

**A RESOLUTION AUTHORIZING EXECUTION OF MEMORANDUM OF AGREEMENT
NO.3 BETWEEN THE TOWNSHIP OF NORTH BRUNSWICK AND AMERICAN WATER
FOR THE 2002-2022 WATER SERVICES MANAGEMENT
AND MAINTENANCE AGREEMENT FOR
THE TOWNSHIP'S WATER TREATMENT AND DISTRIBUTION SYSTEM**

WHEREAS, the Township is the owner of its water treatment plant and distribution system (the "Water System") which services the North Brunswick community and currently has a 20-year Water Services Agreement (the "contract") with American Water Enterprises, LLC (which includes all of the pertinent American Water entities in contract with North Brunswick) for the management and maintenance of the Water System that includes, but is not limited to, American Water providing billing and collections for water and sewer usage, customer service, and maintenance and plant operation services; and

WHEREAS, in 2018, it was determined to be in the best interest of the Township to amend the contract with American Water to bring in-house billing and collections, to enable municipal staff to efficiently provide billing, online access to customers for usage reporting, and alerts to residents experiencing unusual consumption; and

WHEREAS, representatives for the Township and American Water met and agreed on a Memorandum of Agreement (the "Memorandum No. 1") amending terms and conditions within the contract to address billing and collections as well as other change-in-condition items; and

WHEREAS, the Township is the owner of the approximate 12,000 water meters that are part of the water distribution system; and

WHEREAS, in 2019, it was determined in the best interest of the community to replace the meters, most of which were approximately 20 years old and had exceeded their useful life, along with installing an automated system, to enable the Township to efficiently provide monthly billing, online access to water consumption, and receive usage alerts; and

WHEREAS, in 2019, pursuant to Resolution 157-5.19, the Township entered into a contract with In-Line Services Inc. for Purchase and Installation of Water Meters, BID19004, in the amount of \$5,426,404.50 for Items 1 through 17, plus \$217,600.00 for the Alternate (Software), for a total bid of \$5,644,004.50; and

WHEREAS, subsequent to the award, Change Order 1 -\$38,630.98 and Change Order 2 \$11,591.75 were authorized for a revised contract authorization of \$5,616,964.77; and

WHEREAS, as of November 2021, most of the residents had received a new meter, leaving less than 100 customers to be scheduled to receive an updated meter; and

WHEREAS, In-Line Services Inc. agreed to deliver the remaining new water meters that were now the property of the Township over to American Water for installation as these homes become accessible; and

WHEREAS, American Water was agreeable to providing meter replacement services, which was not included within the scope of the 2002 Agreement; and

WHEREAS, on December 6, 2021 the Parties amended the Agreement to further amend the scope of work such that American Water shall perform certain *meter replacement services* for the Township's customers as per the agreed price schedule (Memorandum No. 2); and

WHEREAS, with the 20-year contract set to expire the end of September 2022, the Parties have met and now wish to further amend the original scope of work such that personnel in identified vital positions employed by the American Water will become Township employees for the remainder of the contract while still under the oversight and supervision of American Water; and

WHEREAS, pursuant to the Memorandum dated February ___, 2022 attached hereto (Memorandum No. 3), the Township and American Water have reviewed the current contract terms and conditions and have agreed on the language changes addressing personnel changes.

NOW, THEREFORE, BE IT RESOLVED, on this 7th day of February 2022, the Township Council of the Township of North Brunswick does hereby authorize the Memorandum of Agreement to be executed in substantially similar form to the attached Memorandum No. 3 for aforesaid contract changes; and

BE IT FURTHER RESOLVED, that the Township Council of the Township of North Brunswick hereby authorizes the Mayor and/or Business Administrator to take necessary steps to execute the Memorandum of Agreement.

Justine Progebin
Business Administrator

Ronald Gordon, Esq.
Township Attorney
Approved as to legal form

RECORDED VOTE:

COUNCIL MEMBER	YES	NO	ABSTAIN	NOTES
MEHTA				
LOPEZ				
GUADAGNINO				
ANDREWS				
SOCIO				
DAVIS				
MAYOR WOMACK				

I hereby certify that the above Resolution was duly adopted by the Township Council of the Township of North Brunswick, County of Middlesex, at its meeting held on February 7, 2022.

Lisa Russo
Township Clerk

**AMENDMENT NO. 3
TO THE
WATER SERVICES AGREEMENT FOR THE TOWNSHIP OF NORTH BRUNSWICK
WATER SYSTEM**

This Amendment No. 3 (the "Amendment") to the Water Services Agreement for the Township of North Brunswick Water System (the "Agreement") is made and dated this ____ day of ____ 2022 ("Effective Date") by and between the Township of North Brunswick (the "Township") and American Water Enterprises, LLC (the "Company"). The Township and Company are sometimes herein referred to individually as a "Party" and collectively as the "Parties."

WITNESSETH:

WHEREAS, on August 27, 2002, the Company, and the Township entered into the Agreement, which provided for the operation and maintenance of the Township's water system; and

WHEREAS, on August 17, 2021, the Parties amended the Agreement to remove *customer billing services* from Company's scope of work as of October of 2018, and to have Company begin performing certain *service line work* for the Township; and

WHEREAS, on December 6, 2021, the Parties amended the Agreement to further amend the Company's scope of work such that the Company will perform certain *meter replacement services* for the Township's customers.

WHEREAS, with the 20-year contract set to expire in September of 2022, the Parties now wish to further amend the scope of work such that personnel in identified positions employed by the Company may become Township employees for the remainder of the contract, but continue to work in the same capacity and at the sole and complete direction of Company.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Parties hereby agree that the Agreement be amended as follows:

1. Hiring of Company Personnel. In accordance with section 10.20 (Hiring of Company Personnel) of the Agreement, the parties agree as follows:

A. Transfer of Employees

Company employees within the following job position titles shall, upon the Effective Date of this Amendment, become eligible for employment with the Township for the duration of the Agreement:

- One (1) System Manager (W-2)
- One (1) Chief Water Treatment Plant Operator (T-4)
- One (1) Water Distribution Foreman (W-3)
- One (1) Electrical/Mechanical Repairer
- One (1) Water Repairer
- Four (4) Water Treatment Plant Operators

Notwithstanding the foregoing, the Parties acknowledge and agree that: i) accepting employment with the Township is at the sole discretion of each individual employee's choice; and ii) accepting employment with the Township is not mandatory. Should any of the aforementioned Company employees elect to accept employment with the Township, then Company shall assist in the transition of those Company employees to the Township.

The employees who accept employment by the Township will be referred to as "Transferred Employees." All of the Transferred Employees will transition from the employ of the Company to the Township simultaneously on a date prior to the termination of the Agreement that is mutually agreed upon by both the Company and the Township. The period of time from the date of transfer to the employ of the Township through the termination of the Agreement and transition to a new operator of the System will hereinafter be referred to as the "Employee Transition Period."

The Company shall maintain responsibility and oversight of all Transferred Employees through the Transition Period. As such, during the Transition Period: i) Company will have the sole and complete oversight of the Transferred Employees; ii) Company will assign work to the Transferred Employees at its sole discretion; iii) the Township will not interfere with Company's oversight, direction or control of the Transferred Employees; iv) Company will have the sole right to manage, direct and discipline the Transferred Employees in accordance with the Company's then-current policies and procedures; and v) to the greatest extent possible, the Township will comply with the Company's discipline recommendations related to any of the Transferred Employees.

The Company will maintain all responsibility for tasks and deliverables performed by the Transferred Employees providing said job functions. The Company will assist in efforts to facilitate the activities necessary for the transition to a new operator of the System.

B. Transferred Employees Wages and Benefits

During the Transition Period, each Transferred Employee: i) will be paid wages (minus applicable payroll taxes) by the Township; ii) will receive Company-paid COBRA benefits coverage for medical, dental and vision care at a rate that is no higher than the levels of coverage held by each respective Transferred Employee on the date that the Transferred Employees transition to the employ of the Township; and ii) will receive paid time off benefits comparable with the benefits that each held with Company. Notwithstanding the foregoing, The Parties agree that this does not include long-term or short-term disability.

The Company will provide a credit (the "Transition Period Credit") to the Township during the Transition Period for the cost of actual wages paid plus 7.65% FICA (which represents the employer's portion of Social Security tax (6.2%) and Medicare tax (1.45%)), minus the amount of the employee contributions for the levels of medical, dental and vision care benefits coverage held by each respective Transferred Employee on the date that the Transferred Employees transition to the employ of the Township.

Within five (5) days following the end of each month during the Transition Period, the Township will provide the Company with the number of hours worked (including overtime) by each Transferred Employee. Within fifteen (15) days following the end of each month during the Transition Period, Company will provide the Township's Business Administrator a detailed analysis of costs related to the hours worked by the Transferred Employees, using their wage rates (including overtime, if any) on the last date of employment with Company, minus the amount of the employee contributions for the levels of medical, dental and vision care benefits coverage held by each respective Transferred Employee on the date that the Transferred Employees transition to the employ of the Township, in order to calculate the Transition Period Credit owed to the Township. Once agreed by both the Township and the Company, the Company will provide the Transition Period Credit to the Township on the next monthly invoice that is issued to the Township. Within 30 calendar days following the expiration of the Transition Period, the Township and Company agree to perform a final true-up with respect to the Transferred Employees.

2. This Amendment may be executed in any number of original counterparts. All such counterparts shall constitute one and the same Amendment.

IN WITNESS WHEREOF, Township and Company have executed this Amendment as of the Effective Date.

Township of North Brunswick

Mayor Francis Womack, III

American Water Enterprises, LLC

Adam R. McDonough
Senior Director of Operations