

**FRANCHISE FOR WATER SERVICES
AND
WATER SERVICE AGREEMENT
BY AND BETWEEN
CECIL COUNTY, MARYLAND
AND
ARTESIAN WATER MARYLAND, INC.**

Dated

August _____, 2008

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FRANCHISE FOR WATER SERVICES

AND

WATER SERVICE AGREEMENT

THIS FRANCHISE FOR WATER SERVICES AND WATER SERVICE AGREEMENT (“Agreement”) is made as of August _____, 2008, by and between **CECIL COUNTY, MARYLAND**, a body corporate and politic under the laws of the State of Maryland, as represented by the Board of County Commissioners of Cecil County (the “County”), and **ARTESIAN WATER MARYLAND, INC.**, a Delaware corporation (the “Franchisee”).

Explanatory Statement

A. Article 25, §3D of the Code provides that the Commissioners of the County are authorized to displace or limit competition within the County, with respect to water systems, in order to assure delivery of adequate, economical, and efficient services to its citizens, to avoid duplication of facilities, to provide for the health and safety of its citizens, to control disease, to prevent blight and other environmental degradation, to utilize efficiently the public right-of-way, to protect limited natural resources for the benefit of the citizens of the County, and to promote the general health and welfare by providing for adequate water systems. To that end, the Commissioners have the authority to displace or limit competition by granting one or more franchises for any concession on, over or under property owned or leased by the County on an exclusive or nonexclusive basis, to control prices and rates for such franchises, to establish rules and regulations to govern the operation of the franchises, to provide for the enforcement of any such measure, and to lease or sublease publicly owned or leased land improvements to land or both on terms to be determined by the County without regard to any anticompetitive effect; provided that such authority shall not be construed to preempt or supersede the regulatory authority of any State department or agency under any public general law.

B. Pursuant to such authorization, the Commissioners of Cecil County have requested, by the RFP (defined below), that appropriate and qualified Persons submit proposals that would develop Water Services within the Service Area, pursuant to a franchise (defined below) from the County.

C. Following review and evaluation of all proposals submitted in response to the RFP the Commissioners have determined to accept the proposal of Franchisee for the provision of Water Services in the Service Area, pursuant to franchise, subject to the terms, covenants and conditions and restrictions hereafter set forth.

D. The parties acknowledge that: (i) pursuant to §§67-1, 67-2 and 67-3 of the County Code, the Service Area forms part of the County sanitary district, under the

jurisdiction and control of the Commissioners, subject to the administration and direction of the Director of Public Works of the County, acting in his capacity as the Director of Sanitary Facilities; (ii) pursuant to §67-16 of the County Code no Water System may be constructed by Franchisee without the prior approval of the Director of Sanitary Facilities; (iii) pursuant to §5-204 of the PUC Article a Person may not construct a Water System for public use without the prior authorization of the Commission; (iv) pursuant to §7-105(b) of the PUC Article Franchisee is required to obtain the consent of the Commissioners before laying pipes or constructing water works within the Service Area, and the Commissioners may adopt reasonable regulations for the laying of pipes, construction of works and operations of a Water Company; and (v) pursuant to §5-201 of the PUC Article Franchisee may not exercise a Franchise except upon a demonstration to the Commission that the Commissioners have provided the required consent for the exercise of the Franchise, and then only to the extent authorized by the Commission.

E. The Commissioners have made a finding that, subject to the terms, covenants, conditions and restrictions in this Agreement, the grant of a franchise to Franchisee, to design, build, own, operate and maintain, repair and replace the Water System, to provide Water Services with respect to the Franchise Area, for the Franchise Term, will (i) assure delivery of adequate, economical, and efficient water services to Customers within the Franchise Area; (ii) provide for the health and safety of its citizens; (iii) control disease; (iv) prevent blight and other environmental degradation; (v) promote the efficient utilization of the public rights-of-way located in the Franchise Area; (vi) protect limited natural resources for the benefit of the citizens of the County; and (vii) promote the general health and welfare by providing for adequate Water Service to Customers in the Franchise Area.

F. Accordingly, the purpose of this Agreement is to (i) confirm the grant of the Franchise to Franchisee, as a franchise created in exercise of the authority vested in the Commissioners pursuant to Article 25, §3D(b) of the Code; (ii) establish the Franchise Area, and the Franchise Term; (iii) define the terms, covenants, conditions and restrictions upon which the Franchise is granted by the Commissioners and upon which it is to be accepted and held by Franchisee, and exercised by Franchisee subject to the regulatory control of the Commission pursuant to the PUC Article and the Regulations; and (iv) define the terms, covenants, conditions and restrictions upon which Franchisee contractually agrees with the County to provide Water Services within the Franchise Area.

Agreement

NOW, THEREFORE, in consideration of the County's grant of the Franchise to Franchisee, and Franchisee's contractual undertaking to provide Water Service to Customers in the Franchise Area pursuant to and consistent with Applicable Laws, pursuant to the terms, covenants, conditions and restrictions set forth in this Agreement, and other good and valuable consideration, the receipt and the adequacy of which are hereby acknowledged, the County and Franchisee agree as follows.

1. DEFINITIONS; USAGE; EXHIBITS.

1.1. **Definitions.** As used in this Agreement the following words, when capitalized, shall have the meanings indicated.

(a) *AAA:* The American Arbitration Association or any successor organization.

(b) *AAA Director:* the regional director of the chapter of the American Arbitration Association with jurisdiction over disputes arising in Maryland, or his or her designee.

(c) *Adjusted Rate Base:* At any given time, the adjusted value of the Rate Base, accounting from the date it was last determined by the Commission, which shall be calculated as the sum of: (A) the Rate Base as most recently determined by the Commission, plus (B) the original cost of any elements of the Water System acquired and placed in service by Franchisee within the Franchise Area since the last determination of the Rate Base, minus (C) the sum of (1) the original cost of any elements of the Water System disposed of or no longer used and useful since the last determination of the Rate Base, plus (2) depreciation charges since the last determination of the Rate Base.

(d) *Affiliate:* any Person who, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership or control with, Franchisee.

(e) *Agreement:* this Franchise for Water Services and Water Service Agreement.

(f) *Applicable Laws:* collectively, the County Code, the PUC Article, the other provisions of the Code, the Regulations, Environmental Laws, and all other applicable laws, ordinances, notices, orders, rules, regulations and requirements of all Appropriate Authorities regulating the issuance and operation and disposition of the Franchise, and the design, building, ownership, operation, maintenance, repair, replacement, sale, transfer or other disposition of the Water System, and the provision of Water Services within the Franchise Area.

(g) *Application for County Approval:* an application for approval of proposed action by the Franchisee, in respect of its ownership and control, or in respect of its use of the Franchise and operation of the Water System, made pursuant to Section 11.

(h) *Appropriate Authorities:* the governmental offices and officers of the United States, the State and the County, charged with the administration of Applicable Laws and with the issuance of all permits, licenses, consents, waivers or other approvals needed under Applicable Laws governing the issuance and operation and disposition of the Franchise, and the design, building, ownership, operation, maintenance, repair, replacement, sale, transfer or other disposition of the Water System, and with the provision of Water Services within the Franchise Area generally.

- (i) *Arbitration Act*: the Federal Arbitration Act (Title 9, U.S. Code).
- (j) *ASA*: American Society of Appraisers.
- (k) *ASCE*: American Society of Civil Engineers.
- (l) *AWWA*: American Water Works Association.

(m) *Books and Records*: all books and records, including all documents in whatever form maintained, including electronic media to the extent that such books and records relate to the Water System or to Franchisee's provision of Water Service in the Franchise Area and are reasonably necessary to ensure compliance with the terms of this Agreement.

(n) *Breach*: in the context of a representation, warranty, covenant, obligation, or other provision of this Agreement or any instrument delivered pursuant to this Agreement, that there is or there has been any inaccuracy in or breach of, or any failure to perform or comply with, such representation, warranty, covenant, obligation, or other provision.

(o) *Certificate of Public Convenience and Necessity*: the certificate to be issued to Franchisee by the Commission, in exercise of its regulatory powers under Title 5 of the PUC Article, authorizing Franchisee to construct and operate the Water System in the Franchise Area, in exercise of the Franchise.

(p) *CMMS*: Computerized Management Maintenance Systems to be maintained by Franchisee for use in operating Water System.

(q) *Code*: the Annotated Code of Maryland, and in each instance the latest revision thereof.

(r) *Commission*: the Public Service Commission established pursuant to §2-101 of the PUC Article.

(s) *Commissioners*: the Board of County Commissioners of the County, or any successor board and Persons exercising the executive and legislative authority of the County pursuant to the County Code.

(t) *Control*: (a) in respect of Franchisee, the legal or practical ability to exert actual working control over the affairs of Franchisee, either directly or indirectly, whether by contractual agreement, majority ownership interest, any lesser ownership interest, or in any other manner; and (b) in respect of the Franchise, the legal or practical ability to exercise the Franchise in operation of the Water System, either directly or indirectly, whether by contractual agreement, or in any other manner.

- (u) *County*: Cecil County, Maryland.

(v) *County Code*: the Code of Cecil County, Maryland, consisting of all currently effective public local laws enacted by the Maryland General Assembly pertaining to the County and all currently effective acts, ordinances and resolutions adopted by the Commissioners, and in each instance the latest revision of this Agreement.

(w) *County Notice Address*: care of the County Administrative Officer, Cecil County Administration Building, 200 Chesapeake Boulevard, Elkton, Maryland 21921, with a copy to the Director of Sanitary Facilities, Cecil County Administration Building, 200 Chesapeake Boulevard, Elkton, Maryland 21921.

(x) *Custom and Practice*: for purposes of determining the propriety of a proposed material change, pursuant to Section 14, a determination of the then-current customs and practices within the County, the State and throughout that portion of the United States lying east of the Mississippi River, with respect to the award and operation of agreements and franchises for water systems (such as are contemplated in this Agreement) and wastewater systems, which are awarded to private or investor-owned water and wastewater companies.

(y) *Customer*: any owner or occupant of property in the Franchise Area receiving or desiring to receive Water Service from Franchisee pursuant to this Agreement.

(z) *Default*: a Breach which continues beyond the period for notice and opportunity to cure as provided in Section 12.2, and gives rise to a right of termination as provided in Section 12.1(e).

(aa) *Director of Sanitary Facilities*: the Director of Public Works of the County, acting in his capacity as such pursuant to §67-2 of the County Code.

(bb) *Effective Date*: the first day of the first full calendar month next following the date of latest signature and delivery of this Agreement, which date of latest signature and delivery shall be entered on the first page of this Agreement.

(cc) *Environmental Laws*: any and all Federal, State and local statutes, laws, regulations, ordinances, judgments, orders or governmental codes existing as of the Effective Date which impose liability for or standards of conduct concerning the manufacture, processing, generation, distribution, use, treatment, storage, disposal, cleanup, transport or handling of Hazardous Substances and the design, manufacture and operation of Water Systems, including, but not limited to, the Resource Conservation and Recovery Act of 1976, as amended; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended; the Superfund Amendment and Reauthorization Act of 1984, as amended; the Toxic Substances Control Act, as amended; the Occupational Safety and Health Act of 1970, as amended; and, to the extent it relates to the handling of and exposure to hazardous or toxic materials or similar substances, any other so-called “Superfund” or “Superlien” law, and any State statutes which regulate such materials or substances; the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977; and United States Department of the

Environment Title 40, Code of Federal Regulations, Parts 50 through 149 for water program requirements.

(dd) *Extension Term*: either or all of the three (3) periods, each of twenty (20) years, referenced in Section 4.2.

(ee) *Fair Market Value*: At any given time, the fair market value of the Water System as if it were being offered for sale on the open market, for its highest and most profitable use; provided that (i) by operation of the provisions of Section 3.4, no valuation component shall attach to the Franchise itself, as distinct from the assets of the Water System itself (unless and until otherwise provided in such Section), and (ii) in no event shall the Fair Market Value be less than the Adjusted Rate Base. The Fair Market Value shall be as determined from time to time in accordance with Section 13. Nothing in this definition shall preclude Franchisee from making a claim that the Fair Market Value of the Water System should include a component accounting for profit with respect to future expected cash flows from operation of the Water System; provided further than nothing in this definition shall require the inclusion of such a claim as a component of the valuation.

(ff) *Force Majeure*: acts of God; fire; earthquake; flood; explosion; action of the elements; declared or undeclared war; riots; civil disturbances; breakage or accident to machinery for which Franchisee is not liable; failure of transportation; strikes; lockouts; action of labor unions; injunction; court order or decree; governmental preemption; any rule, order, or regulation of any department or subdivision of any government agency.

(gg) *Franchise*: the right granted by the County to Franchisee, in exercise of its powers under existing public general or public local laws, and specifically with reference to the County's authority under Article 25, §3D(b) of the Code, authorizing Franchisee to locate elements of the Water System in, through, on or under the Franchise Area, including the property, right-of-way or other lands owned or controlled by the County, all subject to the requirements, terms and conditions set forth in this Agreement and Applicable Laws.

(hh) *Franchise Area*: initially, the Service Area; subject to expansion, contraction or reconfiguration as may be agreed to by the County and Franchisee during the Term of this Agreement, in the manner provided in this Agreement.

(ii) *Franchisee*: Artesian Water Maryland, Inc., and its lawful and permitted successors, assigns and transferees.

(jj) *Franchisee Notice Address*: care of the President, 664 Churchmans Road, Newark, Delaware 19702, with a copy to General Counsel, 664 Churchmans Road, Newark, Delaware 19702.

(kk) *Initial Term*: the period commencing on the Effective Date and ending on the last day of the twentieth (20th) full calendar year thereafter (i.e., December 31, 2028).

(ll) *Master Water and Sewer Plan*: the Cecil County Master Water and Sewer Plan, bearing revision date of March 2004 as of the Effective Date, as amended from time to time.

(mm) *MDE*: Maryland Department of the Environment.

(nn) *MGD*: million gallons per day, as a measure of water volume or flow.

(oo) *MTBF*: with respect to the Water System and each component of it, the mean time between failures.

(pp) *Parent*: Artesian Resources Corporation, a Delaware corporation.

(qq) *Parent Guaranty*: that Guaranty of Payment and Performance of Parent, respecting the obligations of Franchisee under this Agreement, to be executed and delivered by Parent to the County in the form of **Exhibit E** attached hereto, on or before the Effective Date.

(rr) *Person*: An individual, partnership, association, joint stock company, trust, or corporation; but such term does not include the County.

(ss) *Public Rights-of-Way*: The surface and the area across, in, over, along, upon and below the surface of the public streets, roads, bridges, sidewalks, lanes, courts, ways, alleys, and boulevards, including public lands and waterways located within the Franchise Area and used as public rights-of-way, as the same now or may hereafter exist, which, consistent with the purposes for which it was dedicated, may be used for the purpose of installing and maintaining a Water System.

(tt) *Public Service Company*: as defined in §1-101 of the PUC Article; and for purposes of this Agreement means and refers to Franchisee when acting as a Water Company in operation of the Water System in the Franchise Area.

(uu) *PUC Article*: The Public Utilities Company Article of the Annotated Code of Maryland, as currently in force and effect and as the same may be amended from time to time.

(vv) *Rate Base*: At any given time, the valuation of the Water System as determined and approved by the Commission, for purposes of calculating the allowed return on investment with respect thereto in the hands of Franchisee, which valuation is typically made by the Commission in connection with an adjustment to Franchisee's tariff, in accordance with the PUC Article. Unless re-defined by the Commission in the future, the Rate Base for a given period of determination shall equal the sum of (A) the original costs of all assets comprising the Water System then used and useful, minus (B) accumulated depreciation on those assets. The depreciation schedules shall be those then approved by the Commission for that purpose.

(ww) *Regulations*: Title 20 of the Code of Maryland Regulations, particularly including, but not limited to, Subtitle 70, “Service to be Provided by Water Companies,” and Subtitle 73, “Construction of New Water and Sewage Disposal Systems.”

(xx) *RFP*: Cecil County Government Request for Proposal RFP 08-02 (amended July 18, 2007, and August 15, 2007) for the provision of Elkton West Water and Wastewater Services in the Service Area.

(yy) *RFP Response*: the Response to Request for Proposal of Franchisee dated September 7, 2007, together with all attachments thereto, and all supplements thereto subsequently filed with the County.

(zz) *Service Area*: The Elkton-West Water and Wastewater Services Area described on **Exhibit A** to this Agreement and depicted on **Exhibit B** to this Agreement, as amended from time to time by the County.

(aaa) *State*: the State of Maryland.

(bbb) *Table of Standards of Service*: as set forth on **Exhibit D**.

(ccc) *Term*: the Initial Term, together with any one or more Extension Terms which are exercised as provided in this Agreement, subject to earlier termination as elsewhere provided in this Agreement.

(ddd) *Termination Event*: As defined in Section 12.1.

(eee) *Transfer of Control*: (a) with respect to the Franchisee, any transaction in which an ownership or other interest in Franchisee is transferred, directly or indirectly, in one or more or a series of transactions, from one Person or group of Persons to another Person or group of Persons so that Control of Franchisee is transferred from the Person last recognized and acknowledged by the County as exercising Control of Franchisee; or (b) with respect to the Franchise, any transaction or series of transactions in which the rights held by Franchisee under the Franchise and this Agreement are purported to be transferred or assigned from the Franchisee last recognized and acknowledged by the County as holding the Franchise, to another Person or group of Persons; notwithstanding this, the following transactions do not constitute a Transfer of the Franchisee or of the Franchise:

(i) A transaction among or between Affiliates if:

A. The previous Franchisee under this Agreement provides an unconditional guarantee of performance of the new Franchisee in a form acceptable to the County prior to the closing of the transaction;

B. the transferee agrees in writing, prior to closing, that it will abide by and accept all terms of this Agreement and Applicable Laws, and that it will assume the obligations, liabilities, and responsibility for all acts and omissions,

known and unknown, of the previous Franchisee under this Agreement and Applicable Laws for all purposes, including renewal;

C. Franchisee has no uncured Breach from the time of the notice through the date of closing of the transaction; and

D. Franchisee has provided the County at least ninety (90) days notice of the proposed Transfer and responds completely to all information requests by the County respecting the proposed Transfer.

(ii) A sale of ownership or other interest in a Person Controlling Franchisee, either directly or indirectly, unless the sale occurs before Franchisee has completed construction of the Water System as provided in **Exhibit C** and otherwise as promised by Franchisee in this Agreement.

(iii) A transfer in trust, by mortgage, by other hypothecation, by assignment of any rights, title, or interest of Franchisee in the Franchise or Water System in order to secure indebtedness.

(fff) *USEPA*: The United States Environmental Protection Agency.

(ggg) *Water Company*: as defined in §1-101 of the PUC Article, a public service company that owns a Water Plant and sells or distributes water for gain.

(hhh) *Water Plant*: as defined in §1-101 of the PUC Article, the material, equipment and property owned by a Water Company and used or to be used for or in connection with Water Service; the term shall be synonymous with the term “Water System” when used to describe the material, equipment and property owned by Franchisee and used for such purpose within the Franchise Area.

(iii) *Water Service*: the employment of the Water System by Franchisee for the provision of potable water to the Customers within the Franchise Area, in exercise of the Franchise and in fulfillment of Franchisee’s obligations under this Agreement, and in accordance with Applicable Laws.

(jjj) *Water System*: the material, equipment and property owned or to be owned by Franchisee and used or to be used in connection with the provision of Water Service by Franchisee within the Franchise Area, in exercise of its Franchise and in fulfillment of Franchisee’s obligations under this Agreement, and including, but not limited to, pipes, vaults, valves, meters, pumps and pumping stations, tanks, reservoirs, filters and filtration systems, towers and the like.

1.2. **Usage.** The words “shall” and “will” are mandatory, and the word “should” expresses an expectation, but is not mandatory, and the word “may” is permissive.

1.3. **Exhibits.** The following Exhibits are attached to this Agreement and are incorporated into this Agreement by reference.

- (a) **Exhibit A** - Description of Elkton West Service Area.
- (b) **Exhibit B** - Pictorial representation or plan of the Service Area as of the Effective Date.
- (c) **Exhibit C** - Division of Water System into Phases, for Construction and Installation and Schedule for Construction and Installation of Water System, by Phase.
- (d) **Exhibit D** - Table of Standards of Service.
- (e) Exhibit E - Form of Parent Guaranty
- (f) Exhibit F - Letter of Intent For Transfer of County's Water Facilities

2. REPRESENTATIONS AND WARRANTIES OF FRANCHISEE.

Franchisee represents and warrants that the following statements are true and correct as of the Effective Date.

2.1. **Organization.** The Franchisee is a corporation duly organized, and existing in good standing under the laws of the State of Delaware.

2.2. **Qualification to Do Business.** Franchisee is duly qualified to do business and in good standing in the State.

2.3. **Public Service Company.** Franchisee is a Public Service Company holding a Certificate of Public Convenience and Necessity from the Commission and is presently lawfully entitled to operate a Water Company elsewhere in the County.

2.4. Affiliates.

- (a) Franchisee is a wholly-owned subsidiary of Parent.
- (b) Franchisee owns no Affiliates.
- (c) The Affiliates of Franchisee as of the Effective Date are as follows; and all such entities are wholly-owned subsidiaries of Parent:
 - (i) Artesian Development Corporation;
 - (ii) Artesian Water Company, Inc.;
 - (iii) Artesian Wastewater Management, Inc.;
 - (iv) Artesian Wastewater Maryland, Inc.;
 - (v) Artesian Water Pennsylvania, Inc.; and

(vi) Artesian Utility Development, Inc.

(vii) Artesian Consulting Engineers, Inc.

2.5. **Power and Authority.** Franchisee has the power, authority and legal right to own its property and carry on the business now being conducted by it and to engage in the transactions contemplated by this Agreement.

2.6. **Due Authorization.** The execution and delivery of, and the carrying out of the transactions contemplated by, this Agreement executed by the Franchisee, and the performance and observance of the terms and conditions of this Agreement and Franchise, have been duly authorized by all necessary corporate action of the Franchisee.

2.7. **Valid and Binding Obligations.** This Agreement constitutes the valid and legally binding obligation of the Franchisee and is fully enforceable against the Franchisee in accordance with its terms.

2.8. **No Conflicts.** The execution and performance of this Agreement by Franchisee and the consummation of the transactions contemplated thereby will not conflict with, result in any breach of, or constitute a default under, the corporate charter and bylaws of the Franchisee, or any contract, agreement, document or other instrument to which the Franchisee is a party or by which the Franchisee may be bound or affected, and do not and will not violate or contravene any Applicable Laws.

2.9. **Taxes.** Franchisee has filed all federal, state, county and municipal tax returns required to have been filed by the Franchisee in any state and has paid all taxes which have become due pursuant to such returns or pursuant to any tax assessments received by the Franchisee.

2.10. **Legal Actions.** There are no material (a) claims pending or, to the best of the Franchisee's knowledge and belief, threatened, against or affecting the Franchisee, the Franchisee's business or the property of Franchisee and which materially affect Franchisee's ability to perform under this Agreement, or (b) investigations at law or in equity, before or by any court or Appropriate Authority, pending or, to the best of the Franchisee's knowledge and belief, threatened, against or affecting the Franchisee, the Franchisee's business or the property of Franchisee and which materially affect Franchisee's ability to perform under this Agreement. The Franchisee is not in default with respect to any order, writ, injunction, decree or demand of any court or any Appropriate Authority affecting the Franchisee or the property of Franchisee.

2.11. **RFP Response; Access to Water Supplies.**

(a) The statements and representations of Franchisee contained in the RFP Response were true and correct as and when made, and remain true and correct in all material respects as of the Effective Date.

(b) Most particularly, Franchisee is contractually entitled to the sources of water supply in the quantities and from supply sources as set forth in the RFP Response.

(c) To the extent that any contractually available sources of water supply referenced in the RFP Response represent the property or rights of an Affiliate, as distinct from Franchisee, Franchisee shall have, on or before the Effective Date, executed a purchased water agreement with the relevant Affiliate (which, as of the Effective Date, is Artesian Water Company, Inc.) assuring the availability of the source of water supply referenced in the RFP Response.

3. GRANT OF FRANCHISE; LIMITS AND RESERVATIONS.

3.1. Generally.

(a) Subject to the terms and conditions of this Agreement and Applicable Laws, the County grants Franchisee the right and franchise to design, build, own, operate, maintain, repair and replace the Water System, to provide Water Services with respect to the Franchise Area, for the Franchise Term.

(b) Franchisee and County shall execute a definitive agreement for the transfer of the County's water facilities within the Service Area as described in Exhibit A from the County to Franchisee in accordance with the terms reflected in the Letter of Intent at Exhibit F.

(c) The County's grant of Franchise grants no authority for Franchisee to use the Public Rights-of-Way for any purpose other than as set forth in Section 3.1(a) unless otherwise expressly provided in this Agreement; however, nothing in this Agreement shall be construed to prohibit Franchisee from using any portion of the Franchise Area, other than the Public Right-of-Way, for any purpose that is not prohibited by Applicable Laws provided any requirements for County authorization or registration not inconsistent with other Applicable Laws are satisfied.

(d) The County makes no representation or guarantee that its interest in or right to control any Public Right-of-Way is sufficient to permit Franchisee's use, and Franchisee shall gain only those rights to use that are within the County's power to convey. Franchisee shall be required to independently acquire any necessary rights and privileges from private landowners in the Franchise Area.

(e) Nothing in this Agreement shall be construed to prohibit or otherwise limit the Franchisee's power of condemnation under §5-411 of the PUC Article; provided that Franchisee agrees, as a condition to the grant and acceptance of the Franchise, that Franchisee's powers under such section confer no such rights to Franchisee with respect to lands owned by the County.

3.2. County's Regulatory Authority.

(a) The parties acknowledge that this Agreement does not encompass or reflect the full extent of the County's authority over Franchisee and, notwithstanding any provision of this Agreement, the parties reserve all of their rights under Applicable Laws regarding the scope of such authority.

(b) Franchisee also acknowledges that, subject to Applicable Laws, the County has the authority to regulate the placement, construction, repair, and maintenance of physical facilities located in the Public Rights-of-Way.

3.3. Exclusivity of Grant of Franchise; Limitation.

(a) So long as the Franchise granted by this Agreement remains in force and effect Franchisee shall have the exclusive right and franchise to provide Water Services within the Service Area, subject to the qualifications set forth in Subsections 3.3(b) and 3.3(c).

(b) Nothing in Section 3.3(a) or elsewhere in this Agreement shall affect any right or power vested in any other Person as of the Effective Date with respect to the provision of Water Services within the Service Area by such Person.

(c) Nothing in Section 3.3(a) or elsewhere in this Agreement shall affect the rights and powers of the County with respect to the present or prospective construction, ownership and operation of County-owned Water Systems as set forth in §67-6 of the County Code, to the fullest extent of the enumeration of such powers, as though the Franchise had never been granted.

3.4. Grant of Franchise Conveys No Property Right Entitled to Compensation Upon Taking.

(a) Franchisee acknowledges and agrees that the Franchise is granted and conveyed by the County to Franchisee, and is held and exercised by Franchisee, without payment of any monetary consideration. Notwithstanding any other provision of Applicable Laws, except as otherwise expressly provided in this Agreement, the Franchise is granted and conveyed on the express acknowledgement and understanding by Franchisee that the Franchise shall not be regarded as property, or as conferring any property rights.

(b) By its acceptance of the Franchise and this Agreement Franchisee expressly and irrevocably agrees that (subject to the contingency set forth below) no exercise by the County of its reserved powers referenced in Section 3.3(c) shall give rise to any claim by Franchisee for compensation in any manner, from the County or from any other Person, based on a claim of condemnation, inverse condemnation, tortious interference with prospective economic advantage or any other legal theory of any sort. This provision shall apply unless and until a charge or fee is hereafter assessed in connection with the prospective operation of the Franchise, as part of a material change effected pursuant to the provisions of Section 14. In such case, and

thereafter during the Franchise Term while such material change applies, this subsection 3.4(b) shall not be construed to limit or otherwise affect the Franchisee's right to receive Fair Market Value compensation for any taking of the Franchise by the County in exercise of the powers reserved to it under §67-6 of the County Code.

3.5. Franchise Subject to Applicable Laws.

(a) Notwithstanding any provision to the contrary in this Agreement, the Franchise is subject to and shall be governed by all Applicable Laws.

(b) Following the Effective Date and during the Term the County shall not effect any change to the County Code which materially alters the terms and conditions of the Franchise to the detriment of Franchisee; provided that the rights of the County under Section 3.8 shall not be impaired by this restriction.

(c) Should any change to Applicable Laws (other than the County Code, by any Appropriate Authority other than the County) after the Effective Date have the lawful effect of materially altering the terms and conditions of the Franchise to the detriment of one or both parties, then the parties shall modify the Franchise to ameliorate such adverse effects on and preserve the affected benefits of Franchisee and/or the County to the extent possible which is not inconsistent with the change in law. If the parties cannot reach agreement on the above-referenced modification to the Franchise, then, at either party's option, the parties agree to submit the matter to mediation. In reviewing the claims of the parties, the mediators shall be guided by the purpose of the parties in submitting the matter for guidance. The parties agree that their purpose is to modify the Franchise so as to preserve intact, to the greatest extent possible, the benefits that each party has bargained for in entering into this Agreement and ameliorate the adverse affects of the change of law in a manner not inconsistent with the change in law. Should the parties not reach agreement, including not mutually agreeing to accept the guidance of the mediator, this Section 3.5(c) shall have no further force or effect.

3.6. No Waiver.

(a) The failure of the County on one or more occasions to exercise a right or to require compliance or performance under the Franchise or Applicable Laws shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance by the County, nor to excuse Franchisee from complying or performing, unless the County has specifically waived, in writing, such right or such compliance or performance.

(b) The failure of Franchisee on one or more occasions to exercise a right under the Franchise or Applicable Law, or to require performance under the Franchise, shall not be deemed to constitute a waiver of such right or of performance of this Agreement, nor shall it excuse the County from performance, unless Franchisee has specifically waived, in writing, such right or performance.

3.7. Construction of Agreement.

(a) By accepting the Franchise and executing this Agreement, Franchisee, relying upon its own investigation and understanding of the power and authority of the County to grant the Franchise and enter into this Agreement, accepts and agrees to comply with this Agreement and Applicable Laws, to the extent not contrary to federal or State law.

(b) Franchisee retains all rights to challenge the County's application of Applicable Laws to Franchisee.

(c) If there is a conflict between Applicable Laws and this Agreement, then Applicable Laws shall prevail.

3.8. Police Powers; Taxation.

(a) Nothing in the Agreement shall be construed to prohibit the lawful exercise of the police powers of the County.

(b) Specifically, neither the Franchise nor any action by the County shall constitute a waiver of or a bar to the exercise of the right of eminent domain afforded to the County with respect to the Franchise and to the Water System, as provided in §67-6 of the County Code. This Agreement shall not limit any authority of the County in accordance with Maryland law to condemn, in whole or in part, any property of Franchisee, provided that Franchisee shall receive whatever condemnation award Franchisee would normally be entitled to recover as a matter of Maryland law, except to the extent modified by Section 3.4 and Section 13 of this Agreement.

(c) Partial condemnation of Franchisee's property shall not terminate this Agreement except in accordance with the terms of this Agreement.

(d) If the exercise of the County's police power results in any material alteration of the terms and conditions of the Franchise, then the parties shall modify the Franchise so as to ameliorate the adverse effects of the material alteration and preserve intact, to the greatest extent possible, the benefits and obligations that Franchisee has bargained for in entering into this Agreement. If the parties cannot reach agreement on the above-referenced modification to the Franchise, then, at either party's option, the parties agree to submit the matter to mediation. In addition, if the parties cannot reach agreement on such a modification, either on their own or through mediation, the parties may pursue whatever remedies are available at law or equity to enforce their rights under this Agreement.

(e) Nothing in this Agreement shall be construed as waiving or relinquishing or limiting any right or authority which the County now has, or may hereafter have, at any time, to impose any tax, fee or assessment of general applicability against Franchisee, or the Water System or any other property of Franchisee located anywhere in the County. Any fees or other payments due to the County, in respect of the issuance of permits, or for review or approvals of applications, and required elsewhere in this Agreement or pursuant to Applicable Laws shall be in addition to any and all taxes of a general nature or other fees or charges which Franchisee shall be required to pay to the

County or to the State or to any other Appropriate Authority, as required in this Agreement or by Applicable Laws, all of which shall be separate and distinct obligations of Franchisee.

3.9. **Effect of Acceptance.**

Franchisee expressly acknowledges and agrees that it has executed this Agreement and has accepted the Franchise upon the following terms, conditions and understandings.

(a) Franchisee, relying upon its own investigation and understanding of the power and authority of the County to grant the Franchise, acknowledges and accepts the County's legal right to grant the Franchise, to enter into this Agreement, and to enact and enforce ordinances and regulations related to the Franchise subject to the provisions of this Agreement.

(b) Franchisee agrees that the Franchise was granted pursuant to processes and procedures consistent with Applicable Law.

(c) Franchisee agrees that the County retains the absolute right to terminate this Agreement for any Breach and Default by Franchisee pursuant to Section 12.1(e) of this Agreement.

(d) Franchisee agrees that this Agreement and the Franchise may be terminated, by the County, the Franchisee, or by action of the Commission, as provided in Section 12.1 of this Agreement.

4. **TERM.**

4.1. **Initial Term.** The Franchise shall be effective on the Effective Date, and shall extend for the Initial Term, unless the Franchise is earlier revoked as provided in this Agreement, or unless the Franchise is renewed or extended by mutual agreement.

4.2. **Extension Terms.** Provided Franchisee is not in Breach of any of its obligations under this Agreement and is operating the Water System in accordance with Applicable Laws, Franchisee shall be entitled to renew this Agreement and the Franchise for three (3) successive Extension Terms, the first commencing immediately following the expiration of the Initial Term, and each successive Extension Term commencing on the expiration of the immediately prior Extension Term, with the following conditions:

(a) Not earlier than twenty-four (24) full calendar months, nor less than twelve (12) full calendar months prior to the expiration of the then-current Term, Franchisee will give written notification to the County of its intention to exercise or not to exercise its option to renew this Agreement and Franchise.

(b) Unless the County otherwise agrees (in the unfettered exercise of its discretion) Franchisee shall have no right or option to renew this Agreement or Franchise with respect to less than all of the Franchise Area as then defined.

(c) Unless the County otherwise agrees (in the unfettered exercise of its discretion) Franchisee shall have no right or option to renew this Agreement or Franchise with respect to less than all of the proposed Extension Term.

(d) The parties desire to insure that Franchisee does not lose its right to renew the Term of this Agreement and the Franchise through inadvertent failure to give the notification to the County as prescribed in Section 4.2(a). Accordingly, if Franchisee fails to give the notification to the County as prescribed in Section 4.2(a), then the then-current Term of the Agreement shall be tolled until such time as the County shall tender a reminder notice to Franchisee, specifically referencing this Section 4.2 and requesting that Franchisee deliver to the County a reply notification stating whether Franchisee desires to exercise its right to renew this Agreement and the Franchise for the applicable Extension Term. Franchisee shall have thirty (30) days following the date of the County's notification within which to make its election. If Franchisee fails or refuses to deliver a responsive notice electing to exercise the right to renew, then such failure or refusal shall be deemed an election by Franchisee to waive the then-current and all other additional remaining rights of renewal with respect to the Term; in which case the Franchise and this Agreement shall expire as of the end of the then-current Term.

(e) Time shall be of the essence with respect to each of the provisions of this Section; if Franchisee fails or refuses to provide notices or to take action as provided in this Section within the times herein set forth then, subject to the savings provisions set forth in Section 4.2(d), the extension rights and options herein granted shall lapse and terminate.

(f) No notice of exercise of any right or option to extend the Term of this Agreement and the Franchise will be effective, and no Extension Term will be permitted to take effect, if at either time, an uncured Breach exists.

(g) Franchisee and the County acknowledge that the exercise of Franchisee's right to extend the Term, in exercise of the option granted by this Section, may be subject to the review and approval of the Commission. To the extent that such review and approval is required, the County agrees to cooperate with Franchisee in seeking such approval, so long as no uncured Breach exists either at the time of option exercise, or as of the date for commencement of the Extension Term, or at any time in between while the matter is subject to review and approval by the Commission.

5. FRANCHISE AREA.

5.1. **Service Area.** As of the Effective Date the Franchise Area shall be coextensive with the Service Area. No portion of the County's lands lying outside the Service Area (whether or not contiguous to the Franchise Area) shall be deemed a part of the Franchise Area, nor shall any such lands be subject to any rights or obligations of Franchisee hereunder, except as may be authorized pursuant to Section 5.3. This Agreement shall not confer any express or implied right or franchise from the County to operate as a Water Company in any such lands.

5.2. Expansion, Alteration, Contraction of Service Area, Franchise Area.

At any time during the Term either party may make request of the other party for an expansion, contraction or other alteration of the boundaries of the Franchise Area and the Service Area, or either of them. The following provisions shall apply in this regard.

(a) During the Term Franchisee may make request of the County to expand, contract or otherwise alter the boundaries of the Franchise Area and the Service Area, or either of them. In such case the County shall have the right, in the unfettered exercise of its discretion, to deny such request, consent to such request, or to consent to such request subject to such conditions which the County shall deem fit to propose.

(b) During the Term the County may make request of Franchisee to expand, contract or otherwise alter the boundaries of the Franchise Area and the Service Area, or either of them. In such case:

(i) Franchisee shall be under no obligation to accede to the County's request to expand, contract or otherwise alter the boundaries of the Franchise Area, the Service Area, or either of them; and

(ii) Franchisee shall not unreasonably withhold, condition or delay the County's request to expand, contract or otherwise alter the Franchise Area and the Service Area, or either of them.

(c) Franchisee and the County acknowledge that any request, by either of them, contemplating an expansion, contraction or alteration of the Franchise Area, and the scope of Franchisee's provision of Water Service, shall also be subject to the regulatory review and approval of the Commission; and, provided that the parties are in agreement with respect to any proposal made by either of them with respect to an expansion, contraction or alteration of the Franchise Area, and the scope of Franchisee's provision of Water Service, the parties agree to cooperate and exercise due diligence to place the matter before the Commission for review and approval, and to act cooperatively to obtain such approval.

5.3. Franchisee's Use of County Lands Outside of Franchise Area. The parties recognize that, in connection with the performance of Franchisee's development and operation of the Water System within the Franchise Area the parties may deem it more convenient, efficient, economical or practical to permit Franchisee to install or operate portions of the Water System in areas of the County adjacent to, or connecting to, or near the Franchise Area (but not theretofore included within the Franchise Area or the Service Area as provided in Section 5.2) as, for example, by providing rights of way or easements for the extension of water lines or other portions of the Water System. Franchisee may make use of such non-Franchise Area/non-Service Area portions of the County for such purposes upon written application to the County, through the Director of Sanitary Facilities, and upon demonstration of convenience, efficiency, economy or practicality as relates to on-going or proposed development of the Water System elsewhere within the Franchise Area. The grant of Franchise pursuant to this Agreement specifically encompasses the consent of the County for the installation and operation of

the Water System connecting the Cherry Hill portion of the Franchise Area to the balance of the Franchise Area, so no additional written consents from the County shall be required for such purpose (except that such construction and installation shall still be subject to County review, approval and supervision under Applicable Laws generally pertaining to such installation and construction, and otherwise referenced elsewhere in his Agreement). Except as set forth in the immediately preceding sentence, the prior express written consent of the County shall be required in each instance, which consent may be granted, withheld, or granted with conditions by the County, in the unfettered exercise of its discretion. The parties specifically acknowledge that as a condition to the grant of such approval the County may require that the portion or portions of County land so to be used must be incorporated into the Franchise Area and the Service Area.

6. DESIGN, DEVELOPMENT AND INSTALLATION OF WATER SYSTEM.

As set forth in the RFP, the Cecil County Master Plan contemplates that future growth and development within the County shall be directed to designated growth areas, and away from rural conservation and resource protection districts, but the County understands that its success in so directing such growth and development will be dependent upon its ability to cause sufficient public utilities infrastructure to be created within the designated growth areas – sooner rather than later - so that such future growth can be accommodated there. The parties acknowledge that the County issued the RFP in order to accelerate the development of the Water System within the Service Area (which forms part of such designated growth areas under the County Master Plan) beyond what the County deemed itself able to do in this regard, in the near term. And Franchisee expressly understands and acknowledges that the County has awarded the Franchise to Franchisee, and has entered into this Agreement with Franchisee, on the expectation that Franchisee will proceed with all dispatch, and employ all commercially reasonable efforts, to design, develop and install the Water System within the Franchise Area so as to provide Water Service to the maximum number of Customers in the Franchise Area by the earliest practicable date. Accordingly, Franchisee acknowledges that in accepting the Franchise and in executing this Agreement with the County, Franchisee does so agree to proceed with all dispatch, and employ all commercially reasonable efforts, to design, develop and install the Water System within the Franchise Area so as to provide Water Service to the maximum number of Customers in the Franchise Area by the earliest practicable date. The following express provisions shall apply in this regard.

6.1. Application for Certificate of Public Convenience and Necessity. Within thirty (30) days following the Effective Date Franchisee will prepare and submit to the Commission an application for a Certificate of Public Convenience and Necessity authorizing Franchisee to construct and operate the Water System in the Franchise Area.

6.2. Amendment to Master Water and Sewer Plan. The Franchisee shall work cooperatively with the County with all due diligence and dispatch to prepare and submit to the County proposed amendments to the County's Master Water and Sewer Plan so that the latter may be made to conform to the development of the Water System contemplated by this Agreement. Thereafter the County and Franchisee shall cooperate

and exercise due diligence to conclude the amendment to the Master Water and Sewer Plan.

6.3. **Submittal of Plans.**

(a) Within nine (9) full calendar months following the Effective Date Franchisee shall submit detailed plans and specifications for the design and installation of that portion of the Water System identified in Section 6.4(c). The plans and specifications for such system, or portion thereof, shall conform with (i) design standards and requirements set forth in the County Code, and any regulations or requirements of the County Department of Public Works promulgated pursuant thereto; (ii) the design standards and specifications contained in the Title 20, Subtitle 70 of the Regulations and the requirements of MDE applicable to such system, or portion thereof; and (iii) best engineering practices for the design and engineering of such systems in the industry generally. Such submittal shall be made to the Director of Sanitary Facilities for review and approval as provided in §67-16 of the County Code, and such review and approval shall not be unreasonably withheld, conditioned or delayed. Franchisee and the County shall cooperate and exercise due diligence to expedite the review and approval process. Franchisee shall pay all applicable reasonable costs incurred by the County in completing such review, as provided in such Section.

(b) Following County review and approval of plans and specifications for the design and installation of that portion of the Water System identified in Section 6.4(c) (as provided in Section 6.3(a)), Franchisee shall submit the same to the Commission and to MDE, as applicable, in accordance with the requirements of the PUC Article and applicable Regulations; and it shall diligently prosecute the obtaining of all required permits and approvals based on such plans and specifications.

6.4. **Construction and Installation of Water System – Phase I.**

(a) Franchisee will install a 20 inch diameter water transmission main in Delaware to have available 1 MGD at the Maryland State line by October 31, 2008.

(b) Franchisee will install a water transmission main from the Maryland State Line to Red Hill Road within six (6) full calendar months next following the date of Franchisee's receipt of construction permits from MDE.

(c) Franchisee will apply to Appropriate Authorities for permits, based on full and complete plans and specifications, to install a water transmission main to Route 279/Route 40 within thirty (30) days following the County's approval of such plans and specifications in accordance with Section 6.3.

(d) Franchisee will complete all Phase I Water System capital improvements identified on **Exhibit C** at the earliest practicable date, subject to the qualifications set forth in **Exhibit C**.

(e) Beginning with the date of commencement of construction or installation of the Water System, and thereafter during the course of such construction and installation, Franchisee will provide to the Director of Sanitary Facilities, and shall timely update, a list of contractors, subcontractors and suppliers, engaged by Franchisee to complete construction or installation of the Water System.

(f) At all times during the course of construction of that portion of the Water System described in Section 6.4(c) Franchisee will insure that all of Franchisee's contractors, subcontractors and suppliers remain committed to supply all required materials and services for completion of the work, within thirty (30) days of Franchisee's request therefor.

6.5. **Increase in Supply of Water to Franchise Area.** Franchisee will increase available water supply to 3 MGD within six (6) full calendar months after the earlier to occur of (i) the first month in which average daily consumption of water from the Water System exceeds 0.8 MGD, or (ii) the date on which Franchisee receives a written request from a Customer of the Franchise Area whose water requirements would cause daily demand to exceed 0.8 MGD. Franchisee shall promptly notify the Director of Sanitary Services of the occurrence of contingency (i) or (ii) above.

6.6. **Construction and Installation of Water System – Phase II.** Franchisee will install Phase II capital improvements within the Franchise Area and as described in **Exhibit C** as the need is required and permitted by the County and the Commission, subject to the qualifications set forth in **Exhibit C**.

6.7. **Construction and Installation of Water System – Phase III.** Franchisee will install Phase III capital improvements within the Franchise Area and as described in **Exhibit C** as the need is required and permitted by the County and the Commission, subject to the qualifications set forth in **Exhibit C**. Franchisee will install adequate facilities and supply to provide Water Service to other properties within the Franchise Area and as described in **Exhibit C** as the need is required and permitted by the County and the Commission.

6.8. **Construction and Installation Permits.** Before any construction or installation of any part of the Water System is commenced Franchisee shall make application for and shall obtain all permits and approvals required pursuant to §67-11 of the County Code. Franchisee shall pay reasonable charges therefor as prescribed by the Director of Sanitary Facilities as provided in such section.

6.9. **Fire Hydrants.** Franchisee shall cooperate with the Director of Sanitary Facilities to insure that provision is made in the design and installation of the Water System for the inclusion of adequate fire hydrants, pumps, valves, water pressure towers or systems and other fire protection equipment, in order to provide adequate assurance of public safety, consistent with generally accepted industry standards.

6.10. **Right of Entry; Conservation of Water.** At Franchisee's request the County will take reasonable action in exercise of the powers referred to it under §§67-8

and 67-9 of the County Code in order to assist Franchisee in gaining entry on or upon public and private property for the purpose of performing Franchisee's obligations hereunder, but only to the extent the County is not otherwise prohibited from so doing by supervening State or federal law or regulation. The County reserves the rights conferred to it pursuant to §67-9 of the County Code with respect to conservation of water and Franchisee and the County shall be bound to cooperate with each other to take such measures as they shall deem prudent to conserve the water supply in case of water shortage.

7. PROVISION OF WATER SERVICE IN EXERCISE OF FRANCHISE.

Franchisee shall operate the Water System in the exercise of its Franchise to provide Water Service to the Franchise Area and in so doing shall fully and effectually comply with all requirements of Applicable Laws. The following specific provisions shall apply in this regard.

7.1. **Standard of Service.** As provided in §5-303, of the PUC Article, Franchisee shall operate the Water System in exercise of the Franchise so as to furnish equipment, services, and facilities that are safe, adequate, just, reasonable, economical, and efficient, considering the conservation of natural resources and the quality of the environment. In addition to the requirements of the PUC Article and the Regulations and the other provisions of this Agreement, Franchisee shall be bound to operate the Water System in accordance with the service standards, and subject to measurement and evaluation in accordance with the performance metrics/standards, set forth in the Table of Standards of Service set forth in **Exhibit D**. The Table of Standards of Service was designed by Franchisee and submitted by Franchisee to the County as part of Franchisee's response to the RFP. In any case in which the standards and requirements of the PUC Article, the Regulations, the Table of Standards of Service and the other provisions of this Agreement are at variance, the higher or more restrictive standard or requirement shall be deemed to apply.

7.2. **Tariffs.** Franchisee furnish to the Director of Sanitary Facilities a notice of any filing with the Commission with respect to the establishment or modification of any tariff for the provision of Water Services within the Franchise Area.

7.3. Customer Relations.

(a) Franchisee shall furnish to the Director of Sanitary Facilities, within fourteen (14) days following the Director's request, a log or report, in a form reasonably to be prescribed by the Director, listing all Customer complaints received by Franchisee within the preceding twelve (12) calendar months concerning Franchisee's charges, practices, facilities or service, as well as an explanation of their dispositions.

(b) Where Franchisee has identified recurrent Water System problems, the nature of any such problems and the corrective measures taken or to be taken shall be identified.

(c) From time to time, at the request of the County (but not more frequently than twice in any calendar year), Franchisee shall appear before the Commissioners and the Director of Sanitary Facilities to present a report of operations with respect to the Water System, to answer questions respecting such operations, to address Customer complaints or other issues respecting the provision of Water Service under this Agreement, and to address such other relevant matters as the Commissioners, the Director or the Franchisee so desire.

7.4. Delivery of Water Service within Franchise Area.

(a) Franchisee shall offer Water Service to significant numbers of Customers in the Franchise Area within thirty-six (36) full calendar months following the installation of the Water System Capital Improvements identified as Phase I on **Exhibit C**, except as specified in Sections 7.4(b) and 7.4(c). Franchisee shall offer Water Service to all Customers within the Franchise Area requesting Water Service within eight (8) years following the Effective Date, except as specified in Sections 7.4(b) and 7.4(c).

(b) Franchisee shall not be excused from the timely performance of its obligation as set forth in Section 7.4(a) except for the following occurrences:

- (i) for periods of Force Majeure;
- (ii) for periods of delay caused by the County;
- (iii) for periods of delay resulting from Franchisee's inability to obtain authority to access rights-of-way in the Franchise Area; and
- (iv) for periods of delay caused by untimely or unlawful action or inaction of any Appropriate Authority, including condemnation or the unlawful failure to issue any necessary permits, and including action or inaction of the Commission.

(c) Franchisee may refuse to provide Water Service within the Franchise Area:

- (i) in developments or buildings that are subject to exclusive arrangements with other providers;
- (ii) when it is unable pursuant to normal industry practice to obtain necessary real property or other physical access rights;
- (iii) when the provision of Water Service cannot be reasonably provided in a manner to assure acceptable water quality, or cannot be provided in a manner that the Commission finds to be economically feasible, so that the cost of provision of such Water Service to such portion of the Franchise Area cannot be recovered in rates as approved by the Commission; and

(iv) in developments or buildings to which Franchisee is unable to provide Water Service for technical reasons, or which require non-standard facilities which are not available on a commercially reasonable basis; provided, however, that, in any such cases, Franchisee will provide the County with semi-annual reports that identify such developments or buildings and contain information that reasonably demonstrates why Franchisee is unable to do so.

7.5. Interconnections to Water Service Systems Outside of Franchise Area. To the extent that it is practicable to do so, Franchisee shall design the Water System so that it may be interconnected with other water systems lying outside the Franchise Area, at suitable locations as determined by Franchisee and as approved by the County. Interconnection of systems may be made by any appropriate methods. However, consistent with the rights reserved to the County with respect to the expansion of the Franchise and Franchise Area as set forth in Sections 3.1(a), 5.1 and 5.2(a), Franchisee shall have no right to make such connections, or to operate all or part of any water system lying outside the Franchise Area by means of any such connections to the Water System within the Franchise Area, or to convey water through the Water System to areas outside the Franchise Area, without the prior written consent of the County, which consent may be granted, withheld, or granted with conditions by the County in the unfettered exercise of the County's discretion, and which shall not be unreasonably withheld. Notwithstanding the above, the County expressly authorizes the Franchisee's interconnection with water systems in existence as of the Effective Date of this Agreement within and immediately adjacent to the designated Franchise Area without prior written consent of the County.

7.6. Franchisee's Responsibility for Contractors, Subcontractors. Any contractor or subcontractor used by Franchisee to meet its obligations under the Franchise or Applicable Laws must be properly licensed under Applicable Laws, and each such contractor or subcontractor shall have the same obligations with respect to its work as Franchisee would have if the work were performed by Franchisee. Franchisee shall be responsible for the omissions and negligent actions of Persons contracting or subcontracting or representing Franchisee in the course of providing Water Service to any Customer. Franchisee is responsible for and shall address complaints made against its contractors, subcontractors, representatives or agents. All contractors, subcontractors, representatives or agents of Franchisee shall be properly trained and supervised in accordance with Franchisee's customer service standards for Water Service and otherwise as required by Applicable Laws.

8. REPORTS; BOOKS AND RECORDS.

8.1. Franchisee to Maintain Accurate and Complete Books and Records.

(a) Franchisee shall keep complete and accurate books of account and records of its business and operations under and in connection with the Agreement.

(b) Unless otherwise provided in this Section, all materials and information specified in this Section shall be maintained for a period of five (5) years.

(c) Franchisee shall take all reasonable steps required to ensure that it is able to provide the County with all information that must be provided or may be requested under this Agreement or Applicable Laws.

(d) Franchisee shall be responsible for redacting any data that Applicable Laws prevents it from providing to the County. Nothing in this Section shall be read to require a Franchisee to violate Applicable Laws protecting Customer privacy.

8.2. **Open Books and Records.** Subject to Applicable Laws, upon reasonable written notice to Franchisee, which shall be no less than thirty (30) days, the County shall have the right to inspect and copy at any time during normal business hours and on a nondisruptive basis at a mutually agreed location in the County, all Books and Records. Such notice shall specify the purpose of the review, so that Franchisee may organize the necessary Books and Records for appropriate access by the County.

8.3. **Location and Copying.** If any Books and Records are too voluminous, not available locally in the County, or for security reasons cannot be copied and moved, then Franchisee may request that the inspection take place at a location mutually agreed to by the County and Franchisee, provided that (i) Franchisee must make necessary arrangements for copying documents selected by the County after its review; and (ii) Franchisee must pay all travel and additional copying expenses incurred by the County (above those that would have been incurred had the documents been produced in the County) in inspecting those documents or having those documents inspected by its designee.

8.4. **Proprietary Books and Records.** The County shall have the right to copy any such books and records, except to the extent that such books and records are proprietary and/or confidential pursuant to the Maryland Uniform Trade Secrets Act or other Applicable Law. If Franchisee believes that the requested information is confidential and proprietary, Franchisee must provide the following documentation to the County: (i) specific identification of the information; (ii) statement attesting to the reason(s) Franchisee believes the information is confidential; and (iii) statement that the documents are available at Franchisee's designated offices for inspection by the County. The County shall take reasonable steps to protect the proprietary and confidential nature of any such Books and Records that are provided pursuant to this Agreement to the extent they are designated as such by Franchisee.

9. FEES; COSTS; GUARANTY.

9.1. **Fee.** As additional consideration supporting this Agreement, Franchisee shall pay to the County a fee in the amount of Thirty-Five Thousand Dollars (\$35,000), such payment to be made within thirty (30) days following the Effective Date.

9.2. **Other Costs and Expenses.** Franchisee shall pay to the County, or reimburse the County for, all applicable costs, fees and expenses actually and reasonably incurred by the County in connection with reviews and approvals of submissions required or permitted to be made to County by Franchisee hereunder and in accordance with the

provisions of the County Code; and Franchisee shall also pay the County all permit application fees or review fees prescribed in connection therewith under the County Code.

9.3. **Parent Guaranty.** On or before the Effective Date Franchisee shall provide the Parent Guaranty of Parent, pursuant to which Parent shall guaranty the payment and performance obligations of Franchisee to the County hereunder.

10. INSURANCE AND INDEMNIFICATION.

10.1. **Insurance.** Franchisee shall maintain in full force and effect, at its own cost and expense, for so long as this Agreement and the Franchise remain in force and effect, the following insurance coverages.

(a) Commercial General Liability Insurance insuring Franchisee with respect to the construction, operation and maintenance of the Water System, and the conduct of the Water Service business in the County in the minimum amounts of five million dollars (\$5,000,000), per occurrence; and in the aggregate. Such commercial general liability insurance must include coverage for all of the following:

- (i) comprehensive form;
- (ii) premises-operations;
- (iii) explosion and collapse hazard;
- (iv) underground hazard;
- (v) products/completed operations hazard;
- (vi) contractual liability;
- (vii) broad form property damage;
- (viii) independent contractors; and
- (ix) personal injury.

(b) Automobile Liability Coverage, with a minimum limit of liability of two million dollars (\$2,000,000), per occurrence, combined single limit for bodily injury and property damage coverage. Policy must include coverage for owned automobiles, leased or hired automobiles and non-owned automobiles.

(c) Workers' Compensation Coverage meeting statutory requirements of Applicable Laws of the State and Employers' Liability Coverage with the following minimum limits: Bodily Injury by Accident - \$100,000 each accident, Bodily Injury by Disease - \$500,000 policy limits and Bodily Injury Disease - \$100,000 each employee.

(d) All insurance policies and certificates maintained pursuant to this Agreement shall provide the following unless the County approves other language: “It is hereby understood and agreed that this insurance coverage may not be materially changed or canceled by the insurance company nor the intention not to renew be stated by the insurance company until at least sixty (60) days after receipt by the County of a written notice of such intention to cancel or not to renew.”

(e) Each of the required insurance policies shall be with insurers qualified to do business in the State, with an A- or better rating by Best’s Key Rating Guide, Property/Casualty Edition.

(f) Franchisee shall provide the County with an original certificate of insurance providing evidence of all coverage required of this Agreement upon execution of this Agreement, following a material change or any time Franchisee obtains new insurance policies.

(g) Not more frequently than once in every five (5) years the County may review the amounts of any insurance policies under the Agreement and shall have the right to require reasonable adjustments to such insurance policies consistent with the public interest. The County shall provide Franchisee written notice at least sixty (60) days in advance of any reasonable adjustments.

(h) All Commercial General and Automobile Liability Insurance policies shall by specific endorsement name the County, their elected and appointed officials, officers, boards, commissions, Commissioners, agents, and employees as additional insureds. Such additional insured requirement shall be noted on the original certificate of insurance provided to the County.

(i) Failure to comply with the insurance requirements set forth in this Section shall constitute a Breach.

10.2. **Indemnification.**

(a) Subject to the provisions below, for so long as this Agreement and the Franchise remain in effect, Franchisee shall, at its sole cost and expense, indemnify and hold harmless the County and its elected and appointed officials, officers, boards, commissions, commissioners, agents, and employees, against any and all claims asserted or liability imposed upon the County, except from the County’s gross negligence or willful misconduct, including suits, causes of action, proceedings, and judgments, whether for damages or otherwise arising out of the installation, construction, operation, or maintenance of the Water System, including but not limited to any claim against Franchisee for invasion of the right of privacy, defamation of any Person, firm or corporation, or the violation or infringement of any copyright, trade mark, trade name, service mark, or patent, or of any other intellectual property right of any Person, firm, or corporation.

(b) The County shall give Franchisee written notice of its obligation to indemnify the County under Section 10.2(a) within thirty (30) days of receipt of a

claim, suit, cause of action, or proceeding for which Franchisee is obligated to indemnify the County. The County shall take action necessary to avoid entry of a default judgment if such action is needed before the County provides Franchisee notice; provided, however, that no such action shall in any way prejudice or harm Franchisee or any defense, right or remedy of Franchisee. In the event that the County does not timely notify Franchisee under this Section of any claim, suit, cause of action or proceeding for which Franchisee is obligated to indemnify the County and such failure in any way prejudices or harms Franchisee (including without limitation any defense, right or remedy of the Franchisee), then Franchisee shall be under no obligation to indemnify the County to the extent of any such prejudice or harm to Franchisee.

(c) With respect to Franchisee's indemnity obligations set forth in Section 10.2(a), Franchisee shall provide the defense of any claims, suits, causes of action, or proceedings brought against the County by selecting counsel of Franchisee's choice to defend the claim, subject to the consent of the County, which shall not be unreasonably withheld, conditioned or delayed. Nothing in this Agreement shall be deemed to prevent the County from cooperating with Franchisee and participating in the defense of any litigation by its own counsel at its own cost and expense, provided however, that after consultation with the County, Franchisee shall have the right to defend, settle or compromise any claim, suit, cause of action, or proceeding arising hereunder, so long as the settlement includes a full release of the County, and Franchisee shall have the authority to decide the appropriateness and the amount of any such settlement. If the County does not consent to the terms of any such settlement or compromise, then Franchisee shall not settle the claim or action but its obligation to indemnify the County shall in no event exceed the amount of such settlement. Notwithstanding the foregoing, Franchisee shall be entitled to settle or compromise any claim, suit, cause of action or proceeding for which Franchisee is obligated to indemnify the County without the consent of the County, if such settlement or compromise requires only the payment of money damages and/or a full release of the claim, suit, cause of action or proceeding against the County. If Franchisee fails, after notice pursuant to Section 10.2(b), to undertake the County's defense of any claims encompassed within this Section, then Franchisee's indemnification shall include, but is not limited to, the County's reasonable attorneys' fees, including fees for outside counsel hired to defend the County, incurred in defending against any such claim, suit, cause of action, or proceeding, any interest charges arising from any claim, suit, cause of action, or proceeding arising under this Agreement or Applicable Laws, the County's out-of-pocket expenses, and the reasonable value of any services rendered by the County Attorney, or the County staff or its employees.

(d) Neither the provisions of this Section nor any damages recovered by the County shall be construed to limit the liability of Franchisee or its contractors or subcontractors for damages under the Agreement or Applicable Laws or to excuse the faithful performance of obligations required by the Agreement, except to the extent that any monetary damages suffered by the County have been satisfied by a financial recovery under this section or other provisions of the Agreement or Applicable Laws. The County shall not be entitled to recover any amount under this Agreement with respect to any claim, suit, cause of action or proceeding for which Franchisee is obligated to indemnify

the County, if and to the extent that the County shall have actually recovered any amount with respect to such claim, suit, cause of action or proceeding. The County shall use its reasonable efforts to claim and recover any damages suffered by it under any insurance policy or other third party indemnity it may have, which amounts shall be deducted from any amount for which Franchisee is obligated to indemnify the County under this Agreement.

(e) The County shall never be liable for any injury or damage occurring to any Person or property from any acts or omissions of Franchisee in the construction, maintenance, use, operation or condition of the Water System. It is a condition of this Agreement that the County shall not and does not by reason of this Agreement assume any liability whatsoever of Franchisee for injury to Persons or damage to property.

(f) Nothing in this Agreement shall be construed to waive the County's governmental immunity.

(g) The Franchisee's obligations in this Section to defend the County do not extend to instances where, in connection with the construction, maintenance, use, operation or condition of the Water System, claims are asserted or liability is imposed only upon the County and any third party, and not upon the Franchisee.

(h) In the event of any action or proceeding brought against the County by reason of any matter for which the County is indemnified under this Agreement, Franchisee shall not admit any liability in any such matter on behalf of the County without the prior written consent of the County, and the County shall not admit any liability for any claim for which they are indemnified under this Agreement without the prior written consent of the Franchisee.

(i) Anything to the contrary in this Agreement notwithstanding, neither party shall be liable to the other party or to any insurance company (by way of subrogation or otherwise) insuring the other party for any loss or damage to any building, structure or other tangible property, when such loss is caused by any of the perils which are or could be insured against under a standard policy of full replacement cost insurance for fire, theft and all risk coverage, or losses under workers' compensation laws and benefits, even though such loss or damage might have been occasioned by the negligence of such party, its agents or employees (this clause shall not apply, however, to any damage caused by intentionally wrongful actions or omissions).

11. OPERATION, TRANSFER OF CONTROL OF FRANCHISEE AND FRANCHISE.

11.1. County Approval of Transfer of Control Required.

(a) No Transfer of Control of Franchisee may occur without the prior written consent of the County.

(b) No Transfer of Control of the Franchise may occur without the prior written consent of the County.

11.2. Other Actions Affecting Franchise.

(a) Franchisee shall not enter into any agreement or contract with any Person which materially affects Franchisee's performance of its obligations under the Franchise and this Agreement, or abandon or discontinue the exercise of the Franchise, and the operation of the Water System within the Franchise Area, as a whole or in part, without the prior written consent of the County.

(b) Franchisee shall not make or attempt to make any acquisition, or take or attempt to take any corporate actions, of the types described in §5-203 of the PUC Article without the prior written consent of the County.

11.3. Precondition to Application for Approval Required.

(a) Franchisee shall make no application to the Commission for Transfer of Control of Franchisee pursuant to §5-205 of the PUC Article without the prior written consent of the County to such proposed Transfer as provided in Section 11.1(a).

(b) Franchisee shall make no application to the Commission for approval of the actions affecting Franchisee or the Franchise pursuant to §5-202 of the PUC Article without the prior written consent of the County to such proposed actions as provided in Sections 11.1(b) and 11.2(a).

(c) Franchisee shall not make or attempt to make any application to the Commission pursuant to §5-203 of the PUC Article for approval of any acquisition or any corporate actions described in such section, without the prior written consent of the County as provided in Section 11.2(b).

11.4. Application for County Approvals.

(a) No Transfer of Control or other actions by Franchisee in respect of itself, or its operation of the Franchise and the Water System, of the types described in Sections 11.1, 11.2 or 11.3, may occur without prior approval by the County following an Application for County Approval and a hearing as prescribed in Section 11.5.

(b) No Transfer of Control of Franchisee or of the Franchise will be approved by the County when the Person holding Control of the Franchisee has held such control less than five (5) years, or when the Franchisee has held the Franchise for less than five (5) years, unless the County finds that the transfer is necessary and in the best interests of the County and its residents.

(c) An application for approvals pursuant to this Section shall provide complete information on the proposed transaction, including, as the case warrants, the legal, character, financial, technical and other pertinent qualifications of the transferee, and on the potential impact of the transfer on Customer services or rates. An

application must provide all information necessary to provide a complete and accurate understanding of the transaction and of the financial position of the Water System before and after the proposed transaction, including all documents and information related to the transaction.

11.5. Hearing on Application for Approval; County's Determination.

(a) The Commissioners shall hold a public hearing on any Application for Approval. The public hearing shall be subject to such prior notice and on such terms as are prescribed for public hearings generally as set forth in the County Code. Franchisee and any other interested Person shall be permitted to appear and make a presentation at the public hearing, in respect of the Application for Approval.

(b) Before approving the proposed transaction reflected in the Application for Approval, the County shall consider the legal, financial, technical and character qualifications of any proposed transferee of the Franchise, the Franchisee, or the Water System, as the case may be.

(c) The Commissioners shall take final action on an Application for Approval within thirty (30) days following conclusion of the public hearing in respect of the Application, and shall grant, deny or grant with conditions the proposed action requested in the Application for Approval. The Commissioners' actions and decision shall be neither arbitrary nor capricious, but shall be based upon their findings as to whether the action proposed by Franchisee will be inconsistent with the expectations of the County in originally issuing the Franchise, as reflected in this Agreement. The Commissioners shall not unreasonably deny the proposed action requested in the Application for Approval. The Commissioners shall grant the proposed action requested in the Application for Approval if the Application for Approval establishes that the proposed transferee can perform the obligations of Franchisee under this Agreement in substantially the same manner as the Franchisee when the Franchisee was in compliance with the terms and conditions of this Agreement. The Commissioners' decision may also be based upon their findings as to the financial qualifications of the transferee and whether the action proposed by the Franchisee will have a materially adverse effect on the provision of Water Service to Customers.

(d) The County's favorable action in respect of any Application for Approval does not constitute a waiver or release of any of the rights of the County under Applicable Laws or this Agreement, whether arising before or after the date of the County's action.

(e) Any Transfer of Control does not release any non-performance prior to the Transfer of Control. All such non-performance shall become the responsibility of any successor-in-interest to the Franchisee or to the Franchise unless the County otherwise agrees.

(f) The County may impose a fee to cover the reasonable costs of the County in considering an Application for Approval.

11.6. **Assumption of Obligations by Transferee.** No Application for Approval of a Transfer of Control of the Franchised or the Franchise shall be granted unless the transferee agrees in writing that it will abide by and accept all terms of the Franchise, this Agreement and Applicable Laws, and that it will assume the obligations, liabilities, and responsibility for all acts and omissions, known and unknown, of the previous Franchisee under this Agreement and Applicable Laws for all purposes, including renewal, unless the County and in their sole discretion, expressly waives this requirement in whole or in part.

12. ENFORCEMENT, TERMINATION OF FRANCHISE AND AGREEMENT.

12.1. **Termination Events.** This Franchise and Agreement may be terminated in any one of the following circumstances (each a “Termination Event”).

(a) Upon expiration of the Term, if no further Extension Term exists or if Franchisee shall have failed or refused to exercise its right and option to renew this Agreement and the Franchise for an Extension Term, then this Agreement, the Franchise and Franchisee’s right to provide Water Service in the Franchise Area shall terminate, subject to Applicable Laws.

(b) Prior to the stated expiration date of the Term, as to all or part of the Franchise, the Franchise Area and the rights and obligations of the parties under this Agreement, upon application by Franchisee to the County in accordance with Section 11.2(a), and following application to and approval of such action by the Commission, as provided in §5-202 of the PUC Article and Section 11.3(b).

(c) Prior to the stated expiration date of the Term, upon request by the County to Franchisee, and with the consent of Franchisee, and following application to and approval of such action by the Commission, as provided in §5-202 of the PUC Article and Section 11.3(b).

(d) Upon action by the Commission, in exercise of its powers under the PUC Article, to suspend or revoke Franchisee’s right to exercise the Franchise and to operate the Water System.

(e) By the County, following a Default by Franchisee, and as provided in Section 12.2.

(f) By the County, without regard to the existence of a Breach or a Default, in connection with the County’s exercise of its reserved rights under Section 3.8 and §67-6 of the County Code.

12.2. Breach; Default.

A Breach which continues beyond the period for written notice and opportunity to cure as provided in this Section 12.2 shall be deemed a Default, entitling the County to

terminate the Franchise and Franchisee's prospective rights under this Agreement, as otherwise provided herein. The following provisions shall apply in this regard.

(a) A preliminary determination of the existence of a Breach shall be made by the County.

(b) The Commissioners shall provide written notice of their preliminary finding of Breach to Franchisee, stating with particularity the nature and extent of the preliminary findings of Breach, and thereafter, upon not less than thirty (30) days' prior notice, Franchisee shall be afforded the right to attend a public hearing before the Commissioners to hear and to be heard on matters relating to the existence, non-existence, and nature and extent of the Breach described in the Commissioners' notice. The public hearing shall be subject to such prior notice and on such terms as are prescribed for public hearings generally as set forth in the County Code.

(c) Upon conclusion of the public hearing, and within thirty (30) days thereafter, the Commissioners shall make a final written determination with respect to the existence, non-existence, and nature and extent of the Breach.

(d) After making such finding and determination of the existence of a Breach, the County shall provide Franchisee written notice of such finding, and shall afford Franchisee not less than one (1) full calendar month (or if such Breach cannot reasonably be cured within such period, such additional period of time that is sufficient to allow for such cure, which period of time shall not exceed six (6) full calendar months in the aggregate) to allow Franchisee to cure such Breach, unless a longer period shall be permitted by the County.

(e) Following the period for notice and opportunity to cure as provided in Subsection 12.2(d), Franchisee may submit evidence of the cure of such Breach. If the County finds that such Breach has been cured, then the previous finding of Breach shall be rescinded.

12.3. Remedies of the County for Breach and Default.

(a) If The County finds on the basis of substantial evidence, as provided in Section 12.2 that such Breach has not been cured, then a Default shall be deemed to have occurred, entitling the County to terminate this Agreement as provided in Section 12.1(e).

(b) The rights and remedies reserved to the County in this Agreement are cumulative and shall be in addition to all other rights and remedies which the County may have with respect to the subject matter of this Agreement, whether reserved in this Agreement or authorized by Applicable Laws.

(c) Because Franchisee's Breach of certain provisions of this Agreement will result in injury to the County, and because it will be difficult to estimate the extent of such injury in such circumstances, the County and Franchisee agree to the liquidated damages provided for in this Section, with such liquidated damages

representing both parties' best estimate of the damages resulting from the specified violations. Such damages shall not be a substitute for actual performance by Franchisee of the obligations with respect to which a Breach and Default has occurred, but shall be in addition to Franchisee's obligation for actual performance of such obligations. The failure of a Franchisee to hire sufficient staff or to properly train its staff shall not preclude the application of the provisions in this Section. The following provisions shall apply in this regard.

(i) The County, or its designee, shall have the authority to waive or reduce the liquidated damage amounts in this Agreement for good cause.

(ii) In each case, the assessment of liquidated damages shall be imposed upon a finding of Default, but retroactive to the date of the County's notice of Breach with respect to which the Default has been determined.

(iii) On an annual basis accounting from the Effective Date, Franchisee shall be liable for liquidated damages up to One Hundred Thousand Dollars (\$100,000); and Franchisee's aggregate liability for liquidated damages under this Agreement shall be One Million Dollars (\$1,000,000.00).

(iv) The liquidated damages shall be assessed in the following manner:

A. For Breach in the obligation to make application within the time provided in Section 6.1, One Thousand Dollars (\$1,000) per day.

B. For Breach in the obligation to submit plans within the time provided in Section 6.3(a) and Section 6.3(b), One Thousand Dollars (\$1,000) per day.

C. For Breach in the obligation to comply with the requirements respecting Water System improvements, provided in Section 6.4, One Thousand Dollars (\$1,000) per day.

D. For Breach in the obligation to comply with the Water Service supply requirements provided in Section 6.5, One Thousand Dollars (\$1,000) per day.

E. For Breach in the obligation to comply with the Water Service supply obligations as set forth in Section 7.4, Five Thousand Dollars (\$5,000) per day.

F. For Breach in the obligation to comply with the Books and Records disclosure obligations as set forth in Section 8, Five Hundred Dollars (\$500) per day.

G. For Breach in the obligation to comply with the insurance obligations as set forth in Section 10, One Thousand Dollars (\$1,000) per day.

H. For Breach in the obligation respecting County review and approval of Transfer of Control or abandonment, discontinuance or alteration of Franchisee's obligations respecting operation of the Water System, as set forth in Section 11.1, Section 11.2 and Section 11.3, One Thousand Dollars (\$1,000) per day.

I. For any other Breach of this Agreement or Applicable Laws (if applicable) not itemized above, Five Hundred Dollars (\$500) per day for each Breach, for each day the Breach is not remedied.

(d) A separate daily liquidated damage charge shall be imposed with respect to each separate and distinct Breach; provided, however, Franchisee shall not be charged with multiple violations for a single act or event which constitutes one and the same Breach of separate provisions of this Agreement; in such case the charge shall be based on the highest applicable daily liquidated damage penalty.

(e) During the Term the monetary penalties prescribed above shall be increased by ten percent (10%) on each successive sixth anniversary of the Effective Date.

12.4. Effect of Termination – Expiration of Term. If the Franchise and this Agreement expire as provided in Section 12.1(a) then the Water System shall be transferred and conveyed by Franchisee and acquired by the County free of all liens and encumbrances; and Franchisee shall be bound to execute such further assurances of the conveyance of title as the County shall deem reasonable. The County shall pay Franchisee the Fair Market Value for the Water System, as and when conveyed to the County. The County and Franchisee shall be bound to cooperate with one another and to exercise due diligence to effectuate the sale and transfer.

12.5. Effect of Termination – by Agreement. If the Franchise and this Agreement are terminated as provided in Section 12.1(b) and Section 12.1(c) then the Water System shall be disposed of between the parties on such price and terms as they shall agree.

12.6. Effect of Termination – Default. If the Franchise and this Agreement are terminated as provided in Section 12.1(d) or Section 12.1(e), then the Water System shall be transferred and conveyed by Franchisee and acquired by the County free of all liens and encumbrances; and Franchisee shall be bound to execute such further assurances of the conveyance of title as the County shall deem reasonable. The County shall pay Franchisee the Adjusted Rate Base for the Water System, as and when conveyed to the County. The County and Franchisee shall be bound to cooperate with one another and to exercise due diligence to effectuate the sale and transfer.

12.7. Effect of Termination – Taking. If the Franchise and this Agreement are terminated as provided in Section 12.1(f) then the Water System shall be transferred and conveyed by Franchisee and acquired by the County in accordance with the provisions set forth in §67-6 of the County Code. The Water System shall be transferred and conveyed by Franchisee and acquired by the County free of all liens and encumbrances; and Franchisee shall be bound to execute such further assurances of the conveyance of title as the County shall deem reasonable. The County shall pay Franchisee the Fair Market Value for the Water System, as and when conveyed to the County. The County and Franchisee shall be bound to cooperate with one another and to exercise due diligence to effectuate the sale and transfer.

13. DETERMINATION OF FAIR MARKET VALUE OF WATER SYSTEM.

The Fair Market Value of the Water System shall be determined by the parties, if they are able to agree, and if not then in accordance with the appraisal provisions of this Section 13.

13.1. Determination by Agreement. Promptly following the occurrence of any Termination Event calling for the valuation of the Water System with reference to the Fair Market Value, Franchisee and the County shall confer and cooperate and exercise due diligence in order to determine the Fair Market Value of the Water System. Unless the parties otherwise agree, the parties shall make such cooperative determination, if at all, within ninety (90) days following the Termination Event giving rise to the requirement for valuation of the Water System.

13.2. Determination by Appraisal. If the parties shall have failed or refused to cooperatively determine the Fair Market Value within the time prescribed in Section 13.1 then the Fair Market Value shall be determined by appraisal as provided in this Section 13.2.

(a) Within sixty (60) days following the conclusion of the ninety (90) day period provided in Section 13.1, Franchisee shall request, obtain (from a qualified appraiser chosen by Franchisee) and deliver to the County an appraisal of the Fair Market Value for the Premises, consistent with the definition of Fair Market Value reflected in Section 1.1(ee).

(b) Upon receipt of the results of Franchisee's appraisal, the County may either accept or reject such appraised determination of the Fair Market Value, and shall be deemed to have accepted Franchisee's appraiser's determination unless the County rejects the same by notice to Franchisee given within thirty (30) days following receipt of Franchisee's appraisal.

(c) If the County rejects Franchisee's appraiser's determination of the Fair Market Value of the Water System then the County shall promptly designate a second appraiser; and the two appraisers then chosen shall select a third appraiser within thirty (30) days following the County's notification as to the identification of the County's choice of appraiser.

(d) If the two appraisers fail to timely appoint the third appraiser, such third appraiser shall be selected by the AAA Director.

(e) In the event of a failure, refusal or inability of any appraiser to act, a new appraiser shall be designated in his stead by the two other appraisers, or if they fail to do so within thirty (30) days after such failure, refusal or inability, by the AAA Director.

(f) Each appraiser shall be a member of the ASA and actively performing appraisals within the Machinery and Technical Specialties Discipline as recognized by the ASA, or otherwise actively performing appraisals with respect to the tangible property and assets of publicly regulated utilities in the United States.

(g) No appraiser shall be an affiliate of any party hereto or shall have any direct or indirect financial or other business interest in any party hereto or any Affiliate of any party hereto, or in the Water System. No party hereto, nor any Affiliate of any party, shall have any interest in any appraiser.

(h) The second and third appraisers so chosen shall be instructed to produce appraisals of the Fair Market Value for the Water System within sixty (60) days following the date of selection of third appraiser and his acceptance of his task. Each appraiser shall make an independent appraisal of the Fair Market Value. The Fair Market Value shall be the mean average of the two closest valuations of the three appraisers (unless the mean and the median of the three appraisals are equal, in which case the average or mean of the three appraisals shall be the Fair Market Value). If any of the three appraisals so obtained is more than 15% higher or lower than the mean average of the three appraisals, such appraisal shall be discarded from consideration, in which case the Fair Market Value shall be the mean average of the two remaining appraisals. The valuation of the Fair Market Value thus obtained shall be binding on the County and Franchisee.

(i) The County and Franchisee shall each pay the cost of the appraiser designated by them and shall divide equally the cost of the third appraiser.

14. MATERIAL CHANGES TO AGREEMENT.

The parties are mindful that the Term of this Agreement, including renewals of the Initial Term, is long, and that the rights to be conferred to Franchisee hereunder are broad, so the parties desire to provide a mechanism by which the economic terms and conditions of the Agreement and the Franchise may be modified from time to time to reflect Custom and Practice. Accordingly, from time to time during the Term the County shall have the right and option to suggest material changes to the economic terms and conditions of the Franchise and this Agreement, without terminating the Franchise or abrogating this Agreement, and the following provisions shall apply in this regard.

14.1. Times for Proposing Material Change. The County may propose a material change for consideration by Franchisee at the following times: at any time during the twentieth year of the Initial Term or each of the first years of each of the first

or second Extension Terms (such material change, if adopted, to become effective as of January first of the calendar year next following, and thereafter to be effective for the remainder of the Term);

14.2. **Procedure for Proposing Material Change.** During the times provided in Section 14.1 the County may propose a material change to Franchisee by written notice, stating with specificity the nature of the material change proposed to be adopted, and providing a rationale as to why the proposed material change reflects Custom and Practice. Thereafter, the parties shall cooperate and exercise due diligence in order to determine whether they can reach an accord respecting the proposed material change.

14.3. **Arbitration of Proposal for Material Change.** If, notwithstanding the cooperation and due diligence of the parties, the parties have not been able to reach an accord respecting the proposed material change within ninety (90) days following the date of the County's notice proposing the same, then either party shall be entitled to seek arbitration of the matter, and the following provisions shall apply in this regard.

(a) At any time within sixty (60) days following the ninety (90) day period described above, but not later, (time being of the essence) either party may deliver written notice to the other electing that the matter be resolved by non-binding arbitration in accordance with the Arbitration Act.

(b) The arbitration proceedings will be determined in accordance with (i) the Arbitration Act, (ii) the then-current commercial rules and procedures for the arbitration of such matters of the AAA, and the (iii) terms of this Section.

(c) If AAA is unwilling or unable to (i) serve as the provider of arbitration or (ii) enforce any provision of this arbitration clause, then the County and Franchisee shall by agreement substitute another arbitration organization with similar commercial procedures to serve as the provider of arbitration.

(d) The arbitration shall be administered by AAA and conducted, unless otherwise required by Applicable Laws, in the State.

(e) The matter shall be determined by a single neutral arbitrator. Unless the parties are otherwise able to agree upon the arbitrator to be chosen, the party initiating arbitration shall request a list of five (5) impartial arbitrators from the office of the AAA located in Baltimore, Maryland. From this list, the parties will alternately strike arbitrators (with the party initiating arbitration making the first strike) until one name is left.

(f) The parties agree to facilitate the arbitration by: (i) conducting arbitration hearings to the greatest extent possible on successive days; and (ii) observing strictly the time periods established by the Arbitration Act or by the arbitrator for the submission of evidence and briefs. Discovery in the arbitration shall be as limited as reasonably possible and in no event shall a party be entitled to take more than three (3) depositions, ask more than ten narrowly focused interrogatories (sub-parts of an interrogatory deemed as a separate interrogation), and make more than fifteen narrowly

focused document requests (sub-parts of a request deemed as a separate request). Any up-front fees payable to the arbitrator or like up-front fees shall be divided equally between the parties. Otherwise, each party shall bear its own costs and expenses in connection with the arbitration.

(g) All arbitration hearings shall commence within ninety (90) days of the demand for arbitration (except that the arbitrator, upon a showing of good cause, may extend the commencement of the hearing for up to an additional sixty (60) days) and shall close within ninety (90) days of commencement. The issue before the arbitrator shall be limited to a determination as to whether the proposed material change should be given effect, and the arbitrator's decision in this regard shall be governed by its determination as to whether or not the proposed material change reflects Custom and Practice.

(h) The decision of the arbitrator shall be issued within thirty (30) days following the close of the hearing. The arbitrator shall provide a reasoned decision, containing a concise written statement of findings and grounds for the decision.

(i) Either party may seek judicial review of the decision of the arbitrator. The decision of the arbitrator or court with respect to this matter shall be subject to the following provisions of this Section 14.

14.4. Approval of Material Change by Commission. The County and Franchisee acknowledge that the implementation of a material change, if agreed to by the parties or if directed by an arbitrator or court, pursuant to Section 14.3, shall require approval of the Commission pursuant to §5-202 of the PUC Article. The following provisions shall apply in this regard.

(a) Promptly following a determination to implement a material change, either by agreement of the parties or upon the direction of an arbitrator or court, pursuant to Section 14.3, Franchisee shall make application with the Commission for approval of the material change, and Franchisee shall be obligated to prosecute the application for approval in good faith and with due diligence, subject to the qualifications set forth below.

(b) The County shall cooperate with Franchisee and shall intervene in support of such application as required.

(c) Either the County or Franchisee shall have the right to seek judicial review of the Commission's decision, and may cooperate with one another in prosecuting such judicial proceeding (provided that this option to cooperate shall not be construed to require joinder in the litigation).

(d) If the Commission's denial of approval of the requested material change is acquiesced in by the parties, or such denial is upheld on judicial review, then the proposed material change shall not be given effect. Otherwise, the requested material change shall be given effect as approved by the Commission and/or as determined following judicial review of the Commission's decision.

(e) The parties irrevocably agree that if the implementation of a material change (whether as agreed to by the parties or as directed by an arbitrator or court, pursuant to Section 14.3) would result in an increase in costs to Franchisee with respect to its operation of the Water System in the exercise of its Franchise, then notwithstanding any other provision of this Section 14.4, the following provisions shall apply:

(i) The parties' request for Commission approval of a material change that would result in an increase in costs to Franchisee shall be made expressly contingent upon Franchisee's receipt of the Commission's approval to recover fully such increase in costs.

(ii) Neither party shall seek to implement the otherwise-agreed-upon (or arbitration-awarded or court-awarded) material change unless, and except to the extent that, Franchisee is permitted by the Commission to recover fully such increase in costs, through an approved increase in rates in accordance with an application to be made by Franchisee pursuant to the PUC Article.

(iii) If this condition applies with respect to any application to the Commission for approval of a material change then, to the extent that it is practicable to do so, Franchisee shall be bound to make application with the Commission for such adjustment to its approved rates together with the application for material change.

(iv) If it is impractical to make the two applications at the same time, then Franchisee shall be bound to make the latter application at the earliest practicable time.

(v) In any case, Franchisee shall be bound to prosecute such rate change application in good faith and with due diligence. The County shall be bound to support any such application in good faith and with due diligence.

(vi) In any event, the County shall be bound not to effectuate any Commission-approved material change unless and until Franchisee shall have received a favorable determination with respect to its application for rate adjustment.

(vii) If the Commission approves a material change to this Agreement that results in an increase in costs to Franchisee with respect to its operation of the Water System in the exercise of its Franchise, and a subsequent event of any Termination of this Agreement under Sections 12.4, 12.5 or 12.7 of this Agreement occurs prior to the Franchisee's full recovery in rates of such increase in costs, then notwithstanding any provision of Section 1.1(ee), Fair Market Value shall include an additional component to reflect the amount of the increase in costs to Franchisee with respect to its operation of the Water System that Franchisee was unable to recover in rates as a result of the Termination.

(viii) If the Commission approves a material change but denies Franchisee's application for rate adjustment in connection therewith then, as between

the County and Franchisee, the material change shall not be effectuated unless and until the Commission's denial of rate adjustment is reversed.

(ix) Franchisee and, to the extent permitted by Applicable Law, the County, shall each have the right to seek judicial review of the denial of the request of approval for rate adjustment. Unless the County and Franchisee otherwise collectively determine that it would be inadvisable to judicially appeal the denial of rate adjustment, the material change shall not be effectuated unless and until the Commission's denial of rate adjustment is reversed and Franchisee's proposed rate adjustment is awarded.

15. MISCELLANEOUS PROVISIONS.

15.1. **Actions of Parties.** In any action by the County or Franchisee that is mandated or permitted under the terms of this Agreement, such party shall act in a reasonable, expeditious, and timely manner; provided that nothing in this Section nor any other provision of this Section shall limit the right of the County to act, or to decline to act, in the unfettered exercise of its discretion when action or inaction by the County is permitted to be governed by such standard.

15.2. **Binding Acceptance.** This Agreement shall bind and benefit the parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, successors and assigns.

15.3. **Preemption.** If federal or State Applicable Laws preempt a provision or limit the enforceability of a provision of this Agreement, then the provision shall be read to be preempted to the extent, and for the time, but only to the extent and for the time, required by such Applicable Law. In that event, the parties shall negotiate in good faith to reconstitute this Agreement in a form that, to the maximum extent possible, is consistent with the parties' original intent and preserves the benefits bargained for by each party. If such federal or State Applicable Law is subsequently repealed, rescinded, amended or otherwise changed so that the provision of this Agreement that had been preempted is no longer preempted, then such provision shall return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the County.

15.4. **Force Majeure.** Franchisee shall not be held in Breach under, or in noncompliance with, the provisions of the Franchise or this Agreement, nor suffer any enforcement, liquidated damage, or penalty relating to noncompliance or Breach, where such noncompliance or alleged Breach was caused by a Force Majeure. If any such delay in performance or failure to perform affects only part of Franchisee's capacity to perform, then Franchisee shall perform to the maximum extent it is able to perform and shall take all reasonable steps within its power to correct such noncompliance or Breach in as expeditious a manner as possible.

15.5. **Notices.** Unless otherwise expressly stated in this Agreement, all notices, requests and other communications under this Agreement shall be in writing and

shall be delivered (i) in person, (ii) by registered or certified mail, return receipt requested, (iii) by recognized overnight delivery service providing positive tracking of items (for example, Federal Express), or (iv) by facsimile or other electronic transmission if a copy is sent simultaneously by a method described in clause (i), (ii) or (iii), addressed to the County Notice Address or to the Franchisee Notice Address or at such other address of which the County or Franchisee shall have given notice as provided in this Section. All such notices, requests and other communications shall be deemed to have been sufficiently given for all purposes hereof only upon receipt by the party to whom such notice is sent. Notices by the parties may be given on their behalf by their respective attorneys.

15.6. **Entire Agreement.** This Agreement embodies the entire understanding and agreement of the County and Franchisee with respect to the subject matter of this Agreement and merges and supersedes all prior representations, agreements, and understandings, whether oral or written, between the County and Franchisee with respect to the subject matter of this Agreement, including, without limitation, any and all written or oral statement or representations by any official, employee, agent, attorney, consultant, or independent contractor of the County or Franchisee.

15.7. **Explanatory Statement.** The Explanatory Statement of this Agreement forms a part of this Agreement.

15.8. **Exhibits.** The attached exhibits are incorporated in this Agreement by reference and expressly made a part of this Agreement.

15.9. **Captions and Headings.** The captions and headings of articles and sections throughout this Agreement are intended solely to facilitate reading and reference to the sections and provisions of this Agreement. Such captions shall not affect the meaning or interpretation of this Agreement.

15.10. **Severability.** If any Section or other part of this Agreement shall, to any extent, be held to be illegal, invalid, or unenforceable, the remainder of this Agreement shall be valid in all other respects and continue to be effective.

15.11. **No Oral Modifications.** This Agreement shall not be modified except by written instrument executed by the County and Franchisee.

15.12. **Franchisee Bears Its Own Costs.** Unless otherwise expressly provided in this Agreement, all acts that Franchisee is required to perform must be performed at its own expense. This provision shall not be deemed to apply to or to interfere with the Franchisee's right to obtain contributions from Customers for the provision of Water Service, consistent with the Commission's regulatory oversight of the receipt of such contributions and their application to construction or development of the Water System.

15.13. **County Bears Its Own Costs.** Unless otherwise expressly provided in this Agreement, all acts that the County is required to perform must be performed at its own expense.

15.14. **Rights of Third Parties.** Nothing in this Agreement shall be construed to give any Person other than Franchisee or the County a right to assert any claim or cause of action against Franchisee or the County, its employees, elected or appointed officials, officers, commissions, Commissioners, boards or agents.

15.15. **Governing Law.** This Agreement shall be governed in all respects by the laws of the State and applicable federal law.

15.16. **Jurisdiction and Venue.** Franchisee consents to venue and jurisdiction in the U.S. District Court for the District of Maryland and the Circuit Court for Cecil County, Maryland.

15.17. **Waiver of Trial by Jury.** FRANCHISEE AND THE COUNTY EACH HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS AGREEMENT OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY FRANCHISEE AND THE COUNTY, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. THE COUNTY OR FRANCHISEE, AS APPLICABLE, IS HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY FRANCHISEE OR THE COUNTY, AS APPLICABLE.

15.18. **Attorney's Fees.** Notwithstanding anything to the contrary in this Agreement, in the event that either Franchisee or the County, as the case may be, shall bring a lawsuit against the other party to enforce their respective rights under this Agreement, the losing party shall pay the prevailing party's costs and expenses incurred in connection with such litigation, including without limitation reasonable attorneys' fees. The "prevailing party" shall be determined by the court hearing such matter.

[signature page follows]

THE COUNTY:

CECIL COUNTY, MARYLAND, a body corporate and politic under the laws of the State of Maryland, as represented by THE BOARD OF COUNTY COMMISSIONERS OF CECIL COUNTY

William C. Manlove, President

Mark H. Guns, Vice President

Rebecca Demmler, Commissioner

Brian Lockhart, Commissioner

Wayne Tome, Sr., Commissioner

ATTEST:

Alfred C. Wein, Jr.
Administrator

FRANCHISEE:

ARTESIAN WATER MARYLAND, INC.,
a Delaware corporation

By: _____
Dian C. Taylor, President and Chief
Executive Officer

ATTEST:

Secretary

Exhibit A

Description of Elkton West Franchise Area

I. Description of Elkton West Franchise Area as of Franchise Agreement Effective Date

Beginning at a point where the limits of the Town of Elkton meet I-95, then along the northerly and westerly limits of the Town of Elkton to a point where said limits meet the North East Corridor Rail line, then in a westerly direction with said rail line to a point south of Hayes Lane, then in a northerly direction to Hayes Lane, then in a northerly direction along Hayes Lane to U.S. Route 40, then across U.S. Route 40 to Marley Road, then in a northerly direction along Marley Road to its intersection with Nottingham Road, then in a westerly direction along Nottingham Road to its intersection with Union Church Road, then in a northerly direction along Union Church Road to until it meets I-95, then in an easterly direction along I-95 to the place of beginning. Also included in this area are the Cherry Hill Sanitary Subdistrict and the Manchester Park subdivision.

II. Additional Elkton West Franchise Area Effective Upon Execution of Definitive Agreements

Beginning at a point where Maryland Route 213 meets I-95, then in a northerly direction along Maryland Route 213 to the southerly edge of the Cherry Hill Sanitary Subdistrict and the Manchester Park Subdivision, then along the southerly and easterly boundary of the Cherry Hill Sanitary Subdistrict and Manchester Park Subdivision to Elk Mills Road, then in an easterly direction along Elk Mills Road to its intersection with Brewster Bridge Road, then in an easterly direction along Brewster Bridge Road to its intersection with Appleton Road, then in a northerly direction along Appleton Road to its intersection with Maryland Route 273, then in an easterly direction with Maryland Route 273 to the Maryland/Delaware Stateline, then in a southerly direction with said Stateline to I-95, then in a westerly direction with I-95 to the place of beginning. Also included in this area are the Pine Hills Water Service Area and the Harbour View Water Service Area.

Exhibit B

Pictorial Representation of Service Area as of the Effective Date

(See attached map).

Exhibit C

Division of Water System into Phases, for Construction and Installation and Schedule for Construction and Installation of Water System, by Phase

Water System Capital Improvements	Phase	By 12/31/Year
Transmission main from Maryland State Line to Red Hill Road, booster station, and interconnection	I	As provided in Section 6.4
Transmission main on Route 279 from Red Hill Road to Route 40	I	2008*
Transmission main from Route 279 to Villages of Herron Lake	I	2008*
First 1.5 million gallon elevated tank	I	2009*
Transmission main from Villages of Herron Lake to Cherry Hill	II	2010*
Second 1.5 million gallon elevated tank	III	2016*
Development of additional groundwater supply & connecting mains	III	2016*
Water treatment plant at Villages of Herron Lake	III	2025*
Surface intake on Little Elk Creek and 100 million gallon reservoir	III	2025*

*Other than as expressly described elsewhere in this Agreement, the dates provided are tentative and will be determined by water service needs. Actual construction will depend on the rate of growth in the Franchise Area.

Exhibit D

Table of Standards of Service

SERVICE STANDARD CRITERIA	SERVICE STANDARD DESCRIPTION	PERFORMANCE METRICS/ STANDARDS
Quality	Water quality will be preserved throughout Water System. Franchisee will comply with State permitting requirements and Franchisee's high quality standards will be rigidly applied.	Compliance with permit standards
Reliability	Reliability of Water System conveyance is assured through strict adherence to ASCE, AWWA, and USEPA standards, as well as local requirements.	Service interruptions such as line breaks, outages, etc.
Recurring and Preventive Maintenance	Franchisee implements Predictive Maintenance to enhance the life of the infrastructure.	Water System down time
Sampling/ Analysis	Where applicable, Chain of Custody and conformance to the Standard Practices Manual, AWWA standards, and USEPA requirements, State-certified laboratories will perform compliance testing.	Sample in compliance
Maintaining Water System Pressure	Hydraulic modeling and/or Water System monitoring will assess Water System capacity and flow/pressure testing of hydrants.	Maintain Water System pressure in accordance with State and local regulations
Demand and Distribution Capacity	Hydraulic modeling and/or Water System monitoring will assess Water System capacity and match usage to operational practice and capital improvements.	Permit compliance
Water Storage Requirements	Hydraulic modeling and Water System monitoring will be employed to verify the water storage requirements. Storage must be adequate to meet peak demands, fire-flow, and emergency storage criteria.	Outages, low pressures
Fire Flow Capacity/Duration	Hydraulic modeling and/or Water System monitoring will assess Water System capacity.	Meeting minimum fire flow requirements for buildings to a maximum of 500 gpm for 60 minutes

Corrosion Control	Minimized through proper grounding and abatement. The Water System will be analyzed regularly and, as appropriate, any proposed cathodic protection Water Systems will be maintained to extend the life of the tanks and piping infrastructure should conditions dictate. New installations of pipe/equipment will be of a material selection to minimize corrosion impact.	CMMS reporting against industry standards
Minimization of Leaks and Losses	Ongoing leak detection surveys.	Current water losses
Minimization of Water Use	A combination of hydraulic modeling, Water System-wide monitoring, and/or the CMMS work order Water System will be employed to ensure that we understand the extent, location, and nature of water use. Public awareness programs and other instruments employed corporate-wide will be used to educate the County consumers to minimize water use where possible.	Water System demand monitoring and Customer education
Safety of Personnel and Property	OSHA requirements and Franchisee corporate procedures will be combined to provide protection for all personnel.	OSHA/company reporting requirements
Service Connection Standards and Specifications	Where applicable, County standards and specifications will be implemented in any connection. Franchisee standards and guidelines-in concert with local ordinances-will be implemented where County standards and specifications are not applicable.	Compliance with specifications
Exterior Backflow Prevention	Backflow prevention devices where indicated as part of the Water System will be maintained.	Compliance with specifications
Water and Sewer Line Separation	Any needed corrective actions found during Water System investigations will be noted and included in the capital program.	Number of occurrences and time to correct.
New Construction Standards	Franchisee will adhere to all applicable AWWA, ANSI, ASCE, County standards and local codes.	Compliance with specifications.
Commissioning Standards	These standards will be adapted from AWWA, USEPA, and Franchisee's standards.	Compliance with specific criteria for each component
Water System	Using the CMMS and best business	CMMS will assign appropriate

Inspections	practices, the Water System will be inspected on a recurring basis with the results being entered into the CMMS Water System for examination.	criteria for each component
Meter and Equipment Calibration	As required, equipment and flow meters in the Water System will be calibrated periodically in accordance with industry standards and manufacturers' recommendation.	Age of meters and period between calibration
Service Interruption Frequency	All elements or components of the Water System MTBF will be monitored. If a section's failure rate falls outside the standard deviation of the established normal interruption frequency, a work order and exploratory procedure will be generated to determine the best course of corrective action.	CMMS will assign appropriate criteria for each component

Exhibit E

Parent Guaranty

THIS PARENT GUARANTY (“Guaranty”) is dated as of this ___ day of _____, 2008 and is by **ARTESIAN RESOURCES CORPORATION**, a Delaware corporation (the “Guarantor”) in favor of **CECIL COUNTY, MARYLAND**, a body corporate and politic under the laws of the State of Maryland, as represented by the Board of County Commissioners of Cecil County (the “Guaranteed Party”).

A. The Guaranteed Party and Guarantor’s affiliate, Artesian Water Maryland, Inc., a Delaware corporation (the “Franchisee”), are entering into the Franchise for Water Services and Water Service Agreement dated of even date herewith (as amended, restated, supplemented or otherwise modified from time to time, the “Franchise Agreement”); and

B. The Guarantor is entering into this Guaranty in satisfaction of the requirements under Section 9.3 of the Franchise Agreement.

C. Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Franchise Agreement.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the Guarantor agrees as follows:

Guaranty. The Guarantor hereby unconditionally guarantees to the Guaranteed Party on an unsecured basis (i) the performance of all of the obligations of the Franchisee arising from time to time under the Franchise Agreement; and (ii) upon receipt of written notice from the Guaranteed Party of any failure of the Franchisee promptly to pay when due of any undisputed sum of money owing under the Franchise Agreement, the Guarantor shall promptly pay such sum (all such obligations described under clauses (i) and (ii) being referred to herein as the “Obligations”). The Guarantor acknowledges and agrees that this Guaranty is a primary and unconditional obligation, and this Guaranty is irrevocable. Notwithstanding anything in this Guaranty Agreement to the contrary, the Guarantor shall have no obligation to the Guaranteed Party beyond the obligations of the Franchisee under the Franchise Agreement. The Guaranteed Party, by acceptance of this Guaranty, acknowledges and accepts its rights and obligations under this Guaranty.

No Recourse. Recourse against the Guarantor under and pursuant to the terms of this Guaranty shall be the sole and exclusive remedy of the Guaranteed Party against the Guarantor in respect of any liabilities or obligations arising under, or in connection with, the Franchise Agreement or the Obligations. Nothing set forth in this Guaranty shall confer or give or shall be construed to confer or give to any Person other than the Guaranteed Party (including any Person acting in a representative capacity) any rights or remedies against any Person, including Guarantor, except as expressly set forth herein.

Termination. This Guaranty shall terminate and the Guarantor shall have no further obligations under this Guaranty upon the termination of the Franchise Agreement in accordance with its terms.

No Assignment. This Guaranty may not be assigned by any party or by operation of Applicable Law or otherwise without the prior written consent of the other party.

Notices. All notices, requests, claims, demands and other communications hereunder shall be given by the means specified in the Franchise Agreement (and shall be deemed given as specified therein), as follows:

If to the Guarantor:

Artesian Resources Corporation
664 Churchmans Road
Newark, Delaware 19702
Attn: David B. Spacht, Chief Financial Officer
Telecopier: (302) 453-6980

Email: dspacht@artesianwater.com

with a copy to:

DLA Piper US LLP
6225 Smith Avenue
Baltimore, Maryland 21209-3600
Attn: Carville B. Collins, Esquire
Telecopier: (410) 580-3000
Email: carville.collins@dlapiper.com

If to the Guaranteed Party, as provided in the Franchise Agreement.

Governing Law. This Agreement shall be governed in all respects by the laws of the State and applicable federal law.

Jurisdiction and Venue. Guarantor and the Guaranteed Party consent to venue and jurisdiction in the U.S. District Court for the District of Maryland and the Circuit Court for Cecil County, Maryland.

Waiver of Trial by Jury. GUARANTOR AND THE GUARANTEED PARTY EACH HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS GUARANTY OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY GUARANTOR AND THE GUARANTEED PARTY, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. GUARANTOR OR THE GUARANTEED PARTY, AS APPLICABLE, IS HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY GUARANTOR OR THE GUARANTEED PARTY, AS APPLICABLE.

Attorney's Fees. Notwithstanding anything to the contrary in this Guaranty, in the event that either Guarantor or the Guaranteed Party, as the case may be, shall bring a lawsuit against the other party to enforce their respective rights under this Guaranty, the losing party shall pay

the prevailing party's costs and expenses incurred in connection with such litigation, including without limitation reasonable attorneys' fees. The "prevailing party" shall be determined by the court hearing such matter.

Counterparts. This Guaranty may be executed in any number of counterparts (including by facsimile), each such counterpart when executed being deemed to be an original instrument, and all such counterparts shall together constitute one and the same agreement.

The Guarantor has caused this Guaranty to be executed and delivered as of the date first written above by its officer thereunto duly authorized.

GUARANTOR:

ARTESIAN RESOURCES CORPORATION

By: _____

Name:

Title:

Exhibit F

Letter of Intent Between Cecil County, Maryland, and Artesian Water Maryland, Inc. For Transfer of County's Water Facilities

Overview

This letter of intent ("Letter of Intent") between Cecil County, Maryland, a body corporate and politic under the laws of the State of Maryland, as represented by the Board of County Commissioners of Cecil County (the "County"), and Artesian Water Maryland, Inc., a Delaware corporation ("Artesian"), sets forth the basic terms for proceeding to a definitive agreement ("Definitive Agreement") for the County's transfer of all of its Water Facilities (known as the Meadowview, Highlands, Pine Hills, Harbourview and Rt. 7 water systems) and associated parcel(s) of land, easement rights and water transmission and distribution systems (the "Facilities") to Artesian. Upon transfer of the Facilities, Artesian will be subject to regulation by the Maryland Public Service Commission, and to the terms of the Franchise for Water Services (the "Franchise Agreement") with the County. The County and Artesian are collectively referred to in this Letter of Intent as the "Parties" and individually as a "Party".

Delivery of Transferred Assets

The County shall assign, transfer, convey and deliver to Artesian, free and clear of all liens, all of the County's right, title and interest in and to the Facilities, including, but not limited to, any easements or other rights to access or use any real property associated with the Facilities and related transmission and distribution systems, etc., within sixty (60) days following the approval by the Maryland Public Service Commission (PSC), which would include approval by the PSC of customer rates to be charged by Artesian based on cost of service principles for those currently served by the County's Facilities. Recognizing the value of County employees currently operating the Meadowview wastewater facility, Artesian desires to offer employment to those employees, subject to Artesian's standard pre-employment background checks, hiring qualifications and post-employment substance tests, while also recognizing the County's other on-going operational needs. Artesian will not assume any liabilities associated with the Facilities arising from or relating to any period at or prior to the date of transfer.

Franchise

Upon the transfer of the Facilities to Artesian, all customers of the Facilities will be incorporated within Artesian's water franchise and be subject to Artesian's PSC approved tariff, in accordance with the Franchise Agreement. The County will fully cooperate with Artesian in obtaining any and all required PSC approvals. Until December 31, 2010, Artesian shall limit any increase to the existing customer rate structure to an amount not in excess of changes in the consumer price index, as subject to PSC approval.

Definitive Agreement

After the date of this Letter of Intent, the Parties will undertake in good faith to arrive at a mutually acceptable Definitive Agreement. The Definitive Agreement will contain customary representations and warranties, covenants, indemnities, and other agreements by or on behalf of the Parties.

Expenses

Each Party shall be responsible for its own expenses in connection with the review and negotiation of this Letter of Intent and the Definitive Agreement.

Conduct of the County

Except as may be first consented to by Artesian in writing, during the period from the date of this Letter of Intent until the earlier of (i) the execution and delivery of a Definitive Agreement by Artesian and the County or (ii) December 31, 2008, the County shall conduct its operation of the Facilities according to its ordinary and usual course of business, will preserve intact the Facilities and will maintain satisfactory relationships with respect to the Facilities with governmental authorities, suppliers, agents, customers, and others having business relationships with the County in regard to the Facilities. In addition, the County shall promptly notify Artesian in writing of any notice or other communication that it receives (written or oral) respecting any litigation, violation of law or regulation, permit, or other action involving or affecting the Facilities. Without limiting the foregoing or as may be first consented to by Artesian in writing, the County shall not:

- (a) enter into any contract other than with customers or suppliers in the ordinary course of business substantially as conducted heretofore;
- (b) cause any material adverse change or perform or not perform any action the performance or non-performance of which would reasonably be expected to result in a material adverse change; and

- (c) (i) incur any indebtedness, except expenses and current liabilities incurred in connection with or for services rendered or goods supplied in the ordinary course of business, or (ii) create any lien on any asset associated with the Facilities.

Exclusive Dealing

After the date of this Letter of Intent and until the earlier of (i) the date on which a Definitive Agreement is executed and delivered by Artesian and the County or (ii) December 31, 2008, neither the County nor any of its representatives or agents, shall, directly or indirectly, encourage, solicit, initiate or participate in any manner in discussions or negotiations with, or extend any competing offers to, or knowingly provide any information to, any corporation, partnership, person or other entity or group concerning the sale of the Facilities or contract for its operation by any person other than Artesian.

Confidentiality

Except to the extent that the Parties may be required to disclose information under applicable law or regulations, no Party will publicly disclose the existence of this Letter of Intent, any facts related to the proposed Definitive Agreement, the fact that discussions are taking place among the Parties or any confidential, nonpublic information of Artesian or County exchanged between the Parties (whether in written, oral or electronic form) in connection with the Definitive Agreement, without the consent of the other Party, such consent not to be unreasonably withheld.

Approvals/Binding Provisions

Except for the provisions of this Letter of Intent set forth under the Captions “Conduct of the County,” “Exclusive Dealing” and “Confidentiality,” which shall be legally binding upon the Parties upon execution of this Letter of Intent, this Letter of Intent and the terms contained herein are not legally binding upon the Parties and are subject to, among other things, the negotiation, execution and delivery of a mutually satisfactory Definitive Agreement, the due diligence in connection therewith and to the approval of the Definitive Agreement by any other governmental, municipal or local authorities necessary to complete the transactions contemplated by the Definitive Agreement. The Parties will be bound only in accordance with the terms and conditions contained in the Definitive Agreement, except as otherwise set forth in the foregoing sentence.

[SIGNATURE PAGE FOLLOWS]

Accepted by:

THE COUNTY:

CECIL COUNTY, MARYLAND, a body corporate and politic under the laws of the State of Maryland, as represented by THE BOARD OF COUNTY COMMISSIONERS OF CECIL COUNTY

William C. Manlove, President

Mark H. Guns, Vice President

Rebecca Demmler, Commissioner

Brian Lockhart, Commissioner

Wayne Tome, Sr., Commissioner

ATTEST:

Alfred C. Wein, Jr.
Administrator

FRANCHISEE:

ARTESIAN WATER MARYLAND, INC., a Delaware corporation

By: _____
Dian C. Taylor
President and Chief Executive Officer

ATTEST:

Secretary