy of any protective covenants or deed restrictions applying to land being subdivided.

(16) A soil erosion and sediment control plan, if required in accordance with N.J.S.A. 4:24-39 et seq. or successor legislation. Said plan shall be submitted to the Soil Conservation District in accordance with said statute, and approval of the application shall be conditioned upon certification of the soil erosion and sediment control plan by the district.

(17) A map showing the entire drainage area and the drainage area contributing to each pertinent drainage structure along with drainage tabulation sheets showing calculations for each drainage area. Each drainage area shall be marked for identification purposes.
(7) When approval of a plat is required by an officer or body of the Township, county or state, approval shall be certified on the plat.

(8) The Township Engineer's statement confirming receipt of a map showing all utilities in exact location and elevation identifying those portions already installed and those to be installed, and that the developer has installed all improvements in accordance with the requirements of these regulations, or a statement by the Township Clerk that proper performance guaranties have been posted with the Township Council. Said performance guaranties shall be based on a detailed written estimate prepared by the Township Engineer showing the estimated cost of installation of all required improvements.

E. Minor Site Plan. The Minor Site Plan shall be drawn at a scale of not less than one inch equals 50 feet and shall include such details as may be necessary to properly evaluate the application and determine compliance with this Chapter. Such details shall include:

(1) Identification of the provision(s) of the Minor Site Plan definition in Township Code §170-3 under which approval is sought, with specificity as to the details proposed that meet that definition.

(2) The name(s), title(s) and address(es) of the applicant(s) and the owner(s). If an applicant is a corporation or a partnership, the names and addresses of all stockholders or individual partners owning at least 10% of its stock of any class or at least 10% of the interest in the partnership, as the case may be.

(3) The name, address, license number, signature and official seal of the New Jersey professional engineer, land surveyor, architect, landscape architect, or professional planner preparing the plans as required by the New Jersey Administrative Code.

(4) A sheet index listing the drawings included within the site plan set.

(5) A place for the signatures of the Township Engineer, Planning Board Chairman and Planning Board Secretary.

(6) The date of preparation of the plans and the dates of all revisions.

(7) The scale of the site plan (Not less than 1" = 50').

(8) Reference meridian and North arrow.

(9) The location of all structures within 100 feet of the site.
(26) Photographs of any existing buildings or structures on the site.

(27) A copy of any recommendations received from the Business Improvement District.

F. Preliminary site plan. The preliminary site plan shall be drawn at a scale of not less than one inch equals 50 feet and shall include the Township Tax Map block and lot number(s) of the site, the meridian reference and North arrow, and such details as may be necessary to properly evaluate the application and determine compliance with this Chapter. Any site plan involving any new building or addition thereto or any site improvements shall be drawn by a licensed New Jersey professional engineer, architect or professional planner as required by the New Jersey Administrative Code. Where applicable to the proposed use or construction, the following information shall be clearly shown:

(1) The name(s) and title(s) of the applicant(s), the owner(s) and of the person(s) preparing the area map. If an applicant is a corporation or a partnership, the application form shall list the names and addresses of all stockholders or individual partners owning at least 10% of its stock of any class or at least 10% of the interest in the partnership, as the case may be.

(2) The name, address, license number, signature and official seal of the New Jersey licensed professional engineer, land surveyor, architect or professional planner preparing the plans as required by the New Jersey Administrative Code.

(3) Lists setting forth:

(a) An index listing the drawings included within the site plan set.

(b) A list of Block and Lot numbers, street address, and the name(s) of owners of all properties within 200 feet of the site:

(c) a contact list.

(4) A place for the signatures of the Township Engineer, Planning Board Chairman and Planning Board Secretary.

(5) The date of preparation of the plans and the dates of all revisions.

(6) The location of all structures within 100 feet of the site.

(7) The name (if any) of the tract, the Township Tax Map Block and Lot number(s) and the street address.
(19) Location, dimensions and materials of all fences, retaining or decorative walls, or similar man-made features to remain, be removed or modified or provided; and illustrations or photographs of same.

(20) A storm water management plan; a map showing and identifying the existing and proposed drainage areas, location of natural and man-made drainage facilities onsite and within 200 feet, location and construction details of all catch basins and storm water drainage facilities, inlets, pipes, swales, berms, and storm water detention, retention or treatment facilities; drainage calculations and tabulation sheets.

(21) Location, type and connections of all present and proposed utilities, including electric, gas, telephone and cable lines, water mains, sanitary sewer lines or systems, water wells, and pumping stations.

(22) A soil erosion and sediment control plan if required.

(23) Existing and proposed contours, at two-foot intervals, for the entire site and for 100 feet outside the site; however, if only a portion of the site is being developed the contours need only be shown for that portion and 100 feet beyond.

(24) Spot and finished elevations at all site corners, corners of all proposed buildings, paved areas, and other points where contours do not adequately define the elevation of the point.

(25) Location of all slopes greater than 15%.

(26) Location of all existing and proposed signs and the details such as nature of construction, dimensions, height above grade, letter style, materials, colors, and type, direction and lumen power of any illumination.

(27) All building exterior lighting, with location, direction and area of illumination and strength, including on adjacent property, expressed in foot-candles.

(28) Details of parking area and other lighting fixtures or standards and a schedule showing type, dimensions, height above grade, letter style, materials, colors, type, direction and area of illumination and strength, including on adjacent property, expressed in foot-candles.

(29) Landscaping plan with location, size and types of plantings to be preserved or provided on the entire site.

(30) Copies of any pending or approved application(s) for a Tree Removal Permit, and all related plans or drawings as required in Chapter 306 Trees of the Code of the Township of Livingston.
being developed, contours need only be shown for said portion and 100 feet beyond.

(2) Final building floor plans and front, rear and side building elevations, showing building materials.

(3) The location, type and size of existing and proposed catch basins, storm drainage facilities and all utilities, both above and below ground.

(4) The location, size and nature of all existing and proposed rights-of-way, easements and other encumbrances that may affect the premises in question and the location, size and description of any lands contemplated to be dedicated to the Township.

(6) The location, size and nature of the entire property in question and any contiguous property owned by the developer or in which the developer has a direct or indirect interest, even though only a portion of the entire property is involved in the site plan for which approval is sought; provided, however, that where it is physically impossible to show such entire property or contiguous property or properties on one map, a key map thereof shall be submitted.

(7) A recycling plan which will make provisions for the collection and disposition of recyclable materials as required in Chapter 232, Recycling. This required plan shall not only show in specific detail on the site plan where aluminum, glass, newspapers, other recyclables and nonrecyclable material will be separated and collected on site but shall also be accompanied by a program in narrative form. This narrative of the proposed recycling program for the site shall address who is responsible for the separation and collection of all recyclable materials and the method of disposing all recycling materials on site.

(8) Copies of any pending or approved application(s) for a Tree Removal Permit, and all related plans or drawings as required in Chapter 306 Trees of the Code of the Township of Livingston.

(9) Certification from the Township Tax Collector that no taxes, or assessments for local improvements, are due or delinquent on the subject property.

H. Deviation from or interpretation of provisions of the Livingston Center Redevelopment Plan. An application to deviate from, or seeking an interpretation of the provisions of, the Livingston Center Redevelopment Plan must include the following:
Section 5. This ordinance shall take effect twenty (20) days after its final passage in accordance with law.

RUFINO FERNANDEZ, JR., Mayor

GLENN R. TURTLETAUB, Township Clerk

Approved as to form:

SHARON L. WEINER, Township Attorney

Introduced: January 6, 2020

Adopted:
ORDINANCE No. 3—2020

ORDINANCE OF THE TOWNSHIP OF LIVINGSTON AMENDING AND SUPPLEMENTING CHAPTER 29 TRAFFIC AND PARKING

BE IT ORDAINED by the Township Council of the Township of Livingston, County of Essex, State of New Jersey, as follows:

**Bold and italicized language is added**

[Bracketed language is deleted.]

SECTION 1. 29-8. Left Turns. The driver of any vehicle shall not turn such vehicle as to make a left turn at any time at the following locations:

Location:

[West on Dogwood Drive to south on Old Short Hills Road.]

SECTION 2. 29-9.4. Right Turns Only. The driver of any vehicle shall be permitted to turn right only at the following locations:

Location:

**West on Dogwood Drive to north on Old Short Hills Road.**

SECTION 3. 29-22. Stop Intersections.

The following intersections are hereby designated as stop intersections:

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<th>Intersection</th>
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<tr>
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<td>Balmoral Drive</td>
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<td>Arlington Drive and Bunyan Drive</td>
<td>Bunyan Drive</td>
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<tr>
<td>Arlington Drive and Falcon Road</td>
<td>Falcon Road</td>
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<tr>
<td>Badger Drive and Martin Road</td>
<td>Badger Drive</td>
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<tr>
<td>Belvedere Drive and Tremont Terrace</td>
<td>Belvedere Drive</td>
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<tr>
<td>Bowling Drive and Martin Road</td>
<td>Bowling Drive</td>
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<td>Breton Place and Martin Road</td>
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<td>Canterbury Road and Coventry Road</td>
<td>Canterbury Road</td>
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<td>Fairfax Drive and Mount Pleasant Parkway</td>
<td>Mount Pleasant Parkway</td>
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<td>Falcon Court and Falcon Road</td>
<td>Falcon Court</td>
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<tr>
<td>Foxcroft Drive and Wynnewood Road</td>
<td>Foxcroft Drive</td>
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<tr>
<td>Lee Road and Martin Road</td>
<td>Lee Road</td>
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<tr>
<td>Martin Road and Wardell Road</td>
<td>Wardell Road</td>
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</tbody>
</table>

SECTION 4. Except as hereby amended, the Code of the Township of Livingston shall remain in full force and effect.

SECTION 5. This Ordinance shall take effect twenty days from final passage and publication in accordance with the law.

RUFINO FERNANDEZ, JR., Mayor

GLENN R. TURTLETAUB, Township Clerk

Approved as to form:

SHARON L. WEINER, Township Attorney
Introduced: January 27, 2020
Adopted:
ORDINANCE No. 4-2020

ORDINANCE OF THE TOWNSHIP OF LIVINGSTON AMENDING AND SUPPLEMENTING CHAPTER 316 WATER

BE IT ORDAINED by the Township Council of the Township of Livingston, County of Essex, State of New Jersey, as follows:

**Bold and italicized language is added**

[Bracketed language is deleted.]

SECTION 1. The following §316-14 Special Permit from Division of Water and Sewers is amended as follows:

[§316-14 Special Permit from Division of Water and Sewers. Unless a special permit is obtained from the Division of Water and Sewers:

A. No person shall furnish water to others for any purpose.
B. No person shall open any of the fire hydrants of the Township.
C. No water shall be turned on.]

§316-14. Special Permit from Division of Water and Sewers.

It shall be unlawful for any person to furnish water to others for any purpose, open any fire hydrants of the Township or turn on water unless a special permit is obtained from the Division of Water and Sewers.

A. Persons seeking to open a fire hydrant for any purpose shall be required to obtain, in addition to the special permit, a hydrant meter from the Township of Livingston Division of Water and Sewers.

1. Each Applicant upon receipt of the permit shall provide the Township with a surety deposit in the amount of $3,000 to guarantee against damage to the meter or hydrant.

2. Each meter will be billed at a rate of $15.00 per day, until returned to the Township, plus metered water charges.

3. Surety deposits will be returned to the Applicant following satisfactory inspection of the hydrant and meter for damage by Township personnel and payment of all outstanding meter rental and water charges by the Applicant.
(3) The installation of a service lateral, either new construction or replacement of the existing lateral shall be the responsibility of the property owner and shall be completed under the direction of the Township Engineer's office in accordance with current Township standards. All costs for service lateral installation from the meter to the water main wet tap shall be borne by the property owner. When the plumbing code requires a change in the size of a service lateral, the property owner is responsible for upgrading the service lateral from the meter up to, and including, the water main wet tap and abandoning the old service at the corporation.

B. Excavations.

(1) Whenever it shall be necessary to excavate any road under the jurisdiction of the Township for the purpose of making a connection with a water main, such excavation and the backfilling thereof, as well as the temporary and permanent patching of the roadway, shall be done and performed by the property owner, at the cost and expense of such property owner, and in accordance with applicable ordinances and regulations of the Township.

(2) Whenever it shall be necessary to excavate any road under the jurisdiction of the County of Essex or the State of New Jersey, application shall be made by the property owner to the appropriate county or state agency for that purpose.


A. Any person who violates any provision of this article shall, upon conviction thereof, by punished by a fine not exceeding $2,000, or by imprisonment for a term not exceeding 90 days, or both. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

SECTION 5. Except as hereby amended, the Code of the Township of Livingston shall remain in full force and effect.

SECTION 6. This Ordinance shall take effect twenty days from final passage and publication in accordance with the law.

RUFINO FERNANDEZ, JR., Mayor

GLENN R. TURTLETAUB, Township Clerk

Approved as to form:

SHARON L. WEINER, Township Attorney
Introduced: January 27, 2020
Adopted:
RESOLUTION APPROVING COMMODITY DEMAND REGIONAL WATER SALES AGREEMENT WITH NEW JERSEY AMERICAN WATER COMPANY, INC.

WHEREAS, the Township of Livingston ("Township") has the need to acquire bulk quantities of treated drinking water for its water system and utility; and

WHEREAS, the Township has negotiated a Commodity Demand Regional Water Sales Agreement (the "Commodity Demand Agreement") with New Jersey American Water Company, Inc. ("NJAW") pursuant to and as approved by the New Jersey Board of Public Utilities, whereby the Township is converting its prior General Metered Service Water Sales Agreement with NJAW dated January 16, 2012; and

WHEREAS, the Township Engineer and Township Manager have advised that the Commodity Demand Agreement will result in significant annual recurring water purchase savings for the Water Utility and its customers and are therefore recommending the approval of the attached Commodity Demand Agreement.

NOW, THEREFORE, BE IT RESOLVED, by the Township Council of the Township of Livingston, in the County of Essex, State of New Jersey, that it hereby approves and authorizes the Township Manager to enter into the attached Commodity Demand Regional Water Sales Agreement with New Jersey American Water Company, Inc.

Rudy Fernandez, Mayor

Glenn R. Turtletaub, Township Clerk

Approved as to form:

Sharon L. Weiner, Township Attorney

Adopted: January 27, 2020
COMMODITY-DEMAND
REGIONAL WATER SALES AGREEMENT

By and Between

New Jersey-American Water Company, Inc.
A public utility corporation of the State of New Jersey

And

The Township of Livingston
In the County of Essex,
A municipal corporation of the State of New Jersey

Dated As of January 1, 2020
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THIS WATER SALES AGREEMENT, ("Agreement") is made as of the __ day of ______________________, 2020, by and between New Jersey-American Water Company, Inc., a public utility corporation of the State of New Jersey with its principal office at 1 Water Street, Camden, NJ 08102 ("Company") and the Township of Livingston, a municipal corporation located at 357 South Livingston Avenue, Livingston, NJ 07039-3994 ("Purchaser").

WHEREAS, the Purchaser has exercised the option to convert the General Metered Service Water Sales Agreement between the Company and the Purchaser dated January 16, 2012 to this Commodity Demand Agreement; and

WHEREAS, the Company currently has available a sufficient supply of water and is willing to make water available to Purchaser as provided herein; and

WHEREAS, Purchaser requires bulk quantities of water as would be provided in accordance with the provisions of this Agreement;

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth below, the parties hereby agree as follows:

The following terms used in this contract will, unless the context clearly establishes otherwise, have the following meanings:

1. Definitions -
   A. "BPU" is the New Jersey Board of Public Utilities or any successor agency thereto.
   B. "Daily Period" is that period of twenty-four (24) hours from midnight of one day to midnight of the next day.
   C. "Effective Date" is January 1, 2020.
   D. "Force Majeure" is 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 Delaware River Basin Commission; acts of terrorism; insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; storms; floods; washouts; explosions; breakage or accidents to machinery, pipelines, dams or canals or partial or entire failure or contamination of water supply, not due to 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.

E. "Initial Nomination Period" is that period of time from the Effective Date until December 31st of the year in which the Effective Date falls.

F. "Maintenance Water" is water required by Purchaser on a temporary basis in excess of Purchaser's Nominated Demand during that period of time for which Purchaser has previously informed the Company that some portion or all of Purchaser's water production or distribution facilities will be unavailable or impaired due to the need to perform prudently scheduled maintenance activities.

G. "MGD" is million gallons per day.

H. "Nomination Period" is each period of twelve (12) calendar months commencing the January 1st which immediately follows the end of the Initial Nomination Period.

I. "Nominated Demand" is, for the Initial and all other Nomination Periods hereunder, that rate of flow available at any time, expressed in increments of thousand gallons per day ("TGD"), either nominated by Purchaser or subsequently adjusted pursuant to Paragraph 4.B of this Agreement. The initial Nominated Demand is set forth on Schedule A attached hereto, which may be revised from time to time in accordance with this Agreement.
J. "Points of Delivery" or "Point of Delivery" are those locations of Company metering facilities at which water is delivered to Purchaser. Points of Delivery for this Agreement are shown on Schedule A hereto.

K. "TG" is Thousand Gallons.

2. **Construction and Ownership of Facilities** - The Purchaser will be responsible, at its sole cost and expense, for the construction, operation, maintenance and repair of all piping and distribution system improvements necessary to manage, control and transport water from the Point of Delivery into the Purchaser's system. This Agreement shall not create or vest in Purchaser any ownership interest in, or right or title to, any part of the facilities installed, owned, operated and maintained by the Company, nor shall this Agreement create or vest in the Company any ownership interest in, or right or title to, any part of the Purchaser's facilities.

3. **Delivery of Water** - Company will make available to Purchaser at the Point(s) of Delivery the Nominated Demand set forth on Schedule A hereto. The Purchaser and the Company shall agree to a Fixed Rate of Delivery for every Point of Interconnection that, in aggregate, shall equal or be less than the Nominated Demand established on Schedule A. Adjustments to the initial Fixed Rates of Delivery for each Interconnection may be requested by the Purchaser on a monthly basis, provided that the request is made by the Purchaser fifteen (15) days prior to the end of the then current month. The Company will review all such requests and notify the Purchaser of its ability to satisfy the request, but shall be under no obligation to provide anything other than the Fixed Rates of Delivery established hereto. Title to water delivered will pass to Purchaser at the Point(s) of Delivery. The Fixed Rates of Delivery will be delivered at a rate that is reasonably constant at all times.
4. **Purchases of Water - Fixed Service, Demand and Commodity Charges** - The Purchaser will begin purchasing water from the Company under the terms of this Agreement on the Effective Date.

A. For water made available to the Purchaser as represented by the Nominated Demand, Purchaser will pay a monthly bill consisting of a Fixed Service Charge, a Distribution System Improvement Charge, a Demand Charge, a Commodity Charge and a Purchased Water Adjustment Charge. The Fixed Service Charges and the Distribution System Improvement Charges will be based on the size of Purchaser’s meter(s). The monthly Demand Charge will be Purchaser’s current Nominated Demand multiplied by the demand rate as set forth in the Company’s Commodity-Demand Rate Schedule, or successor rate schedule thereto. The monthly Commodity Charge will be the total volume of water delivered to Purchaser multiplied by the commodity rate as set forth in the Company’s Commodity-Demand Rate Schedule, or successor rate schedule thereto. The monthly Purchased Water Adjustment Clause charge will be the greater of the Nominated Demand multiplied by the days in the month, or the total volume of water delivered to Purchaser, multiplied by the Purchased Water Adjustment Clause rate as set forth in the Company’s Purchased Water Adjustment Clause rate schedule, or successor rate schedule thereto.

B. If, at the request of the Purchaser, the quantity of water delivered to Purchaser in any Daily Period exceeds Purchaser’s Nominated Demand, then Purchaser’s Nominated Demand will be increased automatically to the actual delivered quantity. Further, Purchaser’s next monthly bill will include an additional charge equal to the increase in the
Nominated Demand multiplied by the demand rate and by the number of months to the beginning of that calendar year.

C. Notwithstanding the above, if Purchaser requires water in excess of its Nominated Demand by reason of Force Majeure, Purchaser must telephonically communicate such need at the earliest possible time to the Company's Plant Operator at the Canoe Brook Water Treatment Plant in Millburn, New Jersey at 973-564-5731 (landline) or 908-216-6565 (mobile). (These phone numbers should only be used for Force Majeure and emergency events; All other phone communications concerning operations and water requests should be made to the Production Manager whose phone number will be provided to designated Purchaser's operations personnel) with subsequent written confirmation and explanation of the cause of the Force Majeure within three (3) working days to the Company's Production Manager at the address listed in Paragraph 21. Such Force Majeure will not operate to adjust Purchaser's Nominated Demand either for that calendar year or for the Nomination Period. Purchaser will continue to pay the Commodity Charge for all water delivered to Purchaser. For the Force Majeure period, Purchaser will pay the Company's General Metered Service Water Rate applicable to residential customers, or successor rate thereto, for all water delivered in excess of Purchaser's current Nominated Demand. This Paragraph 4.C shall only apply to Force Majeure periods of less than thirty (30) days, the Company and Purchaser agree to negotiate in good faith on supplying water to Purchaser for a Force Majeure period of greater than thirty (30) days.

D. Additionally, Purchaser may request relief from the automatic Nominated Demand adjustment provision of Paragraph 4.C. hereof for one Daily Period each year of this Agreement. In order to obtain such relief, Purchaser must notify Company in writing
within two business days of that Daily Period for which Purchaser requests relief. Following receipt of this notice, Company will not use the Daily Period selected by Purchaser to adjust Purchaser’s Nominated Demand. However, for all water delivered in excess of Purchaser’s Nominated Demand for the selected Daily Period, Purchaser will be billed at Company’s then approved General Metered Service Water Rate. Once Purchaser has made a Daily Period selection under this subparagraph, such selection will not be revoked or revised and Purchaser will be prohibited from making another such Daily Period selection until the following calendar year.

E. Finally, in the event of a documented major fire occurrence which causes Purchaser to exceed its then currently applicable Nominated Demand, and such occurrence is verified by Company metering and monitoring equipment, then water purchased in excess of the then currently applicable Nominated Demand will be billed at the then approved General Metered Service Water Rate and the Nominated Demand adjustment described in Paragraph 4.B. hereof will not apply.

5. Selection of and Revisions to Nominated Demand - Purchaser's Initial Nominated Demand is reflected on Schedule A hereto. Not later than July 1st of each calendar year within the term of this Agreement, Purchaser will notify Company in writing of increases requested in Purchaser's Nominated Demand. Each individually requested increase to Purchaser's Nominated Demand must meet a minimum threshold requirement of 50 TGD. In no event will Purchaser’s Nominated Demand be reduced below the Initial Nominated Demand, or any subsequent increased Nominated Demand. If Purchaser does not notify Company of a requested increase in Purchaser’s Nominated Demand by July 1st as aforesaid, the Nominated Demand for the next succeeding Nomination Period will be the Nominated Demand applicable at the end of the previous Nomination Period.
6. Temporary Water Purchases for Maintenance of Facilities -

A. Subject to the terms of this Agreement, Purchaser may request to purchase Maintenance Water at the Company’s GeneralMetered Service Water Charge rate applicable to residential customers statewide (presently Rate Schedule A-2) or successor rate thereto, without impacting Purchaser’s Nominated Demand, such request to be approved or denied by the Company in its sole discretion.

B. The availability of Maintenance Water is further contingent upon Purchaser’s providing thirty (30) days advance written notice to Company of Purchaser’s need for Maintenance Water, the date when such water will be required and the reason(s) therefore. The thirty (30) day notice requirement may be waived by Company at its discretion for good cause shown by Purchaser. If the Company agrees to provide Maintenance Water, it will supply such water on an interruptible basis as it may be available from day to day. Purchaser is obligated to inform Company in Purchaser’s notice of the expected duration of the scheduled maintenance period. Purchaser will also notify Company of the end of the scheduled maintenance period twenty-four (24) hours in advance thereof. If, during the scheduled maintenance period, it appears that the scheduled maintenance period may extend for more than thirty (30) days, Purchaser will so advise Company in writing and will detail the reason(s) for such extension.

7. Billing Procedures - Meters will be read daily and bills will be rendered no later than ten (10) days after the last day of each month. Payment will be made no later than thirty (30) days after the invoice date. If payment is not made within such thirty (30) day period, then beginning on the 46th day, simple interest at the rate of one and one half percent (1.5%) per month, or any other such rate approved by the BPU for commercial and industrial accounts, will accrue and be assessed on any unpaid balance up until the date payment in full has been received. Bills will be
rendered based on Purchaser's then applicable Nominated Demand and the amount of water delivered to Purchaser plus adjustments for any additional charges as provided for in this Agreement. The bill will show the quantity of water delivered to Purchaser during the billing period and any adjustments as provided for in this Agreement.

8. **Billing Disputes** - If Purchaser disputes a bill in good faith, Purchaser must, on or before the bill due date, pay the undisputed portion of the bill and notify the Company in writing of the basis for the dispute. If the dispute is regarding meter accuracy, a meter test will be performed by any qualified firm acceptable to both parties. If the meter test proves that the meter is within the accuracy limits set forth in governing BPU regulations, Purchaser will, within two (2) business days of such meter test, pay to the Company the disputed portion of the bill, together with accrued interest from the invoice date, and the cost of the meter test. If the meter test proves that the meter is not within the accuracy limits set forth in governing BPU regulations, a billing adjustment will be made in accordance with such regulations, the Company will pay for the cost of the meter test and the meter will be replaced or recalibrated at the Company's option.

9. **Meters** - Meters will be tested periodically by the Company according to governing BPU regulations. If requested in writing by Purchaser, Purchaser will have the right to be present when meter testing is performed. Tests requested by Purchaser in excess of the number of tests provided for in governing BPU regulations and not in connection with bill disputes pursuant to Paragraph 8 hereof will be performed at the sole expense of the Purchaser.

10. **Water Quality** - Company will comply with all applicable NJDEP and USEPA laws and regulations regarding treatment and delivery of water and will comply with all applicable notice requirements established by the NJDEP and USEPA and any successor government agencies or departments. The Company will not be responsible for contamination or degradation in the quality of the water past the Point(s) of Delivery unless it can be shown that the contamination or degradation was
caused by the Company. The Company will perform water quality tests as required by applicable NJDEP and USEPA laws and regulations. All water quality tests will be performed only by State of New Jersey certified laboratories. The Company will provide Purchaser with reports of water quality test results for water samples taken at the Point(s) of Delivery and, upon written request of Purchaser, Purchaser will be entitled to take split samples at its own cost with the Company at the Point(s) of Delivery.

11. **Service Interruptions** - Planned service interruptions may be required in the course of operation of the Company's facilities. The Company will use its commercially reasonable efforts to minimize such occurrences, as well as the duration thereof. Reasonable advance notice of planned service interruptions in accordance with Paragraph 20 will be provided to Purchaser by the Company.

12. **Reporting Projections of Water Supply Requirements** - In order to facilitate maximum utilization of Company facilities and to enable the Company to plan efficiently and economically for incremental additions to Company capacity, Purchaser will, within one (1) year from the date of execution of this Agreement, and by January 31st of each year subsequent thereto, provide to the Company in writing a five (5) year projection of Purchaser's anticipated water purchase requirements. Such data will include projections, if any, of expected Nominated Demand on an annual basis. The Company and Purchaser will meet regularly to review and discuss Purchaser's water supply requirements. Nothing in this paragraph will obligate Company to satisfy Purchaser's projected water supply requirements nor will Purchaser likewise be obligated to commit to purchase from Company those projections of water supply requirements furnished Company hereunder in excess of Purchaser's Nominated Demand.

13. **Force Majeure, Protective Covenants** -
A. If by reason of Force Majeure, Company is rendered unable, wholly or in part, to satisfy its obligations under this Agreement, then the obligations of Company, to the extent affected by such Force Majeure, will be suspended or reduced during the continuance of the inability to perform hereunder, but for no longer period. Telephonic notice of the Force Majeure will be given to Purchaser at the earliest possible time, and will be described subsequently in writing to Purchaser within three (3) working days after the occurrence of the Force Majeure event. Company will use its commercially reasonable efforts to remove or overcome such Force Majeure as soon as possible. Company will not be liable for damages to Purchaser or any customer of Purchaser for any act, omission or circumstance occasioned by, or in consequence of, a Force Majeure occurrence.

B. If either party suffers a Force Majeure which limits or prevents the transfer of water hereunder, the parties agree as follows:

(1) Purchaser’s obligation to pay the Fixed Service Charge and Demand Charge will continue during the period of the Force Majeure; but,

(2) The parties will, by mutually acceptable addendum to this Agreement, provide Purchaser additional Nominated Demand in amount and duration necessary to replace the capacity which was unavailable during the Force Majeure, for a Force Majeure under this paragraph alone, at no additional cost to Purchaser.

Telephonic notice of a Force Majeure experienced by Purchaser will be given to the Company at the earliest possible time, and will be described subsequently in writing to the Company within three (3) working days after the occurrence of the Force Majeure event. Purchaser will use its commercially reasonable efforts to remove or overcome such Force Majeure as soon as possible. Purchaser will not be liable for damages to
Company for any act, omission or circumstance occasioned by, or in consequence of, Force Majeure.

C. Purchaser agrees that it is Purchaser's sole responsibility to provide water service to its customers at adequate flow rates and pressures. As long as the Company furnishes the Nominated Demand to the Purchaser, the Company will have no liability to Purchaser, or any customer of Purchaser, for any costs, expenses, damages, liability, loss, claims, suits, or proceedings of whatsoever nature arising out of alleged inadequate water pressure or alleged inadequate flow rate in Purchaser's system.

D. As long as the Company furnishes the quantity of the Nominated Demand to the Purchaser and complies with Paragraph 10 herein, Purchaser agrees to indemnify, protect, and hold harmless the Company from any and all liability, loss, damages, costs or expense (including, without limitation, reasonable attorney's fees) arising out of claims alleging that the Company failed to provide water to Purchaser at a flow rate or pressure sufficient to afford adequate service within Purchaser's system, or arising out of claims wherein contamination or degradation in water quality occurred beyond the Point(s) of Delivery.

E. Except as limited in subparagraphs A through D above, Company agrees to indemnify, protect, and hold harmless the Purchaser from any and all liability, loss, damages, costs or expense (including, without limitation, reasonable attorney's fees) arising out of claims alleging that the Company failed to meet its obligations under this Agreement.

14. **Severability** - 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 will not affect any other provisions hereof, and this Agreement will 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 provisions are not severable from all other provisions of the Agreement or that the deletion materially alters the substance of this Agreement. If, after the date of execution of this Agreement, the BPU determines that some rate methodology other than the rate methodology provided for herein should be utilized to set rates for service under this Agreement, the parties reserve the right to renegotiate the provisions of this Agreement or to terminate the Agreement. Exercise of these rights by either party will be accomplished by providing written notice to the other party within thirty (30) days of receipt of notice of the BPU decision that the rate methodology provided for herein is to be used no longer.

15. Term of Agreement/Termination - The initial term of this Agreement will be for a period of twenty (20) years from the Effective Date. The Agreement will automatically renew for two (2) successive twenty (20) year terms unless: Purchaser provides Company with written notice of termination no sooner than year sixteen (16) and no later than three (3) years prior to the end of the then current term. If Purchaser provides said notice of termination, Purchaser’s then current Nominated Demand will be reduced by twenty percent (20%) in each year of the next successive four (4) years, beginning in year twenty-one (21), so that at the end of year twenty-four (24), Purchaser’s Nominated Demand has been reduced to zero (0). This Agreement may be terminated by Company at the end of the then current term.

16. Successors - This Agreement may not be assigned by either party without the prior written consent of the other party, which consent will not be unreasonably withheld. This Agreement will inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

17. Integration and Amendment - This Agreement, including all Schedules and Exhibits, constitutes the entire understanding between the parties respecting the subject matter hereof, and the parties
will not be bound by any agreements, understandings or conditions, whether written or oral, respecting the subject matter hereof, other than those expressly set forth in this Agreement or in the Company's tariff on file with the BPU as the same may be changed or amended from time to time during the term of this Agreement, specifically including but not limited to any change in the Company's Commodity-Demand Rate Schedule, or successor rate schedule thereto, as approved by the BPU from time to time. Other than as set forth in Paragraph 18, this Agreement may be amended only in writing signed by Company and Purchaser.

18. **Duly Constituted Authorities** - The rates of the Company, and the respective obligations of the parties under this Agreement, are subject to valid laws, orders, rules and regulation of duly constituted authorities having jurisdiction. The rates, terms and conditions of this Agreement are subject to change as may be lawfully required or permitted by the BPU or successor agencies.

19. **Governing Law** - This Agreement will be governed by the laws of the State of New Jersey.

20. **Notices.** All notices and demands of any kind ("Notice") which any party may be required or may desire to serve upon the other party in connection with this Agreement must be in writing and must be served either by personal service, acknowledged by signature of addressee or authorized agent at the office address; by express mail or federal express; or by certified mail, return receipt requested, postage prepaid. Service of any such notice by express mail, federal express, or certified mail is deemed complete the second business day after mailing. Service of any such Notice by personal delivery is deemed complete upon the date of acknowledgment by the addressee. Such Notices is addressed as follows:

   **If to Company:**
   
   New Jersey-American Water Company, Inc.  
   1 Water Street  
   Camden, NJ 08102  
   Attn: Corporate Secretary

   **With a Copy to:**
   
   New Jersey-American Water Company, Inc.
21. **Conversion Payment** – The Company shall invoice the Township for the $288,628 due as outlined in Section 18(c) of the General Metered Service Water Sales Agreement between the Company and the Purchaser dated January 16, 2012. The Township shall pay the Invoice in three (3) equal installments due on the last day of the months of January, February and March 2020.
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed, under
seal, by their authorized representatives, the year and day first written above.

TOWNSHIP OF LIVINGSTON

By: __________________________
    __________________________
Title: __________________________
Date: __________________________

NEW JERSEY-AMERICAN WATER
COMPANY, INC.

By: __________________________
    __________________________
Title: __________________________
Date: __________________________

Attest:
Name: __________________________
    __________________________
Title: __________________________
Date: __________________________
Schedule A

Effective Date: January 1, 2020

Point(s) of Delivery: Mount Pleasant Avenue Interconnection
Northfield Road Interconnection
Ross Road Interconnection
Eisenhower Parkway Interconnection

Nominated Demand: 1.000 mgd

Estimated Regulatory Capacities (subject to NJDEP review and approval):

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RESOLUTION DESIGNATING AREA IN NEED OF REHABILITATION
PURSUANT TO N.J.S.A. 40a:12A-14

WHEREAS, the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (the "LRHL") authorizes municipalities to determine that certain parcels of land in the municipality, or the entirety of the municipality, constitute areas or an area in need of rehabilitation; and

WHEREAS, the Township Engineer has prepared and submitted a report on the age and condition of the water and sewer infrastructure informing that a majority of the water and sewer infrastructure in the proposed Rehabilitation Area, depicted on the attached Exhibit A, (the "Rehabilitation Area") is at least 50 years old and is in need of repair or substantial maintenance satisfying the criteria of N.J.S.A. 40A:12-14.a.(6) for the Rehabilitation Area to be designated as an area in need of rehabilitation; and

WHEREAS, N.J.S.A. 40A:12A-14 requires that, prior to adoption, the governing body shall refer a proposed Resolution designating an area in need of rehabilitation to the Planning Board for review; and

WHEREAS, on December 16, 2019, the Township Council, in Resolution #2019-230, referred a copy of this Designation Resolution, together with the Township Engineer's report on the age and condition of the Water and Sewer infrastructure to the Township of Livingston Planning Board for review and comment pursuant to N.J.S.A. 40A:12A-14; and

WHEREAS, on January 7, 2020, the Planning Board reviewed this proposed Designation Resolution and the report of the Township Engineer and reported back to the Township Council that the Planning Board found, based upon the Township Engineer's report, that the eligibility criteria for designation of the Rehabilitation Area as an Area in Need of Rehabilitation pursuant to N.J.S.A. 40A:12A-14 had been met and concurred in the recommendation that the Township Council adopt the proposed Designation Resolution designating the Rehabilitation Area as an Area in Need of Rehabilitation.

NOW, THEREFORE, BE IT RESOLVED, by the Township Council of the Township of Livingston as follows:

1. Eligibility of the Area. Based upon the facts reported by the Township Engineer and the recommendation of the Planning Board, the Township Council finds that the entire Rehabilitation Area, consisting of all of the properties depicted on the attached Exhibit A in the Township of Livingston, meets the eligibility criteria of N.J.S.A. 40A:12A-14.a(6) in that a majority of the water and sewer infrastructure in the Rehabilitation Area is at least 50 years old and is in need of repair or substantial maintenance, for designation as an Area in Need of Rehabilitation, and further finds that the designation of the Rehabilitation Area as an area in need of rehabilitation is expected to prevent further deterioration and promote the overall development of the Township in accordance with the requirements of N.J.S.A. 40:12A-14.
2. **Designation of the Area.** The Township Council hereby designates the Rehabilitation Area as depicted in Exhibit A, and all of the properties therein, as an area in need of rehabilitation, which designation allows the Township Council to, among other things, enter into Redevelopment Agreements and grant tax exemptions pursuant to the Five Year Exemption and Abatement Law, N.J.S.A. 40A:21-1 et seq., upon the adoption of an ordinance setting forth the eligibility requirements.

3. **Transmittal of Resolution to State Department of Community Affairs.** The Township Council hereby directs that the Township Clerk shall transmit a copy of this Resolution to the Commissioner of the Department of Community of Affairs in accordance with the LRHL.

4. **Effective Date.** This resolution shall take effect immediately.

Rufino Fernandez, Jr., Mayor

Glenn R. Turtletaub, Township Clerk

Adopted: January 27, 2020
Okner - Rt 10 - Microlab

Proposed Area In Need of Rehabilitation

Properties Included In Area

Imagery © 2019 Maxar Technologies, USDA Farm Service Agency
Exhibit A
Area in Need of Rehabilitation

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MEMORANDUM

TO: MAYOR AND TOWNSHIP COUNCIL
FROM: JEANNETTE HARDUBY, P.E., TOWNSHIP ENGINEER
SUBJECT: CONDITION OF WATER AND SEWER INFRASTRUCTURE
DATE: DECEMBER 12, 2019
CC: BARRY R. LEWIS, JR., TOWNSHIP MANAGER

As requested by the Township Manager, I am providing this report on the age and condition of the water and sewer infrastructure in the area reflected on the attached map, (the “Proposed Rehabilitation Area”), specifically as it relates to the rehabilitation criteria set forth in N.J.S.A. 40A:12A-14.a.(6).

Based upon my personal knowledge and my experience as Township Engineer and my review of Township water and sewer records, inspections and reports, I can report that a majority of the water and sewer infrastructure in the Proposed Rehabilitation Area is at least 50 years old and is in need of repair or substantial maintenance.

Dated: December 12, 2019

Jeannette Harduby, P.E.
Township Engineer
RESOLUTION AUTHORIZING APPROVAL OF CHANGE ORDER NUMBER 1 AND FINAL WITH IRON HILLS CONSTRUCTION, INC.

WHEREAS, the Township Council of the Township of Livingston entered into a contract ("Contract C1800019") with Iron Hills Construction, Inc., for the Primary Digester Upgrades; and

WHEREAS, the initial Contract was not to exceed One Million, One Hundred Forty-One Thousand, Two Hundred Fifty Dollars and no cents ($1,141,250.00), and

WHEREAS, due to a change in field conditions, a Change Order has been requested for the following:

A. REDUCTIONS

<table>
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<tr>
<th>Description</th>
<th>Amount</th>
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<tr>
<td>Structural Steel Repairs</td>
<td>-$139,328.00</td>
</tr>
<tr>
<td>Repairs to Drainage Channel</td>
<td>-$8,100.00</td>
</tr>
<tr>
<td>Township Defined Work</td>
<td>-$10,469.14</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>-$157,897.14</strong></td>
</tr>
</tbody>
</table>

WHEREAS, the total change order decreased the contract amount by 13.84% or $157,897.14 making the new contract sum $983,352.86; and

WHEREAS, this Change Order has been recommended by the Township Engineer and Township Manager; and

NOW, THEREFORE, BE IT RESOLVED, the Township Council of the Township of Livingston, Essex County, approves the execution and payment of Change Order Number 1 and Final to the Contract with Iron Hills Construction, Inc. for the Primary Digester Upgrades; that this resolution is without prejudice to any rights of the Township of Livingston, that the Township has, had, or may have to charge back or to seek cost of said change orders from third-party and the Township hereby reserves all of its rights hereto.

BE IT FURTHER RESOLVED that a copy of this resolution shall be published in the West Essex Tribune as required by law.

Rufino Fernandez, Jr., Mayor
Glenn R. Turtletaub, Township Clerk

Approved as to form:

Sharon L. Weiner, Township Attorney

Adopted: January 27, 2020
RESOLUTION NO. R-20-71

RESOLUTION AUTHORIZING PARTICIPATION IN SECTION 1033 PROGRAM FOR PROCUREMENT OF FEDERAL SURPLUS PROPERTY FROM THE DEPARTMENT OF DEFENSE AND DELEGATING AUTHORITY FOR LOCAL ADMINISTRATION OF PARTICIPATION IN THE PROGRAM

WHEREAS, federal law permits the Department of Defense to transfer to federal and state agencies personal property of the Department that it determines is suitable for use by agencies in law enforcement activities, including counterdrug and counterterrorism activities and is excess to the needs of the Department; and

WHEREAS, this program is generally known as the "1033 program," that allows local law enforcement agencies to obtain, at little or no cost surplus federal property; and

WHEREAS, the Township's prior participation in this program has enabled the Township to acquire valuable equipment that it could not otherwise afford, and to prepare for, respond to, and assist in the daily operations of the Police Department and during times of exigency.

WHEREAS, on March 16, 2015, Governor Christie signed Senate Bill No. 2364 (P.L. 2015, c.23), which now establishes, in the absence of federal requirements, a system of local oversight over local law enforcement agencies that participate in and acquire equipment through the 1033 program; and

WHEREAS, pursuant to N.J.S.A. 40A:5-30.2a, municipal governing bodies must now authorize participation in the 1033 program by a "resolution adopted by a majority of the full membership of the governing body of a local unit prior to transmittal of any such application to the State Coordinator of the program; and

WHEREAS, pursuant to N.J.S.A. 40A:5-30.2b, the acquisition of any property by a local law enforcement agency shall be approved by a "resolution adopted by a majority of the full membership of the governing body".
NOW, THEREFORE, BE IT RESOLVED by the Township Council of the Township of Livingston in the County of Essex, State of New Jersey that:

1. Pursuant to N.J.S.A. 40A:5-30.2a, the governing body hereby authorizes and directs the Chief of Police to designate a qualified individual to file the necessary application materials for continued participation in the 1033 program limited to the acquisition of gun sights for the Police Department’s weapons.

2. Pursuant to N.J.S.A. 40A:5-30.2b, the governing body hereby authorizes and directs the Chief of Police to designate a qualified individual to maintain an inventory of surplus property obtained under the 1033, subject to the following conditions:
   a. Within thirty (30) days of its acquisition, all property obtained under the program shall be subject to review by the governing body to determine whether any such property obtained should be rejected and removed from the Township’s inventory; and
   b. If after appropriate notice to the governing body, no action to reject the property obtained is taken within thirty (30) days of its acquisition, it shall hereby be deemed accepted by the governing body and put into service or otherwise disposed of as necessary.

Rufino Fernandez, Jr., Mayor

Glenn R. Turtletaub, Township Clerk

Approved as to form:

Sharon L. Weiner, Township Attorney
Adopted: January 27, 2020
RESOLUTION AUTHORIZING A CONTRACT WITH MATRIX NEW WORLD ENGINEERING, INC.

WHEREAS, the Township of Livingston has a need to acquire professional environmental services for a remedial action proposal for the former police headquarters site phase two pursuant to the provisions of N.J.S.A. 19:44A-20.4 and 20.5; and

WHEREAS, the Township Manager has determined and certified in writing that the value of the acquisition will exceed $17,500; and

WHEREAS, the Township Council has determined that Matrix New World Engineering, Inc. has provided environmental services in prior years and has performed in a satisfactory manner; and

WHEREAS, Matrix New World Engineering, Inc. has completed and submitted a Business Entity Disclosure Certification which certifies that Matrix New World Engineering, Inc. has not made any reportable contributions to a political or candidate committee in the Township of Livingston in the previous one year, and that the contract will prohibit Matrix New World Engineering, Inc. from making any reportable contributions through the term of the contract, and

WHEREAS, the Township Engineer and Township Manager are recommending the award of a contract to Matrix New World Engineering, Inc. to provide professional environmental services for a remedial action proposal for the former police headquarters site phase two as required by the Township in an amount not to exceed $59,470.00; and,

WHEREAS, the Chief Financial Officer has certified that sufficient funds are available in account C-04-55-018-006-002; and

NOW THEREFORE, BE IT RESOLVED that the Township Council of the Township of Livingston authorizes the Township Manager to enter into a contract with Matrix New World Engineering, Inc. in an amount not to exceed $59,470.00 as described herein.

BE IT FURTHER RESOLVED that the Business Disclosure Entity Certification and the Determination of Value be Placed on file with this resolution.

BE IT FURTHER RESOLVED that a notice of this action shall be printed in the West Essex Tribune as required by law within ten (10) days of its passage.

Rufino Fernandez, Jr., Mayor

Glenn R. Turtletaub, Township Clerk

Approved as to form:

Sharon L. Weiner, Township Attorney

Adopted: January 27, 2020
Certification Of Availability of Funds

This is to certify to the [name missing] of the TOWNSHIP OF LIVINGSTON that funds for the following resolutions are available.

Contract Amount: 59,470.00  
Resolution Date: 01/27/20  
Resolution Number: R-20-72

Vendor: MATRIX  
MATRIX NEW WORLD ENGR.INC.  
26 COLUMBIA TURNPIKE  
2ND FLOOR  
FLORHAM PARK, NJ 07932

Contract: C20000001  
Professional Environmental Services: Remedial Action  
Proposal Phase Two

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<tr>
<th>Account Number</th>
<th>Amount</th>
<th>Account Description</th>
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<tbody>
<tr>
<td>C-04-55-018-006-002</td>
<td>59,470.00</td>
<td>ENVIRONMENTAL REMEDIATION</td>
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<tr>
<td>Total</td>
<td>59,470.00</td>
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Only amounts for the 2020 Budget Year have been certified. Amounts for future years are contingent upon sufficient funds being appropriated.

Chief Financial Officer
RESOLUTION TO TRANSFER
2019 BUDGET APPROPRIATIONS

WHEREAS, transfers between budget appropriations are permitted by N.J.S. 40A: 4-58 during the last two months of the fiscal year; and

WHEREAS, certain 2019 budget appropriations are expected to be insufficient to meet expenditure requirements through the end of this fiscal year, and certain 2019 budget appropriations are expected to have funds available to offset these expenditure requirements;

NOW, THEREFORE, BE IT RESOLVED, by the Township Council of the Township of Livingston (not less than two-thirds thereof affirmatively concurring) that the transfers listed on the attached page be made effective December 31, 2019.

Rufino Fernandez Jr., Mayor
Glenn R. Turtletaub, Township Clerk

Approved as to form:

Sharon L. Weiner, Township Attorney
Adopted: January 27, 2020
<table>
<thead>
<tr>
<th>Department</th>
<th>Line Item</th>
<th>From</th>
<th>To</th>
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<tbody>
<tr>
<td>Tax Collection</td>
<td>Salaries &amp; Wages</td>
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<td>Zoning</td>
<td>Salaries &amp; Wages</td>
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<tr>
<td>Uniform Construction Code</td>
<td>Salaries &amp; Wages</td>
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<td>Court</td>
<td>Salaries &amp; Wages</td>
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<td>Public Communications</td>
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<td>Court</td>
<td>Other Expenses</td>
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<td>Street Lighting</td>
<td>Other Expenses</td>
<td>25,000</td>
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<tr>
<td>Zoning</td>
<td>Other Expenses</td>
<td>5,000</td>
<td></td>
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<tr>
<td>Public Communications</td>
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<tr>
<td>Clerk</td>
<td>Other Expenses</td>
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<td>Administrative &amp; Executive</td>
<td>Other Expenses</td>
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<td>Leaf Collection</td>
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<td>Health</td>
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**TOTAL TRANSFERS**

$ 153,712 $ 153,712
### Sewer Utility

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<tr>
<th>Line Item</th>
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<td>Other Expenses Supplies</td>
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<tr>
<td>Debt Service Payment of Bond Anticipation Notes and Capital Notes</td>
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<td>100</td>
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**TOTAL TRANSFERS**

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
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<tbody>
<tr>
<td>$ 100</td>
<td></td>
<td>$ 100</td>
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</tbody>
</table>

### Swimming Pool

<table>
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<tr>
<th>Line Item</th>
<th>From</th>
<th>To</th>
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<tbody>
<tr>
<td>Statutory Expenditures Social Security</td>
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<tr>
<td>Salary &amp; Wages</td>
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<tr>
<td>Other Expenditures Supplies</td>
<td>650</td>
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</table>

**TOTAL TRANSFERS**

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>$ 3,590</td>
<td></td>
<td>$ 3,590</td>
</tr>
</tbody>
</table>
AMENDING RESOLUTION R-20-74 APPOINTING ANTONELLI KANTOR, P.C. AS SPECIAL COUNSEL

WHEREAS, the Township of Livingston has a need and desire to retain Special Counsel to be available to represent the Township in various specialized legal matters that may arise; and

WHEREAS, the Township Manager has determined and that the value of the services may exceed $17,500; and,

WHEREAS, the Township’s Purchasing Agent issued RFP No. 13-2019 Professional Services – Special Counsel in a Fair and Open process under N.J.S.A. 19:44A-20.5 et. Seq.; and

WHEREAS, the firm of Antonelli Kantor, P.C. submitted a proposal responsive to the RFP demonstrating the qualifications required to provide Special Counsel services; and

WHEREAS, the Township Manager is recommending the award of a contract to Antonelli Kantor, P.C. to be retained as Special Counsel to be available to provide specialized legal service when and as directed by the Township on the terms set forth in the attached proposal; and

WHEREAS, the Chief Financial Officer has certified that funds are available in the 2019 and 2020 municipal budgets.

NOW THEREFORE, BE IT RESOLVED that the Township Council of the Township of Livingston authorizes the Township Manager to enter into a contract with Antonelli Kantor, P.C. for the period of August 5, 2019 through August 4, 2020.

Rufino Fernandez, Jr., Mayor

Glenn R. Turtletaub, Township Clerk

Approved as to form:

Sharon L. Weiner, Township Attorney

Adopted: January 27, 2020