

**BEFORE THE  
PUBLIC SERVICE COMMISSION  
STATE OF NEW YORK**

\_\_\_\_\_ )  
Application of United Water New )  
Rochelle Inc. For A Declaratory Ruling )  
That Cappelli Enterprises, Inc. Must Pay )  
for the Off-Site Upgrades Required To )  
Provide Water Service to its Trump ) Case 07-W-0774  
Plaza Project in the City of New Rochelle. )  
New York; or, in the Alternative, for )  
Permission to Recover the Costs of Those )  
Off-Site Upgrades Through Its Long-Term )  
Main Replacement Program. )  
\_\_\_\_\_ )

**JOINT PROPOSAL SETTLING AND RESOLVING  
ALL ISSUES IN THIS PROCEEDING**

United Water New Rochelle Inc. ("UWNR"), New Roc Parcel 1A, LLC ("New Roc"), New Rochelle Revitalization, LLC ("NRR"), and Louis Cappelli ("Cappelli", and collectively with UWNR, New Roc, and NRR, "the Sponsoring Parties") respectfully submit this Joint Proposal for the purpose of settling and resolving all issues in this proceeding pursuant to Rule 3.9 of the Commission's Procedural Rules, 16 N.Y.C.R.R. § 3.9 (2007).

**I.**  
**BACKGROUND**

1. UWNR is a Class A water works corporation providing water service in New Rochelle, New York ("New Rochelle") and surrounding communities subject to the Commission's jurisdiction under Article 4-B of the New York Public Service Law ("PSL").

2. New Roc is owner of the premises located at 175 Huguenot Street ("the New Roc Premises") in the City of New Rochelle, New York ("New Rochelle"). New Roc is also the sponsor of Trump Plaza New Rochelle, which is located on the New Roc Premises. Invoices to

New Roc for payments due under this Joint Proposal shall be sent to New Roc c/o Cappelli Enterprises, Inc., 115 Stevens Avenue, Valhalla, New York 10595.

3. NRR is the owner of the premises located in New Rochelle and bounded on the west by North Avenue, on the south by Anderson Street, on the north by Huguenot Street and on the east by Le Count Place ("the NRR Premises"). NRR is also the developer of the proposed LeCount Square project, which is proposed to be constructed on the NRR Premises. Invoices to NRR for payments due under this Joint Proposal shall be sent to NRR c/o Cappelli Enterprises, Inc., 115 Stevens Avenue, Valhalla, New York 10595.

4. Mr. Louis Cappelli is the managing partner of New Roc and NRR.

5. For the purposes of this Joint Proposal, Maximum Daily Demand ("MDD") shall mean the customer's highest total demand for water service in gallons in any calendar day.

6. By letter dated January 18, 2006, New Roc requested that UWNR provide a maximum of 530 gallons per minute ("gpm") of water service to the New Roc Premises. If sustained over a 24 hour period, this level of service would translate into an MDD of 763,200 GPD.

7. In a study performed on May 30, 2006, UWNR's engineering consultant concluded based on computer modeling of its existing system that in order to supply 530 gpm of water service to the New Roc Premises without adversely impacting water pressure in UWNR's system, two system upgrades would be required:

- a. Cleaning and cementing the lining of the existing 16-inch main on Mayflower Avenue and North Avenue from Clove Road to Coligni Avenue ("the Cleaning and Relining Project"); and
- b. Replacing the existing 10-inch and 8-inch mains on North Avenue from Coligni Avenue to Burling Lane with approximately three thousand feet of new 12-inch main ("the 12-inch Main Replacement Project").

8. On February 21, 2007, UWNR issued a Will Serve Letter to New Roc in which UWNR agreed to provide this requested level of water service to the New Roc Premises, but reserved the right to require New Roc to make a contribution in aid of construction for any system upgrades required to provide this level of service to the New Roc Premises without adversely impacting pressure in UWNR's water system under maximum day demand and fire flow conditions ("the February 21, 2007 Will Serve Letter").

9. Actual construction of the facilities connecting the New Roc Premises to UWNR's water system was completed on May 10, 2007, and water deliveries to the New Roc Premises began on that date.

10. At the same time, UWNR undertook the Cleaning and Relining Project, which was completed on June 7, 2007. The final cost of this project, exclusive of replacements of existing hydrants and other facilities directly benefiting other customers has been determined by UWNR to be \$ 749,825.55.

11. In May of 2006, UWNR estimated the total cost of the 12-Inch Main Replacement Project, exclusive of the replacement of existing hydrants and other facilities directly benefiting other customers, to be approximately \$ 2 million. UWNR has not commenced construction of this project.

12. Because UWNR and New Roc were unable to agree on who should pay for these two system upgrades, UWNR filed its Application for Declaratory Ruling with the Commission on June 29, 2007. Cappelli Enterprises, Inc. filed an Opposition to UWNR's Application on behalf of New Roc on July 18, 2007.

13. On September 10 and 26, 2007, the Sponsoring Parties engaged in settlement discussions at the behest of the Commission's Staff. During these discussions, the Sponsoring

Parties determined that the actual water demand for the New Roc Premises would be far lower than 763,200 GPD.

14. In addition, these settlement discussions were also extended to include a discussion of the facilities required to deliver water to the NRR Premises, whose MDD is projected to be approximately 885,600 gallons per day ("GPD") with a fire flow of 1250 gpm, as well as the recovery of the costs of constructing those facilities.

15. These discussions have resulted in agreement among the Sponsoring Parties to the following terms settling and resolving all issues in this proceeding.

**II.**  
**TERMS SETTLING**  
**ALL ISSUES**

The Sponsoring Parties, intending to be legally bound, stipulate and agree to the following terms settling and resolving all issues in this proceeding:

**A Provisions Relating to the New Roc Premises**

16. The Sponsoring Parties agree that the February 21, 2007 Will Serve Letter is hereby withdrawn and replaced by the revised Will Serve Letter annexed to this Joint Proposal as Attachment A, which revised Will Serve Letter provides for a reduction in the amount of water service which UWNR is obligated to provide to the New Roc Premises to an MDD of 324,000 GPD with a project fire flow requirement of 1250 gpm.

17. The Sponsoring Parties agree that the Cleaning and Relining Project has created sufficient capacity on UWNR's system to permit it to supply the revised MDD of 324,000 GPD to the New Roc Premises without significantly reducing pressure in the affected portions of UWNR's water system and, consequently, that construction of the 12-inch Main Replacement Project is not required to provide the New Roc Premises with this level of service.

18. Unless and until the 16-Inch Main Replacement Project (as defined in section 23 of this Joint Proposal) is completed and paid for as contemplated in section 27 of this Joint Proposal, the Sponsoring Parties agree that to the extent that future demands for water service at the New Roc Premises exceed an MDD of 324,000 GPD, the customer seeking such additional service will be required to apply for additional service from UWNR and that UWNR reserves the right to require that customer to pay the costs of any system upgrades required to accommodate such increased water service without adversely impacting pressure in UWNR's water system under maximum day demand and fire flow conditions, provided however that nothing in this Joint Proposal shall be regarded as limiting the right of any such customer to challenge any such charge in a proceeding before the Commission. The Sponsoring Parties' rights in the event of the completion of the 16-Inch Main Replacement Project as provided in sections 35 to 42 of this Joint Proposal shall be governed by section 29 of this Joint Proposal and not by this section.

19. The Sponsoring Parties further agree that in exchange for this service commitment, New Roc will pay UWNR the sum of \$ 499,883.70, which represents two-thirds (2/3) of the actual cost of the Cleaning and Relining Project, inclusive of all applicable overheads, but exclusive of the cost of the replacement of existing hydrants and any other facilities directly benefiting other customers.

20. New Roc agrees that it has received, reviewed and accepts the detailed supporting documentation concerning the cost of the materials, labor and overheads that form the basis of that \$ 499,883.70 and agrees to pay that amount to UWNR within ten (10) days of Commission approval of this Joint Proposal. New Roc waives any right it may have to audit the costs incurred in connection with the Cleaning and Relining Project and UWNR waives any right it may have to require New Roc to pay any amount in excess of this amount as a contribution in aid

of construction for the facilities required to provide an MDD of 324,000 GPD of water service to the New Roc Premises.

21. Commission approval of this Joint Proposal shall constitute a Commission determination: (i) that UWNR is authorized to collect this contribution in aid of construction from New Roc; (ii) that the prudently-incurred costs associated with the replacement of existing hydrants and any other facilities directly benefiting other customers (\$ 19,376.62), as well as the remaining one-third (1/3) of the actual cost of the Cleaning and Relining Project inclusive of overheads (\$ 249,941.85), may be recovered from UWNR's customers; and (iii) that UWNR may apply to recover such costs under its Long-Term Main Replacement Program ("LTMRP")

**B Provisions Relating to the NRR Premises**

22. The Sponsoring Parties agree based on current conditions on UWNR's system that if development of the NRR Premises proceeds as presently proposed, the 12-Inch Main Replacement Project will not be adequate to accommodate the projected MDD of the NRR Premises of 885,600 GPD with a fire flow of 1250 gpm without adversely impacting the pressure on UWNR's water system.

23. The Sponsoring Parties further agree that replacing the existing 10-inch and 8-inch mains on North Avenue from Coligni Avenue to Burling Lane with approximately three thousand feet of new 16-inch main ("the 16-Inch Main Replacement Project") would be required to provide sufficient capacity to meet these requirements.

24. UWNR estimates that the cost of the 16-Inch Main Replacement Project, exclusive of hydrants and other facilities directly benefiting other customers, will exceed the cost of the 12-Inch Main Replacement Project by approximately \$ 100,000. Based on UWNR's May

2006 estimate of \$ 2 million for the 12-Inch Main Replacement Project, the cost of the 16-Inch Main Replacement Project would be approximately \$ 2.1 million. The Sponsoring Parties recognize, however, that these figures are based on 2006 estimates that are subject to change and that certain regulatory actions recently proposed by New Rochelle may dramatically increase the cost of this project. Accordingly, it is understood that UWNR will update this estimate if and when NRR requests a Will Serve Letter from UWNR for an MDD of 885,600 GPD of water service at the NRR Premises.

25. The cost estimates described above do not include any extraordinary costs that might be incurred if NRR does not request a Will Serve Letter for this level of service until after New Rochelle re-paves North Avenue, which repaving project is currently scheduled by New Rochelle for the Spring of 2008. NRR acknowledges that UWNR has informed NRR that § 281-10 of the municipal ordinances of New Rochelle prohibits UWNR from doing any construction in North Avenue for three years after this repaving has been completed, except in the case of an emergency as determined by New Rochelle's mayor, and that New Rochelle has further informed UWNR that if plans for this project are not finalized by February 1, 2008, New Rochelle intends to proceed with the re-paving of North Avenue without allowing for this project.

26. Nothing in this Joint Proposal shall be construed as requiring UWNR to move forward with the 16-Inch Main Replacement Project in violation of any municipal ordinance or other legal requirement or as requiring UWNR to pay any portion of any additional costs imposed or demanded by New Rochelle in exchange for the reopening of North Avenue within such three-year period.

27. In the event that NRR applies for an MDD of approximately 885,600 GPD of water service to the NRR Premises, the Sponsoring Parties agree that the 16-Inch Main Replacement Project will be required to maintain pressures in UWNR's water system under maximum day demand and fire flows at or near pre-project levels. Except as expressly provided in paragraph 30 below, the Sponsoring Parties further agree that to receive such service, NRR must accept and execute a Will Serve Letter in the form of Attachment B to this Joint Proposal ("the NRR Will Serve Letter") providing, among other things, that, except for the cost of replacing existing hydrants and any other facilities directly benefiting other customers, two-thirds (2/3) of the actual cost of the 16-Inch Main Replacement Project, inclusive of all applicable overheads, shall be born by NRR as provided in this Joint Proposal.

28. The Sponsoring Parties agree that to the extent that the 16-Inch Main Replacement Project is completed and paid for as contemplated in section 27 of this Joint Proposal, NRR shall have no obligation to pay any amount in excess of the amount specified in the preceding paragraph as a contribution in aid of construction for the facilities required to provide an MDD of 1,209,600 GPD of water service to the New Roc Premises and NRR Premises combined.

29. In the event that the 16-Inch Main Replacement Project is completed and paid for as contemplated in section 27 of this Joint Proposal and the combined demands for water service at the New Roc Premises and the NRR Premises thereafter exceed an MDD of 1,209,600 GPD, the customer seeking such additional service will be required to apply for additional service from UWNR, and UWNR reserves the right to require that customer to pay the costs of any system upgrades required to accommodate such increased water service without adversely impacting pressure in UWNR's water system under maximum day demand and fire flow conditions,



provided however that nothing in this Joint Proposal shall be regarded as limiting the right of any such customer to challenge any such charge in a proceeding before the Commission.

30. Notwithstanding the provisions of Paragraph 27 above, upon NRR's acceptance and execution of the NRR Will Serve Letter, NRR or its affiliate GAFCO (George A. Fuller Company) shall have the option to construct the 16-Inch Main Replacement Project using its own crews or those of GAFCO on a "no bid" basis provided:

- a. NRR and/or GAFCO demonstrates to the satisfaction of UWNR that it has the resources and the expertise to undertake this Project; and
- b. NRR agrees in writing to construct the project or cause GAFCO to construct the project to UWNR's specifications and under UWNR's supervision; and
- c. NRR agrees in writing to bear 100 percent of its own costs incurred in this project, as well as 100 percent of UWNR's costs in supplying pipe and/or other materials, if any, and 100 percent of UWNR's reasonable fees for supervising this project, inclusive of UWNR's applicable overheads; and
- d. NRR exercises this option to undertake the Project on this basis within the time limits specified in Section 37 of this Joint Proposal.

31. Alternatively, if NRR accepts and executes the NRR Will Serve Letter and if NRR or its affiliate GAFCO applies for and is approved as a contractor eligible to bid on the construction of the 16-Inch Main Replacement Project in conformance with UWNR's policies and requirements applicable to all contractors, then the Sponsoring Parties agree that NRR or its affiliate GAFCO may submit a bid to construct the 16-Inch Main Replacement Project and if selected may construct that project in accordance with the terms of that bid, in which case NRR and/or GAFCO will be compensated by UWNR in the same manner as any other contractor and the cost sharing provisions of Paragraphs 27 and 28 will apply without change.

32. Nothing in this Joint Proposal shall be construed as requiring NRR to proceed with the construction of the 16-Inch Main Replacement Project or to pay any of the costs

associated with that project unless and until NRR affirmatively elects to proceed with that project as provided in Sections 35 through 42 of this Joint Proposal, provided however that in the event that NRR does not elect to move forward with this project as provided herein prior to April 30, 2008 and UWNR thereafter concludes that the 16-Inch Main Replacement Project is required to mitigate the impacts on its water system of serving other customers, then NRR acknowledges and agrees that part or all of the capacity of that project may be dedicated to those other customers and, hence, no longer available to mitigate the impacts of the water service demands of the NRR Premises. In such circumstances, UWNR will give written notice to NRR that it has decided that the 16-Inch Main Replacement Project is required to mitigate the impacts of other new customers and the Sponsoring Parties agree to work together cooperatively to identify other means for mitigating any adverse impacts of the water demands of the NRR Premises on the pressure in UWNR's water system if and when NRR elects to move forward with development of the NRR Premises.

33. UWNR shall have no obligation to NRR to proceed with either the 16-Inch Main Replacement Project or any other upgrades to mitigate the impacts on UWNR's other customers of the demands resulting from the development of the NRR Premises – or to represent to New Rochelle or any other third party that it is committed to constructing this project – unless and until NRR shall have accepted and executed the NRR Will Serve Letter and shall have either entered into a construction contract with UWNR committing to construct this project as provided in Sections 35 and 42 of this Joint Proposal (directly or through its affiliate GAFCO) or entered into an installation contract with UWNR committing to pay its share of the 16-Inch Main Replacement Project to UWNR and made the estimated payment required by that installation agreement as provided in Section 38 of this Joint Proposal.

34. Commission approval of this Joint Proposal shall constitute a Commission determination: (i) that UWNR is authorized to collect this contribution in aid of construction from NRR; (ii) that the prudently-incurred costs associated with the replacement of existing hydrants and any other facilities directly benefiting other customers, as well as the remaining one-third (1/3) of the actual cost of the 16-Inch Main Replacement Project inclusive of overheads, may be recovered from UWNR's customers; and (iii) that UWNR may apply to recover such costs under its LTMRP.

**C. Timing of Construction of 16-Inch Main Replacement Project**

35. Upon receipt of a written request from NRR for an MDD of 885,600 GPD of water service at the NRR Premises and a check for \$ 100,000, UWNR shall promptly issue the NRR Will Serve Letter for execution by NRR, which NRR shall execute, accept and deliver to UWNR within five (5) days. In addition, UWNR shall also finalize the design of the 16-Inch Main Replacement Project and submit that design to the Westchester County Department of Health ("WCDOH") and City of New Rochelle Department of Public Works ("DPW") within twenty (20) days or such additional time as NRR and UWNR shall agree.

36. Upon approval of that proposal by WCDOH and DPW, UWNR shall submit that approved proposal to NRR within five (5) days, along with an updated estimate of the total project cost and NRR's share thereof determined in accordance with Section 27 of this Joint Proposal.

37. UWNR shall exercise its best efforts to provide NRR with thirty (30) days from receipt of that finalized design and updated cost estimate to elect whether to take full responsibility for construction of the project as provided in Section 30 of this Joint Proposal or whether to permit UWNR to place construction of that project out for bids, provided however

that UWNR may unilaterally reduce this review period to not less than ten (10) days in the event that this period would otherwise extend beyond February 15, 2008. Once this period has expired, NRR shall have no further right to elect to take full responsibility for construction of the project, but may submit a competing bid to construct the project as provided in Section 31 of this Joint Proposal.

38. In the event that the project is placed out for bids, once UWNR has reviewed the bid results and selected one or more contractors to perform the project, UWNR will provide NRR with an updated estimate of the cost of the project based on the results of that bidding process. UWNR shall have no responsibility to contract for any work on the project covered by such bids until NRR: (i) signs an Installation Contract based on the standard form attached to this Joint Proposal as Attachment C with modifications as required to implement the provisions of this Joint Proposal; and (ii) provides UWNR with payment in full of the estimated amount of its share of such costs.

39. If NRR fails to execute such Installation Contract and pay its full share of such estimated costs prior to the expiration of the bids solicited by UWNR, UWNR shall have no obligation to NRR other than to re-bid the project under the terms of this Joint Proposal, provided however that UWNR shall only be required to re-bid the project one time, and provided further that NRR shall be solely liable for any and all increased costs resulting directly or indirectly from the need for such re-bidding.

40. If NRR prefers, it may provide UWNR with a materials cost deposit to cover UWNR's cost of acquiring part or all of the pipe and related materials required for the project, so that UWNR can order those materials while the contract bidding process is still underway. If NRR elects this option and thereafter fails to proceed with this project, however, UWNR shall

have no obligation either to refund any materials cost deposit received from NRR or to store pipe and other materials ordered for this project for a period in excess of four (4) months, it being understood that UWNR has only short-term storage for the 16-inch pipe to be used in this project. At the end of such period, NRR shall collect such unused materials or, if NRR fails to do so, UWNR may dispose of such pipe and other materials as it sees fit, with no obligation to NRR.

41. (a) Upon the completion of the 16-Inch Main Replacement Project, where such Project has been constructed by NRR or its affiliate GAFCO, as provided in Paragraph 30 herein, NRR, within 30 days of receipt by it of UWNR's final and complete invoice for the costs, fees and overheads set forth in subparagraph c of Paragraph, 30, shall pay the amount of such invoice to UWNR.

(b) If UWNR shall undertake the 16-Inch Main Replacement Project, it shall determine its actual cost of constructing the Project, except for the cost of replacement of existing hydrants and any other facilities directly benefiting other customers, inclusive of overheads. In this event, two-thirds (2/3) of any difference between the estimated and actual costs of this part of the project, net of any payments previously received by UWNR from NRR, will be paid by NRR to UWNR or refunded by UWNR to NRR within 30 days of receipt by NRR of UWNR's final and complete invoice therefor, which charges shall be deemed to be charges for water service to the NRR Premises.

(c) The final invoices provided in paragraphs (a) and (b) herein shall provide accounting and audit rights consistent with UWNR's standards for PSC audits, provided however that NRR shall only be entitled to exercise such accounting and audit rights after it has paid the full amount of UWNR's final invoice.

42. If NRR elects to construct the 16-Inch Main Replacement Project (directly or through its affiliate GAFCO) under UWNR's supervision, NRR and UWNR shall enter into an agreement based on the standard form attached to this Joint Proposal as Attachment D, with modifications as required to implement the provisions of this Joint Proposal to govern such construction, and NRR shall not be authorized to commence construction of this project on UWNR's behalf until that construction agreement has been negotiated and executed by both NRR and UWNR.

**D. Other Provisions**

43. Nothing in this Joint Proposal shall be construed as providing New Roc, NRR, or Cappelli with any reservation of capacity or other rights on UWNR's system beyond an MDD of 324,000 GPD of water service to the New Roc Premises as provided in Attachment A hereto.

44. All requests for service at the NRR Premises and any requests for service to the New Roc Premises in excess of an MDD of 324,000 GPD shall be made pursuant to the provisions of UWNR's tariff filed with and approved by the Commission, as modified and in effect from time to time, except that this Joint Proposal shall apply to resolve any dispute concerning the facilities required to provide a combined MDD of 1,209,600 GPD to the New Roc and NRR Premises and the recovery of the costs of the constructing those facilities as provided in Sections 27 through 42 hereof.

45. The Sponsoring Parties agree to develop and issue a joint press release describing the resolution of the issues in this proceeding agreed to herein and further agree to refrain from making any public statements regarding the issues addressed herein prior to the issuance of that joint press release.

**II.**  
**PROVISIONS APPLICABLE TO JOINT PROPOSAL**

46. The Sponsoring Parties agree that the Commission's approval of this Joint Proposal will constitute a full and final resolution of all issues raised in UWNR's Application for Declaratory Ruling, NRR's Opposition thereto, and any other pleadings filed by the Sponsoring Parties in this proceeding.

47. The Sponsoring Parties further agree to take all reasonable action to support adoption of this Joint Proposal by the Commission.

48. The Sponsoring Parties have each participated in the drafting of this Joint Proposal and, therefore, no rule of construction should apply that would interpret this document more favorably to any Sponsoring Party.

49. The rights conferred and obligations imposed on any Sponsoring Party by this Joint Proposal shall inure to the benefit of or be binding on that Party's successors in interest or assignees, including without limitation New Roc's successors or assigns in ownership of the New Roc Premises and NRR's successors or assigns in ownership of the NRR Premises, as if each such successor or assignee was itself a Sponsoring Party.

50. This Joint Proposal is made upon the express understandings that it constitutes a negotiated settlement of this proceeding and that no person or Sponsoring Party shall be deemed to have approved, accepted, agreed to or otherwise consented to any ratemaking or tariff principle or methodology underlying or supposed to underlie any of the provisions herein. The making of this Joint Proposal shall not be deemed in any respect to constitute an admission by any Sponsoring Party with respect to any allegation or contention in these proceedings. The Commission's acceptance or approval of this Joint Proposal shall not constitute approval of, or precedent regarding, any principle or issue in these proceedings.

51. The discussions that have produced this Joint Proposal have been conducted on the explicit understanding, pursuant to Rule 3.9 of the Commission's Rules of Procedure, 16 N.Y.C.R.R. § 3.9 (2007), that neither the terms of this Joint Proposal, nor any comment on this Joint Proposal, shall be admissible in evidence against any Sponsoring Party except in any proceeding to enforce the provisions of this Joint Proposal, and on the further explicit understanding that any discussions among the Sponsoring Parties with respect to this Joint Proposal prior to the execution and filing thereof shall not be subject to discovery or admissible in evidence except in a proceeding to enforce the provisions of this Joint Proposal.

52. This Joint Proposal is expressly conditioned upon the acceptance or approval by the Commission of all provisions thereof without material change or condition. In the event that the Commission does not accept or approve this Joint Proposal in its entirety and without material change or condition, this Joint Proposal shall at the option of any of the Sponsoring Parties be deemed withdrawn and shall not constitute any part of the record in this proceeding or be used for any other purpose, and each of its provisions shall be deemed null and void, provided such option shall be deemed waived if not exercised within 20 days of issuance of a Commission order modifying or conditioning approval of this Joint Proposal.

53. This Joint Proposal supersedes any and all prior representations, agreements, instruments and understandings among the Sponsoring Parties whether written or oral, relating to the matters addressed herein. There are no other oral understandings, terms or conditions of this Joint Proposal and none of the Sponsoring Parties has relied upon any such representation, express or implied in making this Joint Proposal.



**IV.**  
**CONCLUSION AND**  
**REQUEST FOR RELIEF**

The undersigned Sponsoring Parties, by their signatures, on this 19th day of December, 2007 hereby agree to the settlement and resolution of all issues in this proceeding provided in this Joint Proposal and respectfully request that the Commission accept, adopt or approve the terms of this Joint Proposal without material change or condition.

United Water New Rochelle Inc.

By: M. Painting

Title: V.P. & G.M.


New Roc Parcel 1A, LLC

By: 

Louis Cappelli

Title: Managing Partner

New Rochelle Realization, LLC

By: 

Louis Cappelli

Title: Managing Partner

**ATTACHMENT A**

**WILL SERVE LETTER FOR  
TRUMP PLAZA NEW ROCHELLE**

December 19, 2007

Mr. Joseph V. Apicella  
Member  
New Roc Parcel 1A, LLC  
115 Stevens Avenue  
Valhalla, New York 10595

Re: Water Service to Trump Plaza New Rochelle

Dear Mr. Apicella:

Pursuant to the Joint Proposal Settling and Resolving All Issues (the "Joint Proposal") in Case 07-W-0744 before the New York State Public Service Commission ("the PSC") dated December 19, 2007, United Water New Rochelle Inc. ("UWNR") hereby agrees to provide water service to the premises owned by New Roc Parcel 1A, LLC ("Customer") and located at 175 Huguenot Street in the City of New Rochelle, New York ("the Premises"), as specified in this letter agreement.

UWNR will provide water service to the Premises in accordance with the rules, regulations and orders of the PSC and the provisions of UWNR's tariff filed with and approved by the PSC and in accordance with the provisions set forth herein. UWNR's obligation to provide water service to the Premises pursuant to this letter shall be limited to a Maximum Daily Demand (as defined in the Joint Proposal) of 324,000 gallons per day ("GPD") and fire protection service demand of 1250 gpm. This letter supersedes in its entirety and replaces all prior commitments by UWNR to provide water service to the Premises and may only be modified in a written agreement signed by UWNR and the Customer.

To the extent that the Project requires water service in excess of these amounts, Customer shall file a new application for service to the Premises under the applicable provisions of UWNR's tariff, and UWNR will evaluate that application and determine whether any additional off-site upgrades will be required to accommodate that service request without adversely impacting the pressure in UWNR's water system under maximum day demand and fire flow conditions. If UWNR determines that such off-site upgrades are required and if UWNR and the Customer are unable to agree on the recovery of those costs, either UWNR or Customer may file a petition with the PSC seeking an order specifying how such costs will be recovered.

The understandings embodied in this letter agreement are expressly premised on the Customer's agreement to pay UWNR \$ 499,883.70 as Customer's share of the cost of the off-site upgrades required for service to the Premises as specified in the Joint Proposal. No further capital contributions will be required of the Customer for the level of service authorized in this letter. This letter agreement shall be void and of no force and effect whatsoever unless and until the PSC approves the Joint Proposal without material change or conditions unacceptable to UWNR.

Very truly yours,



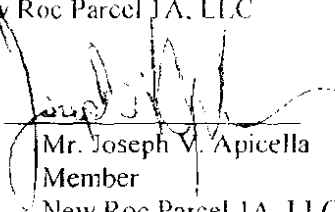
Donald F. Distant, P.E.  
Director, Master Planning  
United Water

For United Water New Rochelle Inc.

ACCEPTED AND AGREED

New Roc Parcel 1A, LLC

By:



Mr. Joseph V. Apicella  
Member

New Roc Parcel 1A, LLC

**ATTACHMENT B**

**WILL SERVE LETTER FOR  
LeCOUNT SQUARE**

Mr. Joseph V. Apicella  
Member  
New Rochelle Revitalization, LLC  
115 Stevens Avenue  
Valhalla, New York 10595

Re: Water Service to LeCount Square New Rochelle

Dear Mr. Apicella:

Pursuant to the Joint Proposal Settling and Resolving All Issues (the "Joint Proposal") in Case 07-W-0744 before the New York State Public Service Commission ("the PSC") dated December 19, 2007, United Water New Rochelle Inc. ("UWNR") hereby agrees to provide water service to the premises owned by New Rochelle Revitalization, LLC ("Customer") and New Roc Parcel 1A, LLC ("New Roc") located in New Rochelle and bounded on the west by North Avenue, on the south by Anderson Street, on the north by Huguenot Street and on the east by Le Count Place ("the Premises") and 175 Huguenot Street ("the New Roc Premises") in the City of New Rochelle, New York, as specified in this letter agreement.

This letter shall become effective upon completion of the 16-Inch Main Replacement Project (as defined in the Joint Proposal) and shall supersede in its entirety and replace all prior commitments by UWNR to provide water service to the Premises and the New Roc Premises (including the Will Serve Letter between UWNR and New Roc dated December 19, 2008) and may only be modified in a written agreement signed by UWNR, New Roc and the Customer.

UWNR will provide water service to the Premises and to the New Roc Premises in accordance with the rules, regulations and orders of the PSC and the provisions of UWNR's tariff filed with and approved by the PSC and in accordance with the provisions set forth herein. UWNR's obligation to provide water service to the Premises and to the New Roc Premises pursuant to this letter shall be limited to a combined Maximum Daily Demand (as defined in the Joint Proposal) of 1,209,600 gallons per day ("GPD") and fire protection service demand of 1250 gpm.

To the extent that the combined demands of the Project and the New Roc Premises exceed these amounts, Customer or New Roc shall file a new application for service to the Premises under the applicable provisions of UWNR's tariff, and UWNR will evaluate that application and determine whether any additional off-site upgrades will be required to accommodate that service request without adversely impacting the pressure in UWNR's water system under maximum day demand and fire flow conditions. If UWNR determines that such off-site upgrades are required and if UWNR and the Customer and New Roc are unable to agree on the recovery of those costs, either UWNR, Customer or New Roc may file a petition with the PSC seeking an order specifying how such costs will be recovered.

The understandings embodied in this letter agreement are expressly premised on the Customer's and New Roc's compliance with all of the provisions of the Joint Proposal, including without limitation New Roc's obligation to pay UWNR \$ 499,889.70 as New Roc's share of the cost of the off-site upgrades required for service to the New Roc Premises and Customer's entering into either: (i) a written installation agreement with UWNR committing Customer to pay its share of the cost of installing the 16-Inch Main Replacement Project and furnish the advance payment, all as specified in the Joint Proposal and Attachment C thereto; or (ii) a written construction agreement with UWNR committing Customer to construct that project to at its own expense as specified in the Joint Proposal and Attachment D thereto. No further capital contributions will be required of the Customer or New Roc for the level of service authorized in this letter. This letter agreement shall be void and of no force and effect whatsoever unless and until the PSC approves the Joint Proposal without material change or conditions unacceptable to UWNR.

Very truly yours,

Donald F. Distant, P.E.  
Director, Master Planning  
United Water

For United Water New Rochelle Inc.

ACCEPTED AND AGREED

New Rochelle Revitalization, LLC

By: \_\_\_\_\_  
Mr. Joseph V. Apicella  
Member  
New Rochelle Revitalization, LLC

New Roc Parcel 1A, LLC

By: \_\_\_\_\_  
Mr. Joseph V. Apicella  
Member  
New Roc Parcel 1A, LLC

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**ATTACHMENT C**

**FORM OF  
INSTALLATION AGREEMENT**

**Company Performed Installation**



**AGREEMENT FOR EXTENSION  
Company Performed Installation**

**(Applicable to Extensions for Real Estate Developers)**

THIS AGREEMENT, made this \_\_\_\_ day of \_\_\_\_\_, Two Thousand and One, between United Water New Rochelle, Inc., a corporation of the State of New York, with its principal office at 2525 Palmer Avenue, New Rochelle, New York 10801, hereinafter called the "Company" and

-----  
(name)

-----  
(address)

hereinafter called the "Applicant", WITNESSETH:

**ARTICLE ONE**

In consideration of the performance by the Applicant of the covenants hereinafter set forth, the Company agrees:

FIRST: To install and maintain an extension to its mains as follows:

SECOND: To install and maintain service connections from the said main to the property line of each premise to be served.

THIRD: The estimated cost of said main extension, including taxes, the cost of the service connections and any other extension cost as defined in 16 NYCRR part 501, is **DOLLARS (\$ )**.

**ARTICLE TWO  
THE APPLICANT AGREES:**

FIRST: To advance the Company, simultaneously with the execution of this agreement the sum of \_\_\_\_\_ (\$) which represents the estimated cost of the main extension, the cost of the service connections, fire hydrants, accessories and all applicable taxes and other extension costs as defined in 16 NYCRR part 501. The advance so paid shall be the absolute property of the Company. (The Company may require a separate check for that portion of the deposit representing taxes.)

SECOND: To connect the buildings under construction to the said service connections upon completion thereof for the purpose of receiving regular water service therefrom.

THIRD: To provide all easements and rights-of-way, which the Company considers necessary either from the Applicant or from third persons, as the case may be, to assure the legal feasibility of the extension, without cost to the Company.

FOURTH: To abide by all the rules and regulations of the Company and the rules and regulations set forth in the Company's schedule for water service, duly filed with the Public Service Commission of the State of New York, as may be amended from time-to-time

FIFTH: The title to the mains and service connections furnished and installed by the Company shall be and remain the sole property of the Company and the extension shall be and remain a part of the distribution system of the Company for all purposes. Should further or additional longitudinal or lateral extensions be made from any point on this extension, the Applicant shall not by reason thereof, be entitled to any credits or refund therefrom.

SIXTH: To provide the Company with written notification of any change affecting this application with respect to change in ownership, change of applicants' address or change of applicant's phone numbers. It is the applicant's responsibility to provide this information in order to insure the timely issue of refund checks. UWNR shall not be held responsible for any returned checks due to the applicant's failure to comply with this requirement.

**ARTICLE THREE**  
**BOTH PARTIES AGREE THAT:**

FIRST: (a) As soon as the actual cost of the main extension, including the cost of the service connections, is known, if the estimated cost exceeds the actual cost, the company shall within sixty (60) days refund the difference and the proportionate amount of taxes to the Applicant.

(b) If the actual cost exceeds the Applicant's advance, the excess, including the proportionate amount of taxes, shall be paid to the Company by the Applicant within sixty (60) days of receipt of notice from the Company itemizing the actual cost.

SECOND: Except as provided in subparagraph (b) below, no refund on the advance shall be made to the Applicant before the expiration of one year from the date of the completion of the extension, i.e. the date when water service becomes available to the premises to be served by the extension.

(a) At the expiration of one year from the date of completion of the extension aforesaid, and annually thereafter, the Applicant shall be entitled to a refund, of a portion of the cost deposited by Applicant without interest; said refund being proportionate to the number of customers connected to the extension for that year multiplied by seventy-five (75) feet and then divided by the total extension length. Any refund made shall include a proportionate amount of taxes.

(b) The cost of installing the fire hydrants shall be refunded to the Applicant at such time as the hydrants become usable and revenue is collected through hydrant charges.

(c) The right to any refunds, partial or total, except such refunds pursuant to the second paragraph hereof, shall expire five years from the date of the completion of the extension. The total amount of all refunds, as hereinabove set forth, shall in no case exceed the amount of the advance.

THIRD: No interest on the refund will be paid except that if refunds are not made within 60 days of the date the Applicant is entitled to a refund, the refund shall begin to accumulate interest at the then existing customer deposit rate established by the Public Service Commission. Such interest obligation shall cease when a reasonable effort has been made by the Company to tender the refund.

FOURTH: The above considerations shall be in addition to and independent of any charges to the Applicant as a customer of the Company for water service for which the Applicant shall be charged at the regular rates of the Company.

FIFTH: Should the Company for any reason fail or be unable to furnish, lay and connect said extension as herein provided, it shall not be liable to the Applicant for more than the amount advanced by the Applicant to the Company

SIXTH: The covenants contained herein are to apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties

IN WITNESS WHEREOF, the Applicant and the Company have caused this agreement to be executed the day and year first above written.

United Water New Rochelle

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Witness

Applicant:

\_\_\_\_\_  
(L.S.)

\_\_\_\_\_  
(L.S.)

\_\_\_\_\_  
(L.S.)

\_\_\_\_\_

\_\_\_\_\_  
Address

**ATTACHMENT D**

**FORM OF  
INSTALLATION AGREEMENT**

**Applicant Performed Installation**

**AGREEMENT FOR EXTENSION  
Applicant Performed Installation**

THIS AGREEMENT, made this \_\_\_ day of \_\_\_\_\_, One Thousand Nine Hundred and \_\_\_\_\_, between United Water New Rochelle, a corporation of the State of New York, with its principal office at 2525 Palmer Avenue, New Rochelle, New York 10801, hereinafter called the "Company" and

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address, City, Town or Village, State, Zip Code)

hereinafter called the "Applicant". WITNESSETH:

**ARTICLE ONE**

In consideration of the performance by the Applicant of the covenants hereinafter set forth, the Company agrees:

FIRST: To permit the Applicant to install an extension to the Company's mains as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SECOND: To permit the Applicant to install fire hydrants and service connections from the said main to the property line of each premises to be served.

THIRD: (a) The Applicant's estimate of the cost of said main extension, including the cost of service connections is \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_). The Applicant shall provide the Company with details of such cost as may be requested by the Company.

(b) The Applicant's estimate of the cost of installing fire hydrants required for the extension is \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_). The Applicant shall provide the Company with details of such cost as may be requested by the Company.

(c) The Company's estimate of installing the main extension, including the cost of the service connections, is \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_).

(d) The Company's estimate of the cost of installing fire hydrants required for the extension is \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_).

(e) The Company fees for inspection are \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_).

**ARTICLE TWO**  
**THE APPLICANT AGREES:**

FIRST: To advance the Company, simultaneously with the execution of this agreement: (a) the sum of \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_ ), which represents the Company fees for inspection, AND (b) the sum of \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_ ), which represents the taxes imposed by any governmental authority on the value of the labor and materials provided in connection with the main extension, the cost of fire hydrants, service connections and the Company fees for inspection. The advance so paid shall be the absolute property of the Company; for purposes of determining the applicable taxes, the Company's cost estimates shall be used.

SECOND: To connect the buildings under construction to the said service connections upon completion thereof for the purpose of receiving regular water service therefrom.

THIRD: To use contractors and materials acceptable to the Company. Said installation and connection shall be pursuant to the Company's specifications, and shall be subject to the Company's inspection and acceptance. All work and materials performed or provided by Applicant shall be of first class quality and shall be in compliance with all applicable rules, laws and regulations of each governmental body or agency having jurisdiction.

FOURTH: To provide all easements and rights-of-way, which the Company considers necessary either from the Applicant or from third persons, as the case may be, to assure the legal feasibility of the extension, without cost to the Company.

FIFTH: To abide by all the rules and regulations of the Company and the rules and regulations set forth in the Company's schedule for water service, duly filed with the Public Service Commission of the State of New York, as may be amended from time-to-time.

SIXTH: The title to the mains, fire hydrants and service connections furnished and installed by the Applicant shall be and remain the sole property of the Company and the extension shall be and remain a part of the distribution system of the Company for all purposes. The Applicant shall provide the Company with appropriate documentation conveying ownership to the Company. Should further or additional longitudinal or lateral extensions be made from any point on this extension, the Applicant shall not by reason thereof, be entitled to any credits or refund therefrom.

SEVENTH: To indemnify and hold the Company, its owners, the Engineer, and each of their officers, employees, and agents harmless from and against any and all direct or indirect loss or expense, including without limitations any attorney's fees or costs, relating to any claims or suits for

damage or injury, including death, to any property or any person arising from, or occurring in connection with, its performance of any work or the furnishing of any materials contemplated by this Agreement, irrespective of whether any such damage or injury is caused by or results from the negligence of Applicant or any officer, agent, employee or contractor of the Applicant or arises from or occurs in connection with any breach of this Agreement by the Applicant.

Insurance - The Applicant agrees to provide, at its own expense, the following insurance coverage's:

<u>Types</u>	<u>Minimum Amounts</u>
(a) Workers Compensation Insurance	
Coverage A, Workers' Compensation	Statutory
Coverage B, Employers Liability	\$2,000,000
(b) Comprehensive General Liability Insurance	\$5,000,000 each occurrence

The coverage provided shall include "Comprehensive Form, Premises/Operations Underground, Explosion & Collapse Hazard, Products/Completed Operations, Contractual, Independent Contractors, Broad Form Property Damage, and Personal Injury"

(c) Owners Protective Insurance	\$5,000,000 each occurrence
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This insurance coverage shall be in favor of the Owner.

(d) Comprehensive Automobile Liability Insurance	
Bodily Injury	\$1,000,000 per person per accident
Property Damage	\$1,000,000 each occurrence

The coverage provided shall include "Any Auto, All Owned Autos (Priv. Pass.), All Owned Auto (Other Than Priv. Pass.), Hired Autos, and Non-Owned Auto's. Also, if the WATER COMPANY deems it necessary "Garage Liability" coverage will be provided as well.

(e) If any part of the work is to be performed by a subcontractor, the Applicant shall be responsible for insuring each subcontractor possesses and maintains insurance as specified above in paragraphs (a), (b), and (d).

Certificates of insurance shall name the Company as an additional insured and shall be furnished to the Company prior to the commencement of work. Such insurance shall be placed with duly qualified and financially responsible insurance carriers licensed to do business in the State of New York and shall provide that the same may not be canceled for two years after completion of the work contemplated by this Agreement.

EIGHTH: The Applicant shall warrant that work performed in installing the main and appurtenances is free of any defect of equipment, material or workmanship for a period of two

years from completion and approval of the extension or within such longer period of time as may be prescribed by law. Under this warranty, the Applicant, under Company supervision, shall remedy at his own expense any failure or defect upon receipt of written notice from the Company within a reasonable time after the discovery of such failure, defect or damage. In addition, during the aforesaid warranty period, the Applicant shall remedy at his own expense, under Company supervision, any damage to Company-owned or controlled real or personal property, when that damage is the result of any defect of equipment, material or workmanship installed by the Applicant. *The Applicant's warranty with respect to work repaired or replaced hereunder will run for one year from the date of such repair or replacement.* During the warranty period as defined herein, the Applicant shall reimburse the Company for the cost of any emergency repairs relating to Applicant's work undertaken by the Company to maintain the system in good working order.

NINTH: To provide the Company with written notification of any change affecting this application with respect to change in ownership, change of applicants' address or change of applicant's phone numbers. It is the applicant's responsibility to provide this information in order to insure the timely issue of refund checks. UWNR shall not be held responsible for any returned checks due to the applicant's failure to comply with this requirement.

**ARTICLE THREE**  
**BOTH PARTIES AGREE THAT:**

FIRST: As soon as the actual cost of the main extension, including the cost of the service connections and fire hydrants is known, the Applicant shall notify the Company and provide the cost documentation as required by the Company.

SECOND: (a) Except as provided in subparagraph (b) below, no refund of the cost of the installation shall be made to the Applicant or its successors and assigns before the expiration of one year from the date of the completion and approval of the extension, and transfer to title of the mains to the Company. At the expiration of one year from the date of completion of the extension as aforesaid, the Applicant or its successors and assigns shall be entitled to a refund of the cost of the extension, without interest, proportionate to the number of customers connected to the extension that year multiplied by seventy-five (75) feet and then divided by the total extension length. The refund shall include a proportionate amount of the taxes advanced to the Company pursuant to paragraph FIRST of Article Two.

(b) The cost of installing the fire hydrants shall be refunded to the Applicant at such time as the hydrants become usable and revenue is collected through hydrant charges.

THIRD: The right to any refunds, partial or total, except such refunds as shall have already accrued pursuant to Paragraph Second hereof, shall expire five years from the date of the completion and approval of the extension. The total amount of all refunds, as hereinabove set forth, shall in no case exceed the Company's original cost estimate for the extension together with associated taxes, or in the event the actual cost is less than the Company's estimate, then the refund shall not exceed the actual cost of the extension together with associated taxes.

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FOURTH: No interest will be paid on the refund, except that if refunds are not made within 60 days of the date refunds begin to accrue, the refund shall then begin to accumulate interest at the then effective customer deposit rate established by the Public Service Commission. Such interest obligation shall cease when a reasonable effort has been made by the Company to tender the refund.

FIFTH: The above considerations shall be in addition to and independent of any charges against the Applicant as a customer of the Company, for water service for which the said Applicant shall be charged at the regular rates of the Company.

SIXTH: Should the Applicant for any reason fail to commence installation within one year of this Agreement, the Company shall have the right to terminate this Agreement.

SEVENTH: The covenants contained herein are to apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties.

IN WITNESS WHEREOF, the Applicant and the Company have caused this agreement to be executed the day and year first above written.

United Water New Rochelle

By: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Witness

Applicant:

\_\_\_\_\_ (L.S.)

\_\_\_\_\_ (L.S.)

\_\_\_\_\_ (L.S.)

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Phone Number

Applicant Performed.DOC  
December 19, 2007