

## ORDINANCE NO. 2023-14

### AN ORDINANCE GRANTING A SEWER FRANCHISE TO PHOENIX WATER RESOURCES, LLC

**BE IT ORDAINED** by the City Council of the City of Irondale, Alabama in regular meeting duly assembled, a quorum being present, and by authority thereof as follows:

**Section 1. Definitions.** The words “the City” as used herein mean the City of Irondale in the State of Alabama, as it is now constituted and as it may hereafter be extended or enlarged. The words “Franchisee” as used in this division shall mean Phoenix Water Resources, LLC, an Alabama limited liability company.

**Section 2. Franchise Granted; Term.** There is hereby granted to Phoenix Water Resources, LLC, the non-exclusive and limited authority to own, construct, install, operate, extend, and maintain a sewage collection system in, under, across, and through the public rights-of-way in the City of Irondale. The grant of this franchise to Phoenix Water Resources, LLC is for the sole and expressed purpose of operating a sewage collection system for sewage collection, treatment, and disposal services. Phoenix Water Resources, LLC shall not permit the use of its system on the public rights-of-way in any manner that would avoid or seek to avoid the need for a franchise from the City. It is expressly understood that the franchise granted herein is a privilege and not a right.

This franchise is granted to Phoenix Water Resources, LLC for a period of three (3) years (“Initial Term”) Upon the expiration of the Initial Term, the franchise shall automatically renew for nine (9) additional terms of three (3) years each, subject to the terms and conditions contained in the Franchise Agreement, unless lawfully revoked or terminated as provided in the Franchise Agreement between the City and Franchisee and shall take effect on the later of the date of publication of the franchise ordinance authorizing the franchise or the date of execution of the Franchise Agreement by all parties thereto. The franchise granted herein to Franchisee herein and any franchise renewals pursuant to the Franchise Agreement are limited to a maximum of thirty (30) years from the effective date of the Franchise Agreement.

**Section 3. Limitations of Franchise.**

1. **Non-Exclusive Franchise Granted Herein.** Nothing in this Ordinance shall be construed as granting to the Franchisee an exclusive franchise for the purpose set forth in this Ordinance. Identical or similar franchises may be granted by the City to more than one person or entity, within all or any portion of the City.
2. **Subject to exercise of the City’s police power.** The Franchisee shall, at all times during the life of the franchise, be subject to the lawful exercise of the City’s police power. and must strictly adhere to the City’s laws, ordinances and such reasonable regulations as the City Council may subsequently promulgate thereunder. The City reserves the right to make reasonable rules, regulations and restrictions for the protection persons

using the streets, avenues, alley and/or other public places in the City from injury. The City further reserves the right to reasonably designate where the Franchisee's facilities are to be placed within the public ways.

3. **Prior lawful occupancy of the streets.** Any privileges prescribed by this Ordinance shall be subordinate to any prior lawful occupancy of the City's right-of-ways.
4. **Work Completed within the City; Repair.** Whenever the Franchisee shall cause any opening or alteration to be made in any of the streets, avenues, alleys, ways, bridges, viaducts, underpasses, or public places of the City for the purpose of laying, setting, maintaining, operating or repairing any pipes, conduits, appurtenances, fixtures, etc., the work shall be completed within a reasonable time and the Company shall, upon the completion of such work, restore at its own cost and expense such portion of the streets, avenues, alleys, ways, or public places to as good a condition as before the opening or alteration was made and all as promptly as may be practical and within a reasonable length of time thereafter. Any work completed by the Franchisee shall be done in such a manner as to give the least possible inconvenience to the inhabitants of the City.

**Section 4. Ordinances Repealed.** All ordinances or parts of ordinances in conflict herewith are hereby repealed.

**Section 5. Execution of a Franchise Agreement with Franchisee.** The granting of this franchise is contingent upon the execution by Franchisee of a franchise agreement with the City. The specific terms of this franchise shall be set forth in a separate franchise agreement to be executed between the City and the Franchisee. Mayor James D. Stewart, Jr. is hereby authorized to execute a Franchise Agreement with Franchisee in substantially the form attached hereto as Exhibit A. The execution of the Franchise Agreement shall constitute acceptance of the franchise herein granted.

**Section 6. Legal Rights Not Impaired.** That nothing in this Ordinance shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this Ordinance.

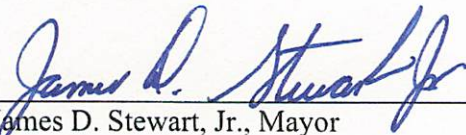
**Section 7. Severability.** If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City of Irondale hereby declares that it would have passed this Ordinance, and each section, subsection, clauses and phrases thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional. Any provision found herein to be in direct contravention with state law or federal law either presently existing or enacted after the date of passage of this Ordinance shall be superseded by such law and rendered unenforceable without effect to those provisions found herein that are no in contravention with state and/or federal law.

**Section 8. Effective Date/Publication and Costs Therefor.** This Ordinance will become effective upon publication. This Ordinance shall be published by the City in accordance with the applicable provisions of Section 11-45-8 of the *Code of Alabama* (1975). Such publication shall be done by the City Clerk of the City and thereafter the City Clerk shall enter upon the minutes of the City, immediately after the place where this Ordinance is recorded, a certificate setting forth that such Ordinance was published in accordance with the terms hereof and the laws of the State of Alabama. All costs of publication shall be paid by the Franchisee.

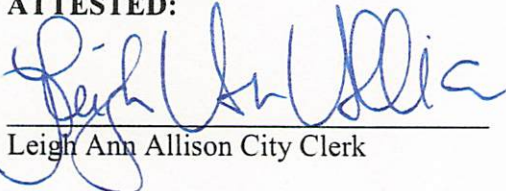
**ADOPTED AND APPROVED** this the 4th day of April, 2023.

  
\_\_\_\_\_  
David Spivey, City Council President

**APPROVED:**

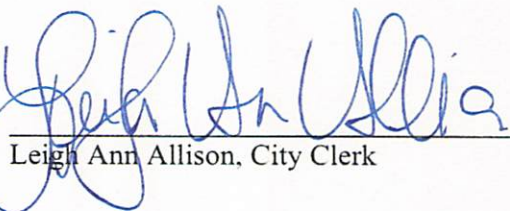
  
\_\_\_\_\_  
James D. Stewart, Jr., Mayor

**ATTESTED:**

  
\_\_\_\_\_  
Leigh Ann Allison City Clerk

**CERTIFICATION**

I, Leigh Ann Allison, City Clerk of the City of Irondale, Alabama, hereby certify the above to be a true and correct copy of an ordinance adopted by the City Council of the City of Irondale at its regular meeting held on the 4th day of April, 2023, as same appears in the minutes of record of said meeting.

  
\_\_\_\_\_  
Leigh Ann Allison, City Clerk

**Exhibit A**  
**Franchise Agreement**

## FRANCHISE AGREEMENT

**THIS FRANCHISE AGREEMENT** ("Agreement") is entered into on the date of the last party hereto to execute this Agreement, by and between the **CITY OF IRONDALE, ALABAMA** (hereinafter referred to as the "City"), and **PHOENIX WATER RESOURCES, LLC**, (hereinafter referred to as the "Company").

**WHEREAS**, the Company has previously been granted a franchise from the City to own, construct, install, operate, extend, and maintain a sewage collection system, as defined herein, in, under, across, and through the public rights-of-way in the City of Irondale for residents and commercial customers located within the municipal limits of the City of Irondale, but such franchise has expired by its own terms; and

**WHEREAS**, the Company agrees and recognizes that it is required to obtain the City's consent in order to install, operate, extend and maintain the System in, under, across, and through the public rights-of-way in the City (the "Purpose") and has requested the continuous use of the City's public rights-of-way for the Purpose; and

**WHEREAS**, the City Council wishes to accommodate the Company's request and grant the use of the City's rights-of-ways to the Company for the Purpose in accordance with the terms and conditions contained herein.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein and intending to be legally bound thereby, the City and Company enter into this Agreement and do hereby mutually covenant and agree as follows:

**SECTION 1. Defined Terms.** For purposes of this Agreement, the following terms, words and phrases shall have the meanings set forth below. When not inconsistent with the context, words used in the singular number shall include the plural number, and words in the plural number shall include the singular.

- A. "*Rights-of-way*" means the surface and space above and below any public street, boulevard, road, highway, freeway, lane, alley, sidewalk, parkway, driveway, public ways, or other public rights of way, including, public utility easements, dedicated utility strips or rights of way dedicated for compatible uses held by the City or location within the City which shall entitle the City and the Company to use the same for the purpose of installing, operating, repairing and maintaining the System.
- B. "*System*" shall mean a sewage collection, treatment and disposal system operated and managed in accordance with all Alabama Department of Environmental Management regulations and all other regulations applicable to sewer collection, treatment, and disposal.

**SECTION 2. Grant of Non-Exclusive and Limited Authority.** The City hereby grants to the Company, subject to the City's receipt of the compensation set forth herein, the non-exclusive and limited authority to own, construct, install, operate, extend, and maintain, and construct, the System in, under, across, and through the public Rights-of-way in the City of Irondale. The City reserves the right to grant the use of said rights-of-way to any person/entity at any time and for any lawful purpose. Nothing in this Agreement shall be construed as granting to Company an exclusive

franchise. The grant of this franchise to the Company is for the sole and expressed purpose of operating a sewage collection system for sewage collection, treatment, and disposal services. The Company shall not permit the use of its System on the public Rights-of-way in any manner that would avoid or seek to avoid the need for a franchise from the City. It is expressly understood that the franchise granted herein is a privilege and not a right. This Agreement shall not be construed to create any rights beyond the terms, conditions and periods set forth in this Agreement, except as provided herein.

**SECTION 3. Duration and Term.** The franchise agreement granted hereunder shall be for an initial term of three (3) years (the "Initial Term") commencing on the later of the date of execution of this Agreement or the effective date of Ordinance No. 2023-\_\_\_\_\_, unless otherwise lawfully revoked or terminated as herein provided. Upon the expiration of the Initial Term, this Agreement shall automatically renew for nine (9) additional terms of three (3) years each, subject to the terms and conditions contained herein, unless either party hereto provides notice to the other to terminate this Agreement by giving at least sixty (60) days' notice before the expiration of the then current term.

**SECTION 4. Compensation to City.** As consideration for this Agreement, which provides for the use by the Company of the City's rights-of-way within the boundaries of the City, which are valuable public properties acquired and maintained at the expense of its taxpayers and citizens, the Company shall pay to the City the following amounts:

- Three percent (3%) of the Total Monthly Sewer Charges received by Company; and
- A portion of the fees received by Company pursuant to Section 5(b) shall be paid by Company to City as follows:

**Residential**

Single Family Dwelling: for <b>each family dwelling</b>	\$ 540.00
Multi-Family Dwellings:	
1 Bedroom <b>each unit</b>	\$ 270.00
2 Bedroom <b>each unit</b>	\$ 405.00
3+ Bedroom <b>each unit</b>	\$ 540.00

**Commercial and Industrial**

Retail: for every 1,000 <b>sq feet</b>	\$ 540.00
Office: for every 1,000 <b>sq feet</b>	\$ 297.00
Industrial: for every 1,000 <b>sq feet</b>	\$ 283.00
Hotel: for <b>each unit</b>	\$ 270.00
Restaurants: <b>Per Seat</b> (not 24 hour service)	\$ 108.00
Restaurants: <b>Per Seat</b> (24 hour service)	\$ 162.00

**Institutional**

Hospitals: per <b>bed space</b>	\$ 540.00
Institutions other than Hospitals: per <b>bed space</b>	\$ 270.00

Schools: <b>per student</b>	\$	32.00
Schools (with cafeteria): <b>per student</b>	\$	44.00
Schools (with cafeteria, gym, and showers): <b>per student</b>	\$	54.00

These amounts shall be paid by the Company to the City on a quarterly basis before the last day of the month following the end of each quarter. For example, for the quarter consisting of January, February, and March, payment for these amounts shall be due from the Company to the City on or before the last day of April.

**SECTION 5. Sewer Charges and Fees.** The monthly sewer charges for each user within the City of Irondale and impact fees have been agreed to between Company and the City.

A. **Monthly Sewer Charges.** The monthly sewer charges shall be based upon water usage. The per gallon cost for residential, commercial and industrial users are set forth below:

<i>Customer Type</i>	<i>Rate</i>
Residential	0,000 – 2,245 gallons = \$48.50 minimum bill 2,246 – 4,489 gallons = \$0.004316 per gallon Over 4,489 gallons = \$0.0080704 per gallon
Commercial	\$0.01828 per gallon
Institutional	\$0.01885 per gallon

B. **Impact Fees.** The amount of impact fees for residential, commercial and industrial, and institutional shall be based as follows:

**Residential**

Single Family Dwelling: for <b>each family dwelling</b>	\$	4,500.00
Multi-Family Dwellings:		
1 Bedroom <b>each unit</b>	\$	2,250.00
2 Bedroom <b>each unit</b>	\$	3,375.00
3+ Bedroom <b>each unit</b>	\$	4,500.00

**Commercial and Industrial**

Retail (other than restaurants): for every 1,000 <b>sq feet</b>	\$	4,500.00
Office: for every 1,000 <b>sq feet</b>	\$	2,475.00
Industrial: for every 1,000 <b>sq feet</b>	\$	2,360.00
Hotel: for <b>each unit</b>	\$	2,150.00
Restaurants: <b>Per Seat</b> (not 24 hour service)	\$	900.00
Restaurants: <b>Per Seat</b> (24 hour service)	\$	1,350.00

**Institutional**

Hospitals: per <b>bed space</b>	\$	4,500.00
Institutions other than Hospitals: per <b>bed space</b>	\$	2,250.00
Schools: <b>per student</b>	\$	270.00

Schools (with cafeteria): <u>per student</u>	\$	360.00
Schools (with cafeteria, gym, and showers): <u>per student</u>	\$	450.00

If the development being proposed is not specifically referenced above, charges and fees shall be negotiated between the City and Company. The above impact fees apply only to domestic waste. Impact Fees for customers producing other than domestic waste shall be determined by the Company. The above charges and fees payable to Company are subject to periodic review and may be increased upon approval of the City.

**SECTION 6. Reservation of Regulatory and Police Powers.** The City, through the granting and approving of this Agreement, does not surrender or to any extent lose, waive, impair or lessen the lawful powers and rights now, or which may be hereafter, vested in the City under the Constitution and the statutes of the State of Alabama to regulate the use of its Rights-of-way by the Company or any person or to charge reasonable compensation for such use, and the Company, by its acceptance of this Agreement, agrees that all lawful powers and rights, regulatory power, police power or otherwise, that may be from time to time vested in or reserved to the City, shall be in full force and effect and subject to the exercise thereof by the City at any time. The Company is deemed to acknowledge that its rights are subject to the regulatory and police powers of the City to adopt and enforce ordinances necessary for the safety and welfare of the public and agrees to comply with all applicable laws and ordinances enacted by the City pursuant to such powers. Any conflict between the provisions of this Agreement and any other present or future lawful exercise of the City's police powers shall be resolved in favor of the latter.

**SECTION 7. System; Standards of System Maintenance and Operation.** The Company shall not construct, install, expand, improve, or extend the System within the City pursuant to this Agreement without approval from the City which said approval shall not be unreasonably withheld.

Additionally, the Company shall, at all times, employ the highest degree of care as is commensurate with the practical operation of its business and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public. The Company shall install and maintain the System in such manner that its operations will not interfere with any installations of the City. All structures and all lines, equipment and connections in, under and upon the rights-of-way, wherever situated or located, shall at all times be kept and maintained in a safe and suitable condition and in good order and repair. The Company shall maintain a force of employees and/or contractors at all times sufficient to provide safe, adequate and prompt service for the System in accordance with the permit issued to the Company by ADEM.

The Company shall perform the following general duties and obligations:

1. Company will operate and manage the System in accordance with all ADEM regulations and other regulations applicable to sewer collection, treatment, and disposal.
2. Company will comply with all local, state and federal laws and regulations regarding the management, design, construction, operation and maintenance of the System.
3. During the term of this Agreement and any renewal hereof, Company shall provide sewage collection, treatment and disposal services for commercial and residential users in the

municipal limits of Irondale; provided, however, that nothing in this Agreement shall require any existing residential or commercial entity to subscribe for or utilize the services to be provided by the System unless they choose to do so if another sewer service is available.

4. As owner of the System, Company shall be responsible for the payment of all expenses associated with the operation, maintenance, and management of the System and any tax obligations associated therewith.
5. Company shall, at its cost, staff the System with qualified personnel who meet the certification requirements of the State of Alabama and continue upgrading, education and training of its staff in modern wastewater collection and treatment technology, safety and equipment maintenance.
6. Company shall, at its cost, prepare reports as required by the applicable NPDES Permit, and file such reports with appropriate agencies as required by law.

The City recognizes that certain System facilities and sewers are currently located in the right-of-way of roads which are maintained by Jefferson County or the State of Alabama and agrees to assist the Company in obtaining necessary approvals so that the Company can make repairs, improvements or modifications to such System facilities and sewers or to make borings or expand the System sewer for the public good. It is agreed that all costs associated with the procurement and maintenance during the term hereof of said land right shall be borne exclusively by the Company, including, but not limited to, fees of land agents, surveys, title searches, attorney's fees, acquisition fees, bonuses, annual rentals, etc.

#### **SECTION 8. Use of Streets.**

A. **Conditions of Street Occupancy.** All portions of the System and all associated equipment installed by the Company pursuant to this Agreement shall be located so as to cause minimum interference with the proper use of the rights-of-way and with the rights and reasonable convenience of property owners who own property that adjoins any of such rights-of-way.

B. **Payment of Costs.** The Company shall be responsible for all costs associated with the installation, repair and maintenance of the System and all associated equipment including, but not limited to (1) the costs to repair the rights-of-way due to the installation, repair and maintenance of the System, and (2) the costs incurred in relocating any portion of the System or facilities constructed when required by the City.

C. **Authority to Require Relocation.** The City shall have authority to require the Company to relocate any facility located in violation of this section at the Company's sole expense. Such relocation shall be completed within forty-five (45) days of written notice to the Company from the City or as otherwise agreed between the City and the Company. The notice shall prescribe the area where the facility is located and any other special conditions deemed necessary by the City. Should the Company refuse or fail to relocate its equipment as provided for herein within forty-five (45) days after written notification, the City shall have the right to do such work or cause it to be done, and the reasonable cost thereof shall be paid by the Company to the City within sixty (60) days following the completion of the work.

**D. Work on Public Rights-of-Way; Restoration of Damaged Areas.**

1. Whenever the Company excavates or does other work in the public right-of-way, such excavation or other work shall be done in compliance with the laws and regulations of the City in effect at the time of such excavation or other work.

2. The Company shall not excavate or do other work in any public right-of-way unless the Company complies with the City's rules, regulations, and ordinances and has applied for and received a written permit from the City, or its designee, granting permission for such excavation or other work. The permit shall describe the area where the excavation and/or work is expected to be completed, the method of construction and the contractor performing the work and any other conditions imposed by the City on such work. In emergencies, the Company shall proceed with all necessary operations without first obtaining the permit, but shall obtain the required permit at its earliest opportunity thereafter.

3. Whenever the Company shall cause any opening or alteration to be made in any of the streets, avenues, alleys, ways, bridges, viaducts, underpasses, or public places of the City for the purpose of laying, setting, maintaining, operating or repairing any pipes, appurtenances, fixtures, etc., the work shall be completed within a reasonable time and the Company shall, upon the completion of such work, restore at its own cost and expense such portion of the streets, avenues, alleys, ways, or public places to as good a condition as before the opening or alteration was made and all as promptly as may be practical and within a reasonable length of time thereafter. Any work completed by the Company shall be done in such a manner as to give the least possible inconvenience to the inhabitants of the City.

4. Immediately upon completion of repairs or installation of any facility, the Company shall refill and compact any trench or excavation to the standards required by the City and the State of Alabama Department of Transportation's "Standard Specifications of Roads and Structures." Promptly, and no more than seven (7) business days after the completion of repair or installation, unless otherwise approved by the City, the Company shall restore or replace any pavement, sidewalk, curb, gutter, grass, landscaping material, or other materials or structure damaged in the course of its work to City standards at the Company's sole expense. In the event excavation or disturbance of special sidewalk pavement areas is necessary, the Company shall restore those areas to their preexisting conditions and such restoration shall meet City standards. Failures within an area which has been disturbed, excavated or encumbered by the Company which are discovered within twelve (12) months of the restoration or replacement specified herein, shall be the responsibility of the Company pursuant to this provision.

5. In any case where a public right-of-way is being excavated, disturbed, or encumbered by the Company, the Company shall take all precautions required by law, in particular, the Manual on Uniform Traffic Control Devices, or otherwise necessary or proper for the protection of the public and shall maintain adequate warning signs, barricades, signals, and other devices necessary or proper to give notice and warning to the public of the existence of actual conditions present.

6. No City property is to be removed from the right-of-way, including signage on utility poles, without proper prior written permission from the City.

**SECTION 9. Relocation at Request of the City.** The Company shall, at its own expense, protect, support, temporarily disconnect, or relocate, any property of the Company in the public rights-of-way within a period of forty-five (45) days (or within the City specified timeframe where emergency conditions require) following the written request of the City or as otherwise agreed between the Company and the City. Should the Company refuse or fail to relocate its property as provided for herein within forty-five (45) days after written notification (or such other City specified timeframe where emergency conditions require for relocation) or as agreed upon between the parties hereto, the City shall have the right to do such work or cause it to be done, and the reasonable cost thereof shall be paid by the Company to the City within sixty (60) days within sixty (60) days of completion.

Unless otherwise set forth herein, the failure of the Company to relocate any property of the Company to a location approved by the City within ninety (90) days of the City's written notice shall entitle the City to recover liquidated damages from the Company. The liquidated damages assessed the Company, if any, shall be the greater of (a) Two Hundred and Fifty Dollars (\$250.00) per day or (b) the amount of the liquidated damages, if any, specified in the City's contract with the prime contractor (either as executed at the time of the City's removal or relocation request or which will be executed prior to any construction for the project which requires the relocation or extension of new facilities). If work which requires the relocation of the Company's facilities is being constructed by a developer, who has submitted a plan which indicates said work will be dedicated to the City, the liquidated damages from the Company's failure to relocate a facility shall be Two Hundred and Fifty Dollars (\$250.00) per day.

If the Company reasonably believes it will be unable to complete the relocation within ninety (90) days from receipt of written notice from the City, the Company shall explain the reasons for its inability in detail and in writing and City and the Company shall attempt to agree on an alternate schedule, subject however, to the City's right to make a final determination as to such schedule and subject to the City's right to liquidated damages.

The City may collect such liquidated damages owed by the Company through means allowed by law. Unless the delay is excused by the City, the City may immediately request payment of any liquidated damages due to the City by the Company.

**SECTION 10. Insurance.**

A. **Commercial General Liability.** The Company shall maintain, through the term of this Agreement, Commercial General Liability Insurance using carriers authorized in the State of Alabama and maintaining a Best rating of at least A-1. Such insurance shall include coverage for premises and operations, underground collapse, and products and completed operations, and shall include as Additional Insureds the City, and its officers, elected and appointed officials, agents, representatives, and employees. Such insurance shall be in the amount of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate covering bodily injury, including death, and property damage. If the Company employs independent contractors, the Company shall insure that these contractors maintain appropriate levels of insurance and that the City is named as an additional insured under each liability policy.

B. **Commercial Automobile Liability.** The Company shall maintain during the term of this Agreement Commercial Automobile Liability insurance with a limit of One Million Dollars

(\$1,000,000) per occurrence combined single limit for bodily injury, including death, and property damage covering owned, non-owned and hired automobiles used in conjunction with its operations under this Agreement. Such insurance shall include the City as an Additional Insured.

C. Workers' Compensation and Employer's Liability Insurance. The Company shall maintain, during the course of this Agreement, Workers' Compensation coverage as prescribed by the laws of the State of Alabama and Employers' Liability coverage in an amount of not less than One Million Dollars (\$1,000,000) per accident, One Million Dollars (\$1,000,000) per injury, per employee and One Million Dollars (\$1,000,000) per injury, aggregate.

D. Commercial Umbrella or Excess Liability Insurance. The Company shall maintain, during the course of this Agreement, Commercial Umbrella or Excess Liability Insurance to provide excess coverage above the Commercial Liability, Commercial Automobile Liability and the Employer's Liability coverage of Worker's Compensation with Excess/Umbrella Limits of \$4,000,000 per Occurrence and \$4,000,000 per Aggregate. The policy must be on an "occurrence" basis.

E. Evidence of Insurance. On or prior to the Effective Date of the Agreement, the Company shall furnish to the City certificates of insurance upon each policy renewal evidencing all of the aforementioned types and limits of insurance to be in effect.

F. Maintenance of Insurance Policies. The liability insurance policies required under this Section shall be maintained by the Company through the term of this Agreement. Each policy of insurance shall provide that it not be cancelled without thirty (30) days' prior written notice to the City.

G. Alteration of Minimum Limits. The City may, following the Effective Date, increase the minimum limitation(s) of the self-insurance or insurance policy(ies) required under this Section by a percentage not to exceed the percentage increase in the Consumer Price Index for the Birmingham Metropolitan Statistical Area as of the Effective Date. The City shall notify the Company of such requirement pursuant to Section 18.

H. No Limit of Liability. The legal liability of the Company to the City and any person for any of the matters that are the subject of the insurance policy(ies) required by this Section, shall not be limited by said insurance policy(ies) or by the recovery of any amounts thereunder.

I. Certificate of Insurance. The Company shall furnish or have its insurer furnish to the City certificates for all the coverage described hereinabove, from companies acceptable to the City, properly executed by an authorized representative of the insurer authorized to do business in the State of Alabama. Certificates shall include the City as an additional insured and all policies shall waive rights of subrogation in favor of the City, and contain a provision that coverage afforded under the policies will not be cancelled, unless insurers have provided at least thirty (30) days prior written notice has been given to the City. All notices or certificates shall be delivered to the following:

The City of Irondale, Alabama  
Attn: City Clerk  
101 20<sup>th</sup> Street South  
Irondale, Alabama 35210

All deductibles under said policies shall be the sole responsibility of the Company.

J. Insurance Coverage Required for Contractors and Subcontractors. It is understood and agreed between the parties hereto that all insurance coverage types and coverage amounts required herein from the Company shall be required of any contractor and subcontractor that the Company uses to provide services to the System. Company agrees to ensure that each contractor and subcontractor utilized by Company for the System possesses the requisite insurance as set forth in this Section 10. Further, Company agrees to require each contractor and subcontractor providing services to the System to provide the Company with proof thereof in advance of the provisions of services by the contractor or subcontractor to the System. In the event that a contractor or subcontractor does not possess insurance required herein, then Company shall not use such contractor or subcontractor to render services to the System. Further, in the event that Company utilizes a contractor or a subcontractor which does not possess the requisite insurance required in this Agreement, then Company shall be solely responsible for any and all losses suffered by the City, its agents, employees, officials, and representatives due to the lack of insurance by the contractor or subcontractor. Company shall obtain a certificate of insurance from each contractor and subcontractor to verify the presence of the coverages required herein and shall regularly evaluate such insurance certificates and monitor such coverages for cancellation and expiration of coverage. The insurance certificates shall be made available to the City upon request and the City shall also be named as an additional insured thereon.

K. Notification of Claims and/or Litigation. Company shall notify the City in writing of any known claims and/or litigation within two (2) business days of the earlier of (i) learning of such claims and/or litigation or (ii) receipt thereof. Company shall also provide therewith a copy of any and all information related thereto to the City as well as any other information requested by the City.

**SECTION 11. Indemnity and Hold Harmless.** The Company agrees to indemnify, defend, and hold harmless the City, its elected officers, employees, agents, and representatives, against all claims, costs, losses, expenses, demands, actions, or causes of action, including reasonable attorney's fees and other costs and expenses of litigation, which may be asserted against or incurred by the City or for which the City may be liable, which arise from the negligence or willful misconduct, of the Company, its employees, agents, contractors, and/or subcontractors arising out of the construction, operation, maintenance, upgrade, repair, or relocation of the System. The City does not and shall not waive any rights against the Company which it may have by reason of this indemnification, or because of the acceptance by, or the Company's deposit with the City of any of the insurance policies described in this Agreement. The indemnification by the Company shall apply to all damages, penalties and claims of any kind, regardless of whether any insurance policy shall have been determined to be applicable to any such damages or claims for damages.

During System construction or maintenance, if the Company, its contractors, subcontractors, employees, agents or assigns cause damage to or break in any lines, cables, ducts, conduit or other facilities located in the City's rights-of-way, notice shall be given immediately to the affected party and to the City. In the event of any Claim specified in this Section 11, the City shall give reasonable notice in writing to the Company of the nature and amount of such Claim. Failure of the City to timely give such notice to the Company shall not relieve the Company of its indemnity obligations hereunder.

The obligations of the Company contained in this Section 11 shall survive the termination or expiration of this Agreement.

**SECTION 12. Default.**

A. Each of the following shall constitute a material default of this Agreement by the Company:

1. Failure to make any payments to the City required to be made as set forth in this Agreement and/or to provide any documentation to the City required herein.
2. Failure to maintain the insurance required herein and that is not cured within thirty (30) days following written notice to the Company.
3. Failure to provide or furnish any information required under this Agreement to the City that is not cured within thirty (30) days following written notice to the Company.
4. Any breach or violation of any ordinance, rule or regulation or any applicable safety or construction requirements or regulations by Company or its employees, agents and/or representatives that presents a threat to health or safety that has not been cured within the time specified by the City following written notice thereof.
5. The occurrence of any event relating to the financial status of the Company which may reasonably lead to the foreclosure or other judicial or non-judicial sale of all or any material part of the System or the assets of the Company, including but not limited to, the appointment of a receiver or trustee in bankruptcy to take over and conduct the business of the Company.
6. The condemnation by a public authority, other than the City, or sale or dedication under threat or in lieu of condemnation, of all of the facilities.
7. If (a) the Company shall make an assignment for the benefit of creditors, shall become and be adjudicated insolvent, shall petition or apply to any tribunal for, or consent to, the appointment of, or taking possession by, a receiver, custodian, liquidator or trustee or similar official pursuant to state or local laws, ordinances or regulations of any substantial part of its property or assets, including all or any part of the System; (b) a writ of attachment, execution, distraint, levy, possession or any similar process shall be issued by any tribunal against all or any material part of the Company's property or assets; (c) any creditor of the Company petitions or applies to any tribunal for the appointment of, or taking possession by, a trustee, receiver, custodian, liquidator or similar official for the Company or for any material parts of the property or assets of the Company under the law of any jurisdiction, whether now or hereafter in effect, and a final order, judgment or decree is entered

appointing any such trustee, receiver, custodian, liquidator or similar official, or approving the petition in any such proceeding; or (d) any final order, judgment or decree is entered in any proceedings against the Company decreeing the voluntary or involuntary dissolution of the Company.

- B. The Company shall not be excused from its obligations under this Agreement by mere economic hardship, or by nonfeasance or malfeasance of its directors, officers, agents, subcontractors or employees.

**SECTION 13. Enforcement and Termination of Agreement.**

- A. Notice of Violation. In the event the Company has not complied with the terms of this Agreement, the City shall notify the Company in writing of the nature of the alleged noncompliance. Such writing shall specify the nature of the breach. In the event the City has not complied with the terms of this Agreement, the Company shall notify the City in writing of the nature of the alleged noncompliance. Such writing shall specify the nature of the breach.
- B. Right to Cure or Respond. The Company shall have thirty (30) days from receipt of the notice described herein: (a) to respond to the City by contesting the assertion of noncompliance, (b) to cure such default, or (c) in the event that, by the nature of default, such default cannot, for reasons beyond the control of the Company, be cured within the 30-day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date that they will be completed.
- C. Enforcement. Should the Company fail to cure or otherwise respond pursuant to Section 13B above to the notice given by the City, the City may hold the Company in default of this Agreement and (i) terminate the Agreement and/or (ii) pursue remedies as the City deems appropriate, including, but not limited to, any or all of the following remedies:
  - 1. Seek specific performance of any provision which reasonably lends itself to such a remedy;
  - 2. Restrain by injunction the default or reasonably anticipated default by the Company of any provision of this Agreement; and/or
  - 3. Seek any other available remedy permitted by law or in equity.

**SECTION 14. Permit for Excavation of Right-of-Ways.** Prior to any excavation within the rights-of-way, the Company shall obtain a permit from the City pursuant to this Agreement, and the work shall be performed in accordance with all applicable ordinances and codes and any subsequent ordinances or regulations that may be adopted by the City. Repair and replacement of the rights-of-ways due to the Company's installation, removal, relocation, maintenance and repair of its System or facilities shall be accomplished to the satisfaction of the City.

**SECTION 15. Warranties and Representations by Company.** The Company hereby agrees, represents and warrants that it is legally authorized to enter into this Agreement in accordance

with all applicable laws, rules and regulations. Furthermore, the Company further agrees, represents and warrants that this Agreement is legal, valid and binding, and that it is required to obtain authorization and consent from the City prior to the construction, installation, operation or maintenance of the System.

**SECTION 16. Other Obligations.** Obtaining a franchise pursuant to this Agreement does not relieve the Company of its duty to obtain all other necessary permits, licenses, authority and the payment of fees required by any other City, county, state or federal rules, laws or regulations. Furthermore, the Company is responsible for all work done in the rights-of-way pursuant to this Agreement, regardless of who performs the work.

**SECTION 17. Priority of Use.** This Agreement does not establish any priority for the use of the rights-of-way by the Company or any present or future franchisees or permit holders. In the event of any dispute as to the priority of use of the rights-of-way, the first priority shall be to the public generally, the second priority to the City, the third priority to the State of Alabama and its political subdivisions in the performance of their various functions, and thereafter, as between franchisees and other permit holders, as determined by the City in the exercise of its powers, including the police powers and other powers reserved to and conferred on it by the State of Alabama.

**SECTION 18. Notice.** All notices required or permitted to be given pursuant to this Agreement shall be in writing and delivered personally or sent by registered or certified mail, return receipt requested, or by generally recognized, prepaid, overnight air courier services, to the address(es) and individual(s) set forth below. All such notices to any party shall be deemed to have been provided when delivered, if delivered personally, three (3) days after mailed, if sent by registered or certified mail, or the next business day, if sent by generally recognized, prepaid, overnight air courier services.

The notices or responses to the City shall be addressed as follows:

The City of Irondale, Alabama  
Attn: Mayor  
101 20<sup>th</sup> Street South  
Irondale, Alabama 35210

The notices or responses to the Company shall be addressed as follows:

Phoenix Water Resources, LLC  
Attn: Mr. Lanier Roton  
606 Clay Street  
Montgomery, AL 36104

The City and the Company may designate such other address or addresses from time to time by giving written notice to the other party as set forth in this section.

**SECTION 19. Assignment.** The Company's interest in this Agreement shall not be sold, transferred, assigned or otherwise encumbered or disposed of, either by forced or voluntary sale or otherwise, without the prior written consent of the City Council.

**SECTION 20. Remedies and Penalties Not Exclusive; No Waiver.** All remedies and penalties under this Agreement are cumulative and not exclusive, and the recovery or enforcement by one available remedy or imposition of any penalty is not a bar to recovery or enforcement by any other such remedy or imposition of any other penalty. The City reserves the right to enforce the penalty provisions of any ordinance or resolution and to avail itself of any and all remedies available at law or in equity. Failure to enforce by one party shall not be construed as a waiver of a breach of any term, condition or obligation imposed upon the other party by or pursuant to this Agreement. A specific waiver of a particular breach of any term, condition or obligation imposed upon one party by or pursuant to this Agreement shall not be a waiver by the other party of any other or subsequent or future breach of the same or any other term, condition or obligation, or a waiver of the term, condition or obligation itself.

**SECTION 21. Limitation on Privileges.** All rights, authority and grants herein contained or conferred are also conditioned upon the understanding and agreement that these privileges in the rights-of-way of the City are not to operate in any way so as to be an asset or item of ownership in any appraisal thereof.

**SECTION 22. Compliance with Applicable Laws and Ordinances.** The Company shall, at all times during the term of this Agreement, be subject to the present and future ordinances, resolutions, rules, regulations, and/or laws of the City, the State of Alabama, and the United States, so far as they may be applicable to the Company.

**SECTION 23. Rules of Construction.** The parties hereto acknowledge that each party and its counsel have had the opportunity to review and revise this Agreement, and the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits thereto.

**SECTION 24. Governing Law; Venue.** This Agreement shall be deemed to have been made in the State of Alabama and the validity of the same, its construction, interpretation, enforcement and the rights of the parties hereunder, shall be determined under, governed by and construed in accordance with the substantive laws of the State of Alabama, without giving effect to any choice of law provisions arising thereunder. Any civil action or legal proceeding arising out of or relating to this Agreement shall be brought in the Jefferson County Circuit Court, Birmingham Division. Each party consents to the sole and proper jurisdiction of such court in any such civil action or legal proceeding and waives any objection to the laying of venue of any such civil action or legal proceeding in such court.

**SECTION 25. Severability Clause.** If any part, section or subdivision of this Agreement shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this Agreement, which shall continue in full force and effect notwithstanding such holding.

**SECTION 26. Modification.** No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and properly executed by an authorized representative of each of the parties hereto.

**SECTION 27. No Third-Party Beneficiaries.** There shall be no third-party beneficiaries of this Agreement.

**SECTION 28. Counterparts.** This Agreement may be executed in counterparts, each of which shall constitute an original, and all of which together shall constitute one and the same document.

**SECTION 29. Immigration Clause.** By signing this Agreement, the Company affirms, for the duration of this Agreement, that it will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of this Agreement and shall be responsible for any and all damages resulting therefrom.

**SECTION 30. Relationship.** The City and the Company shall not be construed as joint venturers or general partners of each other, and neither shall have the power to bind or obligate the other party except as set forth in this Agreement. Company understands and agrees that the relationship to City is that of franchisee, and that it will not represent to anyone that its relationship to City is other than that of franchisee.

**SECTION 31. Force Majeure.** Any delays in the performance of any obligation of City and/or Company under this Agreement shall be excused to the extent that such delays are caused by wars, national emergencies, natural disasters, strikes, labor disputes, utility failures, riots, adverse weather, and other similar causes not within the control of Company and/or City and/or Board and any time period(s) required for performance shall be extended accordingly as agreed upon between the parties hereto.

(REMAINDER OF PAGE LEFT INTENTIONALLY BLANK)

## FRANCHISE AGREEMENT

**THIS FRANCHISE AGREEMENT** ("Agreement") is entered into on the date of the last party hereto to execute this Agreement, by and between the **CITY OF IRONDALE, ALABAMA** (hereinafter referred to as the "City"), and **PHOENIX WATER RESOURCES, LLC**, (hereinafter referred to as the "Company").

**WHEREAS**, the Company has previously been granted a franchise from the City to own, construct, install, operate, extend, and maintain a sewage collection system, as defined herein, in, under, across, and through the public rights-of-way in the City of Irondale for residents and commercial customers located within the municipal limits of the City of Irondale, but such franchise has expired by its own terms; and

**WHEREAS**, the Company agrees and recognizes that it is required to obtain the City's consent in order to install, operate, extend and maintain the System in, under, across, and through the public rights-of-way in the City (the "Purpose") and has requested the continuous use of the City's public rights-of-way for the Purpose; and

**WHEREAS**, the City Council wishes to accommodate the Company's request and grant the use of the City's rights-of-ways to the Company for the Purpose in accordance with the terms and conditions contained herein.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein and intending to be legally bound thereby, the City and Company enter into this Agreement and do hereby mutually covenant and agree as follows:

**SECTION 1. Defined Terms.** For purposes of this Agreement, the following terms, words and phrases shall have the meanings set forth below. When not inconsistent with the context, words used in the singular number shall include the plural number, and words in the plural number shall include the singular.

- A. "*Rights-of-way*" means the surface and space above and below any public street, boulevard, road, highway, freeway, lane, alley, sidewalk, parkway, driveway, public ways, or other public rights of way, including, public utility easements, dedicated utility strips or rights of way dedicated for compatible uses held by the City or location within the City which shall entitle the City and the Company to use the same for the purpose of installing, operating, repairing and maintaining the System.
- B. "*System*" shall mean a sewage collection, treatment and disposal system operated and managed in accordance with all Alabama Department of Environmental Management regulations and all other regulations applicable to sewer collection, treatment, and disposal.

**SECTION 2. Grant of Non-Exclusive and Limited Authority.** The City hereby grants to the Company, subject to the City's receipt of the compensation set forth herein, the non-exclusive and limited authority to own, construct, install, operate, extend, and maintain, and construct, the System in, under, across, and through the public Rights-of-way in the City of Irondale. The City reserves the right to grant the use of said rights-of-way to any person/entity at any time and for any lawful purpose. Nothing in this Agreement shall be construed as granting to Company an exclusive

franchise. The grant of this franchise to the Company is for the sole and expressed purpose of operating a sewage collection system for sewage collection, treatment, and disposal services. The Company shall not permit the use of its System on the public Rights-of-way in any manner that would avoid or seek to avoid the need for a franchise from the City. It is expressly understood that the franchise granted herein is a privilege and not a right. This Agreement shall not be construed to create any rights beyond the terms, conditions and periods set forth in this Agreement, except as provided herein.

**SECTION 3. Duration and Term.** The franchise agreement granted hereunder shall be for an initial term of three (3) years (the “Initial Term”) commencing on the later of the date of execution of this Agreement or the effective date of Ordinance No. 2023-14, unless otherwise lawfully revoked or terminated as herein provided. Upon the expiration of the Initial Term, this Agreement shall automatically renew for nine (9) additional terms of three (3) years each, subject to the terms and conditions contained herein, unless either party hereto provides notice to the other to terminate this Agreement by giving at least sixty (60) days’ notice before the expiration of the then current term.

**SECTION 4. Compensation to City.** As consideration for this Agreement, which provides for the use by the Company of the City’s rights-of-way within the boundaries of the City, which are valuable public properties acquired and maintained at the expense of its taxpayers and citizens, the Company shall pay to the City the following amounts:

- Three percent (3%) of the Total Monthly Sewer Charges received by Company; and
- A portion of the fees received by Company pursuant to Section 5(b) shall be paid by Company to City as follows:

**Residential**

Single Family Dwelling: for <b>each family dwelling</b>	\$ 540.00
Multi-Family Dwellings:	
1 Bedroom <b>each unit</b>	\$ 270.00
2 Bedroom <b>each unit</b>	\$ 405.00
3+ Bedroom <b>each unit</b>	\$ 540.00

**Commercial and Industrial**

Retail: for every 1,000 <b>sq feet</b>	\$ 540.00
Office: for every 1,000 <b>sq feet</b>	\$ 297.00
Industrial: for every 1,000 <b>sq feet</b>	\$ 283.00
Hotel: for <b>each unit</b>	\$ 270.00
Restaurants: <b>Per Seat</b> (not 24 hour service)	\$ 108.00
Restaurants: <b>Per Seat</b> (24 hour service)	\$ 162.00

**Institutional**

Hospitals: per <b>bed space</b>	\$ 540.00
Institutions other than Hospitals: per <b>bed space</b>	\$ 270.00

Schools: <b>per student</b>	\$	32.00
Schools (with cafeteria): <b>per student</b>	\$	44.00
Schools (with cafeteria, gym, and showers): <b>per student</b>	\$	54.00

These amounts shall be paid by the Company to the City on a quarterly basis before the last day of the month following the end of each quarter. For example, for the quarter consisting of January, February, and March, payment for these amounts shall be due from the Company to the City on or before the last day of April.

**SECTION 5. Sewer Charges and Fees.** The monthly sewer charges for each user within the City of Irondale and impact fees have been agreed to between Company and the City.

A. **Monthly Sewer Charges.** The monthly sewer charges shall be based upon water usage. The per gallon cost for residential, commercial and industrial users are set forth below:

<i>Customer Type</i>	<i>Rate</i>
Residential	0,000 – 2,245 gallons = \$48.50 minimum bill 2,246 – 4,489 gallons = \$0.004316 per gallon Over 4,489 gallons = \$0.0080704 per gallon
Commercial	\$0.01828 per gallon
Institutional	\$0.01885 per gallon

B. **Impact Fees.** The amount of impact fees for residential, commercial and industrial, and institutional shall be based as follows:

**Residential**

Single Family Dwelling: for <b>each family dwelling</b>	\$	4,500.00
Multi-Family Dwellings:		
1 Bedroom <b>each unit</b>	\$	2,250.00
2 Bedroom <b>each unit</b>	\$	3,375.00
3+ Bedroom <b>each unit</b>	\$	4,500.00

**Commercial and Industrial**

Retail (other than restaurants): for every 1,000 <b>sq feet</b>	\$	4,500.00
Office: for every 1,000 <b>sq feet</b>	\$	2,475.00
Industrial: for every 1,000 <b>sq feet</b>	\$	2,360.00
Hotel: for <b>each unit</b>	\$	2,150.00
Restaurants: <b>Per Seat</b> (not 24 hour service)	\$	900.00
Restaurants: <b>Per Seat</b> (24 hour service)	\$	1,350.00

**Institutional**

Hospitals: per <b>bed space</b>	\$	4,500.00
Institutions other than Hospitals: per <b>bed space</b>	\$	2,250.00
Schools: <b>per student</b>	\$	270.00

Schools (with cafeteria): <u>per student</u>	\$	360.00
Schools (with cafeteria, gym, and showers): <u>per student</u>	\$	450.00

If the development being proposed is not specifically referenced above, charges and fees shall be negotiated between the City and Company. The above impact fees apply only to domestic waste. Impact Fees for customers producing other than domestic waste shall be determined by the Company. The above charges and fees payable to Company are subject to periodic review and may be increased upon approval of the City.

**SECTION 6. Reservation of Regulatory and Police Powers.** The City, through the granting and approving of this Agreement, does not surrender or to any extent lose, waive, impair or lessen the lawful powers and rights now, or which may be hereafter, vested in the City under the Constitution and the statutes of the State of Alabama to regulate the use of its Rights-of-way by the Company or any person or to charge reasonable compensation for such use, and the Company, by its acceptance of this Agreement, agrees that all lawful powers and rights, regulatory power, police power or otherwise, that may be from time to time vested in or reserved to the City, shall be in full force and effect and subject to the exercise thereof by the City at any time. The Company is deemed to acknowledge that its rights are subject to the regulatory and police powers of the City to adopt and enforce ordinances necessary for the safety and welfare of the public and agrees to comply with all applicable laws and ordinances enacted by the City pursuant to such powers. Any conflict between the provisions of this Agreement and any other present or future lawful exercise of the City’s police powers shall be resolved in favor of the latter.

**SECTION 7. System; Standards of System Maintenance and Operation.** The Company shall not construct, install, expand, improve, or extend the System within the City pursuant to this Agreement without approval from the City which said approval shall not be unreasonably withheld.

Additionally, the Company shall, at all times, employ the highest degree of care as is commensurate with the practical operation of its business and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public. The Company shall install and maintain the System in such manner that its operations will not interfere with any installations of the City. All structures and all lines, equipment and connections in, under and upon the rights-of-way, wherever situated or located, shall at all times be kept and maintained in a safe and suitable condition and in good order and repair. The Company shall maintain a force of employees and/or contractors at all times sufficient to provide safe, adequate and prompt service for the System in accordance with the permit issued to the Company by ADEM.

The Company shall perform the following general duties and obligations:

1. Company will operate and manage the System in accordance with all ADEM regulations and other regulations applicable to sewer collection, treatment, and disposal.
2. Company will comply with all local, state and federal laws and regulations regarding the management, design, construction, operation and maintenance of the System.
3. During the term of this Agreement and any renewal hereof, Company shall provide sewage collection, treatment and disposal services for commercial and residential users in the

municipal limits of Irondale; provided, however, that nothing in this Agreement shall require any existing residential or commercial entity to subscribe for or utilize the services to be provided by the System unless they choose to do so if another sewer service is available.

4. As owner of the System, Company shall be responsible for the payment of all expenses associated with the operation, maintenance, and management of the System and any tax obligations associated therewith.
5. Company shall, at its cost, staff the System with qualified personnel who meet the certification requirements of the State of Alabama and continue upgrading, education and training of its staff in modern wastewater collection and treatment technology, safety and equipment maintenance.
6. Company shall, at its cost, prepare reports as required by the applicable NPDES Permit, and file such reports with appropriate agencies as required by law.

The City recognizes that certain System facilities and sewers are currently located in the right-of-way of roads which are maintained by Jefferson County or the State of Alabama and agrees to assist the Company in obtaining necessary approvals so that the Company can make repairs, improvements or modifications to such System facilities and sewers or to make borings or expand the System sewer for the public good. It is agreed that all costs associated with the procurement and maintenance during the term hereof of said land right shall be borne exclusively by the Company, including, but not limited to, fees of land agents, surveys, title searches, attorney's fees, acquisition fees, bonuses, annual rentals, etc.

#### **SECTION 8. Use of Streets.**

A. Conditions of Street Occupancy. All portions of the System and all associated equipment installed by the Company pursuant to this Agreement shall be located so as to cause minimum interference with the proper use of the rights-of-way and with the rights and reasonable convenience of property owners who own property that adjoins any of such rights-of-way.

B. Payment of Costs. The Company shall be responsible for all costs associated with the installation, repair and maintenance of the System and all associated equipment including, but not limited to (1) the costs to repair the rights-of-way due to the installation, repair and maintenance of the System, and (2) the costs incurred in relocating any portion of the System or facilities constructed when required by the City.

C. Authority to Require Relocation. The City shall have authority to require the Company to relocate any facility located in violation of this section at the Company's sole expense. Such relocation shall be completed within forty-five (45) days of written notice to the Company from the City or as otherwise agreed between the City and the Company. The notice shall prescribe the area where the facility is located and any other special conditions deemed necessary by the City. Should the Company refuse or fail to relocate its equipment as provided for herein within forty-five (45) days after written notification, the City shall have the right to do such work or cause it to be done, and the reasonable cost thereof shall be paid by the Company to the City within sixty (60) days following the completion of the work.

**D. Work on Public Rights-of-Way; Restoration of Damaged Areas.**

1. Whenever the Company excavates or does other work in the public right-of-way, such excavation or other work shall be done in compliance with the laws and regulations of the City in effect at the time of such excavation or other work.

2. The Company shall not excavate or do other work in any public right-of-way unless the Company complies with the City's rules, regulations, and ordinances and has applied for and received a written permit from the City, or its designee, granting permission for such excavation or other work. The permit shall describe the area where the excavation and/or work is expected to be completed, the method of construction and the contractor performing the work and any other conditions imposed by the City on such work. In emergencies, the Company shall proceed with all necessary operations without first obtaining the permit, but shall obtain the required permit at its earliest opportunity thereafter.

3. Whenever the Company shall cause any opening or alteration to be made in any of the streets, avenues, alleys, ways, bridges, viaducts, underpasses, or public places of the City for the purpose of laying, setting, maintaining, operating or repairing any pipes, appurtenances, fixtures, etc., the work shall be completed within a reasonable time and the Company shall, upon the completion of such work, restore at its own cost and expense such portion of the streets, avenues, alleys, ways, or public places to as good a condition as before the opening or alteration was made and all as promptly as may be practical and within a reasonable length of time thereafter. Any work completed by the Company shall be done in such a manner as to give the least possible inconvenience to the inhabitants of the City.

4. Immediately upon completion of repairs or installation of any facility, the Company shall refill and compact any trench or excavation to the standards required by the City and the State of Alabama Department of Transportation's "Standard Specifications of Roads and Structures." Promptly, and no more than seven (7) business days after the completion of repair or installation, unless otherwise approved by the City, the Company shall restore or replace any pavement, sidewalk, curb, gutter, grass, landscaping material, or other materials or structure damaged in the course of its work to City standards at the Company's sole expense. In the event excavation or disturbance of special sidewalk pavement areas is necessary, the Company shall restore those areas to their preexisting conditions and such restoration shall meet City standards. Failures within an area which has been disturbed, excavated or encumbered by the Company which are discovered within twelve (12) months of the restoration or replacement specified herein, shall be the responsibility of the Company pursuant to this provision.

5. In any case where a public right-of-way is being excavated, disturbed, or encumbered by the Company, the Company shall take all precautions required by law, in particular, the Manual on Uniform Traffic Control Devices, or otherwise necessary or proper for the protection of the public and shall maintain adequate warning signs, barricades, signals, and other devices necessary or proper to give notice and warning to the public of the existence of actual conditions present.

6. No City property is to be removed from the right-of-way, including signage on utility poles, without proper prior written permission from the City.

**SECTION 9. Relocation at Request of the City.** The Company shall, at its own expense, protect, support, temporarily disconnect, or relocate, any property of the Company in the public rights-of-way within a period of forty-five (45) days (or within the City specified timeframe where emergency conditions require) following the written request of the City or as otherwise agreed between the Company and the City. Should the Company refuse or fail to relocate its property as provided for herein within forty-five (45) days after written notification (or such other City specified timeframe where emergency conditions require for relocation) or as agreed upon between the parties hereto, the City shall have the right to do such work or cause it to be done, and the reasonable cost thereof shall be paid by the Company to the City within sixty (60) days within sixty (60) days of completion.

Unless otherwise set forth herein, the failure of the Company to relocate any property of the Company to a location approved by the City within ninety (90) days of the City's written notice shall entitle the City to recover liquidated damages from the Company. The liquidated damages assessed the Company, if any, shall be the greater of (a) Two Hundred and Fifty Dollars (\$250.00) per day or (b) the amount of the liquidated damages, if any, specified in the City's contract with the prime contractor (either as executed at the time of the City's removal or relocation request or which will be executed prior to any construction for the project which requires the relocation or extension of new facilities). If work which requires the relocation of the Company's facilities is being constructed by a developer, who has submitted a plan which indicates said work will be dedicated to the City, the liquidated damages from the Company's failure to relocate a facility shall be Two Hundred and Fifty Dollars (\$250.00) per day.

If the Company reasonably believes it will be unable to complete the relocation within ninety (90) days from receipt of written notice from the City, the Company shall explain the reasons for its inability in detail and in writing and City and the Company shall attempt to agree on an alternate schedule, subject however, to the City's right to make a final determination as to such schedule and subject to the City's right to liquidated damages.

The City may collect such liquidated damages owed by the Company through means allowed by law. Unless the delay is excused by the City, the City may immediately request payment of any liquidated damages due to the City by the Company.

**SECTION 10. Insurance.**

A. **Commercial General Liability.** The Company shall maintain, through the term of this Agreement, Commercial General Liability Insurance using carriers authorized in the State of Alabama and maintaining a Best rating of at least A-1. Such insurance shall include coverage for premises and operations, underground collapse, and products and completed operations, and shall include as Additional Insureds the City, and its officers, elected and appointed officials, agents, representatives, and employees. Such insurance shall be in the amount of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate covering bodily injury, including death, and property damage. If the Company employs independent contractors, the Company shall insure that these contractors maintain appropriate levels of insurance and that the City is named as an additional insured under each liability policy.

B. **Commercial Automobile Liability.** The Company shall maintain during the term of this Agreement Commercial Automobile Liability insurance with a limit of One Million Dollars

(\$1,000,000) per occurrence combined single limit for bodily injury, including death, and property damage covering owned, non-owned and hired automobiles used in conjunction with its operations under this Agreement. Such insurance shall include the City as an Additional Insured.

C. Workers' Compensation and Employer's Liability Insurance. The Company shall maintain, during the course of this Agreement, Workers' Compensation coverage as prescribed by the laws of the State of Alabama and Employers' Liability coverage in an amount of not less than One Million Dollars (\$1,000,000) per accident, One Million Dollars (\$1,000,000) per injury, per employee and One Million Dollars (\$1,000,000) per injury, aggregate.

D. Commercial Umbrella or Excess Liability Insurance. The Company shall maintain, during the course of this Agreement, Commercial Umbrella or Excess Liability Insurance to provide excess coverage above the Commercial Liability, Commercial Automobile Liability and the Employer's Liability coverage of Worker's Compensation with Excess/Umbrella Limits of \$4,000,000 per Occurrence and \$4,000,000 per Aggregate. The policy must be on an "occurrence" basis.

E. Evidence of Insurance. On or prior to the Effective Date of the Agreement, the Company shall furnish to the City certificates of insurance upon each policy renewal evidencing all of the aforementioned types and limits of insurance to be in effect.

F. Maintenance of Insurance Policies. The liability insurance policies required under this Section shall be maintained by the Company through the term of this Agreement. Each policy of insurance shall provide that it not be cancelled without thirty (30) days' prior written notice to the City.

G. Alteration of Minimum Limits. The City may, following the Effective Date, increase the minimum limitation(s) of the self-insurance or insurance policy(ies) required under this Section by a percentage not to exceed the percentage increase in the Consumer Price Index for the Birmingham Metropolitan Statistical Area as of the Effective Date. The City shall notify the Company of such requirement pursuant to Section 18.

H. No Limit of Liability. The legal liability of the Company to the City and any person for any of the matters that are the subject of the insurance policy(ies) required by this Section, shall not be limited by said insurance policy(ies) or by the recovery of any amounts thereunder.

I. Certificate of Insurance. The Company shall furnish or have its insurer furnish to the City certificates for all the coverage described hereinabove, from companies acceptable to the City, properly executed by an authorized representative of the insurer authorized to do business in the State of Alabama. Certificates shall include the City as an additional insured and all policies shall waive rights of subrogation in favor of the City, and contain a provision that coverage afforded under the policies will not be cancelled, unless insurers have provided at least thirty (30) days prior written notice has been given to the City. All notices or certificates shall be delivered to the following:

The City of Irondale, Alabama  
Attn: City Clerk  
101 20<sup>th</sup> Street South  
Irondale, Alabama 35210

All deductibles under said policies shall be the sole responsibility of the Company.

J. Insurance Coverage Required for Contractors and Subcontractors. It is understood and agreed between the parties hereto that all insurance coverage types and coverage amounts required herein from the Company shall be required of any contractor and subcontractor that the Company uses to provide services to the System. Company agrees to ensure that each contractor and subcontractor utilized by Company for the System possesses the requisite insurance as set forth in this Section 10. Further, Company agrees to require each contractor and subcontractor providing services to the System to provide the Company with proof thereof in advance of the provisions of services by the contractor or subcontractor to the System. In the event that a contractor or subcontractor does not possess insurance required herein, then Company shall not use such contractor or subcontractor to render services to the System. Further, in the event that Company utilizes a contractor or a subcontractor which does not possess the requisite insurance required in this Agreement, then Company shall be solely responsible for any and all losses suffered by the City, its agents, employees, officials, and representatives due to the lack of insurance by the contractor or subcontractor. Company shall obtain a certificate of insurance from each contractor and subcontractor to verify the presence of the coverages required herein and shall regularly evaluate such insurance certificates and monitor such coverages for cancellation and expiration of coverage. The insurance certificates shall be made available to the City upon request and the City shall also be named as an additional insured thereon.

K. Notification of Claims and/or Litigation. Company shall notify the City in writing of any known claims and/or litigation within two (2) business days of the earlier of (i) learning of such claims and/or litigation or (ii) receipt thereof. Company shall also provide therewith a copy of any and all information related thereto to the City as well as any other information requested by the City.

**SECTION 11. Indemnity and Hold Harmless.** The Company agrees to indemnify, defend, and hold harmless the City, its elected officers, employees, agents, and representatives, against all claims, costs, losses, expenses, demands, actions, or causes of action, including reasonable attorney's fees and other costs and expenses of litigation, which may be asserted against or incurred by the City or for which the City may be liable, which arise from the negligence or willful misconduct, of the Company, its employees, agents, contractors, and/or subcontractors arising out of the construction, operation, maintenance, upgrade, repair, or relocation of the System. The City does not and shall not waive any rights against the Company which it may have by reason of this indemnification, or because of the acceptance by, or the Company's deposit with the City of any of the insurance policies described in this Agreement. The indemnification by the Company shall apply to all damages, penalties and claims of any kind, regardless of whether any insurance policy shall have been determined to be applicable to any such damages or claims for damages.

During System construction or maintenance, if the Company, its contractors, subcontractors, employees, agents or assigns cause damage to or break in any lines, cables, ducts, conduit or other facilities located in the City's rights-of-way, notice shall be given immediately to the affected party and to the City. In the event of any Claim specified in this Section 11, the City shall give reasonable notice in writing to the Company of the nature and amount of such Claim. Failure of the City to timely give such notice to the Company shall not relieve the Company of its indemnity obligations hereunder.

The obligations of the Company contained in this Section 11 shall survive the termination or expiration of this Agreement.

**SECTION 12. Default.**

A. Each of the following shall constitute a material default of this Agreement by the Company:

1. Failure to make any payments to the City required to be made as set forth in this Agreement and/or to provide any documentation to the City required herein.
2. Failure to maintain the insurance required herein and that is not cured within thirty (30) days following written notice to the Company.
3. Failure to provide or furnish any information required under this Agreement to the City that is not cured within thirty (30) days following written notice to the Company.
4. Any breach or violation of any ordinance, rule or regulation or any applicable safety or construction requirements or regulations by Company or its employees, agents and/or representatives that presents a threat to health or safety that has not been cured within the time specified by the City following written notice thereof.
5. The occurrence of any event relating to the financial status of the Company which may reasonably lead to the foreclosure or other judicial or non-judicial sale of all or any material part of the System or the assets of the Company, including but not limited to, the appointment of a receiver or trustee in bankruptcy to take over and conduct the business of the Company.
6. The condemnation by a public authority, other than the City, or sale or dedication under threat or in lieu of condemnation, of all of the facilities.
7. If (a) the Company shall make an assignment for the benefit of creditors, shall become and be adjudicated insolvent, shall petition or apply to any tribunal for, or consent to, the appointment of, or taking possession by, a receiver, custodian, liquidator or trustee or similar official pursuant to state or local laws, ordinances or regulations of any substantial part of its property or assets, including all or any part of the System; (b) a writ of attachment, execution, distraint, levy, possession or any similar process shall be issued by any tribunal against all or any material part of the Company's property or assets; (c) any creditor of the Company petitions or applies to any tribunal for the appointment of, or taking possession by, a trustee, receiver, custodian, liquidator or similar official for the Company or for any material parts of the property or assets of the Company under the law of any jurisdiction, whether now or hereafter in effect, and a final order, judgment or decree is entered

appointing any such trustee, receiver, custodian, liquidator or similar official, or approving the petition in any such proceeding; or (d) any final order, judgment or decree is entered in any proceedings against the Company decreeing the voluntary or involuntary dissolution of the Company.

- B. The Company shall not be excused from its obligations under this Agreement by mere economic hardship, or by nonfeasance or malfeasance of its directors, officers, agents, subcontractors or employees.

**SECTION 13. Enforcement and Termination of Agreement.**

- A. Notice of Violation. In the event the Company has not complied with the terms of this Agreement, the City shall notify the Company in writing of the nature of the alleged noncompliance. Such writing shall specify the nature of the breach. In the event the City has not complied with the terms of this Agreement, the Company shall notify the City in writing of the nature of the alleged noncompliance. Such writing shall specify the nature of the breach.
- B. Right to Cure or Respond. The Company shall have thirty (30) days from receipt of the notice described herein: (a) to respond to the City by contesting the assertion of noncompliance, (b) to cure such default, or (c) in the event that, by the nature of default, such default cannot, for reasons beyond the control of the Company, be cured within the 30-day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date that they will be completed.
- C. Enforcement. Should the Company fail to cure or otherwise respond pursuant to Section 13B above to the notice given by the City, the City may hold the Company in default of this Agreement and (i) terminate the Agreement and/or (ii) pursue remedies as the City deems appropriate, including, but not limited to, any or all of the following remedies:
1. Seek specific performance of any provision which reasonably lends itself to such a remedy;
  2. Restrain by injunction the default or reasonably anticipated default by the Company of any provision of this Agreement; and/or
  3. Seek any other available remedy permitted by law or in equity.

**SECTION 14. Permit for Excavation of Right-of-Ways.** Prior to any excavation within the rights-of-way, the Company shall obtain a permit from the City pursuant to this Agreement, and the work shall be performed in accordance with all applicable ordinances and codes and any subsequent ordinances or regulations that may be adopted by the City. Repair and replacement of the rights-of-ways due to the Company's installation, removal, relocation, maintenance and repair of its System or facilities shall be accomplished to the satisfaction of the City.

**SECTION 15. Warranties and Representations by Company.** The Company hereby agrees, represents and warrants that it is legally authorized to enter into this Agreement in accordance

with all applicable laws, rules and regulations. Furthermore, the Company further agrees, represents and warrants that this Agreement is legal, valid and binding, and that it is required to obtain authorization and consent from the City prior to the construction, installation, operation or maintenance of the System.

**SECTION 16. Other Obligations.** Obtaining a franchise pursuant to this Agreement does not relieve the Company of its duty to obtain all other necessary permits, licenses, authority and the payment of fees required by any other City, county, state or federal rules, laws or regulations. Furthermore, the Company is responsible for all work done in the rights-of-way pursuant to this Agreement, regardless of who performs the work.

**SECTION 17. Priority of Use.** This Agreement does not establish any priority for the use of the rights-of-way by the Company or any present or future franchisees or permit holders. In the event of any dispute as to the priority of use of the rights-of-way, the first priority shall be to the public generally, the second priority to the City, the third priority to the State of Alabama and its political subdivisions in the performance of their various functions, and thereafter, as between franchisees and other permit holders, as determined by the City in the exercise of its powers, including the police powers and other powers reserved to and conferred on it by the State of Alabama.

**SECTION 18. Notice.** All notices required or permitted to be given pursuant to this Agreement shall be in writing and delivered personally or sent by registered or certified mail, return receipt requested, or by generally recognized, prepaid, overnight air courier services, to the address(es) and individual(s) set forth below. All such notices to any party shall be deemed to have been provided when delivered, if delivered personally, three (3) days after mailed, if sent by registered or certified mail, or the next business day, if sent by generally recognized, prepaid, overnight air courier services.

The notices or responses to the City shall be addressed as follows:

The City of Irondale, Alabama  
Attn: Mayor  
101 20<sup>th</sup> Street South  
Irondale, Alabama 35210

The notices or responses to the Company shall be addressed as follows:

Phoenix Water Resources, LLC  
Attn: Mr. Lanier Roton  
606 Clay Street  
Montgomery, AL 36104

The City and the Company may designate such other address or addresses from time to time by giving written notice to the other party as set forth in this section.

**SECTION 19. Assignment.** The Company's interest in this Agreement shall not be sold, transferred, assigned or otherwise encumbered or disposed of, either by forced or voluntary sale or otherwise, without the prior written consent of the City Council.

**SECTION 20. Remedies and Penalties Not Exclusive; No Waiver.** All remedies and penalties under this Agreement are cumulative and not exclusive, and the recovery or enforcement by one available remedy or imposition of any penalty is not a bar to recovery or enforcement by any other such remedy or imposition of any other penalty. The City reserves the right to enforce the penalty provisions of any ordinance or resolution and to avail itself of any and all remedies available at law or in equity. Failure to enforce by one party shall not be construed as a waiver of a breach of any term, condition or obligation imposed upon the other party by or pursuant to this Agreement. A specific waiver of a particular breach of any term, condition or obligation imposed upon one party by or pursuant to this Agreement shall not be a waiver by the other party of any other or subsequent or future breach of the same or any other term, condition or obligation, or a waiver of the term, condition or obligation itself.

**SECTION 21. Limitation on Privileges.** All rights, authority and grants herein contained or conferred are also conditioned upon the understanding and agreement that these privileges in the rights-of-way of the City are not to operate in any way so as to be an asset or item of ownership in any appraisal thereof.

**SECTION 22. Compliance with Applicable Laws and Ordinances.** The Company shall, at all times during the term of this Agreement, be subject to the present and future ordinances, resolutions, rules, regulations, and/or laws of the City, the State of Alabama, and the United States, so far as they may be applicable to the Company.

**SECTION 23. Rules of Construction.** The parties hereto acknowledge that each party and its counsel have had the opportunity to review and revise this Agreement, and the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits thereto.

**SECTION 24. Governing Law; Venue.** This Agreement shall be deemed to have been made in the State of Alabama and the validity of the same, its construction, interpretation, enforcement and the rights of the parties hereunder, shall be determined under, governed by and construed in accordance with the substantive laws of the State of Alabama, without giving effect to any choice of law provisions arising thereunder. Any civil action or legal proceeding arising out of or relating to this Agreement shall be brought in the Jefferson County Circuit Court, Birmingham Division. Each party consents to the sole and proper jurisdiction of such court in any such civil action or legal proceeding and waives any objection to the laying of venue of any such civil action or legal proceeding in such court.

**SECTION 25. Severability Clause.** If any part, section or subdivision of this Agreement shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this Agreement, which shall continue in full force and effect notwithstanding such holding.

**SECTION 26. Modification.** No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and properly executed by an authorized representative of each of the parties hereto.

**SECTION 27. No Third-Party Beneficiaries.** There shall be no third-party beneficiaries of this Agreement.

**SECTION 28. Counterparts.** This Agreement may be executed in counterparts, each of which shall constitute an original, and all of which together shall constitute one and the same document.

**SECTION 29. Immigration Clause.** By signing this Agreement, the Company affirms, for the duration of this Agreement, that it will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of this Agreement and shall be responsible for any and all damages resulting therefrom.

**SECTION 30. Relationship.** The City and the Company shall not be construed as joint venturers or general partners of each other, and neither shall have the power to bind or obligate the other party except as set forth in this Agreement. Company understands and agrees that the relationship to City is that of franchisee, and that it will not represent to anyone that its relationship to City is other than that of franchisee.

**SECTION 31. Force Majeure.** Any delays in the performance of any obligation of City and/or Company under this Agreement shall be excused to the extent that such delays are caused by wars, national emergencies, natural disasters, strikes, labor disputes, utility failures, riots, adverse weather, and other similar causes not within the control of Company and/or City and/or Board and any time period(s) required for performance shall be extended accordingly as agreed upon between the parties hereto.

(REMAINDER OF PAGE LEFT INTENTIONALLY BLANK)

ADOPTED AND APPROVED this 4<sup>th</sup> day of April, 2023.

CITY OF IRONDALE, ALABAMA

By: James D. Stewart, Jr.  
James D. Stewart, Jr.  
Its: Mayor

STATE OF ALABAMA )

COUNTY OF JEFFERSON )

I, Leigh Ann Allison, a Notary Public, in and for said County in said State, hereby certify that **JAMES D. STEWART, JR.**, whose name as **Mayor** of the **City of Irondale, Alabama**, a municipal corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said municipal corporation.

Given under my hand and seal this 4<sup>th</sup> day of April, 2023.

[SEAL]



Leigh Ann Allison  
Notary Public  
My Commission Expires: 2/2/2027

APPROVED this 10<sup>th</sup> day of April, 2023.

PHOENIX WATER RESOURCES, LLC

By: [Signature]

President of Artesian Utilities Systems Management, Inc Its: Managing Member

Its: \_\_\_\_\_

STATE OF ALABAMA )  
COUNTY OF Montgomery )

I, Alicia C. Gensler, a Notary Public, in and for said County in said State, hereby certify that Lawrence B. Hughes, whose name as Managing Member of Phoenix Water Resources, LLC, an Alabama limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he/she, as such officers and with full authority, executed the same voluntarily for and as the act of said limited liability company.

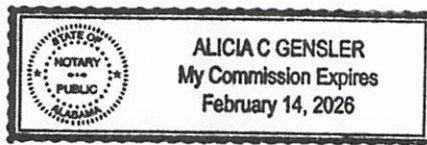
Given under my hand and seal this 10<sup>th</sup> day of April, 2023.

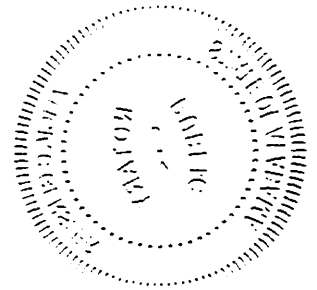
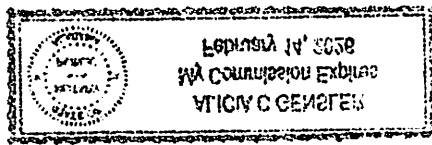
Alicia C. Gensler

Notary Public

[SEAL]

My Commission Expires: 2-14-26





3-11-91

ΠΡΟΕΔΡΟΣ

ΚΑΤΑΡΤΙΣΤΗΣ

ΕΡΩΤΗΣΗ Ν° 6058  
ΠΑ ΚΟΜΜΟΥΝΙΣΤΙΚΟ ΕΚΚΛΗΣΙΑΣΤΙΚΟ ΚΙΝΗΜΑ  
ΤΙΤΙΝ Ο ΓΕΝΙΚΟΣ  
ΕΠΙΤΡΟΠΗ ΕΡΕΥΝΑΣ ΚΑΙ ΣΤΑΤΙΣΤΙΚΗΣ