

**RESIDENTIAL WATER SERVICE AND SEWER LATERAL SERVICE LINE
PROTECTION PROGRAM**

THIS AGREEMENT (this “**Agreement**”) is made as of the ___ day of _____, 2019, by and between the SAN FRANCISCO PUBLIC UTILITIES COMMISSION (hereinafter referred to as “**CITY**”) and AMERICAN WATER RESOURCES, LLC, a Virginia limited liability company (hereinafter referred to as “**PROVIDER**”, together with CITY, the “**Parties**” and each individually, a “**Party**”).

WHEREAS, PROVIDER provides certain water/sewer service line protection programs;

WHEREAS, CITY is a department of San Francisco and the County of San Francisco providing water and wastewater services to San Francisco; and

WHEREAS, CITY desires to enter into a contract with PROVIDER to make the Protection Programs (as defined herein) and other services available to eligible residential homeowner customers of CITY.

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

1. DEFINITIONS

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

“**Change of Law**” means any of the following events occurring after the Effective Date:

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

“**Commence Work**” means the Repair Contractor’s time of arrival at the Member Customer’s service address.

“**Customer**” means the eligible residential homeowners that are at a service address identified from time to time on the books and records of CITY as receiving water and/or wastewater

services from CITY and who are eligible to enroll in a Protection Program as provided on any Updated Service Address List.

“Member Customer” means any eligible Customer who has enrolled in one or more of the Protection Programs.

“Member Customer Data” means the name, address (both mailing and service addresses, if different), phone number, email address (if available), and such other information which has been made available directly from Customers themselves.

“Protection Programs” means those water and sewer service line programs that are administered by PROVIDER and offered to Customers and whose terms and conditions of coverage may be modified or amended by PROVIDER from time to time, in its sole and absolute discretion. The Protection Programs include: Water Line Protection Program, Sewer Line Protection Program, and Water and Sewer Line Protection Program.

“Protection Program Fees” means the periodic program fees charged by PROVIDER for Member Customers to participate in Protection Programs.

“Repair Contractors” means the licensed independent plumbing contractors engaged by PROVIDER to perform repair service work for the Protection Programs.

“Repair Services” shall mean the services that are set forth in the Protection Program terms and conditions between PROVIDER and the Member Customer.

“Services” means the Protection Programs and the On-Demand Services.

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

2. OBLIGATIONS OF BOTH PROVIDER AND CITY

2.1 Review of Marketing Materials. PROVIDER will send marketing or promotional materials to CITY for review and approval of form and content prior to distribution to Customers. PROVIDER shall submit such materials to CITY via email or in any other manner agreed to by the Parties. CITY will use commercially reasonable efforts to review such materials within fifteen (15) business days. Once CITY approves a marketing or promotional material for use, PROVIDER has no obligation to submit such material for review by CITY prior to use in subsequent marketing campaigns unless PROVIDER has made material changes to such marketing or promotional material. For purposes of this Section 2.2 “material change” means a change to a marketing or promotional material that alters its overall appearance, substantive content, format, and/or outline.

2.2 Provision of Customer Data. PROVIDER will submit a list of potential service addresses in CITY’s territory (the “**Quarterly Service Address List**”) procured from a third party to CITY on a quarterly basis. Within fifteen (15) business days after submitting the Quarterly Service Address List to CITY, CITY will return the Quarterly Service Address List to PROVIDER with any changes that are required so the Quarterly Service Address List accurately reflects the service addresses for eligible Customers receiving water and/or wastewater services from CITY (the “**Updated Service Address List**”).

3. PROVIDER’S OBLIGATIONS

3.1 Marketing and Promotion PROVIDER will market and promote the Protection Programs to Customers through periodic marketing campaigns, the frequency and content of which will be proposed by PROVIDER and approved by CITY. In such marketing campaigns, PROVIDER may use any lawful and reasonable marketing or promotional methods of communication that are approved by CITY. Such methods of communication may include, without limitation, direct mail marketing, email marketing and telemarketing. PROVIDER’s marketing and promotional responsibilities shall include strategic direction, planning, scheduling, creative design, creative production, printing, postage, telephone calls and email notices. PROVIDER shall cover the costs of producing and mailing all marketing materials.

3.2 Customer Service. PROVIDER shall handle all customer service activities related to the Services. Such activities will include without limitation (i) processing enrollments of Member Customers in the Protection Programs, (ii) responding to telephone inquiries regarding enrollment and coverage; and (iii) responding to requests for On-Demand Services (as defined below).

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

3.4 Repair Contractor Network.

- A. PROVIDER will establish and maintain a repair service network of local, licensed independent plumbing contractors to perform Repair Services for Member Customers. Subject to the Protection Program terms and conditions, the cost of all Repair Services provided by Repair Contractors shall be paid by PROVIDER, subject to the agreements between PROVIDER and its Repair Contractors. All Repair Contractors shall be deemed subcontractors of PROVIDER.
- B. PROVIDER shall provide qualified reputable Repair Contractors to perform the repairs or replacement of the sewer lateral or water service line. The Repair Contractors must meet the following requirements:
- (i) Repair Contractors must be licensed to do business in San Francisco, California.
 - (ii) The Repair Contractors must have a valid and active plumbing license from the State of California. When multiple workers are assigned to a job, unlicensed workers may be used. A licensed plumber must be present at all times to direct activities and perform all work that requires a licensed plumber.
 - (iii) All Repair Contractors must be insured.
 - (iv) PROVIDER shall contractually require all Repair Contractors to perform background checks to ensure any workers do not have a previous criminal record that renders him/her unfit to perform work on private property.

3.5 Programs and Services. Commencing on the Effective Date, the Protection Programs may be offered to Customers. In addition to the Protection Programs, during the Term, PROVIDER may offer on-demand water and sewer line repair and replacement services to Customers at a negotiated rate with Repair Contractors, subject to applicable law and other requirements (the “**On-Demand Services**”). On-Demand Services will cover water and sewer line repair and replacement services that would otherwise be covered if the Customer was enrolled in a Protection Program in exchange for the Customer signing up for the Water and Sewer Line Protection Program.

3.6 Customer Fees. Except as otherwise provided in this Agreement, PROVIDER agrees that during the Initial Term, the Protection Program Fees shall not exceed those specified in the fee schedule set forth on Appendix A. If PROVIDER’s repair frequency or costs exceed the anticipated and reasonable projections of PROVIDER, PROVIDER may propose to CITY an increase to the Protection Program Fees, subject to CITY’s consent, not to be unreasonably withheld, during the Renewal Term.

3.7 Member Customer Data. All Member Customer Data shall be property of PROVIDER and/or the Customer as applicable.

3.8 Work Product. PROVIDER has the exclusive right of ownership of all work product developed by PROVIDER for the Services including, but not limited to, marketing and promotional materials, specifications, drawings, sketches, models, samples, plans and programs.

3.9 Call Center. PROVIDER will staff and maintain a 24-7 toll-free call center for handling Claims for Member Customers under the Protection Programs. PROVIDER shall provide translation services for messaging and inbound calls. At a minimum, translation services must be available for Spanish, Tagalog, Russian, Chinese (Mandarin and Cantonese), and Vietnamese.

3.10 Timely Response.

- A. Water Line. PROVIDER shall (i) Commence Work within 8 hours of notification by Member Customer or CITY subject at all times to the Member Customer's availability; (ii) be responsible for coordinating both water service shut-off and turn-on as needed for repairs and restoration by calling CITY's City Distribution Division (CDD); (iii) and restore water connection within 24 hours for non-emergency repairs¹, subject to the Member Customer's availability. In an emergency, PROVIDER shall (i) Commence Work within 2 hours of notification by the Member Customer or CITY, subject to the Customer's availability; (ii) be responsible for coordinating both water service shut-off and turn-on as needed for repairs and restoration by calling CITY's CDD, subject to the Member Customer's availability; and (iii) restore water service within 8 hours, subject to the Member Customer's availability. Notwithstanding the foregoing, PROVIDER shall have no responsibility to adhere to these timelines due to CDD's failure to act promptly, the Member Customer's unavailability, or in the event permits are delayed through no fault of PROVIDER.
- B. Sewer Lateral. PROVIDER shall (i) Commence Work within 8 hours of notification by the Member Customer or CITY, subject to the Member Customer's availability; and (ii) complete work within 8 business days, subject to Member Customer's availability. Notwithstanding the foregoing, PROVIDER shall have no responsibility to adhere to these timelines in the event permits are delayed through no fault of PROVIDER.
- C. Sidewalk Restoration. The response times required above are related to addressing the function of the service line and do not include restoration work. Restoration work shall be completed within ten business days following the completion of the repair, subject to weather conditions, permitting delays and the Member Customer's availability.
- D. PROVIDER shall not perform any work on CITY's assets, including but not limited to the water meter and associated public service lines towards the water main. CITY shall not perform any work on a Member Customer's water or sewer line that is covered under a Protection Program. Each Party shall be responsible for any damages caused for failing to perform in accordance with this subsection.

3.11 Repairs in Conformance to CITY Standards.

- A. PROVIDER's Repair Contractors shall provide high-quality repairs in adherence to the most current and applicable CITY and County of San Francisco standards, regional, state

and federal rules and regulations including: specifications for materials and construction for water service lines and sewer laterals; preparation, repair and basic ground and sidewalk restoration work.

- (i) Restoration shall include, at a minimum, filing, raking and reinstallation of existing soft landscaping and shrubbery and patching of paved surfaces. Patching of paved surfaces or sidewalks shall be done in conformance with CITY standards and specifications.
 - (ii) In the event that PROVIDER's Repair Contractor discovers during the course of performing a covered repair on a Member Customer's leaking or broken water service line that the service line consists of lead pipe, the Repair Contractor will replace the portion of the service line that is the Member Customer's responsibility with pipe that is in conformance with CITY regulations.
 - (iii) PROVIDER's Repair Contractors will be responsible for obtaining all relevant City & County of San Francisco permits through the appropriate CITY and County of San Francisco departments.
- B. In the case any portion of the sewer lateral requires repair or replacement, upon completion of the repair or replacement, the upper and lower lateral shall be inspected with video or close-circuit television. A digital copy of the video inspection shall be submitted to SFPUC. Required sewer lateral inspection procedures and documentation are described in Appendix B.

3.12 Customer Service and Reporting.

- A. PROVIDER shall provide CITY's customer service staff with training on the Protection Program and a list of frequently asked questions (FAQs). The FAQs should provide enough information to allow CITY's customer service staff to answer basic informational questions about the Protection Programs without delay or referral to PROVIDER's customer service. It is solely within CITY's discretion whether to use PROVIDER's FAQs when communicating with its customers. CITY may develop its own FAQs to answer Customer questions subject to PROVIDER's review and approval.
- B. PROVIDER will provide high-quality customer service with ongoing reporting to CITY for services provided. PROVIDER will provide CITY with a monthly report on the number and nature of Customer calls, address and dates of repairs and replacements. PROVIDER will also provide monthly reports listing Member Customer wait times for response at PROVIDER's call center and wait times for commencement and timeframe for completion of repair. The reporting described in this section is referred to as the "**AWR Reports**". Any additional reporting between the Parties will be discussed on an as needed basis. Additional reporting may be deemed Confidential Information.

3.13 Program Coverage and Fee Schedule.

- 1) The Protection Programs will be a flat-rate, subscription-based program with an unlimited dollar amount per occurrence and an unlimited number of occurrences per year for repairs covered pursuant to the Protection Program's terms and conditions.

- 2) All repairs and replacements performed under the Program shall be free from defects in material and workmanship for a period of three years from the date of repair or replacement.
- 3) There shall be no deductible or additional service fee borne by the Customer for covered claims.
- 4) PROVIDER shall allow Customer to file a claim immediately after the first 30 days of enrollment in accordance with the terms and conditions.
- 5) PROVIDER shall allow Customer to cancel at any time, regardless of claim history.

3.14 Eligible Customers. The Protection Programs shall be offered to all eligible CITY residential homeowner customers whose water service line is equal to or less than 2 inches, which represents approximately 111,500 eligible accounts. PROVIDER agrees to provide services to Customers in accordance with the terms and conditions of this Agreement. PROVIDER at all times will comply in all material respects with all federal, state and local laws, regulations and policies applicable to the services performed pursuant to this Agreement.

4. SCOPE OF CITY OBLIGATIONS

4.1 License. Subject to monitoring and approval by CITY for appropriate use, CITY, during the Term, grants PROVIDER a royalty-free, worldwide, perpetual, nonexclusive right and license to use CITY s name and logo (the “**Logo**”) necessary for all marketing campaigns and/or promotional materials developed and used by PROVIDER in connection with this Agreement and the Services offered to Customers. A true and correct copy of the authorized Logo as of the Effective Date is set forth on Appendix C.

4.2 Cooperation. CITY will cooperate with PROVIDER by (i) routing any calls from Customers for enrollment, service or repairs to PROVIDER; (ii) assisting with claim execution as reasonably necessary; and (iii) supporting On-Demand referrals as mutually agreed by the Parties.

5. TERM OF AGREEMENT

The term of this Agreement shall commence on [_____] (the “**Effective Date**”), and shall continue for a period of four (4) years (the “**Initial Term**”). The Initial Term may be extended, at the mutual option of CITY AND PROVIDER, for a period of two (2) years (the “**Renewal Term**”, together with the Initial Term, the “**Term**”) up to a cumulative total of nine (9) years, unless terminated sooner in accordance with Section 21 of this Agreement. Each Party agrees to give the other Party notice of whether it intends to exercise the Renewal Term option no later than ninety (90) days prior to the expiration of the Initial Term.

6. LICENSING & ADMINISTRATIVE FEE

During the Term, for each Member Customer actively enrolled in at least one or more Protection Programs and current on all Protection Program Fees, PROVIDER will pay \$3.61 for each Member Customer as a licensing and administrative fee per month *less* all refunds and cancellations (the “**Licensing and Administration Fee**”). PROVIDER will provide a report within fifteen (15) days after the end of each month setting forth the Licensing and

Administrative Fee for such month. The Licensing and Administrative Fee will be trued-up on an on-going basis. The Licensing and Administrative Fee will be paid on a monthly basis by the 15th of the month for the prior month period.

7. KEY PERSONNEL

Each Party will identify a primary point of contact in connection with this Agreement and give the other Party notice of any changes.

8. NOTICES

All notices and communications deemed by either party to be necessary or desirable to be given to the other party shall be in writing and may be given by personal delivery to a representative of the parties or by mailing the same postage prepaid, addressed as follows:

If to CITY:

San Francisco Public Utilities Commission
Wastewater Enterprise
525 Golden Gate Avenue, 13th Floor
San Francisco, CA 94102
Attention: Assistant General Manager or Designee

If to PROVIDER:

American Water Resources, LLC
One Water Street
Camden, New Jersey 08102
Attention: President

with a copy, which shall not constitute notice:

American Water Resources, LLC
One Water Street
Camden, New Jersey 08102
Attention: Corporate Counsel/Legal Department

The address to which mailings may be made may be changed from time to time by notice mailed as described above. Any notice given by mail shall be deemed given on the day after that on which it is deposited in the United States Mail or overnight courier as provided above.

9. CONFIDENTIALITY

9.1 Definition of Confidential Information. “**Confidential Information**” shall mean all non-public information, materials, data, experience or knowledge concerning or related to Disclosing Party, whether any of such information is delivered in a written, oral, visual, electronic or other format and whether or not such information is marked as confidential. Confidential Information includes, but is not limited to, Disclosing Party’s trade secrets, intellectual property, business

contacts, confidential financial information, technical know-how, Member Customer Data, claims frequency data, claims costs data, marketing strategies, research, technology, business plans, business strategies, pricing, suppliers, business records, software and data. Notwithstanding the foregoing, AWR Reports shall not be deemed Confidential Information.

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

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

9.4 Ownership of Information. All Confidential Information shall remain the exclusive property of Disclosing Party. This Agreement does not grant or imply a license or conveyance of any such rights to Receiving Party except as otherwise set forth herein.

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

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

9.7 Remedies for Breach. In the event of a breach of this Section 9 of this Agreement, the Parties acknowledge and agree that the non-breaching Party may suffer irreparable harm for which damages may be difficult to quantify. Accordingly, in the event of a breach of this Section 9, the non-breaching Party shall be entitled to pursue injunctive relief in addition to any other remedies that may be available under the terms of this Agreement or applicable law.

9.8 Survival. The terms of this Section 9 shall survive any termination or expiration of this Agreement. Receiving Party's obligations hereunder shall remain in full force and effect until all Confidential Information received is either returned to Disclosing Party or destroyed in accordance with this Section 9.

10. USE OF SUBCONTRACTORS

PROVIDER is permitted to use subcontractors, including Repair Contractors, marketing vendors and third party call centers. PROVIDER shall be solely responsible for reimbursing any of its subcontractor and CITY shall have no obligation to.

11. LIMITATIONS ON LIABILITY

IN NO EVENT SHALL EITHER PARTY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

12. RESPONSIBILITY; INDEMNIFICATION

PROVIDER shall indemnify and hold harmless CITY and its officers, agents and employees from, and, if requested, shall defend them from and against the following claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or otherwise) arising from PROVIDER's performance under this Agreement: (i) injury to or death of a person, including employees of CITY or PROVIDER; (ii) loss of or damage to property; (iii) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personally identifiable information, health information, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; or (v) losses arising from PROVIDER's execution of subcontracts not in accordance with the requirements of this Agreement applicable to subcontractors. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and CITY's costs of investigating any claims against CITY.

In addition to PROVIDER's obligation to indemnify CITY, PROVIDER specifically acknowledges and agrees that it has an immediate and independent obligation to defend CITY from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to PROVIDER by CITY and continues at all times thereafter.

PROVIDER shall indemnify and hold CITY harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons arising from PROVIDER's actions under this Agreement unless such claim relates to CITY's intellectual property.

13. INSURANCE

Without in any way limiting PROVIDER'S liability pursuant to Section 12, PROVIDER shall maintain in force, during the full term of Agreement, insurance in the following amounts and coverage:

1. Workers' Compensation, in statutory amounts, with Employers' Liability limits not less than 1,000,000 each accident, injury or illness; and
2. Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Advertising Injury, Products and Completed Operations; and
3. Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.
4. Professional liability insurance, applicable to Proposer's profession, with limits not less than \$2,000,000 each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement.

Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide: (i) CITY, its Officers, Agents, and Employees as named addition insured; (ii) that such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Agreement; (iii) all policies shall be endorsed to provide thirty (30) days' advance written notice to CITY of cancellation for any reason, intended non-renewal, or reduction in coverages (notices shall be sent to CITY address set forth in the Section entitled "Notices to the Parties"); (iv) should any of the required insurance be provided under a claims-made form, PROVIDER shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the Term give rise to claims made after expiration of this Agreement, such claims shall be covered by such claims-made policies; and (v) before commencing any Services, PROVIDER shall furnish to CITY certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to CITY, in form evidencing all coverages set forth above. Approval of the insurance by CITY shall not relieve or decrease PROVIDER's liability hereunder.

14. CLOSEOUT AGREEMENT

Beginning not later than sixty (60) days prior to the expiration of the Initial Term or the Renewal Term or, in the event of a termination of this Agreement pursuant to Section 21 as soon as practicable, the Parties shall negotiate in good faith regarding the terms and conditions of a

closeout agreement that will address outstanding issues regarding this Agreement, the Services and the resolution of any claims by either Party.

15. EXCLUSIVITY; NON-COMPETITION

15.1 Exclusivity. During the Term, PROVIDER shall be the exclusive provider of the Services to Customers. CITY shall not promote or market any programs or services to Customers that are similar to or compete with the Services.

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

15.3 Non-Solicitation. During the Term, CITY shall not solicit any Customers or Member Customers to participate in any similar Service that is offered by a third party other than PROVIDER.

16. UNCONTROLLABLE CIRCUMSTANCES

16.1 Subject to the requirements of Section 16.2 below, no Party shall be liable to the other Party for breach, default or delay in performance of any of its obligations under this Agreement (except an obligation to make payment when due) and shall be entitled to relief as provided for herein in the event such Party is rendered unable, wholly or in part, to carry out its respective obligations as the result of an Uncontrollable Circumstance. The affected Party shall be excused from performance (except an obligation to make payment when due) only during the period and to the extent that the Uncontrollable Circumstance adversely affects the affected Party's performance under this Agreement despite acting with all due diligence and dispatch. The Party asserting the existence of an Uncontrollable Circumstance shall bear the burden of demonstrating a reasonable causal link between the Uncontrollable Circumstance and the relief sought.

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

- (a) Promptly give notice to the other Party of the occurrence of such Uncontrollable Circumstance;
- (b) Use its reasonable efforts to eliminate or mitigate the effect of such Uncontrollable Circumstance;
- (c) Promptly give notice to the other Party when such Uncontrollable Circumstance has been eliminated or has ceased to prevent the Excused Party from fulfilling its obligations under this Agreement; and
- (d) Proceed to fulfill such obligations as soon as reasonably practicable after such Uncontrollable Circumstance has been eliminated or has ceased to prevent the Excused Party from fulfilling such obligations.

17. DISPUTE RESOLUTION

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

18. PROVIDER STATUS

Neither PROVIDER nor any party contracting with PROVIDER shall be deemed to be an agent or employee of CITY. PROVIDER is and shall be an independent contractor, and the legal relationship of any person performing services for PROVIDER shall be one solely between that person and PROVIDER.

19. CITY WARRANTIES

CITY makes no warranties, representations, or agreements, either express or implied, beyond such as are explicitly stated in this Agreement.

20. CITY REPRESENTATIVE

Except when approval or other action is required to be given or taken by the General Manager of the Public Utilities Commission, or such person or persons as the General Manager shall designate in writing from time to time, the CITY's program manager, as designated from time to time, shall represent and act for CITY.

21. TERMINATION

CITY may terminate this Agreement at any time by providing one hundred eighty (180) days' prior written notice to PROVIDER during the third or fourth year of the Initial Term.

22. EFFECT OF TERMINATION

Upon termination of this Agreement, PROVIDER shall, at CITY's option, return or destroy, (and provide written declaration of such action), all materials bearing the Marks and Confidential Information of CITY. PROVIDER shall no longer hold itself out as being associated with CITY. Termination shall be without prejudice to the rights and obligations of the Parties, accrued prior to termination and shall not affect the operation of any provisions of this Agreement that is intended to survive termination.

23. WAIVER

No waiver of any default under this Agreement shall constitute or operate as a waiver of any subsequent default hereunder, and no delay, failure or omission in exercising or enforcing any right, privilege or option under this Agreement shall constitute a waiver, abandonment or relinquishment thereof or prohibit or prevent any election under or enforcement or exercise of any right, privilege or option hereunder. Failure by CITY to enforce any of the terms, covenants or conditions of this Agreement for any length of time or from time to time shall not be deemed to waive or decrease the right of CITY to insist thereafter upon strict performance by PROVIDER.

24. ASSIGNMENT

PROVIDER shall not assign any of its rights nor transfer any of its obligations under this Agreement without prior written consent of CITY.

25. APPLICABLE LAW

This Agreement, its interpretation, and all work performed under it shall be governed by the laws of the State of California, and the venue for any dispute shall be San Francisco and the County of San Francisco, California.

26. BINDING ON SUCCESSORS

All of the terms, provisions, and conditions of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, assigns, and legal representatives.

27. ENTIRE AGREEMENT; MODIFICATION

This Agreement, including any Appendices, constitutes the entire Agreement between the parties with respect to the subject matter hereof and may not be amended except by a written amendment executed by authorized representatives of both parties. In the event of a conflict between the terms and conditions of this Agreement and the Appendices the terms of this Agreement will prevail.

28. SEVERABILITY

Should any provisions, or portion of a provision, herein be found or deemed to be invalid, this Agreement shall be construed as not containing such provision, or portion of such provision, and all other provisions which are otherwise lawful shall remain in force and effect, and to this end the provisions of this Agreement are declared to be severable.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized officers as of the day and year first above written.

PROVIDER:

AMERICAN WATER RESOURCES, LLC

By: _____

Eric Palm, President

By: _____

Douglas Brand, Vice President

CITY:

Recommended by:

Harlan L. Kelly, Jr.
General Manager
San Francisco Public Utilities Commission

Approved as to Form:

Dennis J. Herrera
City Attorney

By: _____
Gus Guibert
Deputy City Attorney

ATTEST:

Appendix A

Protection Program Fees – Initial Term

Protection Program	Fee
Water Line	\$4.49
Sewer Line	\$8.99
Water and Sewer Line Combo	\$12.99

Appendix B

SFPUC Video Survey Requirements for Sewer Assets

Appendix C

Authorized SFPUC Logos

