



AMERICAN WATER

Operations Support and Management Services Agreement

between

American Water Operations and Maintenance, Inc.

and

City of New Brunswick, New Jersey

This Operations Support and Management Services Agreement (“Agreement”) is effective as of the 17th day of September, 2014 (“Effective Date”), by and between American Water Operations and Maintenance, Inc. (“AWO&M”), a corporation organized and existing under the laws of the State of Texas and duly authorized to do business in the State of New Jersey and City of New Brunswick, New Jersey a municipal corporation organized and existing under the laws of the State of New Jersey (“Owner”). AWO&M and the Owner shall be individually referred to as a “Party” and collectively as the “Parties”.

RECITALS

WHEREAS, the Owner owns and is responsible for the operation of a water supply, water treatment, and, distribution system, and related facilities and equipment, as more particularly described in Schedule A, annexed hereto and incorporated herein (collectively, “Facilities”); and

WHEREAS, the Owner has determined that it is beneficial to procure the services of a contractor to manage the operations of the Facilities; and

WHEREAS, the Owner is in need of T-4 and W-4 New Jersey licensed water operations services; and

WHEREAS, AWO&M is in the business of providing certain operations, maintenance, and management services at water treatment facilities; and

WHEREAS, the Owner and AWO&M wish to enter into an agreement for operational support and management of the Facilities and the Parties have agreed upon the terms and conditions under which AWO&M will provide the services to the Owner.

NOW, THEREFORE, in consideration of the mutual rights, duties, agreements, and covenants contained herein, and agreeing to be legally bound thereby, the Owner and AWO&M agree as follows:

1. DEFINITIONS

For purposes of this Agreement, the following definitions shall apply:

- 1.1. “Agreement Price” means the sum of (1) the Base Monthly Fee and (2) any additional fees or costs payable to AWO&M under this Agreement.
- 1.2. “Agreement Year” means the first partial month plus the subsequent twelve (12) month period during the Term. The first Agreement Year begins on the Commencement Date and ends at midnight on the last day of the calendar month in which the first anniversary of the Commencement Date occurs. Any computation made on the basis of an Agreement Year shall be adjusted on a pro rata basis to take into account any Agreement Year of less than or more than three hundred and sixty-five (365) or three hundred and sixty-six (366) days, whichever is applicable.
- 1.3. “Applicable Law” means any federal, state or local statute, local charter provision, regulation, ordinance, rule, mandate, order, decree, permit, code, or license requirement or other governmental requirement or restriction, or any interpretation or administration of any of the foregoing by any governmental authority, which applies to the services or obligations of either Party under this Agreement.
- 1.4. “Capital Improvement” means the purchase and installation of new equipment, Facilities structures, or other Facilities components, or rehabilitation of equipment, existing Facilities structures or other Facilities components, which are planned and non-routine.
- 1.5. “Change in Law” means the enactment, adoption, amendment, promulgation, issuance, modification, repeal, or change of any Applicable Law that takes effect after the Effective Date of this Agreement.
- 1.6. “Consumables” means oil, grease, hardware and repair parts, fuel, air filters, belts, paper products, hand soap, counter and floor cleaners, log books, batteries, flow charts, pens, gloves, laboratory testing reagents, and pH buffer solutions used in connection with the operation of the Facilities.
- 1.7. “Emergency Call-Out” means services provided by AWO&M pursuant to this Agreement outside of the Basic Services as established in Schedule B.
- 1.8. “Maintenance” means those routine or repetitive activities, including preventive and predictive activities required by the equipment guidelines or manuals and those activities recommended by AWO&M to maximize the service life and performance of the Facilities’ equipment and the components thereof, which includes replenishment of Consumables.
- 1.9. “Repair” means those unplanned, non-routine and non-repetitive activities required for operational continuity, safety, and performance, generally due to failure, or to avert a failure of, equipment, vehicles, structures, and the Facilities or

a component thereof.

1.10. “Replacement” means the complete substitution of a piece of equipment, a component of a piece of equipment, vehicles, structures, or a component of the Facilities due to wear, breakage, or other failure in order to return the equipment, vehicle, structure, Facilities or some component thereof to designed functionality.

1.11. “Uncontrollable Circumstance” means any act, event, condition, or circumstance that (1) is beyond the reasonable control of AWO&M, (2) by itself or in combination with other acts, events, conditions, or circumstances adversely affects, interferes with or delays AWO&M’s ability to perform its obligations under this Agreement, expands the scope of AWO&M’s obligations under this Agreement, or increases AWO&M’s cost of performing its obligations under this Agreement, and (3) is not the direct result of the willful or negligent act, intentional misconduct, failure to exercise proper due diligence, or breach of this Agreement by AWO&M.

Subject to clauses (2) and (3) above, an Uncontrollable Circumstance shall include, but not be limited to, the following:

- (a) a Change in Law;
- (b) any change that takes place between the Effective Date and the date that AWO&M commences performance of the services under the Agreement, which impacts AWO&M’s performance of the services;
- (c) any injunction or similar order issued by a governmental or regulatory body;
- (d) delays or denials of any licenses, permits and approvals that are required to be maintained by AWO&M in order to perform the services;
- (e) the existence of a concealed or latent environmental condition at the Facilities or adjoining sites;
- (f) contamination of the Facilities’ site from groundwater, soil or airborne substances migrating from sources outside of the Facilities;
- (g) naturally-occurring events such as earthquakes, hurricanes, tornadoes, floods, fires, landslides, underground movement, lightning, epidemics and other acts of nature;
- (h) war, terrorism, explosion, sabotage, extortion, blockade, insurrection, riot, civil disturbance, or acts of a declared public enemy;
- (i) labor disputes or strikes, except labor disputes involving employees of AWO&M;
- (j) the failure of any vendor or third party to furnish services, materials, chemicals, equipment or otherwise perform its contractual obligations;

- (k) the result of any act, error or omission of any other contractor engaged by the Owner to perform services at the Facilities;
- (l) the failure of any governmental body or private utility having operational jurisdiction in the area in which the Facilities is located to provide and maintain utilities, or telephone and telecommunication services;
- (m) a defect in title or placement of any encumbrance on the Facilities;
- (n) the receipt of influent at the Facilities other than Acceptable Influent;
- (o) the presence of hazardous substances or biological toxic substances in the influent;
- (p) any breach by a Party, other than the Party claiming the occurrence of an Uncontrollable Circumstance, of its representations, warranties and covenants as set forth in this Agreement;
- (q) any failure, non-performance or non-compliance by a Party, other than the Party claiming the occurrence of an Uncontrollable Circumstance, with respect to its obligations and responsibilities under this Agreement;
- (r) the failure of the Owner to proceed with a Replacement or Capital Improvement, after notification to the Owner by AWO&M, that AWO&M determines is necessary to provide the services in this Agreement;
- (s) any Replacement or Capital Improvement that interferes with AWO&M's obligations and responsibilities under this Agreement;
- (t) the action of any third party; or
- (u) without prejudice to the generality, any other circumstance, cause or occurrence of any kind whatsoever beyond the reasonable control of a Party.

2. TERM OF AGREEMENT

- 2.1. The term of this Agreement shall be for a period of one (1) Agreement Year ("Initial Term"), commencing September 17, 2014 ("Commencement Date"), and continuing until 11:59 p.m. on September 30, 2015, unless this Agreement is terminated earlier as herein provided.

3. SCOPE OF SERVICES

Throughout the Term of this Agreement, AWO&M shall, in accordance with Applicable Law, provide the services set out in Schedule B attached hereto, as may be amended from time to time by mutual agreement of the Parties (the "Basic Services"). AWO&M shall

provide the Basic Services at its cost and expense, in consideration for which the Owner shall pay AWO&M the “Base Monthly Fee” as set forth in Schedule D. AWO&M shall not be required to perform any services necessary to operate or manage the Facilities other than the Basic Services, or pay any costs relating to services other than the Basic Services, including, without limitation, those services, costs and expenses set out in Schedule C attached hereto (collectively, the “Owner’s Responsibilities”). The Owner shall be responsible for providing all Owner’s Responsibilities at its sole cost and expense.

3.1. Certified Personnel and Subcontractors.

AWO&M shall provide the Basic Services under the direct supervision of AWO&M personnel who possess valid water operator certifications as required by Applicable Law; or if no such certification is required, by personnel AWO&M deems qualified to perform the Basic Services. The Owner acknowledges and agrees that AWO&M may retain subcontractors to assist AWO&M in the performance of the Basic Services, who will be bound to the same duties and obligations for performance of the services as AWO&M. The utilization of subcontractors shall be approved by the City, for which approval shall not be unreasonably withheld. The use of subcontractors shall not relieve AWO&M of its responsibility or obligations under this Agreement.

4. CAPITAL IMPROVEMENTS

During the term of this Agreement, AWO&M may, without obligation, provide the Owner with a listing of recommended Capital Improvements, identifying the Capital Improvements that are necessary to improve the performance or increase the capacity of the Facilities, to address or anticipate the obsolescence of portions of the Facilities, to reduce the cost to AWO&M of performing this Agreement, to produce cost savings or efficiency innovations to the Facilities, or are necessary to comply with existing or anticipated changes to Applicable Law (each, “Capital Improvement Project” and collectively, “Capital Improvement Projects”). The decision to proceed with construction and implementation of any such Capital Improvement Project shall be at the sole discretion and decision of the Owner. If the Owner decides not to proceed with construction and implementation of a Capital Improvement Project recommended by AWO&M that is necessary to address or anticipate the obsolescence of portions of the Facilities or comply with existing or anticipated changes to Applicable Law, then that decision may be considered an Uncontrollable Circumstance as defined herein. If the Owner implements a Capital Improvement Project, such implementation may be considered or lead to an Uncontrollable Circumstance, as more particularly set forth hereunder.

5. COMPENSATION

- 5.1. Commencing on the Effective Date, the Owner shall pay to AWO&M the Agreement Price, which includes a monthly fee for performing the Basic Services, as more particularly set forth in Schedule D (“Base Monthly Fee”), for which AWO&M will invoice the Owner on a monthly basis. The Owner shall pay AWO&M for any increase in costs or expenses attributable to (1) a change in the scope of services to be provided by AWO&M, including any Capital Improvements, as may be agreed to by the Parties (“Change in Scope”) and (2) any excise, sales, use, value added tax (“VAT”), gross receipts or other tax, excluding employee related taxes, that may be imposed on AWO&M in connection with the performance of its obligations under this Agreement. The increase in costs or expenses shall be added to the Base Monthly Fee effective upon the date of the Change in Scope, and will be included in the Agreement Price. If the Parties are unable to agree upon the amount of the increase in costs and expenses attributable to a Change in Scope, the dispute will be submitted for resolution in accordance with Section 16, hereof.
- 5.2. The Owner shall be responsible for providing all Owner’s Responsibilities at its sole cost and expense.
- 5.3. All invoices submitted by AWO&M shall be paid by the Owner no later than thirty (30) days after the date of the invoice (for each invoice, “Due Date”). If the Owner disputes any portion of an invoice in good faith, the Owner shall pay the undisputed portion to AWO&M by the Due Date and shall provide AWO&M with written notice of the disputed amount and basis therefore by the Due Date. Disputes will be submitted for resolution in accordance with Section 16, hereof. Failure of the Owner to provide timely and detailed written notice of any such dispute will act as a waiver of any defense or justification for failing to pay the full amount of the invoice by the Due Date.
- 5.4. All undisputed portions of an invoice not paid by the Due Date for such invoice shall bear interest at the rate of one percent (1.0%) per month from fifteen (15) days past the Due Date. Such interest shall be calculated and added to any unpaid amounts on a monthly basis, but shall not be compounded or treated as recomputed principal.
- 5.5. Notwithstanding any default provision contained hereunder, if the Owner fails to pay any undisputed sum to AWO&M within fifteen (15) days of the Due Date, then AWO&M may, without limiting any other remedies that it may have under this Agreement or Applicable Law, upon five (5) days written notice to the Owner, and provided the Owner does not remedy such failure within such five (5) day

period, immediately suspend performance of its obligations under this Agreement until any and all amounts due to AWO&M, including interest, are paid in full by the Owner.

6. REPRESENTATIONS AND WARRANTIES

- 6.1. AWO&M and the Owner, each with respect to itself, do hereby represent, warrant, and covenant to the best of their knowledge, information and belief, with such representations, warranties, and covenants being true as of the Effective Date of this Agreement, as follows:
- (a) AWO&M and the Owner have the legal authority pursuant to state and local rules, regulations, and statutes to enter into this Agreement; and
 - (b) AWO&M and the Owner are authorized to do business and are in good standing under the laws of the state in which they are formed and the state in which the Facilities is located;
 - (c) The persons signing this Agreement on behalf of AWO&M and the Owner have the power and authority to execute and deliver this Agreement pursuant to the Party's respective by-laws and organizational documents, and the execution, delivery, and performance of this Agreement have been duly authorized and approved by all requisite action;
 - (d) The execution and delivery of this Agreement and the performance by AWO&M and the Owner of their obligations hereunder (a) does not conflict with or result in a violation of (i) AWO&M's Articles of Incorporation, by-laws, and other organizational documents and (ii) Owner's formation and organizational documents, and any applicable governing statute, law or regulation, including without limitation, those governing the operation of a public body corporate; (b) shall not violate or result in a default, immediately or with the passage of time, under any agreement, contract or instrument to which AWO&M or the Owner is a party or by which it is, or may be, bound; and (c) shall not conflict with or violate any order, writ, judgment, or decree, issued by a governmental agency having jurisdiction, to which AWO&M or the Owner is subject;
 - (e) No additional approval, authorization, or other action by, or filing with any governmental authority is required in connection with the execution and delivery of this Agreement by AWO&M or the Owner; and
 - (f) Each of the provisions, covenants, and obligations contained in this Agreement is enforceable by and against the Parties under Applicable Law.
- 6.2. Except as set forth in Schedule E, the Owner hereby warrants, represents, and covenants as follows:

- (a) That the Owner has valid, legal title to the Facilities, clear of all encumbrances, and has authority to provide AWO&M access to the Facilities;
- (b) That the Facilities has been designed and constructed in accordance with all Applicable Law, governmental permits, and all approvals issued therefore;
- (c) That the Facilities has the capacity to process and treat potable water in accordance with Applicable Law, and all governmental statutes, regulations, permits, and approvals required for same;
- (d) That the Facilities is in good working order, operating within the parameters required by Applicable Law and its intended use, and is without any known defect or damage;
- (e) That there are presently no citations, summons, complaints, penalties, actions, suits, investigations, or other proceedings pending or threatened against the Owner in connection with the operation or maintenance of the Facilities that may adversely affect the Owner's or AWO&M's ability to perform its obligations under this Agreement;
- (f) That all licenses, permits, certificates, approvals, registrations, and authorizations necessary for AWO&M's operation of the Facilities as set forth hereunder will be obtained and maintained by the Owner and provided by the Owner to AWO&M; and
- (g) That, as of the Effective Date of this Agreement, the operation and maintenance of the Facilities is currently in compliance with all licenses, permits, certificates, approvals, registrations, and authorizations necessary for the operation of the Facilities, as well as all provisions of Applicable Law.

7. PERMITS, APPROVALS AND CERTIFICATIONS

- 7.1. Application for the renewal, modification, and payment of charges and fees in connection with any governmental permit, approval, or certification for the Facilities required by Applicable Law are the sole responsibility of the Owner. Any such governmental permits, approvals, or certifications are to be held in the Owner's name.

8. SAFETY

During the term of this Agreement, should AWO&M become aware of any unsafe conditions or safety violations at the Facilities arising from the construction or condition of the Facilities, AWO&M will notify the Owner of such condition within a reasonable

time after such discovery. Thereafter, the Owner shall determine the actions needed to correct such conditions and proceed diligently, at the Owner's sole cost and expense, to implement such corrective measures. The Owner will notify AWO&M in writing of the steps the Owner shall take to correct these conditions and the proposed time for implementing them. Should AWO&M disagree with the steps or the proposed time to implement the corrective measures, AWO&M will notify the Owner of such disagreement and the reasons therefore, whereupon the Parties will negotiate to arrive at a mutually agreeable program for safety upgrades and a schedule therefore. Failing such agreement, either Party shall have the right to terminate the Agreement upon thirty (30) days written notice to the other Party.

9. UNCONTROLLABLE CIRCUMSTANCES

- 9.1. If an Uncontrollable Circumstance occurs, AWO&M shall be entitled to: (1) relief from its performance obligations under this Agreement to the extent that the occurrence of the Uncontrollable Circumstance prevents AWO&M's performance of such obligations; (2) an extension of time to perform its obligations under this Agreement to the extent that the occurrence of the Uncontrollable Circumstance prevents AWO&M's ability to perform such obligations in the time specified in this Agreement; and (3) an increase in the Agreement Price or other fee to be paid under this Agreement to the extent that the occurrence of the Uncontrollable Circumstance increases AWO&M's costs of performance of its obligations under this Agreement. The occurrence of an Uncontrollable Circumstance shall not, however, excuse or delay the Owner's obligation to pay monies previously accrued and owing to AWO&M under this Agreement, or for AWO&M to perform any obligation under this Agreement not affected by the occurrence of the Uncontrollable Circumstance. The Owner shall continue to pay the Agreement Price to AWO&M during the continuance of any Uncontrollable Circumstance, except to the extent that the occurrence of the Uncontrollable Circumstance decreases AWO&M's costs of performance of its obligations under this Agreement; in which case any decrease in expense shall be passed onto the City in the form of a temporarily reduced Agreement Price.
- 9.2. If an Uncontrollable Circumstance occurs, AWO&M shall notify the Owner by telephone, electronic mail, or facsimile after AWO&M first learns of the occurrence thereof. Upon AWO&M learning of the Uncontrollable Circumstance, AWO&M shall provide the Owner, as soon as reasonably feasible, with a written description of the Uncontrollable Circumstance, the cause thereof (to the extent known), the date the Uncontrollable Circumstance began, its expected duration and an estimate of the specific relief requested or to be requested by AWO&M.
- 9.3. AWO&M shall use reasonable efforts to reduce costs resulting from the occurrence of the Uncontrollable Circumstance, fulfill its performance obligations

under the Agreement, and otherwise mitigate the adverse effects of the Uncontrollable Circumstance. While the Uncontrollable Circumstance continues, AWO&M shall give the Owner a weekly update of the information previously submitted. AWO&M shall also provide written notice to the Owner of the cessation of the Uncontrollable Circumstance.

10. DEFAULT

10.1. The following shall constitute an “Event of Default” hereunder:

- a. The failure of the Owner to make any undisputed payment by the Due Date; and
- b. The failure of either Party to perform any material term, covenant, or condition of this Agreement (“Defaulting Party”) and the default continues for more than thirty (30) days following the other Party (“Non-Defaulting Party”) giving notice of such default to the Defaulting Party; provided, however, that if the default cannot reasonably be cured within such thirty (30) day period and the Defaulting Party has attempted to cure the default within such thirty (30) day period and thereafter continues to diligently attempt to cure the default, then the cure period provided for herein shall be extended. Failure of the Owner to make any undisputed payment by the Due Date must be cured within the thirty (30) day period.

10.2. If an Event of Default occurs, the Non-Defaulting Party may terminate this Agreement upon written notice to the Defaulting Party. The Non-Defaulting Party may enforce any and all rights and remedies it may have against the Defaulting Party under Applicable Law.

11. PERMITTING REQUIREMENTS, FINES AND PENALTIES

11.1. AWO&M shall be responsible for all fines and penalties relating to and arising from failure of AWO&M to provide services in accordance with its obligations hereunder, but only to the extent of and in proportion to the degree of fault, failure or negligence of AWO&M. The Owner shall be responsible for all other fines and penalties relating to and arising from the Facilities, including, without limitation, the Owner’s failure to perform its obligations hereunder.

11.2. AWO&M will not be responsible for fines, claims, or penalties resulting from violations or a failure to meet water quality requirements of the Owner’s Permit for any period(s) and subsequent recovery period(s) in which:

- (a) The Facilities is inoperable or can operate only at a reduced capacity due to construction, equipment failure, or maintenance activities, fire, flood, adverse weather conditions, labor disputes, or other causes beyond

- AWO&M's control;
- (b) The raw water characteristics exceed the Facilities design parameter and/or reasonable industry standards.
 - (c) The Owner fails to make necessary Capital Improvements or other improvements that are needed to meet permit requirements, or equipment repair or replacement, or delays authorizations for items needed to meet permit requirements.
- 11.3. If a fine or penalty is assessed against AWO&M or the Owner with regard to the Facilities, the Party receiving such fine or penalty ("Notifying Party") shall promptly notify the other Party ("Receiving Party") in writing of such fine and penalty and include a copy of any documents received. Such notice shall also contain a statement of the Notifying Party's position as to which party or parties bear responsibility for the fine or penalty. The Notifying Party's notice shall include assumption of all or partial responsibility of such fine or penalty, if applicable, or its rejection of any responsibility. If the notice asserts that the Receiving Party is either wholly or partially responsible, then, within five (5) business days of receipt of such notice, the Receiving Party shall either assume all responsibility if that Party is wholly responsible, or assume partial responsibility for its portion of such fine or penalty, or reject such assertion in writing. If both Parties are partially responsible for the fine or penalty, then they shall apportion the costs of the fine or penalty in proportion to the percentage of their respective responsibility. If either Party denies responsibility or the Parties are unable to come to an agreement as to the allocation of responsibility, the Parties shall attempt to resolve the dispute amicably, failing which the Parties shall submit the matter to dispute resolution in accordance with Section 16.
- 11.4. As to any fine or penalty for which the Owner or AWO&M assumes responsibility, the Party or Parties assuming responsibility shall be entitled to request and pursue an appeal or administrative hearing to review the fine or penalty at the sole cost and expense of the responsible Party or Parties; provided, however, that the Parties shall cooperate in providing access to documents and information, and execution of any consents or authorizations reasonably required.
- 11.5. As to any fine or penalty for which responsibility is disputed, either the Owner or AWO&M, or jointly, may request and pursue an appeal or administrative hearing to review the fine or penalty without prejudice to the allocation of ultimate responsibility between them, which would be submitted for resolution in accordance with Section 16.
- 11.6. The Owner and AWO&M shall cooperate in assertion of any appropriate affirmative defenses to any alleged permit violation prior to assessment of a fine or penalty. AWO&M will prepare and submit the documentation to assert an affirmative defense. Any testimony, investigations, reports, representation, and

advisory services provided by AWO&M in asserting appropriate affirmative defenses, if not included in the Basic Services or Additional Services, will be provided at an additional cost to the Owner, in accordance with AWO&M's per diem rates then in effect, unless it is ultimately determined that AWO&M is responsible for the fine or penalty.

12. INDEMNIFICATION

- 12.1. AWO&M shall indemnify and hold the Owner, its employees, officers, directors, agents, consultants, contractors, and representatives harmless from and against all liability, including attorneys' fees and/or consultant's fees and costs, for all damages of any nature whatsoever, including employee related injury or illness, any bodily injury or personal damage claim and any damage to or loss of use or loss of any personal or real property, which is caused by or directly attributable to the fault, failure, error, omission, negligent, or wrongful act of AWO&M, its employees, officers, directors, agents, consultants, subcontractors, and representatives for which it may be responsible in the performance or purported performance of its obligations under this Agreement, but only to the extent of and in proportion to the degree of fault, failure, error, omission, negligent, or wrongful act of AWO&M, its employees, officers, directors, agents, consultants, subcontractors, and representatives.
- 12.2. The Owner shall indemnify and hold AWO&M, its employees, officers, directors, agents, consultants, contractors, subcontractors, and representatives harmless from and against all liability, including attorneys' fees and/or consultant's fees and costs, for all damages of any nature whatsoever, including employee related injury or illness, any bodily injury or personal damage claim and any damage to or loss of use or loss of any personal or real property, which is caused by or directly attributable to the fault, failure, error, omission, negligent, or wrongful act of the Owner, its employees, officers, directors, agents, consultants, contractors, subcontractors, and representatives for which it may be responsible in the performance or purported performance of its obligations under this Agreement, but only to the extent of and in proportion to the degree of fault, failure, error, omission, negligent, or wrongful act of the Owner, its employees, officers, directors, agents, consultants, contractors, subcontractors, and representatives.
- 12.3. AWO&M shall not be responsible or liable for any casualty loss to the Facilities unless the casualty loss is due to AWO&M's or its employees', officers', directors', agents', consultants', subcontractors' and representatives' fault, failure, or negligence, but only to the extent of and in proportion to the degree of fault, failure, error, omission, negligent, or wrongful act of AWO&M, its employees, officers, directors, agents, consultants, subcontractors, and representatives.

13. CONSEQUENTIAL DAMAGES

In no event shall the Parties be liable to each other, and each Party specifically waives as against the other, any and all claims for consequential, incidental, indirect, special, or punitive damages resulting in any way from performance or non-performance of this Agreement, whether such damages are characterized as arising under breach of contract or warranty, tort (including negligence), fault, strict liability, indemnity, or any other theory of legal liability.

14. INSURANCE

- 15.1. AWO&M will provide Workers Compensation Insurance for its employees at the statutory limit for the state in which the Facilities is located.
- 15.2. AWO&M and its subcontractors will procure and maintain, in full force and effect during the term of this Agreement, Commercial General Liability Insurance with limits of liability of \$1,000,000 each occurrence and in the aggregate, along with an excess liability umbrella policy with limits of liability of \$5,000,000 each occurrence and in the aggregate, protecting AWO&M and its subcontractors from liability resulting from bodily injury, death and property damage arising out of the acts of AWO&M or its subcontractors. Such acquired insurance shall extend to liability risks relating to this Agreement.
- 15.3. In addition, AWO&M will procure and maintain, in full force and effect during the term of this Agreement, Automobile Liability Insurance with a combined single limit in the amount of \$1,000,000 each occurrence.
- 15.4. AWO&M shall not be required to carry, and will not carry, any property insurance covering the Facilities and such property insurance shall be the responsibility of the Owner at its expense.

15. DISPUTE RESOLUTION

- 15.1. If a dispute between the Parties arises out of, or relates to this Agreement, which does not involve claims made by or asserted against third parties, and if the dispute cannot be settled through negotiation, the Parties will try to resolve the dispute by non-binding mediation, through a mutually agreed upon dispute resolution agency.
- 15.2. If a dispute as contemplated by Section 16.1 cannot be resolved through non-binding mediation, the Parties will submit the dispute to binding arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court of competent jurisdiction in the state in which the Facilities is located.

16. GENERAL PROVISIONS

- 16.1. Ownership of Records. All regulatory and operational records relating to the Facilities are the property of the Owner; however, AWO&M shall be entitled to copies of such records and reasonable use thereof. .
- 16.2. Governing Law. This Agreement and its interpretation shall be governed by the laws of the State of New Jersey.
- 16.3. Entire Agreement. No oral agreement or conversation with any officer, agent, or employee of the Owner or AWO&M, either before or after the Effective Date of this Agreement, shall affect or modify any of its terms or obligations herein contained. This Agreement constitutes the entire agreement between the Parties hereto and supersedes all previous or contemporaneous communications, representations or agreements. The terms and conditions of this Agreement may be amended by and between AWO&M and the Owner; however, no changes, alternations, or modifications to this Agreement shall be effective unless in writing and signed by both Parties hereto. Any changes, alternations, or modifications to this Agreement, including agreed upon interpretation of meaning and other mutually agreed upon conditions provided for in this Agreement, shall be covered by a written amendment signed by both Parties.
- 16.4. Successors and Assigns. The terms of this Agreement shall be binding upon the successors, assigns, and legal representatives in privity of contract with AWO&M or the Owner.
- 16.5. Assignment. AWO&M may assign this Agreement with the prior written consent of the Owner, which consent shall not be unreasonably withheld by the Owner; provided, however, that AWO&M shall not require the consent of the Owner if assignment of this Agreement is to an affiliate, subsidiary, or related entity of AWO&M. The Owner may assign this Agreement with the prior written consent of AWO&M or its assignee, which consent shall not be unreasonably withheld by AWO&M.
- 16.6. Waiver. The failure on the part of either Party to enforce its rights as to any provision of this Agreement shall not be construed as a waiver of its rights to enforce such provision in the future.
- 16.7. Conflicts. To the extent there are any conflicts, inconsistencies or discrepancies between the terms and conditions contained in the main body of this Agreement and the Schedules attached hereto, the terms and conditions of the main body of this Agreement shall govern.
- 16.8. Recitals. The Recitals set forth above are hereby incorporated into and made part of this Agreement.

- 16.9. Non-Solicitation. AWO&M and/or its affiliates, subsidiaries or related entities, agree that it will not directly solicit employees of the City of New Brunswick for hire during the Term of this Agreement and for a two (2) year period after the expiration of this Agreement. The City agrees that it will not directly or indirectly solicit employees of AWO&M and/or its affiliates, subsidiaries or related entities during the Term of this Agreement and for a two (2) year period after the expiration of this Agreement.
- 16.10. Notices. All notices or other communications required or permitted hereunder shall be given in writing and delivered personally or mailed, by certified or registered mail, postage prepaid and return receipt requested, or by a nationally recognized priority delivery service, such as Federal Express, and addressed to the Party or Parties at the following address:

To Owner: City of New Brunswick
City Hall, 78 Bayard Street
New Brunswick, NJ 08901-0269
Attention: Mayor James M. Cahill

City of New Brunswick
City Hall, 78 Bayard Street
New Brunswick, NJ 08901-0269
Copy: Thomas A. Loughlin, 3rd

To AWO&M: American Water Operations and Maintenance Inc.
1025 Laurel Oak Road
Voorhees, NJ 08043
Attention: Vice President of Contract Services

With copy to: American Water Enterprises, Inc.
1025 Laurel Oak Road
Voorhees, NJ 08043
Attention: General Counsel

Addresses may be changed or supplemented by written notice given as above provided. Any such notice sent by mail shall be deemed to have been received by the addressee on the third (3rd) business day after posting in the United States mail, or if by a priority service, on the first (1st) business day after transmittal, or, if delivered personally, on the date of such delivery.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF the Owner and AWO&M have hereto executed this Agreement under their respective corporate seals, and by the hands of their proper officers duly authorized as of the day and year first above written.

CITY OF NEW BRUNSWICK, NEW JERSEY

By: _____

Name: _____

Title: _____

AMERICAN WATER OPERATIONS AND MAINTENANCE, INC.

By: _____

Name: _____

Title: _____

SCHEDULE A
FACILITIES DESCRIPTION

The City of New Brunswick owns and operates a water supply, treatment, distribution and storage system for the purpose of providing water supply to the residents and businesses in the City and neighboring communities. In general, the system consists of the following:

- Four dams that provide water storage impoundments on Lawrence Brook (known as the Westons Mill Supply)
- Two raw water pump stations that convey raw water from Westons Mill Pond and the Delaware & Raritan Canal to the Water Treatment Plant
- Water Treatment Facilities that generally consist of the following:
 - Rapid Mixing Facility
 - Two Flocculation/Sedimentation Basins
 - Chlorine Contact Tank
 - Eight Gravity Filters (One filter is currently out of Service)
 - A Membrane treatment system consisting of four trains of immersed membranes with a combined firm capacity of 9 MGD
 - Chemical storage and feed systems consisting of alum, lime, sodium hypochlorite, caustic soda, citric acid and polymer. A sulfuric acid system is currently being made operational
 - Clearwell storage
 - High lift pumping and Emergency High Lift Pumping
 - Stand-by Power
 - SCADA System
 - Potassium permanganate is also fed at the D/R Canal Raw Water Pumping Station
- Three water storage tanks with a combined capacity of 3.15 MG
- Interconnections with adjoining water systems (includes bulk supply to Franklin Township and Milltown; emergency supply connections with East Brunswick and North Brunswick)
- Water distribution system throughout the City with mains ranging in size from 4" to 24." The piping network is predominantly cast iron and ductile iron pipe.

SCHEDULE B
BASIC SERVICES

AWO&M shall provide Operations Support and Management Services (OSMS) of the Facilities. On average, the Water Treatment Plant provides approximately 12 MGD supply to the City, Milltown and Franklin Township (through the Landing Lane Pump Station).

In general, basic services provided under the OSMS agreement shall include the following:

- Provide the services of a T-4 NJ Licensed operator and one back-up on-call T-4 Operator to manage the operations of the City's Raw Water Pump Stations and Water Treatment Plant.
- Provide the services of a W-4 NJ Licensed operator and one back-up on-call W-4 Operator to oversee the operations of the City's water distribution operations. Note, the T-4 and W-4 licenses may be covered by the same individual at the election of AWO&M and approval of the NJDEP.
- Provide the services for three (3) T-1 or T-2 NJ licensed operators as supervisors. The supervisors will be full-time resources, with their time as scheduled by the AWO&M T-4 and/or W-4 licensed operator. The schedule will be prepared with the intent to maximize supervision of City staff as needed, while also supporting implementation of ongoing projects or improvement initiatives. As such, the supervisors will not provide 24x7 coverage of the City staff; but will be available for Emergency Call-Out as-needed.
- Emergency Call-Outs outside of the supervisors regularly scheduled hours will be billed to the City at a rate of \$70 / hour. Emergency Call-Outs for the T-4 or W-4 resources in excess of 8-hours per week (cumulative) shall be billed to the City at a rate of \$125 / hour.
- Supervise and direct City Water Treatment Plant Operations staff that include:
 - 8 Water Treatment Plant Operators and Assistant Operators..
- Provide guidance and coordinate with City Water Treatment Plant Maintenance staff that include:
 - Maintenance Supervisor, who possesses a T-1 License
 - 7 Water Treatment Plant Maintenance Staff persons, one who possesses a T-1 license.
- Provide oversight for the distribution operations including the development of standard operating procedures for the distribution network operations, management of the implementation of a comprehensive sampling plan as required for compliance, on-site supervision of main break responses as necessary, support the preparation of water main extension permit applications, and basic budget control for the distribution department.
- Supervise and direct City Water Distribution Department staff that include :
 - A Supervisor of Transmission and Distribution and an Assistant Supervisor of Transmission and Distribution.

- Eight Senior Water Repairers and one Equipment Operator.
- Provide additional qualified Treatment Operators and support staff as deemed necessary to deliver the scope of services as described herein. All required supplemental resources provided by AWO&M that are deployed to implement or oversee a change in scope of services shall be pre-approved by the City, except in the event of an emergency.
- Compile and submit all periodic regulatory reports to applicable agencies as the "T" and "W" Licensed Operator for the system.
- Provide all notifications as required by a licensed operator to regulatory agencies as required by existing Federal and State Safe Drinking Water Act regulations.
- Coordinate and oversee sampling protocols for necessary process and regulatory laboratory analysis. Cost for both on-site analysis and off-site certified laboratory testing will be paid by the City (as is the current practice).
- Maintaining plant process and operating records and distribution operating records as required and in accordance with Federal and State Safe Drinking Water Act regulations and best industry practices.
- Conform to the requirements of the City's raw water supply contract with the New Jersey Water Supply Authority and avoid excess purchases that would result in penalties under said contract.
- Operate the raw water pumping stations and plant in a manner that avoids the purchase of water through the emergency interconnections unless required to maintain water quality and service in the system. The operation of any emergency interconnections will require prior approval of the City Business Administrator and the Water Director.
- Coordinate with the City Business Administrator and the Water Director on all Plant and Distribution Operations and Regulatory matters.
- Provide the necessary on-site and/or off-site resources to:
 - Develop and implement a site specific Environmental Management Plan. The Environmental Management Plan shall follow American Water's standards to provide the operations staff with a site specific working tool that identifies applicable regulations and permits, including a summary of the various associated compliance requirements.
 - Assist in the development of a treatment optimization plan. The recommendations in the treatment optimization plan will be developed through the coordinate efforts of various American Water resources to include operations, engineering, and water quality staff.
 - Work with City's consultants to help identify needed capital improvements to maintain and improve existing Facilities. Assist in the implementation of on-going and planned capital improvements.
 - Develop and implement a site specific health & safety program. The health & safety program shall follow American Water's standards, but will be tailored by our health & safety professionals to be address local conditions.

- Remotely monitor Plant Operations through City's existing SCADA system. Remote monitoring will be on a 24x7 basis from one of American Water's SCADA / Operations Support Center(s);
 - Support the maintenance program, including usage of the new asset management and maintenance system
-
- Between the execution date of this Agreement and approximately October 31, 2014, AWO&M shall make Frank Marascia available to the City for up to 40-hours (total), as necessary, to support the following specific activities that were ongoing at the time he left employment with the City. The dates and times to provide these support services shall be as agreed between the parties:
 - Respond to request for additional information for \$750K FEMA grant for emergency generators;
 - Assist City's consulting engineer in providing information to NJDEP for re-rating the firm capacity of the Facility;
 - Assist City in discussions with NJDEP regarding possible fines and corrective strategies related to the Administrative Orders filed in November 2013 against the City's water utility.

SCHEDULE C

OWNER'S RESPONSIBILITIES

The Owner shall be solely responsible for arrangement, payment and implementation of all services and items set forth below:

- Provide City Maintenance Supervisor, who possesses a T-1 license.
- Provide City Water Treatment Plant Operations and Maintenance staff that are and remain employed by the City. The City will maintain the staff required to perform distribution operations and maintenance and will replace employees who voluntarily leave the employ of the City or who may be terminated for cause during the term of the OSMS.
- Provide City distribution system operations and maintenance personnel that are and remain employed by the City. The City will maintain the staff required to perform distribution operations and maintenance and will replace employees who voluntarily leave the employ of the City or who may be terminated for cause during the term of the OSMS.
- The City will provide equipment, materials and supplies needed for the proper operation and maintenance of the Facilities.
- Undertake Capital Improvements in order to provide needed system upgrades to maintain compliance with regulatory standards. Recently completed, ongoing, or planned projects include:
 - SCADA system upgrades and improvements were completed in August 2014. Access to the SCADA system shall be provided to AWO&M for remote monitoring.
 - Repairs and improvements to the gravity filter systems that are anticipated to be completed within six (6) to nine (9) months of the Effective Date of this Agreement.
 - Chemical feed modifications to provide flow pacing of key chemical feed systems that are anticipated to be completed within ninety (90) days of the Effective Date of this Agreement
- Undertake the replacement of equipment that, as a result of normal wear and tear, requires replacement to maintain reliable plant operations.
- Provide materials and supplies such as chemicals and other consumables required for the normal operation of the Facilities.
- Make all payments due to the New Jersey Water Supply Authority for raw water supplies purchased from the Authority.
- Make all payments for waste disposal resulting from the normal operation of the Facilities and periodic cleaning of the sedimentation basins.
- Make all payments for utilities required to operate the subject Facilities.

- Undertake equipment repairs needed for the proper operation of the Facilities including payments to third-party maintenance vendors engaged by mutual consent of the City and AWO&M in accordance with City procurement procedures.
- Arrange for and make all payments for all necessary process and regulatory laboratory services.
- The City will hire a Water Utility Director (expected to be within the next sixty (60) days), who will serve as the point of contact for AWO&M.
- The City will complete the on-going Water Treatment Plant Facility Plan within ninety (90) days from the Effective Date of this Agreement.
- The City will continue with the on-going development of an asset management and maintenance system (“AMMS”). AWO&M will review the on-going development of the AMMS within the next ninety (90) days and provide the City with input on the continued implementation of the AMMS.
- The City will continue to own all water system Facilities and will continue to set water rates for all customers, oversee the billing and collection functions, provide customer service, and maintain all system Facilities.

SCHEDULE D
BASE MONTHLY FEE

The “Base Monthly Fee” in the first Agreement Year is an amount equal to \$72,323 per month, or \$867,880 for the 12-month period October 1, 2014 through September 30, 2015. The Base Monthly Fee for the first partial month, from September 17, 2014 through September 30, 2014, shall be on a pro-rated basis as described in the Agreement.

The Base Monthly Fee is based on the following on-site staffing structure:

- Resources as required to cover NJDEP requirements for W4 and T4 operator coverage
- Three (3) shift supervisors

It is acknowledged that AWO&M will be utilizing various on-site operational resources as part of an interim staffing structure during the first several months of the Agreement. This interim staffing structure is required to accommodate the on-boarding and/or relocation of permanent staff, and also to support the development and implementation of standard operating procedures, health and safety standards, an environmental management and compliance program, and support various ongoing capital and major maintenance activities. During this interim period, actual on-site hours will be tracked for the W4 and T4 operators relative to a target of 212 man-hours per month.

During this period with an interim staffing structure, any hours less than or in excess of 212 total man-hours per month for the T-4 and W-4 operations resources, specifically Jim Golden, Scott Baxter-Green, and Jim Cowley, shall be credited / billed at an hourly rate of \$125 / hour.

For each vacant shift supervisor position, the City will be credited \$1,850/week that the position is not filled. January, April, July, and October shall be considered 5-week months for purposes of calculating the credit; all other months shall be considered 4-week months.

The interim period shall be until Jim Cowley is permanently assigned to the New Brunswick operation as the T-4 and W-4 operator. Thereafter, the Base Monthly Fee shall only be adjusted by applicable credits for vacant shift supervisors and for additional services as requested by the City.

During the interim period, the total cost per month, including any additional hours for the T-4 and W-4 resources netted against applicable credits for vacant shift supervisor positions, shall not exceed the \$72,323 without prior approval from the City.

The cost for Additional Services shall be negotiated between the parties either on a lump sum or hourly basis.

SCHEDULE E
OWNER DISCLOSURES

The Owner acknowledges and agrees that it has disclosed any prior non-compliant conditions existing at the Facilities to AWO&M and the Owner is not aware of any current non-compliant conditions existing at the Facilities as of the Effective Date of this Agreement.

DRAFT