

TRAIL EASEMENT

THIS TRAIL EASEMENT is made on this _____ day of April, 2024,

BETWEEN VEOLIA WATER NEW JERSEY, INC., a New Jersey corporation with its principal office at 461 From Road, Paramus, New Jersey, referred to as “**GRANTOR**”, and the **COUNTY OF PASSAIC**, a corporate body politic of the State of New Jersey, having its principal offices at the Passaic County Administration Building, 401 Grand Street, Paterson, New Jersey, hereinafter referred to as “**GRANTEE**”

W I T N E S S E T H:

WHEREAS, GRANTOR, is the owner in fee of certain parcels located at Block 303, Lot 1, and Block 301.01, Lot 1, as shown on the Official Tax Map of the Borough of Wanaque, as shown and further described in the Topographic Right-of-Way Survey of the Highlands Rail Trail, dated February 16, 2018 and prepared by Jay M. Kimler, P.L.S. of Tectonic Engineering & Surveying Consultants, P.C., attached hereto as Schedule A (collectively, the “Property”); and

WHEREAS, GRANTOR owns, operates, and maintains a major aqueduct, pipelines, and associated improvements, and other appurtenances (hereafter “Pipeline Facilities”) that run through the Property, which Pipeline Facilities are utilized for the transmission of non-potable water for eventual potable use to customers of Veolia Water New Jersey, Inc.; and

WHEREAS, the purpose of this Trail Easement is to permit **GRANTEE** to create a recreational trail (hereafter “Recreational Trail”) over the Property and further permit the recreational activities described in Articles 1 and 2 herein, detail rules regarding the use of the Property under this Trail Easement, and identify the rights and responsibilities of **GRANTOR** and **GRANTEE**; and

WHEREAS, this Trail Easement, together with a separate Amendment to Trail Easement by and between North Jersey District Water Supply Commission, Veolia Water New Jersey, Inc., and the County of Passaic as to certain parcels located at Block 462, Lot 1, Block 447, Lot 1, Block 429, Lot 1, and Block 407, Lot 1, as shown on the Official Tax Map of the Borough of Wanaque, shall supersede the Trail Easement between North Jersey District Water Supply Commission and the County of Passaic dated September 12, 2018 and recorded September 27, 2018 in the Passaic County Register’s Office at Book D3414, Page 79,

NOW, THEREFORE, in consideration of **ONE dollar (\$1.00)** and other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, and in further consideration of the mutual promises set forth herein, **GRANTOR** does hereby impress upon and convey to **GRANTEE** the following permanent Trail Easement, which is more particularly outlined herein, which shall hereafter be covenants which run with the land and shall inure to the benefit of and be binding upon **GRANTEE**:

Article 1. Grant of Easement for the Highlands Rail Trail

1.01 Grant

GRANTOR grants and conveys to **GRANTEE** the perpetual right to create the Highlands Rail Trail identified below; to enter into the Property at any time, with proper notification, to construct, install, maintain, and repair the items (collectively, with the trail, the “Highlands Rail Trail”) described in paragraph (a) below and, subject to prior written consent of **GRANTOR**, those described in paragraph (b) below.

(a) Permitted Trail Facilities

- (1) A trail not to generally exceed approximately ten (10) feet in clear tread width;
- (2) Trailheads;
- (3) Signs to mark the trail, to provide information related to the trail, and for interpretative purposes; and
- (4) Benches, picnic tables, wastebaskets, and bicycle racks, that do not block the trail.

(b) Trail Facilities Requiring Prior Written Consent of GRANTOR

- (1) Fencing, gates, and barriers to control access, which will not block the any right of way enjoyed by **GRANTOR**, and will be mutually agreed upon by the **GRANTOR** and **GRANTEE**.

1.02 Exercise of Rights

Construction, installation, maintenance, and repair of the Highlands Rail Trail may include paving, trailblazing, grading, fencing, cutting vegetation, application of gravel, crushed stone, wood chips, landscape plantings, and other maintenance and construction operations as may be required to maintain and preserve the initial construction of the trail. **GRANTEE** understands and agrees that there shall be a minimum of three (3) feet of cover maintained on the Pipeline Facilities. However, heavy equipment is not permitted on the **GRANTOR**'s Aqueduct and **GRANTEE** understands that there is a maximum load limited of three (3) tons on the Pipeline Facilities and agrees not to exceed that at any time.

Article 2. Grant of Easement for Public Access

2.01 Grant

The undersigned **GRANTOR** grants and conveys to **GRANTEE** the right to make available to the public a perpetual easement and right-of-way over the Highlands Rail Trail and the right to use the Trail Facilities for the purposes described in paragraph (a) below and, subject to the prior written consent of **GRANTOR**, those described in paragraph (b) below:

- (a) **Permitted Trail Use.** Use of the Highlands Rail Trail as a right-of-way for: (1) walking, hiking, jogging, bicycling, horseback riding, bird watching, and natural study; (2) power-driven mobility devices for use by person who have mobility impairments; and (3) emergency vehicles in the case of emergency within the Easement Area.
- (b) **Uses Requiring Prior Written Consent of GRANTOR.** Events such as charity runs or competitive races, programmatic use by schools, clubs, or other groups; or use of the Highlands Rail Trail for purposes other than as a right-of-way for passage over the Property such as picnicking or other stationary activities.

- (c) **GRANTEE** shall be prohibited from utilizing the Property in any way or performing any activity within the Property that shall have a detrimental impact upon the Pipeline Facilities, or disrupt, obstruct, interfere or adversely affect in any way the GRANTOR's efficient water treatment operations, the protection of the Owner's Pipeline Facilities, and the health, safety and welfare of the public ("Prohibited Uses"). The Prohibited Uses shall include, but not be limited to, parking vehicles, goods or materials on, erecting fencing on (unless consent is provided pursuant to Section 2.01(b) above), storing of hazardous materials or equipment on, occupying in any way or engaging in any activity that may damage the Property. In the event of any violation by **GRANTEE** of the covenants and conditions contained in this Paragraph 2.01(c), **GRANTOR** or its designee shall be entitled to recover, in any action to enforce the terms hereof, damages, costs and fees, including without limitation, reasonable attorney's fees.
- (d) No building or other structure shall be erected by the **GRANTEE** on the Property, except for the Recreational Trail, without the **GRANTOR**'s express written consent in its sole and exclusive discretion. Notwithstanding the foregoing, no path may be constructed directly above **GRANTOR**'s Pipeline Facilities, including but not limited to vaults, manholes and/or air vent chambers, unless necessary for the uninterrupted continuation of the Recreational Trail, which shall be constructed with the express written consent of **GRANTOR**.
- (e) There shall be no dumping or placing of soil or other substances or material, such as landfill by the **GRANTEE**, except as needed for Recreational Trail construction purposes, without the **GRANTOR**'s express written consent in its sole and exclusive discretion. There shall be no dumping of trash, waste or unsightly or offensive materials, or use of pesticides and/or herbicides by the **GRANTEE** or the public on the Property. **GRANTEE** shall be responsible for the removal of any and all trash, waste, unsightly or offensive materials on the Property by the public utilizing the Recreational Trail.
- (f) No soil, loam, peat, gravel, rock or other mineral substances shall be excavated, dredged or removed from the Property except as needed for Recreational Trail construction purposes, without the **GRANTOR**'s express written consent in its sole and exclusive discretion.

2.02 No Charge for Access

No person is permitted to charge a fee for access to the Highlands Rail Trail for use of the Trail Facilities.

2.03 Incorporation of the Highlands Rail Trail into the Passaic County Park System

The Highlands Rail Trail will be incorporated into the Passaic County Park System as a recreational facility available to all members of the public. Veolia Water New Jersey, Inc. shall be given proper attribution as the owner of the Property on all signs, marketing materials, and other materials promoting the Highlands Rail Trail.

2.04 Daily Maintenance by the Passaic County Department of Parks and Recreation

The Passaic County Department of Parks and Recreation will be responsible for daily maintenance to the Highlands Rail Trail, including keeping the trail free of debris and litter, snow removal, and emptying waste receptacles, and other improvement or repair projects that arise.

Article 3 Rights of Veolia

3.01 Veolia Improvements

GRANTOR will consult with the **GRANTEE** regarding the construction, installation, or facility improvements within the Property, and take all necessary steps to reasonably ensure accessibility and mobility for pedestrians and cyclists on the Highlands Rail Trail. However, nothing contained in this Trail Easement shall be construed, in any way, to preclude or otherwise limit **GRANTOR**'s right to use the Property in general by persons, vehicles and machinery, including without limitation, inspection, repair, operation, maintenance, installation, construction and other improvements to the Pipeline Facilities in any manner it deems necessary and appropriate.

3.02 Veolia Uses and Activities

Except as limited under this article, **GRANTOR** have all the rights recognized under New Jersey law to use the Property for the purposes consistent with and not interfering with the easement rights granted to **GRANTEE**. **GRANTOR**'s rights include those set forth below:

- (a) **Mitigating Risk.** Cut trees or otherwise disturb resources to the extent reasonably prudent to remove or mitigate against an unreasonable risk of harm to Persons on or about the Property.
- (b) **Grants to Others.** Grant leases, licenses, easements, and rights-of-way affecting the trail easement to Persons other than **GRANTEE** but only for those facilities, improvements, activities, and uses permitted to **GRANTOR** under this article.
- (c) **Enforcement Rights.** Remove or exclude from the Property Persons who are: (1) in locations other than the Highlands Rail Trail or other Trail Facilities; (2) Not engaged in permitted trail uses; or (3) Pose a threat or danger to **GRANTOR** operations.

Article 4. Enforcement; Liability Issues

4.01 Enforcement

GRANTEE may, in addition to other remedies available at law or in equity, compel **GRANTOR** to make the area of the Property reserved for the Highlands Rail Trail available for the purposes set forth in Articles 1 and 2 by exercising any one or more of the following remedies, without need to show that a civil action for damages is not available to furnish compensation:

- (a) **Injunctive Relief.** Seek injunctive relief to specifically enforce the terms of this trail easement; to restrain present or future violations of this agreement; or to compel restoration of Trail Facilities, the Highlands Rail Trail, or other resources destroyed or altered as a result of the violation.
- (b) **Self Help.** Enter the Property to remove any barrier to the access provided under this trail easement and to do such other things as are reasonably necessary to protect and preserve the rights of **GRANTEE** under this trail easement.

4.02 Public Enters at Own Risk

Use of any portion of the Highlands Rail Trail by members of the general public is at their own risk. Neither **GRANTEE** nor **GRANTOR** by entering into this Trail Easement assume duty to or for the benefit of the general public for defects in the location, design, installation, maintenance, or repair of the Highlands Rail Trail; for unsafe defects in the location, design, installation, maintenance, or repair to the

Trail Facilities; for unsafe conditions within the Property; or for the failure to inspect for or warn against possibly unsafe conditions; or to close the Highlands Rail Trail to public access when unsafe conditions may be present. **GRANTEE** will endeavor to repair damaged Trail Facilities but has no duty to do so unless and until **GRANTEE** receives notice given in accordance with Article 6 herein, or is otherwise put on notice, of the need to repair an unreasonably dangerous condition.

4.03 Costs and Expenses

All costs and expenses associated with the Highlands Rail Trail are to be borne by the **GRANTEE** except for items included in Article 3 herein.

4.04 Responsibility for Losses and Litigation Expenses

(a) **Indemnity.** **GRANTEE** agrees to indemnify, defend, and hold **GRANTOR** harmless from any loss or litigation expense if and to the extent arising from negligence on behalf of the **GRANTEE**.

(b) Loss; Litigation Expense

- (1) The term “Loss” means any liability, loss, claim, settlement payment, costs and expense, interest, award, judgement, damages (including punitive damages), diminution in value, fines, fees, and penalties or other change other than a Litigation Expense.
- (2) The term “Litigation Expense” means any court filing fee, court cost, arbitration fee or cost, witness fee, and each other fee and cost of investigating and defending or asserting any claim of violation or for indemnification under this trail easement including, in each case, attorney’s fees, other professionals’ fees, and disbursements.

Article 5. Miscellaneous

5.01 Binding Trail Easement

This Trail Easement is a servitude running with the land binding upon the undersigned **GRANTOR**, and, upon recordation with the Passaic County Clerk, all subsequent owners of the Property are bound by its terms whether or not the owners had actual notice of this Trail Easement and whether or not the deed of transfer specifically referred to the transfer being under and subject to this Trail Easement. This Trail Easement binds and benefits **GRANTOR** and **GRANTEE** and their respective personal representatives, successors, and assigns.

5.02 Governing Law

The laws of the State of New Jersey govern this Trail Easement.

5.03 Incorporation by Reference

Each exhibit or schedule referred to in this Trail Easement is incorporated into this legal instrument by this reference.

5.04 Amendments; Waivers

No amendment or waiver of any provision of this Trail Easement or consent to any departure by **GRANTORS** from the terms of this Trail Easement is effective unless the amendment, waiver, or

consent is in writing and signed by an authorized signatory for **GRANTEE**. A waiver or consent is effective only in the specific instance and for the specific purpose given. An amendment must be filed with the Passaic County Clerk.

5.05 Severability

All agreements and covenants contained herein are severable, and in the event any of them shall be held to be invalid by any competent court, this Trail Easement shall be interpreted as if such invalid agreements or covenants were not contained herein. Should one or more covenants or conditions be waived by either party, such waiver shall not be deemed to waive or render unnecessary the consent or approval of the waiving party to or of any subsequent similar act by the other party.

5.06 Entire Agreement

This Trail Easement contains all of the terms and conditions agreed upon by the **GRANTOR** and **GRANTEE** and supersedes all other negotiations, representations, and understandings of the **GRANTOR** and **GRANTEE**, oral or otherwise, regarding the subject matter as to the Property.

5.07 Notices

All notices, reports, statements, requests, or authorizations required to be give hereunder shall be personally delivered or sent by first class mail to the **GRANTOR** and **GRANTEE** at the following addresses, unless a party has been notified of a change of address:

To: County of Passaic
401 Grand Street, Room 205
Paterson, NJ 07505
Attn: Matthew P. Jordan, Esq.

To: Veolia Water New Jersey, Inc.
461 From Road
Paramus, NJ 07652
Attn: Brian J. Yarzab, Esq.

5.08 Warranty

The undersigned **GRANTOR** warrants to the **GRANTEE** that:

- (a) Liens and Subordination. The Property is, as of the Easement Date, free and clear of all liens or, if it is not, that **GRANTOR** has obtained and attached to this Trail Easement as an exhibit the legally binding subordination of any lien affecting the Property as of the Easement Date.
- (b) Existing Agreements. No one has the legally enforceable right (for example, under a lease, easement, or right-of-way agreement) to prevent the installation or public use of the Highlands Rail Trail.
- (c) Hazardous Materials. To the best of their knowledge, the Property is not contaminated with hazardous or toxic materials, and no such materials have been stored or generated there.

INTENDING TO BE LEGALLY BOUND, the undersigned **GRANTOR** and **GRANTEE**, by their respected duly authorized representatives, and with proper authority, have signed and delivered this Trail Easement as of the Easement Date.

Attest:

VEOLIA WATER NEW JERSEY, INC.

[INSERT NAME]
[INSERT TITLE]

[INSERT NAME]
[INSERT TITLE]

Attest:

COUNTY OF PASSAIC

Louis I. Imhof
Clerk, Board of County Commissioners

John Bartlett
Director, Board of County Commissioners

As to form and legality:

Nadege D. Allwaters, Esq.
Passaic County Counsel

RETURN TO:

Name: Nadege D. Allwaters, Esq.
Address: 401 Grand Street, Room 214,
Paterson, New Jersey 07505