

ASSET PURCHASE AGREEMENT

By and Between

The Butler Area Sewer Authority,

As Seller

and

Pennsylvania-American Water Company

As Buyer

Dated as of [_____, 2022]

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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this “Agreement”), dated as of _____, 2022 (the “Effective Date”), is made and entered into by and among the Butler Area Sewer Authority, a municipal authority, organized under the Pennsylvania Municipality Authorities Act (the “Seller”), and Pennsylvania-American Water Company (the “Buyer”), a corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania.

RECITALS:

WHEREAS, on the Effective Date, the Seller, acting by and through its board of directors, owns that certain sanitary wastewater collection system (the “System”) that provides sanitary wastewater service to various customers in Butler, Center, Connoquenessing, Oakland, Penn and Summit Townships, the City of Butler and the Borough of East Butler, all located in the Commonwealth of Pennsylvania (the “Service Area”); and

WHEREAS, Buyer is a regulated public utility that furnishes wastewater service to the public in various counties throughout Pennsylvania; and

WHEREAS, Buyer, in reliance upon the representations, warranties and covenants of the Seller in this Agreement, desires to purchase and acquire from the Seller, and the Seller, in reliance upon the representations, warranties and covenants of Buyer in this Agreement, desires to sell, transfer and convey to Buyer all of the assets of the System (other than the Excluded Assets), and in connection therewith, Buyer has agreed to assume certain ongoing obligations and liabilities of the Seller related to such acquired assets, all on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual representations, warranties, covenants, and agreements stated in this Agreement, the receipt and sufficiency of which hereby are acknowledged, and intending to be legally bound, the Parties agree as follows:

ARTICLE I.

DEFINITIONS

In addition to the capitalized terms defined elsewhere in this Agreement, the following terms, as used in this Agreement (unless otherwise specified in this Agreement), have the meanings set forth in this Article I:

“**Acquired Assets**” has the meaning specified in Section 2.01.

“**Affiliate**” means, when used to indicate a relationship with a specified Person, a Person that, directly or indirectly, through one or more intermediaries has a 10% or more voting or economic interest in such specified Person or controls, is controlled by or is under common control with (which includes, with respect to a managed fund or trust, the right to direct or cause the direction of the management and policies of such managed fund or trust as manager, advisor, supervisor, sponsor or trustee pursuant to relevant contractual arrangements) such specified

Person, and a Person is deemed to be controlled by another Person if controlled in any manner whatsoever that results in control in fact by that other Person (or that other Person and any Person or Persons with whom that other Person is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise (and for purposes of this definition, a managed fund or trust is deemed to be an Affiliate of the Person managing, supervising, sponsoring or advising such fund or trust and a limited partner in a managed fund or trust is deemed to be an Affiliate of such fund or trust and of the Person managing, supervising, sponsoring or advising such fund or trust).

“**Agreement**” has the meaning specified in the Preamble to this Agreement (and includes all Schedules and Exhibits referred to in this Agreement), as amended, modified and supplemented from time to time in accordance with the terms of this Agreement.

“**Assigned Contracts**” has the meaning specified in Section 2.01(c).

“**Assignment and Assumption Agreement**” has the meaning specified in Section 13.02(c).

“**Assumed Liabilities**” has the meaning specified in Section 2.04(a)(iv).

“**Authorizations and Permits**” mean all licenses, permits, franchises, authorizations, certificates, registrations, consents, orders, adjudications, variances, waivers and approvals currently in effect issued or granted by Governmental Authorities, including without limitation, environmental permits, operating permits and approvals that are held by the Seller that primarily relate directly or indirectly to the operation of the System, including those described on Schedule 4.14.

“**Business Day**” means any day other than a Saturday, a Sunday or a day observed as a holiday by either the Commonwealth of Pennsylvania or the United States.

“**Buyer**” has the meaning specified in the Preamble of this Agreement.

“**Buyer Indemnified Persons**” has the meaning specified in Section 8.02.

“**CAPs**” means all EPA and PaDEP consent decrees or corrective action plans currently issued to Seller, including that certain Chapter 94 Corrective Action Plan dated March 11, 2019.

“**CERCLA**” means the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. §9601 et seq., as amended.

“**Closing**” means the consummation of the sale and purchase of the Acquired Assets and assumption of the Assumed Liabilities, the release/waiver of liabilities and the other transactions contemplated by this Agreement, all in accordance with the terms and conditions of this Agreement and as provided for in Article XIII.

“**Closing Date**” has the meaning specified in Section 13.01.

“**Closing Effective Time**” has the meaning specified in Section 13.01.

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**Collective Bargaining Agreement**” means that certain Collective Bargaining Agreement between Seller and District Council 84, The American Federation of State, County and Municipal Employees – AFL-CIO Butler Area Sewer Authority Employees, covering the period from January 1, 2020 through December 31, 2023, as may be amended from time to time.

“**Confidential Information**” means any information about Buyer, Seller or the System related to the transactions contemplated by this Agreement, except that such term does not include information which the receiving Party can demonstrate (a) is generally available to or known by the public other than as a result of improper disclosure by the receiving Party, (b) is obtained by the receiving Party from a source other than the disclosing Party, and that source was not bound by a duty of confidentiality to the disclosing Party with respect to such information, or (c) is legally in the public domain.

“**Creating Municipalities**” collectively, the City of Butler and the Township of Butler.

“**Customer Sewer Laterals**” has the meaning specified in Section 4.19.

“**Easement Escrow Agreement**” has the meaning specified in Section 3.02(b).

“**Easement Escrow Fund**” has the meaning specified in Section 3.02(b).

“**Easements**” means all easements, rights of way, licenses, use agreements, occupancy agreements, leases and other agreements and appurtenances for and over the real property of third parties that is for or used in connection with the operation of the System or to provide continuous and unimpeded rights of way for the Acquired Assets (including access thereto).

“**EDU**” means equivalent dwelling unit and having an average usage of 4,000 gallons per month.

“**Effective Date**” has the meaning specified in the Preamble.

“**Environment**” means soil, surface waters, ground waters, land, stream sediments, flora, fauna, surface or subsurface strata and ambient air.

“**Environmental Claims**” means all notices of investigations, warnings, notice letters, notices of violations, Liens, orders, claims, demands, suits or administrative or judicial actions for any injunctive relief, fines, penalties, third party claims, or other claims asserting violations of Environmental Requirements or responsibility for Environmental Liabilities.

“**Environmental Conditions**” means the Release of Hazardous Materials or the presence of Hazardous Materials on, in, under or within any property (including the presence in the Environment), other than the presence of Hazardous Materials in locations and at concentrations that are naturally occurring.

“**Environmental Liabilities**” means any legal obligation or liability arising under Environmental Requirements or related to or arising out of any Environmental Condition,

including those consisting of or relating to any (a) duty imposed by, breach of or noncompliance with any Environmental Requirements; (b) environmental, health or safety matters or conditions (including on-site or off-site contamination, occupational safety and health and regulation of Hazardous Materials); (c) Remedial Action undertaken by any Person; (d) bodily injury (including illness, disability and death, and regardless of when any such bodily injury occurred, was incurred or manifested itself), property damage (including trespass, nuisance, wrongful eviction and deprivation of the use of real or personal property), or other losses or damages incurred by any other Person (including any employee or former employee of such Person); (e) any injury to, destruction of, or loss of natural resources, or costs of any natural resource damage assessments; (f) exposure of any Person to any Hazardous Materials; and (g) the presence or Release of any Hazardous Materials.

“Environmental Requirements” mean all present Laws (including common law), regulations, legally binding or otherwise enforceable requirements and Authorizations and Permits relating to human health, pollution, or protection of the Environment (including ambient air, surface water, ground water, land surface or surface strata), including (i) those relating to emissions, discharges, Releases, or threatened Releases of Hazardous Materials, and (ii) those relating to the identification, generation, manufacture, processing, distribution, use, treatment, storage, disposal, release, recovery, transport or other handling of Hazardous Materials. Without limiting the foregoing, the term **“Environmental Requirements”** includes (1) CERCLA; the Superfund Amendments and Reauthorization Act, Public Law 99-499, 100 Stat. 1613; the Emergency Planning and Community Right to Know Act, 42 U.S.C. Sections 11001-11050; the Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901-6992k (“RCRA”); the Safe Drinking Water Act, 42 U.S.C. Sections 300f to 300j-26; the Toxic Substances Control Act, 15 U.S.C. Sections 2601-2692; the Hazardous Materials Transportation Act, 49 U.S.C. Sections 5101-5127; the Federal Water Pollution Control Act, 33 U.S.C. Sections 1251-1387; the Oil Pollution Act of 1990, 33 U.S.C. Sections 2701--2761; the Clean Air Act, 42 U.S.C. Sections 7401-7671q; the Atomic Energy Act of 1954, as amended, 42 U.S.C. Sections 2011 et seq.; the Low Level Radioactive Waste Policy Act, as amended, 42 U.S.C. Section 2021b et seq.; the Occupational Safety and Health Act, 29 U.S.C. Sections 651-678, and the regulations promulgated pursuant to the above-listed federal statutes, and (2) counterpart Laws and regulations promulgated or issued by any state or local Governmental Authority, specifically including the Pennsylvania Storage Tank and Spill Prevention Act of 1989 (35 Pa. C.S.A. § 6021.101 *et. seq.*).

“EPA” means the United States Environmental Protection Agency, or a successor Governmental Authority with substantially similar power and authority thereto.

“Equipment and Machinery” means (i) all the equipment, tangible personal property, machinery, office furniture and equipment, fixtures, tooling, spare maintenance or replacement parts, environmental testing equipment, and vehicles owned or leased by the Seller (including all leases of such property), which are primarily used in the operation of the System, (ii) any rights of the Seller to warranties applicable to the foregoing (to the extent assignable), and licenses received from manufacturers and Seller of any such item, and (iii) any related claims, credits, and rights of recovery with respect thereto. Notwithstanding the foregoing, “Equipment and Machinery” shall not include any Excluded Assets.

“**Escrow Agent**” means _____.

“**Escrow Agreements**” has the meaning specified in Section 3.02(b).

“**Excluded Assets**” has the meaning specified in Section 2.02.

“**Excluded Liability**” or “**Excluded Liabilities**” means all liabilities other than Assumed Liabilities.

“**Files and Records**” means all files and records of the Seller primarily relating to the System, whether in hard copy or magnetic or other format including customer and supplier records, customer lists (both current and prospective), records of sales calls, manuals, books, files, records, engineering data, procedures, systems, instructions, drawings, blueprints, plans, designs, specifications, equipment lists, parts lists, equipment maintenance records, equipment warranty information, plant plans, specifications and drawings, sales and advertising material, computer software, and records relating to the System, and whether stored on-site or off-site.

“**Final Order**” means a Governmental Approval by a Governmental Authority as to which (a) no request for stay of the action is pending, no such stay is in effect and if any time period is permitted by statute or regulation for filing any request for such stay, such time period has passed, (b) no petition for rehearing, re-argument, reconsideration, clarification, rescission, amendment, or supersedeas of the action is pending and the time for filing any such petition has passed, (c) such Governmental Authority does not have action under consideration on its own motion and (d) no appeal to a court or administrative tribunal or a request for stay by a court or administrative tribunal of the Government Authority’s action is pending or in effect and the deadline for filing any such appeal or request for stay has passed.

“**Governmental Approval**” means any consent, approval, authorization, notice, filing, registration, submission, reporting, order, adjudication or similar item of, to or with any Governmental Authority.

“**Governmental Authority**” or “**Governmental Authorities**” means any court, department, commission, board, bureau, municipality, municipal authority (established pursuant to the Municipality Authorities Act of the Commonwealth of Pennsylvania), agency or instrumentality of the United States, any state, county, city or political subdivision thereof, or any foreign governmental body, including without limitation, the PaPUC, the EPA, PaDEP and the Seller.

“**Hazardous Materials**” means any solid, liquid, gas, odor, heat, sound, vibration, radiation or other substance or emission which is a contaminant, pollutant, dangerous substance, toxic substance, hazardous waste, residual waste, solid waste, hazardous material or hazardous substance which is or becomes regulated by applicable Environmental Requirements or which is classified as hazardous or toxic under applicable Environmental Requirements (including gasoline, diesel fuel or other petroleum hydrocarbons, polychlorinated biphenyls, asbestos and urea formaldehyde foam insulation).

“Indemnified Party” means any Buyer Indemnified Persons or Seller Indemnified Persons, as applicable, entitled to indemnification pursuant to Article VIII.

“Indemnifying Party” means a Party which is obligated to indemnify the Buyer Indemnified Persons or the Seller Indemnified Persons, as applicable, pursuant to Article VIII.

“Indemnity Escrow Agreement” has the meaning specified in Section 3.02(a).

“Indemnity Escrow Fund” has the meaning specified in Section 3.02(a).

“Knowledge” or “knowledge” when used to qualify or limit a Party’s representations or warranties means the knowledge of such Party’s Representatives who are engaged in a material way in performing the functions of such Party with respect to which the representation made, after conducting reasonable investigation and inquiry with respect to the subject matter of the representation.

“Law” means any applicable law, statute, regulation, ordinance, rule, order, judicial, administrative and regulatory decree, judgment, adjudication, consent decree, settlement agreement or governmental requirement enacted, promulgated, entered into, agreed or imposed by any Governmental Authority, as may be in effect at the relevant time or times in the context in which the term is used.

“Letter of Credit” has the meaning specified in Section 3.01.

“Liability Cap” has the meaning specified in Section 8.05(c).

“Lien” means any lien in a fixed and ascertainable monetary sum, or any pledge, mortgage, deed of trust or security interest securing a fixed and ascertainable monetary sum, or any charge or claim in a fixed and ascertainable monetary sum. In addition, in connection with Real Property, any item otherwise falling within the definition of a “Lien” must be filed of record by the responsible Party in accordance with the terms of this Agreement.

“Loss” means any and all losses, liabilities, obligations, damages, penalties, interest, Taxes, claims, actions, demands, causes of action, judgments, reasonable attorneys’, consultants’ and other professional fees, and all other reasonable costs and expenses sustained or incurred in investigating, preparing or defending or otherwise incident to any such claim, action, demand, cause of action or judgment or the enforcement of a Party’s rights under Article VIII; *provided, however,* that **“Losses”** shall not include punitive, incidental, consequential, special or indirect damages, including loss of future revenue or income, loss of business reputation or opportunity relating to the breach or alleged breach of this Agreement, or diminution of value or any damages based on any type of multiple, except in the case of fraud or to the extent actually awarded to a Governmental Authority or other third party in respect of a Third Party Claim.

“Material Adverse Effect,” means a material adverse effect on the business, financial condition or results of operations of the System, except that no effect arising out of or in connection with or resulting from any of the following is deemed, either alone or in combination, to constitute or contribute to a Material Adverse Effect: (i) general economic conditions or changes in those conditions; (ii) financial, banking, currency or capital markets fluctuations or

conditions (either in the United States or any international market and including changes in interest rates); (iii) conditions affecting the real estate, financial services, construction, water utility or sewer utility industries generally; (iv) any existing event, circumstance, condition or occurrence of which the Buyer has actual knowledge as of the Effective Date; (v) any action, omission, change, effect, circumstance or condition contemplated by this Agreement or attributable to the execution, performance or announcement of this Agreement or the transactions contemplated hereby; and (vi) negligence, intentional misconduct or bad faith of the Buyer or its Representatives.

“Missing Easements” means, as of any particular date, each Easement that is for or used in connection with the operation of the System or to provide continuous and unimpeded rights of way for the Acquired Assets (including access thereto) that either (a) has not been obtained by Seller and is for or used in connection with the operation of the System or (b) if such Easement has been obtained by Seller, such Easement is unrecorded or such Easement is not sufficient to operate the System as currently conducted.

“MS4 System” means assets and facilities built, owned, operated or maintained and used for purposes of capturing, conveying and discharging stormwater separate from the System, including Stormwater System Assets.

“Operations Center” has the meaning specified in Section 7.09.

“Outside Date” means 365 days after the date the application to the PaPUC is accepted as complete by the PaPUC and the statutory 6-month consideration period is initiated.

“Outstanding Indebtedness” means the indebtedness set forth on **Exhibit A**.

“Owned Real Property” has the meaning specified in Section 4.09.

“PaDEP” means the Pennsylvania Department of Environmental Protection, or any successor Governmental Authority with substantially similar powers thereto.

“PaPUC” means the Pennsylvania Public Utility Commission, or any successor Governmental Authority with substantially similar powers thereto.

“Party” means Buyer or the Seller and the term **“Parties”** means collectively Buyer and the Seller.

“PCB Equipment” means PCB equipment as defined in 40 C.F.R. Part 761.

“Permitted Liens” means (a) Liens for Taxes not yet due and payable or being contested in good faith by appropriate procedures; (b) easements, rights of way, zoning ordinances and other similar encumbrances affecting Real Property as disclosed on Schedule 4.09; and (c) any encumbrances identified in the Title Commitment not identified in Buyer’s Objection Notice in accordance with the procedures and deadlines prescribed in Section 6.02(a).

“Person” means any individual (including, the heirs, beneficiaries, executors, legal representatives or administrators thereof), corporation, partnership, joint venture, trust, limited

liability company, limited partnership, joint stock company, unincorporated association or other entity or a Governmental Authority.

“**Personnel**” means the union and non-union employees of the Seller.

“**Purchase Price**” has the meaning specified in Section 3.01.

“**Real Property**” has the meaning specified in Section 4.09.

“**Regulated Asbestos Containing Material**” means regulated asbestos containing material as defined by 40 C.F.R. § 61.141.

“**Release**” means any actual or threatened spilling, leaking, pumping, pouring, injecting, emptying, discharging, emitting, escaping, leaching, dumping, disposal, or release or migration of Hazardous Materials into the Environment, including the abandonment or discarding of barrels, containers and other receptacles containing any Hazardous Materials.

“**Remedial Action**” means any and all actions to (a) investigate, clean up, remediate, remove, treat, contain or in any other way address any Hazardous Materials in the Environment, (b) prevent the Release or threat of Release or minimize the further Release of any Hazardous Materials so it does not migrate or endanger public health or welfare or the indoor or outdoor Environment, and (c) perform pre-remedial studies and investigations and post-remedial monitoring, maintenance and care. The term “**Remedial Action**” includes any action which constitutes (i) a “removal”, “remedial action” or “response” as defined by Section 101 of CERCLA, 42 U.S.C. §§ 9601(23), (24), and (25); (ii) a “corrective action” as defined in RCRA, 42 U.S.C. § 6901 et seq.; (iii) a “response” or “interim response” as defined in the Pennsylvania Hazardous Sites Cleanup Act, 35 P.S. §6020.103; or (iv) any activity performed pursuant to Pennsylvania’s Land Recycling Program, commonly known as Act 2.

“**Representative**” means, with respect to any Party, any director (including, in the case of Seller, any member of its board of directors), officer, employee, official, lender mortgagee, financier, provider of any financial instrument (or any agent or trustee acting on their behalf), partner, member, owner, agent, lawyer, accountant, auditor, professional advisor, consultant, engineer, contractor, other Person for whom such Person is at law responsible or other representative of such Person and any professional advisor, consultant or engineer designated by such Person as its “Representative.”

“**Schedules**” means the disclosure schedules delivered by Seller and Buyer, respectively, concurrently with the execution and delivery of this Agreement, and as may be supplemented and updated pursuant to Sections 9.03 and 10.04. Any disclosure set forth on any particular Schedule shall be deemed disclosure in reference to all Schedules comprising the Schedules to which such disclosure is reasonably apparent.

“**Seller**” has the meaning specified in the Preamble of this Agreement.

“**Seller Indemnified Persons**” has the meaning specified in Section 8.03.

“Seller’s Benefit Obligations” means all material obligations, arrangements, or practices, whether or not legally enforceable, to provide benefits, other than salary or wages to present or former directors, employees or agents, (other than obligations, arrangements and practices that are Seller’s Plans), that are owed, adopted or followed by the Seller. Seller’s Benefit Obligations also include consulting agreements under which the compensation paid does not depend upon the amount of service rendered, sabbatical policies, severance payment policies and fringe benefits within the meaning of Code §132.

“Seller’s NPDES Permits” means the permits issued by PaDEP to Seller with respect to the System, including any revisions or amendments thereto set forth on Schedule 4.14.

“Seller’s Plans” means each voluntary employees’ beneficiary association under Section 501(c)(9) of the Code whose members include any Personnel and any employee benefit plans or any other retirement, deferred compensation (including any “nonqualified deferred compensation plan” within the meaning of Section 409A of the Code), severance, sick leave or other material plan or arrangement providing benefits to current or former Personnel, in each case, if either currently in effect or terminated within the last six (6) years, to which the Seller is a plan sponsor or to which the Seller otherwise contributes or has contributed within the last six (6) years, or in which the Seller otherwise participates or has participated within the last six (6) years.

“Service Area” has the meaning specified in the recitals to this Agreement.

“Stormwater System Assets” means all assets used exclusively in the operation and maintenance of the MS4 System, including (i) drains, pipes and collection basins and all other stormwater drainage assets used exclusively for stormwater collection, conveyance and discharge; (ii) impoundment dams, catch basins, inlets, pipes and all other stormwater lateral facilities that connect surface water drains to storm conveyances which discharge to surface waters; (iii) interest in real estate directly associated with (i) and (ii) and (iv) any related permits.

“Supplies” means all lubricants, spare parts, fuel, chemicals, raw materials, and other supplies and inventory, and all rights to warranties received from suppliers with respect to the foregoing, and related claims, credits, and rights of recovery with respect thereto.

“System” has the meaning specified in the recitals to this Agreement and includes the Acquired Assets and excludes the Excluded Assets.

“Taxes” means any federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, permit fees, capital stock, franchise, profits, withholding, social security, unemployment, disability, real property, personal property, parking, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated or other tax, levy, impost, stamp tax, duty, fee, withholding or similar imposition of any kind payable, levied, collected, withheld or assessed at any time, including any interest, penalty or addition thereto, whether disputed or not.

“Third Party Claim” has the meaning specified in Section 8.04(a).

“**Threshold Amount**” has the meaning specified in Section 8.05(a).

“**Title Commitment**” has the meaning specified in Section 6.01.

“**Title Company**” has the meaning specified in Section 6.01.

“**Title Policy**” has the meaning specified in Section 2.03.

“**Transferred Personnel**” has the meaning specified in Section 7.03(a).

“**UCC Search**” has the meaning specified in Section 6.04.

“**Unscheduled Real Property**” has the meaning specified in Section 6.06.

“**Utility Valuation Expert**” means an expert that has been approved by the PaPUC and is on the Effective Date (and at the time of initiating the proceedings set forth in Section 7.06), on the list of approved appraisers maintained by the PaPUC.

ARTICLE II.

TERMS OF PURCHASE AND ASSUMPTION OF LIABILITIES

Section 2.01. Purchase and Sale of Acquired Assets

Subject to the terms and conditions set forth in this Agreement, at Closing, Buyer shall purchase from the Seller and the Seller shall sell, transfer, assign and deliver to Buyer, free and clear of all Liens except for Permitted Liens, all of Seller’s right, title and interest in and to all assets, facilities, business, goodwill, properties and rights of the Seller of every kind and description, whether tangible or intangible, real, personal or mixed, wherever situated, in each case used in, held for use in, or acquired or developed for use in, the System, or otherwise related to, or arising out of the operation or conduct of the System (whether or not any such assets have any value for accounting purposes or are carried or reflected on the books or financial records of the Seller), other than the Excluded Assets (the foregoing collectively referred to as the “Acquired Assets”), including:

(a) all real property and appurtenant interests necessary for the operation of the System, including without limitation (i) good and marketable fees simple title to the Owned Real Property described and identified on Schedule 4.09, and (ii) all Easements, including without limitation those identified on Schedule 4.09;

(b) all sanitary wastewater related treatment, disposal, sludge receiving assets and conveyance facilities, including but not limited to the Seller’s buildings, pipes, pipelines, treatment facilities, odor control stations, pumping stations, lift stations, holding tanks, storage tanks, plants, structures, improvements, fixtures, excess treatment capacity and all hereditaments, tenements and appurtenances belonging, appertaining or relating to the Acquired Assets;

(c) all contracts, licenses and leases identified on Schedule 4.15 to which the Seller is a party (the “Assigned Contracts”);

- (d) all Supplies;
- (e) all personal property and fixed assets, including all Equipment and Machinery, auxiliary equipment and plant equipment;
- (f) all prepaid expenses and security deposits;
- (g) all Files and Records;
- (h) all Authorizations and Permits of or held by the Seller (to the extent transferrable to Buyer under Law), including all Authorizations and Permits which are environmental permits, the Seller's NPDES Permits, other operating permits and those items listed or described on Schedule 4.14; and
- (i) all goodwill of the System.

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE SELLER MAKES NO EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY OF ANY KIND WHATSOEVER, INCLUDING ANY REPRESENTATION AS TO THE PHYSICAL CONDITION OR VALUE OF ANY OF THE ACQUIRED ASSETS OR THE SYSTEM, OR THE FUTURE PROFITABILITY OR FUTURE EARNINGS PERFORMANCE OF THE ACQUIRED ASSETS OR THE SYSTEM OR ANY FUTURE RATEMAKING THAT MAY BE ALLOWED BY THE PAPUC FOR ANY OF THE ACQUIRED ASSETS. ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY EXCLUDED.

Section 2.02. **Excluded Assets**

Notwithstanding anything in this Agreement to the contrary, the Acquired Assets shall not include the following (the "Excluded Assets"):

- (a) all contracts, licenses and leases that are not Assigned Contracts;
- (b) the seals, organizational documents, minute books, Tax returns, books of account or other records having to do with the organization of Seller and all employee-related or employee benefit-related files or records;
- (c) cash (including any EDU fee cash and any unused bond money received on or prior to the Closing Date) and cash equivalents, including accounts receivable and existing financial security guaranteeing installation of public improvements (including sewer facilities);
- (d) all insurance policies of Seller and all rights to applicable claims and proceeds thereunder;
- (e) all rights to any action, suit or claim of any nature available to or being pursued by Seller, whether arising by way of counterclaim or otherwise;

- (f) all assets, properties and rights used by Seller other than those which primarily relate to the operations of the System;
- (g) the assets, properties and rights specifically set forth on Schedule 2.02(g); and
- (h) the rights which accrue or will accrue to Seller under this Agreement and any related agreement, exhibit or schedule.

Section 2.03. **Sale Free of Liens**

After Buyer fulfills its obligations pursuant to Section 3.01, the Acquired Assets to be sold, conveyed, transferred, assigned and delivered by the Seller to Buyer, as provided in this Agreement, shall be on the Closing Date, free and clear of all Liens other than Permitted Liens. Seller shall convey the Acquired Assets by appropriate special warranty or other deed (subject to Section 6.02(c)), bills of sale, endorsements, assignments and other instruments of transfer or conveyance described in this Agreement, and if not expressly described in this Agreement, then by transfer documents satisfactory in form and substance reasonably acceptable to Buyer and Seller and their counsel in their reasonable, good faith discretion. With respect to the Owned Real Property, at Closing title to the same shall be insured by the Title Company, at the Title Company's filed rates, as a good and marketable title, free and clear of all Liens and exceptions to coverage, except for the Permitted Liens, pursuant to an owner's policy of title insurance on the American Land Title Association's ("ALTA") Owner's Form 2006, subject to the terms of Section 6.02 below (the "Title Policy").

Section 2.04. **Assumption of Liabilities**

(a) On the terms and conditions set forth in this Agreement and excluding the Excluded Liabilities, Buyer shall assume and pay, perform and discharge when due any and all liabilities and obligations of the Seller (1) arising under the Seller's NPDES Permits (arising from, related to, or based on events or circumstances occurring on or after the Closing Date), (2) arising under the Collective Bargaining Agreement, subject to Section 7.03(m), (3) arising under the CAPs and (4) arising out of or relating to the System or the Acquired Assets on or after the Closing Date, specifically described as the following:

(i) all liabilities and obligations under the Assigned Contracts and Authorizations and Permits;

(ii) any litigation initiated against Seller related to the System or the Acquired Assets resulting from events that occur on or after the Closing;

(iii) all liabilities and obligations for Taxes relating to the System, its operation, the Acquired Assets and the Assumed Liabilities attributable to the period beginning on the Closing Date; and

(iv) all other liabilities and obligations arising out of or relating to Buyer's ownership or operation of the System and the Acquired Assets on or after the Closing (all the aforementioned liabilities in this Section 2.04(a) are referred to as the "Assumed Liabilities").

(b) At the Closing, Buyer shall indemnify Seller against any obligations under the Assumed Liabilities in accordance with Section 8.03.

(c) Buyer shall not assume or be liable to pay any liabilities or obligations relating to the Excluded Liabilities or any other liabilities or obligations that are not Assumed Liabilities.

Section 2.05. **Further Assurances**

At any time and from time to time after the Closing Date, the Seller shall, upon the request of Buyer, and Buyer shall, upon the request of the Seller, at the cost of requesting Party, promptly execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such other instruments of conveyance and transfer and other documents, and perform or cause to be performed such further acts, as may be reasonably required to evidence or effectuate, or more fully evidence or effectuate, (a) the sale, conveyance, transfer, assignment and delivery hereunder of the Acquired Assets to Buyer, (b) the assumption by Buyer of any of the Assumed Liabilities, (c) performance by the Parties of any of their other respective obligations under this Agreement, (d) the vesting in Buyer of all right, title and interest in the Acquired Assets and the System as provided in this Agreement, and (e) any other matters reasonably requested by a Party to carry out the provisions, purposes and intent of this Agreement.

Section 2.06. **Certain Transfers; Assignment of Contracts**

(a) Notwithstanding anything to the contrary in this Agreement, and subject to the provisions of this Section 2.06(a) and Section 2.06(b), to the extent that the sale, transfer, assignment, conveyance and delivery, or attempted sale, transfer, assignment, conveyance and delivery, to Buyer of any Assigned Contract or other Acquired Asset would result in a violation of Law, or would require the consent, authorization, approval or waiver of any Person (other than the Parties), including any Governmental Authority, and such consent, authorization, approval or waiver shall not have been obtained prior to the Closing, this Agreement shall not constitute a sale, transfer, assignment, conveyance and delivery, or an attempted sale, transfer, assignment, conveyance and delivery, thereof (any such Acquired Asset, a “Nonassignable Asset”). Following the Closing, the Seller and Buyer shall use commercially reasonable efforts (at the cost and expense of the Party that is responsible for compliance with such Law or obtaining such consent, authorization, approval or waiver), and shall cooperate with each other, to obtain any such required consent, authorization, approval or waiver, or any release, substitution, novation or amendment required to sell, transfer, assign, convey and deliver any such Nonassignable Asset to Buyer; *provided, however*, that in no event shall Buyer be required to pay any consideration therefor. Once any necessary consent, authorization, approval, waiver, release, substitution or amendment is obtained, the Seller shall sell, transfer, assign, convey and deliver to Buyer the relevant Acquired Asset to which such consent, authorization, approval, waiver, release, substitution or amendment relates for no additional consideration. Any applicable sales, transfer and other similar Taxes in connection with such sale, transfer, assignment, conveyance and delivery shall be paid by the Buyer.

(b) Until such time as a Nonassignable Asset is transferred to Buyer pursuant to this Article II, Buyer and the Seller shall cooperate in any commercially reasonable and economically feasible arrangements (such as leasing/subleasing, licensing/sublicensing or

contracting/subcontracting) to provide to the Parties the economic and, to the extent permitted under Law, operational equivalent of the transfer of such Nonassignable Asset to Buyer at the Closing and the performance by Buyer of its obligations with respect thereto, and so long as the Seller transfers and turns over all economic and beneficial rights with respect to each such Nonassignable Asset, Buyer shall, to the extent permitted under Law and the terms of any applicable contract that constitutes a Nonassignable Asset, as agent or subcontractor for the Seller, pay, perform and discharge the liabilities and obligations of the Seller thereunder from and after the Closing Date, but only to the extent that such liabilities and obligations would constitute Assumed Liabilities if the applicable consent or approval had been obtained on or prior to the Closing Date and such Nonassignable Asset had been assigned to Buyer at Closing. To the extent permitted under Law, the Seller shall hold in trust for and pay to Buyer promptly upon receipt thereof, such Nonassignable Asset and all income, proceeds and other monies received by the Seller with respect to such Nonassignable Asset in connection with the arrangements under this Article II.

(c) If, following the Effective Date and prior to the Closing, Buyer identifies any contract to which the Seller is a party which is not identified on Schedule 4.15 as an Assigned Contract as of the Effective Date, and Buyer reasonably determines such contract is necessary to the operation of the System, Buyer shall give notice of such determination to the Seller and the Seller shall, promptly following receipt of such notice, deliver to Buyer an updated Schedule 4.15 identifying the contract(s).

(d) If, during the twelve (12) month period following the Closing Date, Buyer identifies any contract to which the Seller was a party as of the Closing and which (i) was not set forth on or properly identified on Schedule 4.15 (as may be updated pursuant to Section 9.03) and (ii) Buyer reasonably believes is necessary to the operation of the System, the Seller shall, promptly following Buyer's written request therefor, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such other instruments of conveyance and transfer and other documents, and perform or cause to be performed such further acts, as may be reasonably required to evidence or effectuate, or more fully evidence or effectuate the assignment of such contract to Buyer for no additional consideration, and upon such assignment, such contract shall be deemed an Assigned Contract for all purposes hereunder.

ARTICLE III.

ESCROW; PURCHASE PRICE AND ADDITIONAL PURCHASE PRICE

Section 3.01. **Letter of Credit.**

On the Effective Date, Buyer shall provide a Letter of Credit in the amount of Three Million Dollars (\$3,000,000) issued by [_____] in favor of Seller (the "Letter of Credit"), substantially in the form attached hereto as **Exhibit C**.

Section 3.02 **Escrow Amounts.**

At Closing, two escrows will be established:

(a) First, Nine Million Two Hundred Thousand Dollars (\$9,200,000) of the Purchase Price shall be deposited in escrow (the “Indemnity Escrow Fund”) with the Escrow Agent pursuant to an escrow agreement in the form of **Exhibit B-1**, by and among the Seller, the Buyer, and the Escrow Agent (the “Indemnity Escrow Agreement”) to provide for Seller’s post-Closing obligations pursuant to Article VIII. The Indemnity Escrow Fund shall be released in accordance with the Indemnity Escrow Agreement. After the Closing Date and notwithstanding any other provision of this Agreement, the Indemnity Escrow Fund is Buyer’s sole recourse with respect to providing for Seller’s post-Closing obligations pursuant to Article VIII.

(b) Second, an amount to be determined according to Section 6.05(d) to be credited at Closing against the Purchase Price shall be deposited in escrow (the “Easement Escrow Fund”) with the Escrow Agent pursuant to an escrow agreement in the form of **Exhibit B-2**, by and among the Seller, the Buyer, and the Escrow Agent (the “Easement Escrow Agreement”) to provide for any amounts determined in accordance with Section 6.05(d). The Easement Escrow Fund shall be released in accordance with the Easement Escrow Agreement. After the Closing Date and notwithstanding any other provision of this Agreement, the Easement Escrow Fund is Buyer’s sole recourse with respect to Seller’s obligations pursuant to Section 6.05(d). The Easement Escrow Agreement together with the Indemnity Escrow Agreement shall hereinafter sometimes be collectively referred to as the “Escrow Agreements”.

Section 3.03. **Purchase Price and Adjustments to Purchase Price**

The purchase price for the Acquired Assets shall be Two Hundred Thirty-One Million Five Hundred Thousand Dollars (\$231,500,000) (the “Purchase Price”). The Purchase Price shall be adjusted as follows:

(a) Final Billing: The Buyer is entitled to all customer billings with respect to sanitary wastewater customers services for the period on or after the Closing Effective Time, and the Seller is entitled to all such billings prior to the Closing Effective Time. The Parties shall cooperate to calculate an agreed upon proration of billing amounts and to credit the Purchase Price for the appropriate Party on the Closing Date. To the extent that either Party collects billings that are attributable to service provided by the other Party, the Party holding the other Party’s billing collections shall pay such amount to the other Party.

Section 3.04. **Payment of Purchase Price**

The Purchase Price shall be paid by wire transfer of immediately available funds as follows at Closing:

- (i) the Purchase Price as adjusted by Section 3.03;
- (ii) minus the total amount of Outstanding Indebtedness, which the closing agent shall pay in full, fully refund or defease at Closing;
- (iii) minus the Indemnity Escrow;
- (iv) minus the Easement Escrow;

Seller shall designate and provide to Buyer the account or accounts to which the Final Purchase Price will be paid along with wiring instructions at least three (3) Business Days before the Closing Date; and

Section 3.05. **Fair Consideration**

The Parties acknowledge and agree that the consideration provided for in this Article III represents fair consideration and reasonable equivalent value for the sale and transfer of the Acquired Assets and the transactions, covenants and agreements set forth in this Agreement, which consideration was agreed upon as the result of arm's-length good faith negotiations between the Parties and their respective Representatives.

Section 3.06. **Transfer Taxes**

Any and all deed stamps or transfer Taxes that are due the Commonwealth of Pennsylvania or any political subdivision in connection with the sale, transfer, assignment, conveyance and delivery of the Acquired Assets to Buyer (collectively, "Transfer Taxes"), shall be paid by Buyer.

ARTICLE IV.

REPRESENTATIONS AND WARRANTIES OF THE SELLER

The Seller makes only the specified representations and warranties which are set forth in this Article IV.

As a material inducement to Buyer to enter into this Agreement and to consummate the transactions contemplated by this Agreement, the Seller represents and warrants, as of the Effective Date (except to the extent any of the following representations and warranties specifically apply to or relate to another date, in which event such representations and warranties shall be true and correct as of such other date), as follows:

Section 4.01. **Organization**

The Seller is duly organized and existing under the Municipality Authorities Act and incorporated by appropriate legal action by the Creating Municipalities.

Section 4.02. **Power and Authority**

The Seller has (i) duly adopted resolutions authorizing the transactions contemplated in this Agreement, which remains in full force and effect, (ii) duly authorized and approved the execution and delivery of this Agreement and (iii) duly authorized and approved the performance by the Seller of its obligations contained in this Agreement. The Seller has all requisite power and authority to own, lease and operate the Acquired Assets and the System and has the power and authority to enter into this Agreement and to do all acts and things and execute and deliver all other documents as are required under this Agreement to be done, observed or performed by it in accordance with the terms hereof.

Section 4.03. **Enforceability**

This Agreement has been duly authorized, executed and delivered by the Seller and is a valid and legally binding obligation of the Seller, enforceable against the Seller in accordance with the terms hereof, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity.

Section 4.04. **No Conflict or Violation**

The execution and delivery of this Agreement by the Seller, the consummation of the transactions contemplated by this Agreement and the performance by the Seller of the terms, conditions and provisions hereof has not and will not contravene or violate or result in a breach of (with or without the giving of notice or lapse of time, or both) or acceleration of any material obligations of the Seller under (i) any Law or (ii) any agreement, instrument or document to which the Seller is a party or by which it is bound.

Section 4.05. **Consents and Approvals**

Schedule 4.05 sets forth a list of each consent, waiver, authorization or approval of any Governmental Authority, or of any other Person, and each declaration to or filing or registration with any Governmental Authority required in connection with the execution and delivery of this Agreement by the Seller or the performance by the Seller of its obligations under this Agreement.

Section 4.06. **Undisclosed Liabilities**

Except as set forth on Schedule 4.06, there are no liabilities or obligations of Seller, either accrued, absolute, contingent or otherwise, relating to the Acquired Assets, other than liabilities incurred in the ordinary course that could not reasonably be expected to have a Material Adverse Effect. All of the Outstanding Indebtedness can be repaid or defeased by Seller and any security interests granted by Seller to secure its obligations pursuant thereto can be extinguished or terminated at or prior to the Closing pursuant to the contractual terms applicable to such Outstanding Indebtedness.

Section 4.07. **Absence of Certain Changes or Events**

Except as set forth on Schedule 4.07, since December 31, 2019, there has not been any transaction or occurrence that has resulted or is reasonably likely to result in a Material Adverse Effect and the Seller has operated and maintained the System since December 31, 2019 in the ordinary course.

Section 4.08. **Unpaid Taxes and Tax Claims**

Except as set forth on Schedule 4.08 or as would not have a Material Adverse Effect, (i) Seller has timely paid all Taxes that may have been or may be due and payable by Seller on or before the Closing Date, arising from the ownership or operation of the Acquired Assets or the System on or before the Closing Date (ii) no taxing authority has asserted any claim against the Seller for the assessment of any additional tax liability or initiated any action or proceeding which could

result in such an assertion; and (iii) the Seller has made all withholding of Taxes required to be made under all Laws and regulations, including without limitation, withholding with respect to compensation paid to employees, and the amounts withheld have been properly paid over to the appropriate taxing authorities.

Section 4.09. **Owned Real Property and Easements**

Schedule 4.09 sets forth all of Seller's rights in and to real property, including fee interests ("Owned Real Property") and Easements (Owned Real Property and Easements are collectively referred to as "Real Property") Seller owns and/or uses in the operation of the System and identifies the nature of interest held in each item set forth on Schedule 4.09. Except as set forth on Schedule 4.09, the Seller does not lease (as lessee) any real property that is used in the operation of the System. There are no pending condemnation proceedings relating to any of the Owned Real Property or Easements nor has Seller actually received any written threats of any condemnation proceedings and, to the Knowledge of Seller, no such proceedings are threatened. The Seller has not received any written notices of any violations of any Law from any Governmental Authority with respect to the Owned Real Property or the Easements which has not been cured in all material respects and, to Seller's Knowledge, no such violations of Law exist. With respect to the Real Property (i) there are no leases, options, rights of reversions or other rights of use or rights to acquire the Real Property held by third parties, (ii) Seller is in sole possession of the Real Property, and (iii) to Seller's Knowledge there are no encroachments either way across the boundary of the Real Property, nor any dispute with adjacent property owners over the location of boundaries or potential claims adverse to title.

Section 4.10. **Equipment and Machinery**

All Equipment and Machinery included in the Acquired Assets is set forth on Schedule 4.10. Except as set forth on Schedule 4.10, the Seller has good title, free and clear of all Liens (other than the Permitted Liens and Liens that will be released on or prior to Closing) to the Equipment and Machinery owned by Seller.

Section 4.11. **Employee Benefit Plans**

(a) Schedule 4.11(a) sets forth a true and complete list of all Seller's Plans and Seller's Benefit Obligations with respect to Personnel, including amounts owed to current or past employees for severance, unpaid and unused vacation pay or sick leave, or similar obligations. All such Seller's Plans and Seller's Benefit Obligations are in full force and effect and are in material compliance both as to form and operation, with applicable provisions of the Code, and any other Laws, and with the Collective Bargaining Agreement. To Seller's Knowledge, no event has occurred which has resulted or is likely to result in the imposition of any liability on the Seller under the Code or other Law with respect to any Seller's Plans or Seller's Benefit Obligations;

(b) Except as set forth on Schedule 4.11(b), with respect to the System, the Seller does not sponsor, maintain, contribute to, nor is it required to contribute to, any "multiemployer plan" within the meaning of Section 414(f) of the Code, and has no liability of any nature, whether known or unknown, fixed or contingent, with respect to any such multiemployer plan;

(c) Except as set forth on Schedule 4.11(c), Seller does not sponsor, maintain, contribute to, nor is it required to contribute to, any medical, health, life or other welfare plan or benefits for present or future terminated or current or future retired Personnel or their spouses or dependents, other than as required by COBRA, or any comparable state law, and has no liability of any nature, whether known or unknown, fixed or contingent, with respect to any such post-termination welfare benefits;

(d) The Seller is and has been in material compliance with the requirements of COBRA and is not subject to any excise tax under Code Section 4980B for the current or any prior taxable year; and

(e) Except as set forth on Schedule 4.11(e), Seller has not entered into any severance or similar arrangement with respect to any present or former Personnel that will result in any obligation (absolute or contingent) of Buyer to make any payment to any present or former Personnel following termination of employment, including the termination of employment effected by the transactions contemplated by this Agreement. The consummation of the transactions contemplated by this Agreement will not trigger any severance or other obligation of Seller for which Buyer shall have any liability.

Section 4.12. **Seller's Personnel**

(a) Except as set forth on Schedule 4.12(a), Seller shall timely pay, or cause to be timely paid, to the Personnel as required under its policies and/or by Law for accrued but unused and unpaid vacation, sick leave and other benefits accrued as of the Closing Date.

(b) Seller has not, in the past five (5) years, effectuated:

(i) a "plant closing" (as defined in the Worker Adjustment and Retraining Notification Act ("WARN Act")) affecting any site of employment or one or more facilities or operating units within any site of employment or facility of the System; or

(ii) a "mass layoff" (as defined in the WARN Act) affecting any site of employment or facility of the System; nor has the System been affected by any transaction or engaged in layoffs or employment terminations sufficient in number to trigger application of any similar state or local Law.

(c) None of the Personnel has suffered an "employment loss" (as defined in the WARN Act) during the previous six months.

Section 4.13. **Environmental Compliance**

Except as set forth on Schedule 4.13 or that otherwise could not be expected to have a Material Adverse Effect:

(a) To the Seller's knowledge, the System as currently operated by the Seller and all operations and activities conducted by the Seller with respect to the System are in compliance in all material respects with all applicable Environmental Requirements.

(b) To the Seller's knowledge, the Seller has generated, used, handled, treated, stored and disposed of all Hazardous Materials in (i) compliance in all material respects with all applicable Environmental Requirements and (ii) a manner that has not given, and could not reasonably be anticipated to give, rise to Environmental Liabilities.

(c) The Seller is not aware of any Material Adverse Effects arising from Seller's generation, use, handling, treatment, storage or disposal of all Hazardous Materials.

(d) Except as has been disclosed to Buyer on Schedule 4.13, the Seller has not received notice of any Environmental Claims related to the System that have not been fully and finally resolved, and to the knowledge of Seller no claims of Environmental Liabilities have been threatened allegedly arising from or relating to the System that have not been fully and finally resolved.

(e) Except as has been disclosed to Buyer on Schedule 4.13, To the Seller's knowledge, Hazardous Materials are not present at or on the System or Acquired Assets, there has been no Release of Hazardous Materials at, on or from any part of the System or the Acquired Assets, in each case in a manner that violates any Environmental Requirements or has resulted in, or could reasonably be anticipated to give rise to Environmental Liabilities.

(f) No Lien or activity use limitation or institutional control has been recorded affecting any Acquired Assets by any Governmental Authority due to either the presence of any Hazardous Material on or off the Acquired Assets or a violation of any Environmental Requirement except as has been disclosed by Seller to Buyer.

(g) Except as has been disclosed to Buyer on Schedule 4.13, Seller is not aware of any underground storage tanks on or at any of the Acquired Assets. To the Seller's knowledge, any underground storage tanks previously located at the Acquired Assets have been removed or otherwise closed, plugged and abandoned in compliance with applicable Environmental Requirements in effect at the time of such closure.

(h) To the Seller's knowledge, no PCB Equipment is on or at any of the Acquired Assets. Any PCB Equipment that previously existed at the Acquired Assets has been flushed of polychlorinated biphenyls or has been removed and properly disposed of, in compliance with applicable Environmental Requirements, and any remaining PCB Equipment is labeled to the extent required under applicable Environmental Requirements and being managed in compliance with applicable Environmental Requirements.

(i) Except as has been disclosed to Buyer on Schedule 4.13, Seller is not aware of any Regulated Asbestos Containing Material in or on the Acquired Assets.

(j) The Seller has delivered to Buyer (1) all material environmental site assessments pertaining to the System of which Seller is aware, (2) all material compliance audits or compliance assurance reviews prepared within the previous five (5) years relating to compliance with Environmental Requirements by the System, and (3) all documents pertaining to, any known and unresolved Environmental Liabilities incurred in relation to the System, to the extent possessed by or under the reasonable control of the Seller.

Section 4.14. **Authorizations and Permits**

Schedule 4.14 sets forth the Authorizations and Permits of Seller that are currently in full force and effect. The Seller has made true and complete copies of all Authorizations and Permits available to Buyer. Except as set forth on Schedule 4.14, the Seller is in compliance in all material respects with all terms, conditions and requirements of all Authorizations and Permits, except in each case where such violation or failure, individually or in the aggregate, would not have a Material Adverse Effect, and no proceeding is pending or, to the Knowledge of the Seller threatened relating to the revocation or limitation of any of the Authorizations or Permits, other than those revocations or limitations that do not individually or in the aggregate have a Material Adverse Effect.

Section 4.15. **System Contracts**

(a) Schedule 4.15 sets forth a complete and accurate list of all the Assigned Contracts.

(b) The Seller has made available to Buyer true and complete copies of all the foregoing Assigned Contracts.

(c) All of the Assigned Contracts set forth on Schedule 4.15 are in full force and effect. The Seller has not, nor to the Knowledge of the Seller has any other party thereto, breached any material provision of or defaulted under the material terms of, nor does any condition exist which, with notice or lapse of time, or both, would cause the Seller, or to the knowledge of Seller, any other party, to be in default under any Assigned Contract.

Section 4.16. **Compliance with Law; Litigation**

(a) The Seller has operated and is operating the System in compliance, in all material respects, with all Laws, Authorizations and Permits and is not in breach of any Law, Authorization or Permit that would have a Material Adverse Effect. There are no Authorizations or Permits from any Governmental Authority necessary for the operation of the System as currently being operated except for those Authorizations and Permits set forth on Schedule 4.14.

(b) Except as disclosed to the Buyer in the Disclosure Schedules (as those are updated pursuant to Section 9.03 below), to the knowledge of Seller, there are no facts, circumstances, conditions or occurrences regarding the System that could reasonably be expected to give rise to any environmental claims or governmental enforcement actions that could reasonably be expected to have a Material Adverse Effect, and there are no past, pending or, to the knowledge of Seller, threatened environmental claims or governmental enforcement actions against the Seller that individually or in the aggregate could reasonably be expected to have a Material Adverse Effect.

(c) Except as disclosed to the Buyer in Schedule 4.16(c), there is no action, suit or proceeding, at law or in equity, or before or by any Governmental Authority, pending nor, to the knowledge of the Seller, threatened against the Seller, which will have a Material Adverse Effect. As of the Effective Date, there is no action, suit or proceeding, at Law or in equity, or

before or by any Governmental Authority, pending nor, to the knowledge of the Seller, threatened against the Seller which could materially affect the validity or enforceability of this Agreement.

Section 4.17. Title to the Acquired Assets; Sufficiency

(a) Except as set forth on Schedule 4.17(a), the Seller has good and marketable title to a valid leasehold interest in or valid licenses to use, all of the Acquired Assets, free and clear of all Liens, other than Permitted Liens and Liens which will be fully and unconditionally released at or prior to Closing. The use of the Acquired Assets is not subject to any Liens, other than Permitted Liens, and such use does not encroach on the property or the rights of any Person.

(b) Except as set forth on Schedule 4.17(b), the Acquired Assets are sufficient for, and constitute all the assets, properties, business, goodwill and rights of every kind and description, and services required for the continued conduct and operation of the System by Buyer in substantially the same manner as currently conducted and operated by Seller.

Section 4.18. Broker's and Finder's Fees

No broker, finder, or Person is entitled to any commission or finder's fee by reason of any agreement or action of Seller in connection with this Agreement or the transactions contemplated by this Agreement.

Section 4.19. Customer Sewer Laterals

Seller does not own and will not transfer to Buyer any of the connecting facilities originating from the Seller's main to the customer's structure/property when the facilities are not located within a public right-of-way or within an easement and where the collection facilities are located within private property to and throughout the customer's property (the "Customer Sewer Laterals"). Such Customer Sewer Laterals are owned by each customer and are considered such customer's property for which such customer is solely responsible for all maintenance, repair and replacement.

Section 4.20. MS4 Systems

Seller does not own, and will not transfer to Buyer, any Stormwater System Assets.

Section 4.21. Free Service; Prepayments. Except as set forth on Schedule 4.21, Seller has not entered into any agreements or other understandings for the provision of free or otherwise subsidized or discounted services to any parties nor has Seller received payments made in advance by any third party (excluding Seller's residential water customers) for future service (including service after the Closing) with regard to the System or the Acquired Assets.

ARTICLE V.

REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer makes only the representations and warranties which are set forth in this Article V.

As a material inducement to the Seller to enter into this Agreement and to consummate the transactions contemplated hereby, Buyer hereby represents and warrants to the Seller, as of the Effective Date and as of the Closing Date (except to the extent any of the following representations and warranties specifically apply or relate to another date, in which event such representations and warranties shall be true and correct as of such other date), as follows:

Section 5.01. **Organization**

The Buyer is duly organized, validly existing and in good standing under the laws of the state of its organization.

Section 5.02. **Authorization and Validity of Agreement**

The Buyer has the power and authority to enter into this Agreement and to do all acts and things and execute and deliver all other documents as are required hereunder to be done, observed or performed by it in accordance with the terms hereof. This Agreement has been duly authorized, executed and delivered by the Buyer and constitutes a valid and legally binding obligation of the Buyer, enforceable against it in accordance with the terms hereof, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity.

Section 5.03. **No Conflict or Violation**

The execution and delivery of this Agreement by the Buyer, the consummation of the transactions contemplated hereby and the performance by the Buyer of the terms, conditions and provisions hereof has not and will not contravene or violate or result in a material breach of (with or without the giving of notice or lapse of time, or both) or acceleration of any material obligations of the Buyer under (i) any Law, (ii) any material agreement, instrument or document to which the Buyer is a party or by which it is bound or (iii) the articles, bylaws or governing documents of the Buyer.

Section 5.04. **Consents and Approvals**

Schedule 5.04 sets forth a list of each consent, waiver, authorization or approval of any Governmental Authority, or of any other Person, and each declaration to or filing or registration with any Governmental Authority required in connection with the execution and delivery of this Agreement by Buyer or the performance by Buyer of its obligations under this Agreement.

Section 5.05. **Broker's and Finder's Fees**

No broker, finder or third party is entitled to any commission or finder's fee in connection with this Agreement or the transactions contemplated by this Agreement.

Section 5.06. **Sufficient Funds and Financial Wherewithal**

Buyer shall have sufficient funds available at Closing to consummate the transactions contemplated by this Agreement, including payment of the Purchase Price in accordance with Article III and payment of expenses related to the transactions contemplated by this Agreement.

Upon Closing, and after giving effect to the consummation of the transactions contemplated hereby and the incurrence of any indebtedness in connection therewith, Buyer shall have the financial ability and will have sufficient working capital for its needs and anticipated needs to operate the System as a certificated public utility system regulated by the PaPUC authorized, among other things, to provide wastewater utility services to retail residential, commercial, public and industrial customers in the System and to assure that the customers of the System will receive safe, adequate and reliable wastewater service equal to or better than such customers would have received without the transactions contemplated by this Agreement and at all times consistent with the provisions of the Pennsylvania Public Utility Code, 66 Pa. C. S. § 101 *et seq.*, and Law.

Section 5.07. Independent Decision

Except as expressly set forth in this Agreement, or any of the related agreements, Buyer acknowledges that (a) neither Seller nor any other Person has made any representation or warranty, express or implied, as to the accuracy or completeness of the System or information provided to Buyer, and (b) neither Seller nor any other Person shall have or be subject to any liability to Buyer or any other Person resulting from the distribution to Buyer, or Buyer's use of, any information regarding the System or Acquired Assets that has been furnished or made available to Buyer and its Representatives. Buyer acknowledges that other than as expressly set forth in this Agreement or any related agreement, Seller expressly disclaims any warranty of physical condition, value, income potential, operating expenses, costs of operation, or uses or fitness for a particular purpose of any Acquired Assets or the System.

Section 5.08. Scheduled Matters

Buyer acknowledges that: (a) the inclusion of any matter on any Schedule shall not necessarily be deemed an admission by Seller that such listed matter is material or that such listed matter has or could have a Material Adverse Effect or constitutes a material liability with respect to the Acquired Assets; (b) matters reflected in the Schedules are not necessarily limited to matters required by this Agreement to be reflected in such Schedules; and (c) such additional matters are set forth for informational purposes only and do not necessarily include other matters of a similar nature.

Section 5.09. Independent Investigation

Buyer acknowledges that it has conducted an independent investigation of the financial condition, assets, liabilities, properties and projected capital needs and operations of the System in making its determination as to the propriety of the transaction contemplated by this Agreement and, in entering into this Agreement and related agreements, has relied solely on the results of its investigation and on the representations and warranties of the Seller expressly contained in Article IV of this Agreement.

Section 5.10. Litigation

The Buyer is not in breach of any Law that could have a Material Adverse Effect. Neither the Buyer nor any Affiliate of the Buyer is listed on any of the following lists maintained by the

Office of Foreign Assets Control of the United States Department of the Treasury, the Bureau of Industry and Security of the United States Department of Commerce or their successors, or on any other list of Persons with which the Seller may not do business under Law: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List and the Debarred List. Except as set forth on Schedule 5.10, there is no action, suit or proceeding, at law or in equity, or before or by any Governmental Authority, pending nor, to the Knowledge of the Buyer, threatened against the Buyer, which will have a material adverse effect on (i) the transactions contemplated by this Agreement or (ii) the validity or enforceability of this Agreement.

ARTICLE VI.

TITLE TO REAL ESTATE; EASEMENTS

Section 6.01. **Evidence of Title**

Promptly after the Effective Date, and to the extent the same are in the Seller's possession or control, the Seller shall provide to the Buyer all deeds or other instruments evidencing the Seller's title to Owned Real Property as well as any plans depicting Owned Real Property. Subject to Section 6.06, with respect to each parcel of Owned Real Property, Buyer shall obtain, at its sole cost and expense, a commitment for an owner's policy of title insurance on the American Land Title Association's ("ALTA") Owner's Form 2006 (each, a "Title Commitment"), issued by a title insurance company selected by Buyer and licensed to insure title to real property by the Commonwealth of Pennsylvania (the "Title Company"), having an effective date after the Effective Date. Promptly following the Effective Date, Buyer shall order the Title Commitment from the Title Company and shall provide Seller evidence of the same. Notwithstanding anything to the contrary in Section 6.02(a) below, Buyer shall not be entitled to send an Objection Notice with respect to any parcel of Owned Real Property and the Title Commitment for the same if, within thirty (30) Business Days after the Effective Date (or, for Unscheduled Real Property, within thirty (30) Business Days after the discovery of the existence of the same), Buyer has not ordered the Title Commitment from the Title Company for such parcel of Owned Real Property. In order to take advantage of the protections of this Section 6.03, Buyer must provide Seller with evidence that Buyer timely ordered the Title Commitment.

Section 6.02. **Objections to Title**

(a) Notice of Objections. Within thirty (30) days of Buyer's receipt from the Title Company of a Title Commitment for any of the parcels of Owned Real Property, Buyer shall deliver to Seller a true, correct and complete copy of the Title Commitment and true, correct, complete and legible copies of any and all exception documents listed in the same, along with Buyer's notice to Seller of any of the exceptions to title set forth on Schedule B of such Title Commitment to which Buyer objects (such notice of Buyer being referred to as the "Objection Notice") provided such exceptions (a) are not Permitted Liens, (b) pertain to the Buyer or any requirements, conditions or obligations of the Buyer, and (c) are not standard Title Company exceptions (such as the "survey" exception) (such exceptions objected to in the Objection Notice, provided the same are not as described in (a) through and including (c) aforesaid, being referred to as the "Title Objection Items"). Any Objection Notice shall include a true, correct and

complete copy of the Title Commitment and true, correct, complete and legible copies of any and all exception documents listed in the same. If Buyer provides the Seller with an Objection Notice, the Seller shall use its commercially reasonable efforts to have all of the Title Objection Items cured, satisfied or released of record (individually, “Cure” and collectively, “Cured”) prior to or as of the Closing. At or prior to the Closing, the Seller shall deliver written evidence to Buyer, in form and substance reasonably satisfactory to Buyer, evidencing all of the Title Objection Items Seller has Cured. After the Closing Date, Buyer shall assume the responsibility to Cure all remaining Title Objection Items as contemplated in, and subject to the terms of, the Easement Escrow Agreement.

(b) Liens. Without limiting the Seller’s obligations pursuant to Section 6.02(a), prior to or as of the Closing, the Seller shall be obligated, at its sole cost and expense, to Cure any Lien encumbering the Real Property which can be Cured by the payment of money (other than Permitted Liens).

(c) Title Endorsements/Survey. Buyer shall pay for any endorsements required by Buyer or any mortgagee of Buyer to Buyer’s Title Policy. If any survey is required by Buyer or its mortgagee, either as a condition to any endorsement or otherwise, Buyer shall pay to obtain the survey and Buyer shall pay all related costs and expenses. If Buyer obtains a survey of any Owned Real Property and if Buyer wants the deed to contain the legal description based on a survey, if the same is not identical to the legal description contained in Seller’s deed of record, Seller is not obligated to include the same in the deed to Buyer unless the survey is certified to Seller and such description is included in the deed on a “quitclaim” basis only and without warranty of title.

(d) License at Closing. Without limiting the Seller’s obligations pursuant to Section 6.02(a) or (b), Seller shall provide Buyer with a license agreement granting Buyer a license in all of Seller’s rights to access such Real Property in order to allow Buyer to operate and maintain the System until such time as Buyer is provided title to such Real Property as provided for in this Agreement. For the avoidance of doubt, Seller shall provide such title as soon as reasonably practicable in accordance with Section 6.01.

(e) Insurable Claims. To the extent any Claim for Losses under Article VIII is an Insurable Claim (which, for purpose of clarity, shall exclude claims covered by the Easement Escrow Fund per this Article VI and Section 6.05(d)), Buyer shall assert and pursue with reasonable diligence the Insurable Claim against the Title Company (which includes commencing litigation and diligently prosecuting the Insurable Claim to judgment) before pursuing a Claim for Losses under Article VIII. Following a non-favorable judgment that substantially denies the relief sought by Buyer from the Title Company in connection with the Insurable Claim (each a “Non-Favorable Judgment”), Buyer may pursue Seller with a Claim for Losses under Article VIII (any Claim against Seller following an attempted Insurable Claim against the Title Company is a “Residual Title Claim”). Notwithstanding anything to the contrary in Article VIII, Buyer must assert a Claim for Losses based upon a Residual Title Claim within sixty (60) days of the Non-Favorable Judgment. For purposes of this Section 6.02(e), an “Insurable Claim” means a Claim that: (i) arises out of Buyer’s discovery of a title defect or encumbrance with respect to any of the Real Property following the Closing Date that materially restricts or prevents the use of such Real Property in the operation of the System; and (ii) is a

claim against the Title Company under the Title Policy. Buyer acknowledges that any Claims that it could otherwise bring as a breach of a covenant of title under the special warranty deed to the Real Property is included within the Claim for Losses under Article VIII and is subject to the terms of this Section 6.02(e) of first pursuing the same as an Insurable Claim.

Section 6.03. Title Expenses

Irrespective of whether the transactions described by this Agreement are consummated and Closing occurs, all costs and expenses of obtaining the Title Commitment, Title Policy and any survey shall be paid by Buyer.

Section 6.04. UCC Search; Releases

Not later than sixty (60) days after the Effective Date, Buyer shall commence at its sole cost and expense a Uniform Commercial Code search against Seller covering any of the personal property or fixtures included among the Acquired Assets from the Office of the Secretary of the Commonwealth of Pennsylvania and the Recorder of Deeds of all applicable counties in the Commonwealth of Pennsylvania (the “UCC Search”). On or prior to the Closing Date, Seller shall at its sole cost and expense obtain releases of any and all security interests in any of the Acquired Assets which are not Permitted Liens. The form of the releases of such security interests shall be provided by the Seller to Buyer on or prior to the Closing Date.

Section 6.05. Easements

(a) Promptly after the Effective Date, the Seller shall provide access to the Buyer to all Easements in its possession and all plans and maps in its possession depicting the location of all Acquired Assets referenced in Section 2.01(a). Promptly after the Effective Date and prior to the Closing, the Buyer shall, at its sole cost and expense, cause an abstractor selected by the Buyer (the “Abstractor”), to perform, at the Buyer’s sole cost and expense, a search of the public land records of all applicable counties, based on the Seller’s records and plans of the System (and such other sources of information as are reasonably related thereto), by means of searching the grantee index in the names of the Seller and such other searches as the Abstractor may reasonably make, to (i) identify and provide Buyer with title information on any and all recorded Easements (including information related to any Liens or encumbrances on Seller’s title thereto), and (ii) together with the Seller, identify all Missing Easements. During such process, as the Abstractor provides written search results to Buyer for each Easement, the Buyer will promptly provide the same to Seller, and, without limiting the foregoing, the Buyer shall, or shall cause the Abstractor to, provide Seller with periodic updates on the status of the activities set forth on the previous sentence. Seller shall cooperate with Buyer in any commercially reasonable and economically feasible request made by Buyer or the Abstractor.

(b) Notice of Objections. Within thirty (30) days of Buyer’s receipt from the Abstractor of the information described in subsection (a) above for each Easement, Buyer shall deliver to Seller an Objection Notice identifying the encumbrances on the Easements that are unacceptable to Buyer, provided such exceptions are not Permitted Liens (an “Easement Objection Notice”). If the Buyer provides the Seller with an Easement Objection Notice, the Seller shall use its commercially reasonable efforts to have such objections Cured, prior to or as

of the Closing. At or prior to the Closing, the Seller shall deliver written evidence to Buyer, in form and substance reasonably satisfactory to Buyer, evidencing all of the objection items identified in the Easement Objection Notice that Seller has Cured. After the Closing Date, Buyer shall assume the responsibility to Cure all remaining objection items identified in the Easement Objection Notice as contemplated in, and subject to the terms of, the Easement Escrow Agreement.

(c) If during the process of Abstractor's review and investigation of all applicable counties' land records, Buyer determines, based on the Abstractor's investigation or Buyer's own investigation, that there is a Missing Easement, the Seller shall use its commercially reasonable efforts (including the use of its power of condemnation) to obtain any such Missing Easements so that the same may be sold, assigned, transferred and conveyed to Buyer at the Closing pursuant to the terms and conditions of this Agreement. Prior to Closing, all costs and expenses incurred in connection with obtaining each Missing Easement (including any consideration payable to the landowner in connection with condemnation, in lieu of condemnation or otherwise to obtain Missing Easements) shall be paid by the Seller. If Seller has not obtained all Missing Easements by the date that is ninety (90) days after the date that Abstractor has completed his review of the County land records and delivered the last results of the same to Seller (the "Abstract Completion Date"), then the Seller shall commence and file in the Court of Common Pleas, Butler County, a condemnation or eminent domain proceeding to obtain any and all such Missing Easements it can prior to Closing. For the purposes of clarity, upon obtaining each Missing Easement (including upon the final resolution of a condemnation proceeding), each Missing Easement that has been acquired or obtained by the Seller shall be considered an Easement. After the Closing Date, Buyer shall obtain all remaining Missing Easements as contemplated in the Easement Escrow Agreement.

(d) Escrow at Closing for Missing Easements. For all of the Missing Easements listed on attached Schedule 6.05(d) as of the Closing Date, Seller will fund the Easement Escrow Fund in the amount of Two Thousand Dollars (\$2,000) per Missing Easement listed on attached Schedule 6.05(d) as of the Closing Date, which shall be held in accordance with the Easement Escrow Agreement.

Section 6.06. Unscheduled Property

The Parties acknowledge that the Seller may own interests in or have the legal right to use or occupy the Real Property that is necessary or essential to the operation of the System and that is not specifically identified on Schedule 4.09 (the "Unscheduled Real Property"). If the Parties discover prior to or after the Closing Date, one or more parcels of Unscheduled Real Property, the discovering Party shall give notice of such discovery to the non-discovering Party. In addition to its obligations in Section 2.03, Seller shall convey, assign or otherwise transfer any rights to each parcel of Unscheduled Real Property, with no adjustment to the Purchase Price, in such a manner as to provide Buyer with reasonable assurances that Buyer shall have the right to use or occupy the Unscheduled Real Property as it was used by Seller as of the Effective Date.

ARTICLE VII.

OTHER AGREEMENTS

Section 7.01. Taxes

Except as otherwise provided in this Agreement, the Seller shall pay any and all Taxes, if any, arising out of the ownership of the Acquired Assets and out of the operation of the System before the Closing Date.

Section 7.02. Cooperation on Tax Matters

The Seller shall furnish or cause to be furnished to Buyer, as promptly as practicable, whether before or after the Closing Date, such information and assistance relating to the System as is reasonably necessary for the preparation and filing by Buyer of any filings relating to any Tax matters.

Section 7.03. Personnel Matters

(a) Buyer shall offer in writing employment effective on the Closing Date, to all active Personnel set forth on Schedule 7.03(a) who are employed by Seller in operating the System as of the Closing Date, subject to Buyer's existing standard hiring policies and procedures applicable to new employees, including but not limited to, a criminal background check and drug screening of all Personnel. The written employment offer shall include the language set forth in **Exhibit D**, which will inure to the benefit of Personnel who accept such employment and commence employment on or shortly after the Closing Date. The active Personnel who accept such offer of employment and commence employment with Buyer on the Closing Date, shall be referred to in this Agreement as the "Transferred Personnel." Buyer may make the required offer of employment at a reasonable time prior to the Closing Date to ensure there will be adequate staffing on the Closing Date. For purposes of clarity, nothing contained in this Section 7.03 shall be deemed to limit, restrict or prohibit Buyer from interviewing the applicable Personnel for informational purposes only in connection with the transfer of employment of the Personnel to Buyer as provided in this Section 7.03.

(b) Subject to Law, if, following the Closing, any non-union Transferred Personnel are required by Buyer to permanently perform their job at a location in excess of thirty (30) miles from the location of their job as of the Closing Date, then such Transferred Personnel may terminate employment with the Buyer for "good reason". For the purposes of Sections 7.03(b) and (c), the term "permanently" means a duration of more than ten (10) working days in a rolling twelve (12) month period. Buyer will provide in its offers to non-union Personnel that, in the event of a termination for "good reason," as set forth in this Section 7.03(b), Buyer will give any such affected Transferred Personnel the right to (i) 1.5 times their annual pay and (ii) continued medical, dental and vision coverage under COBRA, at Buyer's expense, for a period of twelve (12) months. The termination payments described herein shall be conditioned upon affected Transferred Personnel's execution and delivery to the Buyer of a general release of liability for the Buyer covering all claims except those that cannot be waived under applicable Laws in a form

consistent with **Exhibit E**. Buyer will use commercially reasonable efforts to not eliminate positions of non-union Transferred Personnel due to redundancy.

(c) Prior to Closing, Seller will provide a Memorandum of Understanding in the form of **Exhibit F** to each union that is a party to a Collective Bargaining Agreement, that no Transferred Personnel represented by a union shall be forced to permanently work at a location that is more than thirty (30) miles from the location of their job.

(d) Subject to Law, non-union Transferred Personnel shall be employees-at-will of Buyer.

(e) Buyer shall provide each of the non-union Transferred Personnel with compensation and benefits which are substantially similar in the aggregate to the compensation and benefits which are provided by Seller to the non-union Transferred Personnel as of the Closing Date, provided, the Buyer agrees that, on the Closing Date, it will increase the base pay of any non-union Transferred Personnel to offset a difference in employee healthcare (including dental and vision) premiums. This increase will equal the difference between the non-union Transferred Personnel's total annual premiums costs for healthcare coverages under Buyer's plan subtracted by the non-union Transferred Personnel's total annual premium costs for identical healthcare coverages under Seller's healthcare plan, as of the Closing Date. At Closing, all Transferred Personnel will be eligible to participate in Buyer's health savings account and/or flexible spending account plans, as determined by the Buyer's plan documents, in order to take advantage of pre-tax deductions.

(f) Buyer shall provide a retirement plan to the Transferred Personnel that provides an employer contribution rate of 7.5% or greater and an employee participation rate of 5% or higher. Buyer shall amend its existing 401(k) plan to the extent (if any) that is necessary in order to provide to the Transferred Personnel the same or better salary deferral opportunities as are provided under the Seller's 457 deferred-compensation plans. All Transferred Personnel shall be immediately eligible to participate in the Buyer's retirement plans at the Closing Date. Buyer's defined benefit and post-retirement medical plans that have been closed prior to the Effective Date are excluded from the forgoing sentence. If any Transferred Personnel separates from service with Buyer prior to becoming fully vested in their plan account under the Buyer's Savings Plan for Employees of American Water Works Company, Inc. and Its Designated Subsidiaries, Buyer shall provide an amount equivalent to any forfeited non-elective employer contributions outside the plan to such Transferred Personnel. Buyer shall permit Transferred Personnel to roll over (or arrange for direct transfers of) their plan account balances from the Seller's terminated retirement plans into one or more of Buyer's tax-qualified retirement plans.

(g) Buyer shall recognize the Transferred Personnel's service with Seller as if such service were with Buyer for eligibility and vesting purposes under Buyer's other benefit plans and programs to be offered to the Transferred Personnel but not specifically referenced in this Agreement.

(h) The Transferred Personnel shall cease active participation in the Seller's Plans effective as of the Closing Date. Seller shall remain liable for all eligible claims for benefits under the Seller's Plans that are incurred by Transferred Personnel prior to the Closing Date. For

purposes of this Agreement, the following claims shall be deemed to be incurred as follows: (i) life, accidental death and dismemberment, short-term disability, and workers compensation insurance benefits, on the event giving rise to such benefits, (ii) medical, vision, dental, and prescription drug benefits, on the date the applicable services, materials or supplies were provided, (iii) long-term disability benefits, on the eligibility date determined by the long-term disability insurance carrier for the plan in which the applicable Personnel participates.

(i) At Closing, Buyer will provide Transferred Personnel who retire after Closing with substantially similar post-retirement health benefits as currently maintained by the Seller for its eligible employees. Seller will retain the post-retirement health benefit obligations and liabilities for all union and non-union BASA employees who retire, or have retired, on or before the Closing.

(j) Except as provided herein, this Section 7.03 shall be binding upon and inure solely to the benefit of each of the Parties to this Agreement, and nothing in this Section 7.03, express or implied, shall confer upon any other Person any rights or remedies of any nature whatsoever under or by reason of this Section 7.03. The Parties acknowledge and agree that the terms set forth in this Section 7.03 shall not create any right in any non-union Transferred Personnel or any other Person to any continued employment with the Buyer or any of its Affiliates or compensation or benefits of any nature or kind whatsoever, and shall not be deemed to restrict the Buyer in the exercise of its independent business judgment in establishing or modifying any of the terms or conditions of the employment of the non-union Transferred Personnel other than as provided for in this Section 7.03. Except as otherwise expressly provided in this Section 7.03, nothing contained in this Section 7.03 shall constitute an amendment of, or an undertaking to amend, any employee benefit plan, program or arrangement maintained by Buyer or its Affiliates or is intended to prevent Buyer or its Affiliates from amending or terminating any such employee benefit plan, program or arrangement in accordance with its terms.

(k) Except as otherwise provided in this Section 7.03, it is expressly understood that Buyer will not acquire any asset, or assume any liability or obligation in connection with the transactions contemplated by the Agreement relating to any of the Seller's Plans or Seller's Benefit Obligations, and Seller shall be solely responsible for any liability, funding obligation, claim, or expense arising from the Seller's Plans, Seller's Benefit Obligations, both prior to and after the Closing Date.

(l) No later than the Closing Date, Seller shall transfer all records pertaining to the employment of the Transferred Personnel to Buyer including, but not limited to, all personnel and human resources Files and Records.

(m) Buyer shall have the right, before Closing, to renegotiate the Collective Bargaining Agreement. If the Buyer and union fail to reach agreement on an updated collective bargaining agreement, Buyer shall assume, at Closing, the Collective Bargaining Agreement.

Section 7.04. **Rates**

(a) **Rates**. Seller's current wastewater rates in effect as of the Effective Date are set forth on Schedule 7.04(a)-1. Prior to Closing, Seller shall implement a monthly rate of

\$45.50/EDU (“Seller Base Rates”) in the same manner as Buyer’s Resolution No. 2-09-2021-1 and as set forth on Schedule 7.04(a)-2. Buyer shall not propose to increase Seller Base Rates until the later to occur of (i) the first anniversary of Closing, or (ii) January 1, 2025. The Buyer may apply PaPUC permitted or required surcharges or pass-through costs (e.g., Distribution System Improvement Charge and/or State Tax Adjustment Surcharge). After the Closing, the Buyer shall institute its grant or discount program for low-income customers currently served by the Seller to the Seller Base Rates after Closing.

(b) In Buyer’s first base rate proceeding with respect to the System following Closing, Buyer shall propose to the PaPUC that Buyer move from the Seller’s flat rate to a rate that is based on metered usage.

(c) The rate provisions of this Section 7.04 shall be part of the Buyer’s requested PaPUC Governmental Approval.

Section 7.05. **Buyer Taxpayer**

From and after the Closing Date, Buyer acknowledges that, upon conveyance of the Acquired Assets to Buyer, the Buyer will be subject to, among other Taxes, real estate Taxes, which shall be paid by Buyer.

Section 7.06. **PaPUC Approval**

(a) Promptly after the Effective Date, Buyer shall timely initiate and faithfully prosecute the necessary proceedings to obtain from the PaPUC (i) the issuance of certificates of public convenience to Buyer to provide wastewater services in the Service Area and (ii) the approval of the acquisition of the System by Buyer under terms and conditions that are reasonably acceptable to Seller and Buyer. Seller shall use its commercially reasonable efforts to assist Buyer in the preparation of the filing and shall cooperate with and assist the Buyer in proceedings before the PaPUC. Seller and the Creating Municipalities shall intervene in the proceedings before the PaPUC in support of the application for all necessary approvals from the PaPUC. Buyer and Seller hereby agree that the procedures for determining fair market value of the System and Acquired Assets outlined in Section 1329(a) of Title 66 of the Pennsylvania Consolidated Statutes shall be utilized and filed with the PaPUC as contemplated by Section 1329(c) of Title 66 of the Pennsylvania Consolidated Statutes, with the Buyer discharging the requirements imposed on the “acquiring utility” and the Seller discharging the requirements of said statutes imposed on the “selling utility”. Buyer and Seller hereby agree that the fees and expenses related to the mutually agreed upon licensed engineer that will conduct the engineering assessment for the application to the PaPUC shall be borne fifty percent (50%) by the Buyer and fifty percent (50%) by the Seller.

(b) Buyer, in Buyer’s first base rate proceeding with respect to the System following the Closing, shall propose the use of statutory and regulatory mechanisms available to benefit the Buyer’s acquired customers for ratemaking purposes, including the proposed utilization of 66 Pa. C.S. Section 1311(c) with respect to the Acquired Assets.

(c) Due to the uncertainty and potential non-feasibility of obtaining an adequate remedy after a material delay in Closing, if Buyer does not file an application with the PUC seeking approval of the transaction pursuant to this Section 7.06 hereof within six (6) months of completion of both appraisals by the Utility Valuation Experts, Seller has the right, in its sole discretion, to terminate this Agreement, and draw upon the Letter of Credit, which shall become non-refundable and serve as a liquidated damages payment to Seller by Buyer.

Section 7.07. Remedies for Breach of Article VII Agreements

If Buyer breaches any of the covenants and agreements set forth in this Article VII, in addition to all other rights and remedies available at law or in equity, including specific performance and/or injunctive relief, Seller may commence proceedings before the PaPUC seeking enforcement of such covenants and agreements.

Section 7.08. Utility Valuation Experts

Buyer and Seller shall each be responsible for the costs associated with their respective Utility Valuation Expert for the preparation and completion of their respective Utility Valuation Expert's appraisal report and any additional work by their respective Utility Valuation Expert necessary to assist in the processing and prosecution of the application to the PaPUC in regard to this transaction under Section 1329.

Section 7.09. Headquarters

On the Closing Date, and for a period of at least 10 years thereafter, Buyer shall maintain an operations center at Seller's headquarters at 100 Litman Road, Butler, Pennsylvania 16001-3256 consisting of various managers, customer service representatives, and operators of Buyer's western Pennsylvania wastewater division (the "Operations Center").

Section 7.10. Customer-Owned Damaged Wastewater Service Laterals Pilot

Upon the Effective Date of this Agreement, Buyer shall use its commercially reasonable efforts to develop a pilot program for a customer-owned damaged wastewater service lateral replacement program, consistent with 66 Pa. C.S. § 1311(b)(2) and subject to PaPUC approval, focused on the System. Prior to the second anniversary of Closing, Buyer shall petition the PaPUC for, and use commercially reasonable efforts to obtain approval for the pilot program. If the pilot program is approved by the PaPUC and implemented and Buyer petitions the PaPUC to establish a state-wide customer-owned damaged wastewater service lateral replacement program, Buyer shall include the System in that petition.

Section 7.11. Required Capital Investment

On or prior to the fifth (5th) anniversary of Closing, Buyer shall complete the capital projects set forth on Schedule 7.11 ("Capital Projects"). Buyer shall use its reasonable commercial efforts to use qualified Butler County based contractors on Capital Projects, provided Buyer shall not be required to pay premium costs or to delay implementation of Capital Projects if Butler County contractors are not available in order to meet the requirements of any Capital Project. Buyer and the Creating Municipalities will form a committee (the "Capital Project Committee") consisting

of two (a) representatives from each of Buyer and the Creating Municipalities, and engineers chosen by Buyer and each Creating Municipality, to monitor the use of qualified Butler County based contractors, facilitate cooperative communications are maintained, and track Buyer's compliance with Schedule 7.11. If Buyer fails to undertake all of the Capital Projects on or prior to the fifth (5th) anniversary of Closing, given the uncertainty regarding the amount of potential damages and the likelihood of irreparable harm to Seller and the Creating Municipalities, in addition to all other rights and remedies available at law or in equity, Seller may commence proceedings before the PaPUC or the Court of Common Pleas for Butler County seeking specific enforcement of this covenant by Buyer to complete the Capital Projects, with all reasonable costs incurred by Seller and the Creating Municipalities to be reimbursed by Buyer.

Section 7.12. **Covenant Survival**

The covenants set forth in this Article VII survive Closing.

ARTICLE VIII.

INDEMNIFICATION

Section 8.01. **Survival**

All representations and warranties contained in this Agreement survive until twelve (12) months following the Closing Date. The covenants and agreements of the Parties contained in this Agreement survive the Closing indefinitely or for the shorter period explicitly specified therein, except that for such covenants and agreements that survive for such shorter period, breaches thereof shall survive indefinitely or until the latest date permitted by Law. Notwithstanding the preceding sentences, (i) any breach of representation, warranty, covenant or agreement in respect of which indemnity may be sought under this Agreement survives the time at which it would otherwise terminate pursuant to the preceding sentences, if notice of the inaccuracy or breach thereof giving rise to such right of indemnity shall have been given to the party against whom such indemnity may be sought prior to such time, and (ii) nothing contained in this Section 8.01 limits in any way any rights a Party may have to bring claims grounded in fraud, intentional misrepresentation or willful misconduct, which rights survive the Closing indefinitely.

Section 8.02. **Indemnification by the Seller**

To the maximum extent permitted by Law and subject to the terms and conditions of this Article VIII, the Seller shall, out of Indemnity Escrow Fund, indemnify, defend and hold harmless, Buyer and its successors and Affiliates and their respective employees, officers, directors, trustees and agents (the "Buyer Indemnified Persons"), from and against any and all claims for Losses arising from or relating to: (a) any material misrepresentation as to, or any material inaccuracy in, any of the representations and warranties of the Seller contained in this Agreement or in any exhibit, schedule, certificate or other instrument or document furnished or to be furnished by the Seller prior to the Closing pursuant to this Agreement (without regard to any materiality, Material Adverse Effect or related qualifications in the relevant representation or warranty (except where such provision requires disclosure of lists of items of a material nature or above a specified threshold)); (b) any material breach or material nonfulfillment of any of the

covenants or agreements of the Seller contained in this Agreement or in any exhibit, schedule, certificate or other instrument or document furnished or to be furnished by the Seller prior to the Closing pursuant to this Agreement; or (c) any Excluded Liability or Excluded Asset.

Section 8.03. **Indemnification by Buyer**

To the maximum extent permitted by Law and subject to the terms and conditions of this Article VIII, Buyer shall defend, indemnify and hold harmless the Seller, the Creating Municipalities and its successors and Affiliates and each of their respective employees, officers, directors, trustees and agents (the “Seller Indemnified Persons”) from and against any and all claims for Losses arising from or relating to: (a) any material misrepresentation as to, or any material inaccuracy in, any of the representations and warranties of Buyer contained in this Agreement or in any exhibit, schedule, certificate or other instrument or document furnished or to be furnished by Buyer pursuant to this Agreement (without regard to any materiality, Material Adverse Effect or related qualifications in the relevant representation or warranty (except where such provision requires disclosure of lists of items of a material nature or above a specified threshold)); (b) any material breach or material nonfulfillment of any of the covenants or agreements of Buyer contained in this Agreement or in any exhibit, schedule certificate or other instrument or document furnished or to be furnished by the Buyer pursuant to this Agreement; (c) any Assumed Liability as and when payment and performance is due, including without limitation any liability related to any claims by any Governmental Authority; (d) Buyer’s actions involving Environmental Requirements, Hazardous Materials or environmental claims from and after the Closing Date; or (e) the ownership, operation or control of the Acquired Assets or the System from and after the Closing Date.

Section 8.04. **Indemnification Procedure**

(a) Third Party Claims. If any Indemnified Party receives notice of the assertion or commencement of any action, suit, claim or other legal proceeding made or brought by any Person who is not a party to this Agreement or an Affiliate of a party to this Agreement or a Representative of the foregoing (a “Third Party Claim”) against such Indemnified Party with respect to which the Indemnifying Party may be obligated to provide indemnification under this Agreement, the Indemnified Party shall give the Indemnifying Party prompt notice thereof. The failure to give such prompt notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits material rights or material defenses by reason of such failure. In the notice, the Indemnified Party shall describe the Third Party Claim in reasonable detail and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have the right to participate in, or by giving notice to the Indemnified Party (and subject to the other requirements of this Agreement) to assume the defense of any Third Party Claim at the Indemnifying Party’s expense and by the Indemnifying Party’s own counsel (which counsel shall be reasonably acceptable to the Indemnified Party), so long as (i) the Indemnifying Party notifies the Indemnified Party, within ten (10) Business Days after the Indemnified Party has given notice of the Third Party Claim to the Indemnifying Party (or by such earlier date as may be necessary under applicable procedural rules in order to file a timely appearance and response) that the Indemnifying Party is assuming the defense of such Third Party Claim, *provided*, that if the Indemnifying Party assumes control of such defense it

must first agree and acknowledge in such notice that the Indemnifying Party is fully responsible (with no reservation of any rights other than the right to be subrogated to the rights of the Indemnified Party) for all Losses relating to such Third Party Claim, (ii) the Indemnifying Party conducts the defense of the Third Party Claim actively and diligently and at its own cost and expense, and (iii) the Third Party Claim (A) does not involve injunctive relief, specific performance or other similar equitable relief, any claim in respect of Taxes, any Governmental Authority, any criminal allegations, or any potential damage to the goodwill, reputation or overriding commercial interests of the Indemnified Party or its Affiliates, (B) is not one in which the Indemnifying Party is also a party and joint representation would be inappropriate or there may be legal defenses available to the Indemnified Party which are different from or additional to those available to the Indemnifying Party, or (C) does not involve a claim which, upon petition by the Indemnified Party, the appropriate court rules that the Indemnifying Party failed or is failing to vigorously prosecute or defend. The Indemnified Party shall reasonably cooperate in good faith in such defense. If the Indemnifying Party assumes the defense of any Third Party Claim, subject to Section 8.04(b), it shall have the right to take such action as it deems necessary to avoid, dispute, defend, appeal or make counterclaims pertaining to any such Third Party Claim in the name and on behalf of the Indemnified Party. The Indemnified Party shall have the right, at its own cost and expense, to participate in the defense of any Third Party Claim with counsel selected by it subject to the Indemnifying Party's right to control the defense thereof. If the Indemnifying Party elects not to compromise or defend such Third Party Claim or fails to promptly notify the Indemnified Party in writing of its election to defend as provided in this Agreement, the Indemnified Party may, subject to Section 8.04(b), pay, compromise, or defend such Third Party Claim and seek indemnification for any and all Losses based upon, arising from or relating to such Third Party Claim. The Seller and Buyer shall reasonably and in good faith cooperate with each other in all reasonable respects in connection with the defense of any Third Party Claim, including making available records relating to such Third Party Claim and furnishing, without expense (other than reimbursement of actual out-of-pocket expenses) to the defending party, management employees of the non-defending party as may be reasonably necessary for the preparation of the defense of such Third Party Claim.

(b) Settlement of Third Party Claims. Notwithstanding any other provision of this Agreement, the Indemnifying Party shall not enter into settlement of any Third Party Claim without the prior written consent of the Indemnified Party (which consent shall not be unreasonably withheld or delayed), except as provided in this Section 8.04(b). If a firm offer is made to settle a Third Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnified Party and provides, in customary form, for the unconditional release of each Indemnified Party from all liabilities and obligations in connection with such Third Party Claim and the Indemnifying Party desires to accept and agree to such offer, the Indemnifying Party shall give prompt notice to that effect to the Indemnified Party. If the Indemnified Party fails to consent to such firm offer within fifteen (15) days after its receipt of such notice, the Indemnified Party may continue to contest or defend such Third Party Claim and in such event, the maximum liability of the Indemnifying Party as to such Third Party Claim shall not exceed the amount of such settlement offer. If the Indemnified Party fails to consent to such firm offer and also fails to assume defense of such Third Party Claim, the Indemnifying Party may settle the Third Party Claim upon the terms set forth on such firm offer to settle such Third Party Claim. If the Indemnified Party has assumed the defense pursuant to Section 8.04(a),

it shall not agree to any settlement without the written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

(c) Direct Claims. Any claim by an Indemnified Party with respect to any Loss which does not arise or result from a Third Party Claim (a “Direct Claim”) shall be asserted by the Indemnified Party giving the Indemnifying Party prompt notice thereof. The failure to give such prompt notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits material rights or material defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Direct Claim in reasonable detail and shall indicate the estimated amount, if reasonably practicable, of the Losses that have been or may be sustained by the Indemnified Party. The Indemnifying Party shall have thirty (30) days after its receipt of such notice to respond in writing to such Direct Claim. During such thirty (30) day period, the Indemnified Party shall reasonably cooperate and assist the Indemnifying Party in determining the validity and amount of such Direct Claim. If the Indemnifying Party does not so respond within such thirty (30) day period, by delivery of notice disputing the basis or amount of the Direct Claim, the Indemnifying Party shall be deemed to have rejected such claim, in which case the Indemnified Party shall be free to pursue such remedies as may be available to the Indemnified Party on the terms and subject to the provisions of this Agreement. If the Indemnifying Party has timely disputed its indemnity obligation for any Losses with respect to such Direct Claim, the Parties shall proceed in good faith to negotiate a resolution of such dispute and, if not resolved through negotiations, such dispute shall be resolved by litigation in an appropriate court of jurisdiction determined pursuant to this Agreement.

Section 8.05. Limitations on Indemnification Obligations

(a) Subject to the other limitations contained in this Section 8.05, neither Buyer nor Buyer Indemnified Persons is entitled to indemnification pursuant to Section 8.02 (other than for an intentional breach of any agreement or covenant contained in this Agreement) unless the aggregate amount of Losses incurred by Buyer and Buyer Indemnified Persons under this Agreement exceeds 1% of the Purchase Price (the “Threshold Amount”), in which case Seller shall then be liable for Losses in excess of the Threshold Amount; *provided, however*, that the foregoing limitations contained in this Section 8.05(a) shall not apply to any claims for indemnification based on fraud, intentional misrepresentation or willful misconduct or to claims under the Easement Escrow Agreement.

(b) Subject to the other limitations contained in this Section 8.05 neither Seller nor the Seller Indemnified Persons is entitled to indemnification pursuant to Section 8.03 (other than for an intentional breach of any agreement or covenant contained in this Agreement) unless the aggregate amount of Losses incurred by Seller and Seller Indemnified Persons under this Agreement exceeds the Threshold Amount, in which case Buyer shall then be liable for Losses in excess of the Threshold Amount; *provided, however*, that the foregoing limitations contained in this Section 8.05(b) shall not apply to any claims for indemnification based on fraud, intentional misrepresentation or willful misconduct.

(c) Except in the case of fraud, intentional misrepresentation or willful misconduct (for which all applicable legal and equitable remedies will be available to Buyer), the Buyer

Indemnified Parties are only entitled to assert claims under Section 8.02 up to the aggregate amount of 5% of the Purchase Price (the “Liability Cap”), which shall represent the sole and exclusive remedy of Buyer and the other Buyer Indemnified Parties for any such claims under Section 8.02 (other than claims of fraud, intentional misrepresentation or willful misconduct which shall not be subject to the Liability Cap, but shall be capped at the Purchase Price).

(d) Payments by an Indemnifying Party pursuant to Section 8.02 or Section 8.03 in respect of any Loss shall be limited to the amount of any liability or damage that remains after deducting therefrom any insurance proceeds actually received and any indemnity, contribution or other similar payment received or reasonably expected to be received by the Indemnified Party in respect of any such claim. The Indemnified Party shall use its commercially reasonable efforts to recover under insurance policies or indemnity, contribution or other similar agreements for any Losses prior to seeking indemnification under this Agreement.

(e) Payments by an Indemnifying Party pursuant to Section 8.02 or Section 8.03 in respect of any Loss shall be reduced by an amount equal to any Tax benefit realized or reasonably expected to be realized as a result of such Loss by the Indemnified Party.

(f) Each Indemnified Party shall take, and cause its Affiliates to take, all reasonable steps to mitigate any Loss upon becoming aware of any event or circumstance that would be reasonably expected to, or does, give rise thereto, including incurring costs only to the minimum extent necessary to remedy the breach that gives rise to such Loss.

(g) Subject to the provisions of Sections 7.07, 15.11 and any other provisions for equitable relief and/or specific performance, the Parties acknowledge and agree that their sole and exclusive remedy with respect to any and all claims for any breach of any representation, warranty, covenant, agreement or obligation set forth of this Agreement or otherwise relating to the subject matter of this Agreement, shall be pursuant to the indemnification provisions set forth in this Article VIII. In furtherance of the foregoing, each party hereby waives, to the fullest extent permitted under Law, any and all rights, claims and causes of action for any breach of any representation, warranty, covenant, agreement or obligation set forth in this Agreement or otherwise relating to the subject matter of this Agreement it may have against the other Party and their Affiliates and each of their respective representatives arising under or based upon any Law, except pursuant to the indemnification provisions set forth in this Article VIII. Nothing in this Section 8.05(g) limits any Person’s right to seek and obtain any equitable relief and/or specific performance to which any Person is entitled pursuant to this Agreement.

Section 8.06. **Knowledge of Breach**

Neither Party shall be liable under this Article VIII for any Losses based upon or arising out of any inaccuracy in or breach of any of the representations or warranties of such Party contained in this Agreement if the Party asserting the claim for Losses had actual knowledge of such inaccuracy or breach prior to the Closing.

ARTICLE IX.

PRE-CLOSING COVENANTS OF THE SELLER

Section 9.01. **Operation of the System**

Except as otherwise expressly permitted by this Agreement, as required by Law or with the prior written consent of Buyer (which consent shall not be unreasonably withheld, delayed or conditioned), from the Effective Date until the Closing, the Seller shall (i) operate and manage the System only in the ordinary course of business in accordance with past practices and procedures, (ii) comply in all material respects with all Laws and Authorizations and Permits, (iii) use commercially reasonable efforts to maintain and preserve intact the business and assets of the System and preserve the rights, franchises, goodwill and relationships of the Seller and the System and their customers, lenders, suppliers, regulators and others having business relationships with the Seller and the System including, but not limited to, the land development agreements in existence as of the Effective Date which such agreements shall not be materially amended without notice to and the consent of Buyer, which consent shall not be unreasonably withheld or delayed, and (iv) continue to make capital expenditures in the ordinary course of business in accordance with past practices and procedures.

Section 9.02. **Cooperation**

The Seller shall use its commercially reasonable efforts and cooperate with Buyer and its employees, attorneys, accountants and other agents and, generally, act in reasonably good faith to timely effectuate the purposes of this Agreement and the consummation of the transactions contemplated by this Agreement, including action necessary to obtain all consents and approvals of third parties required as set forth on Schedule 4.05 and Schedule 5.04.

Section 9.03. **Supplements and Updates**

The Seller shall promptly deliver to Buyer any supplemental information updating the information set forth in the representations and warranties set forth in Article IV of this Agreement so that such representations and warranties as supplemented by such information will be true and correct as of the Closing Date (or such other date as provided in such representations and warranties) as if then made. Within three (3) Business Days of having Knowledge of the same, the Seller shall advise Buyer of any facts which would constitute a breach of a representation or warranty as of the date made or a default in a covenant contained in this Agreement. Seller's cooperation under this Section 9.03 shall include providing Buyer reasonable access to the files and documents set forth on Schedule 2.02(g) after the Closing.

Section 9.04. **Consents and Approvals**

Promptly after the execution of this Agreement, or as required by Law, except as provided in Section 7.06 or otherwise expressly provided in this Agreement, the Seller shall file all applications and reports that are required to be filed by Seller with any Governmental Authority as set forth on Schedule 4.05. The Seller shall also promptly provide all information that any Governmental Authority may require in connection with any such application or report. The

Seller shall use its commercially reasonable efforts to obtain each consent, waiver, authorization or approval of any kind from any Person in connection with the transactions contemplated under this Agreement. If a party to the PaPUC proceeding appeals PaPUC authorization of the transaction, the Buyer and the Seller may still mutually agree to proceed to the Closing.

Section 9.05. **Creating Municipalities**

The Creating Municipalities shall use their commercially reasonable efforts and cooperate with Buyer and its employees, attorneys, accountants and other agents and, generally, act in reasonably good faith to timely effectuate the purposes of this Agreement and the consummation of the transactions contemplated by this Agreement. The Creating Municipalities shall hereby be a successor to all of Seller's post-closing rights and obligations under this Agreement.

ARTICLE X.

PRE-CLOSING COVENANTS OF BUYER

Section 10.01. **Actions Before the Closing Date**

Buyer shall not take any action which shall cause it to be in breach of any representation, warranty, covenant or agreement contained in this Agreement or cause it to be unable to perform in any material respect its obligations in this Agreement, and Buyer shall use its commercially reasonable efforts (subject to any conditions set forth in this Agreement) to perform and satisfy all conditions to Closing to be performed or satisfied by Buyer under this Agreement, including action necessary to obtain all consents and approvals of third parties required to be obtained by Buyer to effect the transactions contemplated by this Agreement.

Section 10.02. **Consents and Approvals**

Promptly after the execution of this Agreement, or as required by Law, except as otherwise expressly provided in this Agreement, Buyer shall file all applications and reports which are required to be filed by Buyer with any Governmental Authority as provided on Schedule 5.04. Buyer shall also promptly provide all information that any Governmental Authority may reasonably require in connection with any such application or report. Buyer shall use all commercially reasonable efforts to obtain all required consents and approvals of any kind from any person in connection with the transactions contemplated hereby.

Section 10.03. **Cooperation**

Buyer shall use its commercially reasonable efforts and cooperate with the Seller and their employees, attorneys, accountants and other agents and, generally, do such other acts and things in good faith as may be reasonable to timely effectuate the purposes of this Agreement and the consummation of the transactions contemplated in accordance with the provisions of this Agreement, including, generally, assisting Seller in the process of its dissolution after the Closing and specifically providing Seller reasonable access to the files and documents set forth on Schedule 10.03.

Section 10.04. **Supplements and Updates**

Buyer shall promptly deliver to the Seller any supplemental information updating the information set forth in the representations and warranties set forth in Article V of this Agreement so that such representations and warranties as supplemented by such information will be true and correct as of the Closing Date (or such other date as provided in such representations and warranties) as if then made. At least three (3) Business Days prior to the Closing Date, Buyer shall advise the Seller of any facts which would constitute a breach of a representation or warranty as of the date made or a default in a covenant contained in this Agreement.

ARTICLE XI.

CONDITIONS PRECEDENT TO OBLIGATIONS OF THE SELLER

The obligation of the Seller to consummate the transactions provided for in this Agreement is subject to the satisfaction, at or before the Closing, of the following conditions, any one or more of which may be waived in writing by the Seller in its sole discretion:

Section 11.01. **Consents and Approvals**

Receipt of all required material, consents, waiver, authorizations or approvals of any Governmental Authority, or of any other Person and any other approvals necessary to consummate the transactions contemplated by this Agreement set forth on Schedule 5.04, including without limitation all required EPA and PaDEP approvals and all such Authorizations and Permits and Governmental Approvals must be final (and not subject to any appeal and any applicable appeal period having expired).

Section 11.02. **Representations and Warranties of Buyer**

The representations and warranties made by Buyer in Article V which are (a) not qualified by materiality shall be true and correct in all material respects on and as of the Closing Date (except for representations or warranties that speak of a specific date or time other than the Closing Date which shall be true and correct in all material respects as of such specified date) and (b) qualified by materiality shall be true and correct in all respects on and as of the Closing Date (except for representations or warranties that speak of a specific date or time other than the Closing Date which shall be true and correct in all respects as of such specified date), and the Seller shall have received a certificate to the effect of the foregoing from a duly authorized officer of Buyer dated as of the Closing Date.

Section 11.03. **PaPUC Approval**

PaPUC shall have issued a Final Order approving the acquisition of the System under terms and conditions that are reasonably acceptable to the Seller and Buyer. If a party to the PaPUC proceeding appeals PaPUC authorization of the transaction, the Buyer and Seller may still mutually agree to proceed to the Closing.

Section 11.04. **No Injunctions**

Neither the Seller nor Buyer shall be subject to any injunction, preliminary restraining order or other similar decree of a court of competent jurisdiction prohibiting the consummation of the transactions contemplated by this Agreement.

Section 11.05. **Performance of the Obligations of Buyer**

Buyer shall have performed in all material respects all obligations required under this Agreement to be performed by Buyer on or before the Closing Date, and the Seller shall have received a certificate to that effect from Buyer dated as of the Closing Date.

Section 11.06. **Deliveries by Buyer**

Buyer shall have made delivery to the Seller of the documents and items specified in Section 13.03.

Section 11.07. **No Material Adverse Effect**

There shall not have occurred any event or condition which gives rise to a Material Adverse Effect with respect to the Acquired Assets or the System.

ARTICLE XII.

CONDITIONS PRECEDENT TO OBLIGATIONS OF BUYER

The obligation of Buyer to consummate the transactions provided for in this Agreement is subject to the satisfaction, at or before the Closing, of the following conditions, any one or more of which may be waived in writing by Buyer in its sole discretion:

Section 12.01. **Consents and Approvals**

(a) Receipt of all required material, consents, waivers, authorizations or approvals of any Governmental Authority, or of any other Person and any other approvals necessary to consummate the transactions contemplated by this Agreement set forth on Schedule 4.05, including without limitation all required EPA and PaDEP approvals and all such Authorizations and Permits and Governmental Approvals must be final (and not subject to any appeal and any applicable appeal period having expired); and

(b) Approval by Seller for: (i)(A) defeasance and redemption of any outstanding bonds issued by the Seller on the System included in the Outstanding Indebtedness and (B) discharge of any other outstanding debt issued to the Seller and payable to any current lender and (ii) applying any funds held in any construction fund or account under any indenture(s) being held by the Seller or any lender to the Seller on any outstanding debt (it being understood that any debt service funds or debt service reserve funds will be applied to the defeasance, redemption and discharge of outstanding debt.

Section 12.02. **Representations and Warranties of Seller**

The representations and warranties made by the Seller in Article IV this Agreement (disregarding all “materiality” and “Material Adverse Effect” or similar qualifications contained therein) shall be true and correct on and as of the Closing Date (except for representations and warranties expressly stated to relate to a specific date, in which case each such representation and warranty shall be true and correct as of such earlier date), with only such exceptions as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, and the Buyer shall have received a certificate to that effect from the Seller dated as of the Closing Date.

Section 12.03. PaPUC Approval

PaPUC shall have issued a Final Order approving the acquisition of the System under terms and conditions that are reasonably acceptable to the Seller and Buyer. If a party to the PaPUC proceeding appeals PaPUC authorization of the transaction, the Buyer and Seller may still mutually agree to proceed to the Closing.

Section 12.04. No Injunctions

Neither the Seller nor Buyer shall be subject to any injunction, preliminary restraining order or other similar decree of a court of competent jurisdiction prohibiting the consummation of the transactions contemplated by this Agreement.

Section 12.05. No Material Adverse Effect

There shall not have occurred any event or condition which gives rise to a Material Adverse Effect with respect to the Acquired Assets or the System.

Section 12.06. Deliveries by Seller

Seller shall have made delivery to Buyer of the documents and items specified in Section 13.02.

Section 12.07. Performance of the Obligations of Seller

Seller shall have performed in all material respects all obligations required under this Agreement to be performed by Seller on or before the Closing Date, and Buyer shall have received a certificate to that effect from Seller dated the Closing Date.

Section 12.08. Seller’s Rates

Seller shall have implemented the Seller Base Rates in accordance with Section 7.04, and such Seller Base Rates shall be fully in effect.

ARTICLE XIII.

CLOSING

Section 13.01. Closing Date

The Closing shall take place at a place in Pennsylvania that is mutually agreed upon by the Parties, at 10:00 a.m. eastern standard time on the earliest agreed upon date after the date upon which all the conditions precedent to Closing described in this Agreement have been fulfilled or waived and Buyer and the Seller receive the last of the required consents, waivers, authorizations and approvals from the Governmental Authorities, in each case, for the transactions contemplated by this Agreement, or at such other place and time, by such other method, or on such other date, as may be mutually agreed to by the Parties (the “Closing Date”). The Closing shall be effective at 12:01 a.m., eastern time, on the Closing Date (the “Closing Effective Time”).

Section 13.02. **Deliveries by Seller**

At the Closing, the Seller shall have delivered or cause to be delivered to Buyer executed copies of the following agreements, documents and other items:

(a) A Bill of Sale transferring all of the Acquired Assets comprising personal property, in the form attached hereto as **Exhibit G**;

(b) Possession of the Acquired Assets, including without limitation, the Owned Real Property, the Easements, including a license from Seller to Buyer, if necessary;

(c) A duly executed counterpart to an Assignment and Assumption Agreement with respect to the Assumed Liabilities (the “Assignment and Assumption Agreement”), in the form attached hereto as **Exhibit H**;

(d) A duly executed counterpart to a Joinder Agreement by and among the Seller, Buyer and the Creating Municipalities (the “Joinder Agreement”), in the form attached hereto as **Exhibit I**;

(e) Duly executed counterparts to the Escrow Agreements;

(f) The consents to transfer all of the Assigned Contracts and Authorizations and Permits (including environmental Authorizations and Permits), to the extent required hereunder;

(g) One or more special warranty or other deeds in recordable form reasonably acceptable to Buyer and Seller transferring fee simple title of Owned Real Property and an instrument of assignment, transfer or other conveyance of Seller’s interests in and to all Easements in form reasonably acceptable to Buyer and Seller;

(h) Copies or originals of all Files and Records, materials, documents and records in possession of the Seller relating to the Real Property or the Assigned Contracts;

(i) Certificate of the Seller pursuant to Section 12.02 of this Agreement;

(j) Certificate of the Seller pursuant to Section 12.07 of this Agreement;

(k) Any documents duly executed by Seller required by the Title Company to issue final owner’s title policies in accordance with the procedures set forth in Article VI; and

(l) All such other instruments of conveyance or other documents as shall, in the reasonable opinion of Buyer and its counsel, be necessary to transfer to Buyer the Acquired Assets in accordance with this Agreement or to carry out the terms of this Agreement, duly executed and acknowledged by Seller, if necessary, and in a recordable form.

Section 13.03. Deliveries by Buyer

At the Closing, Buyer shall have delivered or caused to be delivered to the Seller the following agreements, documents and other items:

- (a) Payment in full of the Purchase Price;
- (b) A duly executed counterpart to the Assignment and Assumption Agreement;
- (c) A duly executed counterpart to the Joinder Agreement;
- (d) Duly executed counterparts to the Escrow Agreements;
- (e) The consents to transfer all of the Assigned Contracts and Authorizations and Permits (including environmental Authorizations and Permits), to the extent required hereunder;
- (f) Certificate of Buyer pursuant to Section 11.02 of this Agreement;
- (g) Certificate of Buyer pursuant to Section 11.05 of this Agreement;
- (h) Evidence of PaPUC approval as provided in Section 12.03;
- (i) Instruments of assumption of Seller's interests in and to all Easements in form reasonably acceptable to Buyer and Seller per Section 13.02(h); and
- (j) All such other instruments of assumption as shall, in the reasonable opinion of Seller and its counsel, be necessary for Buyer to assume the Assumed Liabilities in accordance with this Agreement.

ARTICLE XIV.

TERMINATION

Section 14.01. Events of Termination

This Agreement may, by notice given, be terminated and abandoned at any time prior to completion of the Closing:

- (a) By the mutual consent of the Seller and the Buyer;
- (b) By Seller pursuant to Section 7.06(c) hereof;
- (c) By either the Seller or the Buyer, upon notice, if:

(i) the Closing does not occur on or prior to the Outside Date, except the Buyer has the one-time right, upon notice to the Seller, to extend the Outside Date for up to ninety (90) days if, in the Buyer's sole discretion, any such amount of time up to ninety (90) days is necessary to obtain a required Governmental Approval;

(ii) any Governmental Authority issues an order, decree or ruling or taken any other action, in each case permanently restraining, enjoining or otherwise prohibiting the material transactions contemplated by this Agreement and such order, decree, ruling or other action becomes final and non-appealable; provided, however, that the Party seeking termination pursuant to this clause (b)(ii) is not in breach in any material respect of any of its representations, warranties, covenants or agreements contained in this Agreement;

(d) By the Seller (if Seller is not then in material breach of any provision of this Agreement) in the event of a material breach of any covenant or agreement to be performed or complied with by the Buyer pursuant to the terms of this Agreement or of any representation or warranty of the Buyer contained in this Agreement, which breach (i) has continued without cure for a period of sixty (60) days following notice thereof by the Seller to the Buyer or if such breach cannot be cured and (ii) would result in a condition to Closing set forth in Article XI of this Agreement not being satisfied (which condition has not been waived by the Seller in writing); or

(e) By the Buyer (if Buyer is not then in material breach of any provision of this Agreement) in the event of a material breach of any covenant or agreement to be performed or complied with by the Seller pursuant to the terms of this Agreement or of any representation or warranty of the Seller contained in this Agreement, which breach (i) has continued without cure for a period of sixty (60) days following notice thereof by the Buyer to the Seller or if such breach cannot be cured and (ii) would result in a condition to Closing set forth in Article XII of this Agreement not being satisfied (which condition has not been waived by the Buyer in writing).

(f) By the Buyer or the Seller, if either Buyer or Seller believes that the other party to this Agreement is not in compliance with Sections 2.06, 6.05, 7.06, 9.02, 9.05 or 10.03 including providing information and/or documentation (either to the noticing party or a third party) in a timely manner for the filing of a petition with the PaPUC, for approval of the transactions contemplated in this Agreement, or once such petition is filed, if the other party is not using their commercially reasonable efforts to obtain approval of the transaction as expeditiously as possible, including, but not limited to, failure to timely respond to discovery, which failure has continued for ten (10) days following notice thereof to Buyer or Seller as the case may be.

This Agreement may not be terminated after the Closing.

Section 14.02. **Effect of Termination**

If this Agreement is terminated by Seller or Buyer pursuant to Section 14.01 or Section 7.06, the terminating Party shall provide notice of termination promptly to the other Party and all further obligations of the Parties will terminate without further action by either Party and without liability or other obligation of either Party to the other Party hereunder, except that no Party will

be released from liability hereunder if this Agreement is terminated and the transactions abandoned by reason of any willful breach of this Agreement.

ARTICLE XV.

MISCELLANEOUS

Section 15.01. Confidentiality

Except as and to the extent required by Law (including but not limited to the Pennsylvania Right-To-Know Act at 65 Pa § 67.101) or pursuant to an order of a court of competent jurisdiction and as required hereunder to obtain any and all required Governmental Approvals, neither Party shall, directly or indirectly, disclose or use (and no Party shall permit its Representatives to disclose or use) any Confidential Information with respect to the other Party furnished, or to be furnished, by such other Party or its shareholders, directors, officers, agents, or Representatives to the other Party or its employees, directors, officers, agents or representatives in connection herewith at any time or in any manner other than in connection with the completion of the transactions contemplated by this Agreement and related transactions.

Section 15.02. Public Announcements

Subject to Law or listing rules of an exchange on which Buyer's parent corporation's stock is listed, and except as otherwise set forth in this Agreement, the initial public announcement relating to the transactions contemplated in this Agreement will be mutually agreed upon and jointly made by the Parties. Subsequent public announcements by one Party shall be subject to review and approval by the other Party prior to issuance, such approval not to be unreasonably withheld, conditioned or delayed.

Section 15.03. Notices

The Parties shall deliver all notices, other communications and approvals required or permitted by this Agreement in writing, shall state specifically that they are being given pursuant to this Agreement and shall be addressed as follows:

in the case of the Seller:

Attention:

Butler Area Sewer Authority
100 Litman Road
Butler, Pennsylvania 16001-3256
Attention: Executive Director

with a copy to:

Obermayer Rebmann Maxwell & Hippel LLP
Centre Square West
1500 Market Street

Suite 3400
Philadelphia, PA 19102-2101
Attention: Thomas Wyatt

in the case of the Buyer:

Pennsylvania American Water
852 Wesley Drive
Mechanicsburg, PA 17055
ADDRESS
Attention: Mike Doran, President

with a copy to:

Pennsylvania American Water
852 Wesley Drive
Mechanicsburg, PA 17055
ADDRESS
Attention: Andrew Swope, Managing General Counsel

or such other persons or addresses as a Party may from time to time designate by notice to the other Party. A notice, other communication or approval is deemed to have been sent and received (i) on the day it is delivered, or if such day is not a Business Day or if the notice is received after ordinary office hours (time or place of receipt), the notice, other communication or approval is deemed to have been sent and received on the next Business Day, or (ii) on the fourth Business Day after mailing if sent by United States registered or certified mail.

Section 15.04. **Headings**

The article, section and paragraph headings in this Agreement are for reference purposes only and do not affect the meaning or interpretation of this Agreement.

Section 15.05. **Severability**

If any term, provision, covenant or restriction contained in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions contained in this Agreement remain in full force and effect and in no way will be affected, impaired or invalidated.

Section 15.06. **Entire Agreement**

This Agreement is the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, negotiations, discussions and understandings, written or oral, between the Parties. There are no representations, warranties, conditions or other agreements, whether direct or collateral, or express or implied, that form part of or affect this Agreement, or that induced any Party to enter into this Agreement or on which reliance is placed by any Party, except as specifically set forth in this Agreement. The Parties acknowledge and

agree that (i) each has substantial business experience and is fully acquainted with the provisions of this Agreement, (ii) the provisions and language of this Agreement have been fully negotiated and (iii) no provision of this Agreement shall be construed in favor of any Party or against any Party by reason of such provision of this Agreement having been drafted on behalf of one Party rather than the other Party.

Section 15.07. Amendments; Waivers

The Parties may amend this Agreement only by the Parties' written agreement that identifies itself as an amendment to this Agreement. Any waiver of, or consent to depart from, the requirements of any provision of this Agreement will be effective only if it is in writing and signed by the Party giving it, and only in the specific instance and for the specific purpose for which it has been given. No failure on the part of any Party to exercise, and no delay in exercising, any right under this Agreement will operate as a waiver of such right. No single or partial exercise of any such right precludes any other or further exercise of such right or the exercise of any other right.

Section 15.08. Parties in Interest; Third Party Beneficiary

This Agreement enures to the benefit of the Parties and their successors and assigns, including, but not limited to, the Creating Municipalities. Except as otherwise provided, this Agreement is not intended to and shall not be construed to create upon any Person other than the Parties any rights or remedies hereunder.

Section 15.09. Assignment

Neither Party to this Agreement may assign any right or delegate any performance under this Agreement without the prior written consent of the other Party. A purported assignment or purported delegation without prior written consent is void.

Section 15.10. Governing Law; Jurisdiction

The laws of the Commonwealth of Pennsylvania (without giving effect to its conflicts of law principles) govern all matters arising and relating to this Agreement, including torts. The Parties irrevocably agree and consent to the jurisdiction of the United States District Court for the Western District of Pennsylvania and the Court of Common Pleas of Butler County, Pennsylvania, for the adjudication of any matters arising under or in connection with this Agreement. Any action initiated in court shall be filed and litigated (including all discovery proceedings) exclusively in the United States District Court for the Western District of Pennsylvania and the Court of Common Pleas of Butler County, Pennsylvania, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by mail to such Party's address set forth in this Agreement shall be effective service of process for any suit, action or other proceeding brought in any such court. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR THE OTHER TRANSACTION DOCUMENTS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY

IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 15.11. **Specific Performance**

Irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms of this Agreement. Either Party may seek specific performance of the terms of this Agreement, in addition to any other remedy to which they are entitled at law or in equity if the other Party has performed in accordance with the terms of this Agreement.

Section 15.12 **Counterparts; Facsimile Execution**

This Agreement may be executed in any number of counterparts which, taken together, is one and the same agreement. This Agreement becomes effective when it has been executed by each Party and delivered to both Parties. To evidence the fact that it has executed this Agreement, a Party may send a copy of its executed counterpart to the other Party by facsimile or email transmission. Such Party is deemed to have executed and delivered this Agreement on the date it sent such facsimile or email transmission. In such event, such Party shall promptly deliver to the other Party an original counterpart of this Agreement executed by such Party.

[THIS SPACE INTENTIONALLY LEFT BLANK;

SIGNATURES NEXT PAGE]

IN WITNESS WHEREOF, the Parties have executed, or caused to be executed by their duly authorized Representatives, this Agreement as of the Effective Date.

BUTLER AREA SEWER AUTHORITY

PENNSYLVANIA-AMERICAN WATER
COMPANY

By: _____
Printed: _____
Its:

By: _____
Printed: _____
Its: President

ATTEST:

ATTEST:

By: _____
Name:
Its:

By: _____
Name:
Its: