

**AN ORDINANCE TO AUTHORIZE AN AGREEMENT FOR  
WATER AND SEWER SERVICE LINE PROTECTION  
PROGRAMS WITH AMERICAN WATER RESOURCES, LLC.**

#4236

**Sponsor:**

**Council  
Member  
Shabazz**

**Co-Sponsors:**

**Council  
Members  
D. Brown  
Cabrera  
Walsh  
Chukwuocha  
Williams**

**WHEREAS**, pursuant to Section 2-308 and Section 8-200 of the City Charter, the City of Wilmington is authorized to enter into contracts for the supply of property or the rendering of services for more than a period of one year if approved by City Council by Ordinance; and

**WHEREAS**, the City desires to make warranty protection services available to residential owners of water service lines and sewer laterals (collectively “water and sewer service lines”) located in the City; and

**WHEREAS**, homeowners and not the City are responsible for the potentially large maintenance and repair costs for such water and sewer service lines (as opposed to the City’s mains); and

**WHEREAS**, participation by homeowners in such warranty service line protection programs would be completely voluntary on the part of the homeowners and would be paid for by the homeowners under the terms of an agreement between the homeowner and the selected service provider; and

**WHEREAS**, the City publicly advertised a Request for Proposals (“RFP”) for such services in accordance with Section 8-200 of the City Charter and subsequently negotiated an agreement therefor with American Water Resources, LLC (“AWR”) (“the Agreement”), which submitted the best overall proposal; and

**WHEREAS**, the term of the Agreement is for a period of five (5) years, which may be extended for five (5) additional periods of one (1) year each at the option  
W0084974.

of the City; and

**WHEREAS**, AWR shall pay the City the initial sum of Fifty Thousand Dollars (\$50,000.00) plus an additional sum of ten percent (10%) annually of the warranty fees collected by AWR from participating homeowners. In addition, AWR shall pay the City the annual sum of Twenty Thousand Dollars (\$20,000.00) to be used by the City to pay for service line repairs for homeowners who are not AWR customers but who require assistance to pay for such needed repairs; and

**WHEREAS**, it is the recommendation of the Department of Public Works that the City enter into the Agreement with AWR, a copy of which, in substantial form, is attached hereto and incorporated by reference as Exhibit "A."

**THE COUNCIL OF THE CITY OF WILMINGTON HEREBY  
ORDAINS:**

**SECTION 1.** The Agreement between the City and American Water Resources, LLC ("AWR"), a copy of which, in substantial form, is attached hereto, to provide warranty protection services (under separate agreements) to residential owners of water and sewer service lines in the City, for a period of five (5) years, which may be extended for five (5) additional periods of one (1) year each at the option of the City, is hereby approved and the Mayor or his designee and the City Clerk are hereby authorized and directed to execute as many copies of said Agreement, as well as all additional undertakings related thereto, as may be necessary. AWR shall pay the City an initial sum of Fifty Thousand Dollars (\$50,000.00) plus an additional sum of ten percent (10%)

of the service line warranty protection fees collected by AWR from participating homeowners under this voluntary program. AWR shall also pay the City an annual amount of Twenty Thousand Dollars (\$20,000.00) to be used by the City to pay for service line repairs for homeowners who are not AWR customers, but who require assistance to pay for such needed repairs.

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

First Reading . . . . June 16, 2016  
Second Reading. . . June 16, 2016  
Third Reading . . . July 7, 2016

Passed by City Council,  
July 7, 2016

\_\_\_\_\_  
President of City Council

ATTEST: Maribel Seijo  
City Clerk

Approved as to form this  
14<sup>th</sup> day of June 2016

Mary Pilnick  
First Assistant City Solicitor

Approved this 11 day of  
July, 2016



Mayor

**SYNOPSIS:** This Ordinance authorizes the City to enter an agreement with American Water Resources, LLC ("AWR") to make water and sewer line warranty protection services available to homeowners in the City for a period of five (5) years, which may be extended for five (5) additional periods of one year each at the option of the City. AWR shall pay the City an initial sum of Fifty Thousand Dollars (\$50,000.00) plus an additional sum of ten percent (10%) annually of the fees collected from participating homeowners under this voluntary program. AWR shall also pay the City an annual amount of Twenty Thousand Dollars (\$20,000.00) to be used by the City to pay for service line repairs for homeowners who are not AWR customers, but who require assistance to pay for such needed repairs.

## IMPACT STATEMENT

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This Ordinance authorizes the City to enter an agreement with American Water Resources, LLC ("AWR") to make water and sewer line warranty protection services available to homeowners in the City for a period of five (5) years, which may be extended for five (5) additional periods of one year each at the option of the City. AWR shall pay the City an initial sum of Fifty Thousand Dollars (\$50,000.00) plus an additional sum of ten percent (10%) annually of the fees collected from participating homeowners under this voluntary program. AWR shall also pay the City an annual amount of Twenty Thousand Dollars (\$20,000.00) to be used by the City to pay for service line repairs for homeowners who are not AWR customers, but who require assistance to pay for such needed repairs.

# EXHIBIT "A"

## AGREEMENT FOR WATER AND SEWER SERVICE LINE PROTECTION PROGRAMS

This Agreement for Water and Sewer Service Line Protection Programs (the "Agreement"), dated as of the \_\_\_\_ day of \_\_\_\_\_, 2016, is by and between American Water Resources, LLC ("AWR"), a Virginia limited liability company, with its principal office located at 1025 Laurel Oak Road, Voorhees, New Jersey 08043, and the City of Wilmington ("the City"), a municipal corporation of the State of Delaware, with its principal office located at 800 N. French Street, Wilmington, DE 19801.

WHEREAS, AWR provides certain water and sewer Service Line Protection Programs ("SLPP"); and

WHEREAS, the City desires to enter into a contract with AWR to make SLPP available to the residents of the City.

NOW, THEREFORE, for and in consideration of the mutual promises set forth herein, and subject to the terms and conditions herein stated, and agreeing to be legally bound thereby, AWR and the City agree as follows:

### **SECTION 1.        TERM**

Term. The term of this Agreement shall commence on the date that AWR first sends SLPP marketing materials to City Customers or sixty (60) days after the execution of this Agreement, whichever comes first, and shall continue for a period of five years (the "Initial Term"). AWR shall provide the City with prompt written notice of the date that AWR first sends materials regarding SLPP to City Customers and the resulting Term Commencement Date. The Initial Term of this Agreement may be extended, at the City's option, for five additional terms of one (1) year each (each a "Renewal Term"). The City shall provide written notice to AWR not less than ninety (90) days prior to the expiration of the then current Term stating whether the City desires to extend the Term of the Agreement.

## **SECTION 2.            AWR SERVICES**

2.1    Marketing and Promotion. The City will make the initial contact to City Customers regarding the voluntary use of AWR's services. Such initial contact will be in the form of written information describing the relationship of the City with AWR and the services that AWR intends to offer to City Customers. This information will inform City Customers of the nature of AWR's services and provide them with contact information for AWR. AWR will market and promote the SLPP to City Customers through periodic marketing campaigns, the frequency and content of which will be determined by AWR, subject to the approval of the City, except as otherwise provided for herein. In such marketing campaigns, AWR may use any lawful and reasonable marketing or promotional methods of communication that are appropriate. Such methods of communication may include, without limitation, direct mail marketing, email marketing, telemarketing, and/or bill inserts, if approved by the City. AWR's marketing and promotional responsibilities shall include strategic direction, planning, scheduling, creative design, creative production, printing, postage, telephone calls and email notices.

2.2    Customer Service. AWR shall handle all SLPP customer service activities. Such activities will include without limitation (i) processing enrollments of Member Customers, and (ii) responding to telephone inquiries regarding enrollment and coverage.

2.3    Claims Service. AWR will administer all SLPP claims activities for Member Customers. Such activities will include (i) receiving SLPP claims, (ii) making determinations on the acceptance or denial of all such claims, (iii) dispatching Repair Contractors to perform Repair Services for Member Customers in accordance with the SLPP Contracts, (iv) maintaining claims file documentation and (v) the timely resolution of SLPP claim disputes.

2.4    Repair Contractor Network. AWR will establish and maintain a repair service network of local, licensed independent plumbing contractors to perform Repair Services for Member Customers. The cost of all repair services provided by Repair Contractors shall be paid by AWR, subject to the agreements between AWR and its Repair Contractors. All Repair

Contractors shall be deemed subcontractors of AWR and only the Repair Contractors shall be permitted to perform the Repair Services for Member Customers.

2.5 SLPP Fees. AWR reserves the right to set and modify the SLPP Fee paid by Member Customers and will provide Member Customers with sixty (60) days written notice in advance of any SLPP Fee modification. AWR agrees to discuss any material modification to the SLPP Fee with the City prior to the modification of such SLPP Fee; provided, however, that the City acknowledges and agrees that AWR shall have the exclusive right to make any and all such modifications, except as otherwise provided herein. Anything to the contrary notwithstanding, however, AWR agrees that the Member Customer SLPP charges shall not exceed those specified in AWR's response to the City's Request for Proposals dated July 25, 2014 ("the RFP"), for at least the first three (3) years of this Agreement.

### **SECTION 3. CITY DUTIES**

3.1 License. Subject to monitoring and approval by the City for appropriate use, the City, during the Initial Term and each Renewal Term, grants AWR a royalty-free, worldwide, perpetual, nonexclusive right and license to use the City's name, logo, and/or seal (the "Logo") necessary for all SLPP marketing campaigns and/or promotional materials developed and used by AWR in connection with this Agreement and the SLPP offered to Customers. A true and correct copy of the authorized Logo as of the Effective Date is attached hereto in Schedule B.

3.2 Review of Marketing Materials. AWR will send SLPP marketing or promotional materials to the City for review and approval of form and content prior to distribution to Customers. AWR shall submit such materials to the City via email or in any other manner agreed to by the parties. If, after thirty (30) calendar days of receiving such materials, the City has not provided AWR with written objection to the use of such materials, the materials shall be deemed approved for use by AWR. Once the City approves a marketing or promotional material for use, AWR has no obligation to submit such material for review by the City prior to use in subsequent marketing campaigns unless AWR has made material changes to such



marketing or promotional material. For purposes of this Section “material change” means a change to a marketing or promotional material that alters its overall appearance, substantive content, format, and/or outline.

3.3 Provision of Customer Data. Within twenty (20) business days after the Effective Date, the City shall identify City Customers and provide AWR with City Customer Data to assist AWR in conducting its SLPP marketing campaigns. Thereafter, the City shall provide AWR with updated City Customer Data on the first business day of each calendar quarter of the then current Term or at such other time as may be agreed to by the Parties. The City will transfer such City Customer Data to AWR in accordance with the procedure agreed to by the Parties.

#### **SECTION 4. INVOICES AND PAYMENTS**

A. Administrative Fee Payment. AWR shall pay the City an Administrative Fee equal to a total of Fifty Thousand Dollars (\$50,000.00) within ninety (90) days from the date of execution of this Agreement.

B. Revenue Share Payments. AWR will make an annual revenue share payment to the City equal to 10% of the SLPP revenue collected from Member Customers during the preceding twelve (12) month period less refunds for cancellations. On June 1 of each calendar year, AWR shall provide the City with a list in a mutually acceptable electronic format of all SLPP fees collected from Member Customers during the preceding twelve (12) months, and on or before July 1 of each calendar year AWR shall remit payment to the City.

C. H<sub>2</sub>O Program Payments. During each Contract Year, AWR shall fund up to Twenty Thousand Dollars (\$20,000.00) in water line or sewer line repairs for customers selected by the City. City will notify AWR when it wishes to initiate a H<sub>2</sub>O Fund repair. AWR shall administer such repairs and manage the H<sub>2</sub>O Fund.

## **SECTION 5.                    RIGHTS TO CUSTOMER DATA AND WORK PRODUCT**

5.1 All Customer Data, if any, provided to AWR pursuant to this Agreement shall remain the property of the City or the City Customer as applicable. During the Term, AWR shall have a limited, non-exclusive license to use the Customer Data solely in connection with this Agreement. AWR shall have the right to share Customer Data with third parties as necessary solely to provide the AWR Services. AWR shall require all such third parties to keep all Customer Data and Member Customer Data confidential to be used solely as required in connection with this Agreement. AWR shall not sell any Customer Data or Member Customer Data to anyone for any reason whatsoever.

5.2 All Member Customer Data shall be property of AWR or City Customer as applicable. .

5.3 AWR has the exclusive right of ownership of all work product developed by AWR for SLPP including, but not limited to, marketing and promotional materials, specifications, drawings, sketches, models, samples, plans and programs, provided, however, that all reports required to be sent to the City by AWR in connection with this Agreement shall become the sole property of the City.

## **SECTION 6.                    CONFIDENTIAL INFORMATION**

6.1 Definition of Confidential Information. "Confidential Information" shall mean all non-public information, materials, data, experience or knowledge concerning or related to Disclosing Party, whether any of such information is delivered in a written, oral, visual, electronic or other format and whether or not such information is marked as confidential. Confidential Information includes, but is not limited to, Disclosing Party's trade secrets, intellectual property, business contacts, confidential financial information, technical know-how, customer data, claims frequency data, claims costs data, marketing strategies, research, technology, business plans, business strategies, pricing, suppliers, business records, software and data.

6.2 Duty of Non-disclosure. The Receiving Party shall maintain all Confidential Information received from the Disclosing Party in strict confidence. Without limiting the foregoing, the Receiving Party shall use the same degree of care as it uses to protect its own trade secrets and confidential information, and in no event less than a reasonable degree of care, to protect the Confidential Information. The Receiving Party shall not disclose Confidential Information to any third party without the prior written consent of the Disclosing Party. The Receiving Party shall use diligent efforts to safeguard the Confidential Information from unauthorized disclosure and to disclose such Confidential Information only to its directors, officers, members, employees, agents, subcontractors, consultants, advisors or other representatives, including legal counsel, accountants, tax, financial and other advisors (collectively "Representatives") and strictly on a "need to know" basis. The Receiving Party shall be responsible for the failure of any of its Representatives to abide by the provisions of this Agreement.

6.3 Disclosure Required by Law. The Receiving Party may disclose Confidential Information when required to do so by law, a court of competent jurisdiction, any governmental agency having supervisory authority over the business of the Disclosing Party, or by any administrative body or legislative body (including a committee thereof) with jurisdiction to order either Party to divulge, disclose or make accessible such information. Prior to making such required disclosure, the Receiving Party shall promptly notify the Disclosing Party of its receipt of an order or similar directive compelling disclosure so that the Disclosing Party may challenge such order or directive.

6.4 Ownership of Information. All Confidential Information shall remain the exclusive property of Disclosing Party. This Agreement does not grant or imply a license or conveyance of any such rights to Receiving Party.

6.5. Use of Information. Receiving Party shall only use Confidential Information in connection with providing services under this Agreement and for no other purpose without the prior written consent of the Disclosing Party.

6.6 Return of Confidential Information. Upon termination of this Agreement by either Party, or upon Disclosing Party's written demand, Receiving Party and its Representatives shall return to Disclosing Party all information disclosed pursuant to this Agreement. In addition, all information consisting of documents, memoranda, notes and other writings, recordings, analyses, compilations, studies or other documents prepared by or for Receiving Party, or its Representatives, based on data contained in any Confidential Information disclosed pursuant to this Agreement, shall be returned to Disclosing Party or destroyed and confirm such destruction to Disclosing Party by delivery of a certificate signed by a duly authorized officer of Receiving Party.

6.7 Member Customer Data. The Parties acknowledge that Sections 6.4, 6.5 and 6.6 shall not apply to Member Customer Data; however, AWR shall return Customer data to the City regarding any City Customer that is not a Member Customer. Notwithstanding the foregoing, AWR shall be permitted to maintain its business records, including its mail history, that contain City Customer Data, provided that such retention shall be subject to the requirements of Section 6.

6.8 Survival. The terms of this Section 6 shall survive any termination or expiration of this Agreement. Receiving Party's obligations hereunder shall remain in full force and effect until all Confidential Information received is either returned to Disclosing Party or destroyed in accordance with this Section 6.

## **SECTION 7. TERMINATION**

7.1 Termination for Cause. The City may terminate this Agreement upon a material breach by AWR; provided, however, that upon the discovery of such material breach, the City shall notify AWR of such breach in writing. Upon receipt of such written notice, AWR shall have

a period of thirty (30) days to cure such breach. If AWR is unable to cure such breach, causing the Agreement to be terminated, it shall have an additional sixty (60) days to allow for the cessation of its work under this Agreement.

7.2 AWR Termination for Cause. AWR may terminate this Agreement upon a material breach of this Agreement by the City; provided, however, that upon the discovery of such material breach, AWR shall notify the City in writing of such material breach, setting forth in reasonable detail the elements of such material breach. Upon receipt of such written notice, the City shall have a period of thirty (30) days to cure such breach.

## **SECTION 8. CLOSEOUT AGREEMENT**

Beginning not later than sixty (60) days prior to the expiration of the Initial Term or a Renewal Term or, in the event of a termination of the Agreement pursuant to Section 7 as soon as practicable, the Parties shall negotiate in good faith regarding the terms and conditions of a closeout agreement that will address outstanding issues regarding the Agreement, the SLPP and the resolution of any claims by either party.

## **SECTION 9. EXCLUSIVITY; NON-COMPETITION**

9.1 Exclusivity. During the Term of this Agreement and any Renewal Term, AWR shall be the exclusive provider of SLPP services to City Customers. The City shall not promote or market any programs or services to City Customers that are similar to or compete with SLPP.

9.2 Non-Competition. During the Term of this Agreement and any Renewal Term, the City acknowledges, agrees and covenants that it shall not, directly or indirectly, within the United States of America, solicit, sell, manage, operate, control, administer, market or otherwise assist in the sale on behalf of any entity other than AWR, any service similar to SLPP or any program or service offered by AWR in competition with AWR to any Customer.

9.3 The City further agrees not to solicit any Customers or Member Customers to replace SLPP or any similar program or service offered by AWR with a service issued by a third party.

**SECTION 10. INDEMNIFICATION**

AWR hereby agrees to defend, indemnify and hold the City, its respective agents, employees, affiliates, and assigns harmless from any loss, liability, claim, damage, cost or expense of any kind, and any and all liability resulting from the alleged negligence or willful misconduct of AWR, including reasonable attorney's fees, to which the City or any other indemnitee may be subjected by virtue of AWR's performance, non-performance or breach of this Agreement, including but not limited to that of AWR's employees, agents, and subcontractors. The provisions of this Section shall survive termination of this Agreement.

**SECTION 11. UNCONTROLLABLE CIRCUMSTANCES**

11.1 Subject to the requirements of Section 11.2 below, no Party shall be liable to the other Party for breach, default or delay in performance of any of its obligations under this Agreement (except an obligation to make payment when due) and shall be entitled to relief as provided for herein in the event such Party is rendered unable, wholly or in part, to carry out its respective obligations as the result of an Uncontrollable Circumstance. The affected Party shall be excused from performance (except an obligation to make payment when due) only during the period and to the extent that the Uncontrollable Circumstance adversely affects the affected Party's performance under this Agreement despite acting with all due diligence and dispatch. The Party asserting the existence of an Uncontrollable Circumstance shall bear the burden of demonstrating a reasonable causal link between the Uncontrollable Circumstance and the relief sought. Subject to the requirements of Section 11.2 below, if as the result of an Uncontrollable Circumstance, the Contractor is unable to perform or is delayed in performance of any of its obligations under this Agreement, the Contractor shall be entitled to relief from applicable schedules imposed by this Agreement that is sufficient to provide relief from the impacts of the

Uncontrollable Circumstance.

11.2 As a condition for being relieved of its obligations and/or seeking relief due to an Uncontrollable Circumstance, the Party claiming excuse from such Uncontrollable Circumstance ("Excused Party") shall:

- A. Promptly give notice to the other Party of the occurrence of such Uncontrollable Circumstance;
- B. Use its reasonable efforts to eliminate or mitigate the effect of such Uncontrollable Circumstance;
- C. Promptly give notice to the other Party when such Uncontrollable Circumstance has been eliminated or has ceased to prevent the Excused Party from fulfilling such obligations; and
- D. Proceed to fulfill such obligations as soon as reasonably practicable after such Uncontrollable Circumstance has been eliminated or has ceased to prevent the Excused Party from fulfilling such obligations.

## **SECTION 12. DISPUTE RESOLUTION**

12.1 If a claim, controversy, or dispute arises out of or relating to this Agreement, or to the threatened, alleged or actual breach thereof by any party, the parties shall expeditiously schedule consultations or a meeting between the management representatives designated by each party. The parties shall attempt to resolve such dispute through consultation and negotiation, within thirty (30) days (or such longer period as mutually agreed by the parties). The management representatives may, if both parties agree, request the assistance of an independent mediator if they believe that such a mediator would be of assistance to the efficient resolution of the dispute. The designated representative of AWR shall be at least a Vice President or equivalent officer; the designated representative of the City shall be the Commissioner of Public Works.

12.2 If the management representatives cannot resolve the dispute as set forth herein, they may assert any and all available legal and equitable remedies to resolve such claim,

controversy, or dispute, exclusively in a court of competent jurisdiction located in Wilmington, Delaware.

**SECTION 13.            ASSIGNMENTS**

This Agreement shall not be assigned by a party without the prior written consent of the other party unless such assignment shall be to an affiliate or successor of a party in which event the assigning party shall give prompt advance written notice of the assignment to the other parties.

**SECTION 14.            AMENDMENTS**

This Agreement supersedes all prior agreements between the parties with respect to their subject matter and constitutes a complete and exclusive statement of the terms of the agreement between the parties with respect to their subject matter. This Agreement may not be amended except by a written agreement executed by each party.

**SECTION 15.            NOTICES**

All notices given hereunder by mail shall be sent by such means that affords the sender evidence of date and time of dispatch, including hand delivery, U.S. mail, postage prepaid, certified, return receipt requested, facsimile, overnight mail, or electronic mail. All such notices shall be given to the following named persons or offices at the facsimile numbers given below, or at the addresses first set forth at the beginning of this Agreement. Either party may change such addresses or numbers by giving notice pursuant to this Section at least five (5) days before such change is to be effective.

If to AWR:

American Water Resources of Florida, Inc.  
1025 Laurel Oak Road  
Voorhees, New Jersey 08043  
Attention: President

If to The City:

Commissioner of Public Works  
City of Wilmington  
800 N. French Street, 6<sup>th</sup> Floor  
Wilmington, DE 19801



With a copy to:

American Water Enterprises, Inc.  
1025 Laurel Oak Road  
Voorhees, New Jersey 08043  
Attention: General Counsel

With a copy to:

City Solicitor  
City of Wilmington Law Department  
800 N. French Street, 9<sup>th</sup> Floor  
Wilmington, DE 19801

#### **SECTION 16. GOVERNING LAW**

This Agreement, including the validity thereof and the rights and obligations of the parties hereunder, shall be construed in accordance with, and governed by the laws of the State of Delaware, without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any other jurisdiction.

#### **SECTION 17. NO WAIVER**

The failure of a party to insist on strict performance of any or all of the terms of this Agreement, or to exercise any right or remedy under this Agreement, shall not constitute a waiver or relinquishment of any nature regarding such right or remedy or any other right or remedy. No waiver of any breach or default hereunder shall be considered valid unless in writing and signed by the party giving such waiver, and no such waiver shall be deemed a waiver of any subsequent breach or default of the same or similar nature.

#### **SECTION 18. SEVERABILITY**

In case one or more of the covenants, terms or provisions contained in this Agreement shall be held invalid, illegal, or unenforceable in any respect, the validity of the remaining covenants, terms, and provisions contained herein shall be in no way affected, prejudiced, or disturbed and the remaining covenants, terms, and provisions shall remain in full force and effect.

#### **SECTION 19. NO THIRD PARTY BENEFICIARIES**

Nothing expressed or referred to in this Agreement will be construed to give any person other than the parties hereto any legal or equitable right, remedy or claim under or with respect

to this Agreement or any provision of this Agreement. This Agreement and all of its provisions and conditions are for the sole and exclusive benefit of the parties hereto and their successors and assigns.

**SECTION 20.        INDEPENDENT CONTRACTOR**

It is understood that the relationship of AWR to the City is that of an independent contractor and not that of an employee and or agent of the City. None of the employees, agents or contractors of the City shall be considered employees of AWR. None of the employees, agents, or subcontractors of AWR, including Repair Contractors, shall be considered employees, agents, contractors, or subcontractors of the City. Each party shall be wholly responsible and liable for the employment taxes and withholdings due as a result of their performance hereunder.

**SECTION 21.        COMPLETE AGREEMENT**

This Agreement sets forth the entire understanding of the parties, which supersedes and merges all prior proposals, understandings and all other agreements, oral or written, between the parties relating to the subject matter hereof and may not be modified except in a writing executed by both parties.

**SECTION 22.        TITLES AND HEADINGS**

Titles and headings to sections or paragraphs herein are inserted merely for convenience of reference and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

**SECTION 23.        EXPENSES**

Each party will bear its own expenses incurred in connection with the negotiation, drafting, implementation and performance of this Agreement.

**SECTION 24.        COUNTERPARTS**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**SECTION 25.            CITY TERMS AND CONDITIONS**

The City General Terms and Conditions are attached hereto as Schedule C and shall be incorporated as an integral part of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives, as of the day and year first above written.

**AMERICAN WATER RESOURCES, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CITY OF WILMINGTON**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Approved as to form

\_\_\_\_\_  
First Assistant City Solicitor

## **SCHEDULE A DEFINITIONS**

The following words and phrases when used in this Agreement shall have the following meaning:

"AWR Services" means all of the obligations and responsibilities as defined herein to be provided by AWR to the City for SLPP.

"Change of Law" means any of the following events occurring after the Effective Date:

1. the adoption, modification or repeal, or change in interpretation or application, of any Applicable Law, to the extent that compliance therewith materially expands the scope of the obligations of AWR hereunder, materially interferes with, materially delays or materially increases the cost of performing AWR's obligations under this Agreement;  
or
2. the modification, change in interpretation or application, or imposition of any conditions, restrictions or limitations in any permit, license, approval, consent or other authorization which is required for the performance of the AWR Services, to the extent that compliance therewith materially expands the scope of the obligations of AWR hereunder, materially interferes with, materially delays or materially increases the cost of performing the obligations of AWR hereunder.

"Customer" means the persons, firms or entities that are identified from time to time on the books and records of the City as receiving water and/or wastewater services from the City.

"Member Customer" means any eligible Customer who has enrolled in SLPP.

"Member Customer Data" means the name, address (both mailing and service addresses, if different), phone number, email address (if available), and such other information which has been made available directly from City Customers themselves (and not from the City) and which the Parties agree is necessary to assist AWR in administering SLPP.

"Repair Contractors" means the licensed independent plumbing contractors engaged by AWR to perform repair service work for SLPP.

"Repair Services" shall mean the services that are set forth in the SLPP Contracts between AWR and the Member Customer.

"SLPP" means those water and sewer service line protection programs that are administered by AWR and offered to Customers of the City and whose terms and conditions of coverage may be modified or amended by AWR from time to time, in its sole and absolute discretion. The SLPP includes: the Water Line Protection Program and the Sewer Line Protection Program.

"SLPP Fee" means the periodic program fee charged by AWR for Member Customers to participate in SLPP.

"Uncontrollable Circumstance" means any act, event, condition or circumstance beyond the reasonable control of a Party (or the Party's subcontractors) which prevents, delays or otherwise materially adversely affects the ability of that Party to perform under this Agreement or materially adversely affects the associated cost incurred by that Party to perform any obligation under this Agreement (except payment obligations). Such acts, events, conditions or circumstances include, but are not limited to, Change of Law, strikes, lockouts, or other labor disturbances, earthquake, flood, hurricanes, or other natural disaster, acts of God, war, terrorism, civil insurrection, catastrophic equipment failure, electricity or other utility interruption or unavailability, failure or interference with normal sources of supply of equipment and materials necessary to provide the AWR Services in accordance with the terms of this Agreement, accident, any failure or delay in obtaining any permit, license, approval, consent or other authorization for which a complete application or request has been submitted and which is required for the performance of the AWR Services which is beyond a Party's (or the Party's subcontractors) reasonable control, any failure, delay or interference by a party (other than a Party to this Agreement or the Party's subcontractors), issuance of a temporary restraining

order or other form of injunction that prohibits prosecution of a material portion of the Party's obligation under this Agreement, acts of third parties or other circumstances beyond a Party's (or the Party's subcontractors) reasonable control.

**SCHEDULE B  
LICENSE**

The City grants AWR the right to use the name, logo or marks (and any related art work)  
set forth below:

1. Name of the City of Wilmington;
2. City of Wilmington Seal.

## **SCHEDULE C**

### **CITY OF WILMINGTON GENERAL TERMS AND CONDITIONS**

#### **1. Insurance Coverage.**

American Water Resources, LLC ("AWR") shall provide insurance coverage for itself and all of its employees, if any, used in connection with this Agreement as follows: workers' compensation as required by law; comprehensive general liability coverage for personal injury, including death, and property damage in the minimum amount of Two Million Dollars (\$2,000,000.00). Such policies shall be issued by a financially sound carrier and/or carriers and shall be subject to the reasonable approval of the City. AWR shall provide the City with a certificate of insurance evidencing the above-stated coverage and naming the City as an additional insured.

#### **2. Use of Subcontractors.**

AWR shall inform the City of all prospective subcontractors which AWR intends to use in connection with this Agreement. After consultation with AWR, the City may disapprove the use of any such AWR subcontractor.

#### **3. Discrimination.**

In the performance of this Agreement, the parties agree that they shall not discriminate or permit discrimination against any person because of age, sex, marital status, race, religion, color, or national origin.

#### **4. Records.**

AWR shall maintain accounts and records, including personnel, property, and financial records, adequate to identify and account for all costs pertaining to this Agreement and such other records as may be deemed necessary by the City to assure proper accounting for all project funds and performance. Such records shall be made available for audit purposes to the City or its authorized representatives upon request.



**5. Reports and Information.**

AWR, at such time and in such form as the City may require, shall furnish the City such reports as the City may request pertaining to the work or services undertaken pursuant to this Agreement.

**6. Business License.**

AWR and its subcontractors shall obtain and/or maintain an appropriate business license from the City of Wilmington Department of Finance.

**7. Taxes.**

AWR and its subcontractors shall withhold, if applicable, City of Wilmington wage taxes from the compensation of its officers, agents and employees as required by the City of Wilmington wage tax law.

**8. Ownership of Information.**

Except as otherwise specified in this Agreement, any drawings, plans, designs, reports, analyses, specifications, information, examinations, proposals, brochures, illustrations, copy, maps, graphics, slides, and documents prepared, assembled, drafted, or generated by AWR in connection with this Agreement shall become the exclusive property of the City. Contractor may keep copies of such documents for its records.

**9. Successors and Assigns.**

This Agreement, and all the terms and provisions hereof, shall be binding upon and shall inure to the benefit of the City and AWR, and their respective legal representatives, successors, and assigns.