

**AN ORDINANCE TO ENTER INTO A THREE YEAR
INTERCONNECTION AGREEMENT WITH ARTESIAN WATER
COMPANY, INC.**

#4353

Sponsor:

**Council
Member
Turner**

WHEREAS, pursuant to §2-308 and §8-200 of the City Charter, the City of Wilmington (the “City”) is authorized to enter into contracts for the rendering of services for more than a period of one year if approved by Wilmington City Council by ordinance; and

WHEREAS, Artesian Water Company, Inc. (“Artesian”) is a public utility that owns and operates water systems that provide water service to the public and other water distributors in Delaware; and

WHEREAS, the City owns and operates a water system which supplies and distributes water services within and outside the City limits; and

WHEREAS, the City and Artesian have existing interconnections between their water systems at South Heald Street and at Maryland Avenue locations (the “Interconnections”); and

WHEREAS, the parties wish to enter into an agreement pursuant to which each party will deliver water to the other upon request at metered interconnections, and wherein they will agree as to the delivery, receipt and payment for water delivered through the Interconnections (the “Agreement”); and

WHEREAS, the Agreement with Artesian will be for a non-renewable term of three (3) years; and

WHEREAS, it is the recommendation of the Department of Public Works that the City enter into the Agreement, a copy of which, in substantial form, is attached hereto as “Exhibit A.”

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF WILMINGTON
HEREBY ORDAINS:**

SECTION 1. The Agreement between the City and Artesian, a copy of which, in substantial form, is attached hereto as Exhibit AA,@ is hereby approved, and the Director of Public Works

INTERCONNECTION AGREEMENT

THIS INTERCONNECTION AGREEMENT (“Agreement”) is made as of this ____ day of _____, 2017 by and between **ARTESIAN WATER COMPANY, INC.** (“Artesian”), a Delaware corporation with a principal office located at 664 Churchmans Road, Newark, Delaware 19702, and **THE CITY OF WILMINGTON** (the “City”, and together with Artesian, the “Parties”), a municipality chartered under the laws of the State of Delaware, with its principal office located at 800 N. French Street, Wilmington, Delaware 19801.

WHEREAS, Artesian is a public utility that owns and operates water systems which furnish water service to the public and other water distributors in Delaware;

WHEREAS, the City is a municipality that owns and operates a water system which supplies and distributes water services within and outside the City limits of Wilmington, Delaware;

WHEREAS, the City and Artesian have existing interconnections between their water systems at South Heald Street and at Maryland Avenue locations (the “Interconnections”);

WHEREAS, the parties wish to set forth their agreement pursuant to which each party will deliver water to the other upon request at metered interconnections and the mutual agreement as to the delivery, receipt and payment for water delivered through the Interconnections (the “Supplies”).

NOW THEREFORE, in consideration of these premises and of the mutual promises and undertakings hereinafter set forth, the Parties hereto, intending to be legally bound hereby, agree as follows:

ARTICLE I
THE INTERCONNECTIONS

- 1.1 Locations. The Interconnections between the City's system and Artesian's system that are pertinent to this Agreement are situated as follows:
- a. South Heald Street
 - b. Maryland Avenue
- 1.2 Current Functionality. South Heald Street is a two-way interconnection. The City shall own the meter by which water may be supplied by the City to Artesian, and Artesian shall own the meter by which water may be supplied by Artesian to the City at the South Heald Street Interconnection. The Maryland Avenue Interconnection is a one-way interconnection, and the City owns the meter by which water may be supplied by the City to Artesian.
- 1.3 Improvements. Each party will be responsible for half of all costs related to maintaining the Interconnections.
- 1.3.1 Henceforth, each Party shall maintain at its sole cost the meter(s) owned by it.

ARTICLE II
INTERCONNECTION DELIVERIES

- 2.1 Sale and Purchase of Supplies. In accordance with this Article II, the Parties shall, upon request of the other Party, deliver and sell, and the Parties shall receive and purchase the Supplies through the Interconnections.
- 2.2 Commencement and Term. The deliveries and the purchases of Supplies shall commence on the date first written above for a term of three (3) years.
- 2.3 Force Majeure. If either Party's ability to deliver or either Party's ability to receive the Supplies is interrupted or impaired, in whole or in part, due to failure of equipment or facilities, leaks, required repairs, alterations or additions to facilities, strikes, Acts of God, emergencies, or other extraordinary circumstances, occurrences or conditions beyond the Parties' control, including action by governmental bodies and authorities, then during the period of such interruption or impairment, the delivery and purchase obligations described herein shall be suspended. The Parties specifically acknowledge, understand and agree that the obligation to deliver the Supplies requires only the exercise of ordinary and reasonable care under the circumstances to maintain the Supplies and have such available for delivery hereunder, and that neither Party shall be liable to nor make any claim against the other for any interruption of, or curtailment in, the Supplies caused by circumstances beyond its control, or any of the other circumstances stated herein.

- 2.4 Reservation of Rights. The Parties reserve the right to restrict partially or fully the quantity of water that shall be delivered to the other pursuant to this Interconnection Agreement in the event that such deliveries would have an adverse effect on the Party's regular customers.
- 2.5 Meter Reading and Billing Procedures. For billing purposes, the Interconnection meters shall be read monthly. Each Party will bill the other Party in arrears for volumes delivered for the period, computed at that rate per unit further described in Article II, Paragraph 2.6 below.
- 2.6 Charges. The City and Artesian agree that with respect to the exchanges of water at the Interconnections from the City to Artesian and from Artesian to the City, as provided in Article II of this Agreement, the price for water delivered through the Interconnections shall be seventy percent (70%) of the "in-City industrial rate" provided in the City Code, as may be amended from time to time, which is currently Four Dollars and Sixty-One Cents (\$4.61) per thousand gallons. Each Party agrees to not charge the other for water used for testing the operation of the Interconnections on an annual basis. Prior to any such testing, the Party conducting the test shall give the other Party at least three (3) business days' notice of the planned test.
- 2.7 Water Quality. The Parties warrant that the Supplies furnished hereunder shall be potable and in compliance with all applicable federal and State of Delaware laws and regulations in effect at the time the Supplies are delivered (collectively, the "Water Quality Laws").

ARTICLE III MISCELLANEOUS

- 3.1 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the Parties' respective successors and permitted assigns.
- 3.2 Authority and Binding Effect. Artesian and the City each represent, warrant and affirm to the other: (a) their authority and power to enter into this Agreement and to make, perform and carry into effect their respective commitments, obligations and undertakings as set forth herein; (b) their authority to enter into and perform each of the transactions contemplated hereby; (c) that all consents and authorizations requisite to their execution of this Agreement and performance hereunder have been obtained; (d) that this Agreement, the transactions contemplated hereby and the Parties' performance hereunder will not violate any federal, state or local law, statute, regulation, rule, ordinance, tariff term or other similar authority applicable to either of them; and (e) when executed, the Agreement shall constitute a valid and binding obligation, enforceable by each Party against the other in accordance with its terms.

- 3.3 Consent to Assignment. The Parties' respective rights and obligations hereunder shall not be assignable or delegable without the prior written consent of the other.
- 3.4 Amendment. This Agreement may be amended only by written instrument, signed by both Parties.
- 3.5 Entire Agreement. This Agreement embodies the entire agreement between the Parties with reference to the subject matter hereof, and there are no agreements, understandings, conditions, warranties or representations, oral or written, expressed or implied, with reference to the subject matter hereof that are not merged in this Agreement or amended hereby.
- 3.6 Terms Severable. Should any term of this Agreement be held invalid or unenforceable, such determination shall not render the remaining terms of this Agreement invalid or unenforceable unless to do so would cause the Agreement to fail of an essential purpose.
- 3.7 Notices. Any notices required or permitted to be given hereunder shall be in writing, shall be effective upon receipt (unless otherwise provided herein), and shall be delivered by electronic transmission or by United States mail, first-class postage prepaid, addressed to the Parties as follows, or to such other persons or addresses as the Parties may direct from time to time by written notice:

If to the City:

The City of Wilmington
Attn: Jeffrey J. Starkey, Commissioner of the Department of Public Works
800 N. French Street
Wilmington, Delaware 19801
Phone: (302) 576-3060
E-mail: jstarkey@wilmingtonde.gov

If to Artesian:

Artesian Water Company, Inc.
Attn: Karl G. Randall, General Counsel
664 Churchmans Road
Newark, Delaware 19702
Phone: (302) 453-7309
Email: krandall@artesianwater.com

or his designee is hereby authorized to execute as many copies of said Contract, as well as perform all additional undertakings related thereto, as may be necessary.

SECTION 2. This Ordinance shall be effective upon its passage by City Council and approval of the Mayor.

First Reading ...May 4, 2017
Second Reading...May 4, 2017
Third Reading

Passed by City Council,

President of City Council

ATTEST: _____
City Clerk

Approved as to form this
_____ day of May, 2017

Assistant City Solicitor

Approved this _____ day of _____, 2017

Mayor

SYNOPSIS: This Ordinance authorizes the City to enter into an Interconnection Agreement with Artesian Water Company, Inc. for three years.

FISCAL IMPACT: The proposed Agreement will generate an estimated revenue of \$10,000 - \$50,000 per year in the sale of water to Artesian Water Company, Inc.