

**EXPLORATION AND CONFIDENTIALITY AGREEMENT**

THIS AGREEMENT made and entered into this 14<sup>th</sup> day of DECEMBER, 2021, by and between:

BUTLER AREA SEWER AUTHORITY,  
hereinafter referred to as "BASA,"

and

PENNSYLVANIA -AMERICAN WATER COMPANY,  
hereinafter referred to as "PAWC".

**WHEREAS**, PAWC has expressed its interest in purchasing the BASA sanitary sewer collection, treatment plant and all of its assets; and,

**WHEREAS**, BASA is in agreement to explore the possibility of selling its sanitary sewer collection, treatment plant and all of its assets to PAWC.

**NOW, THEREFORE**, in consideration of the promises hereinafter set forth, and intending to be legally bound hereby, the parties set forth the following terms and conditions of this Agreement:

1. **Exploratory Discussions – Initial Due Diligence.** The parties would like to conduct confidential and exclusive discussions regarding the potential acquisition by PAWC of BASA's wastewater system assets. The parties will enter into a 60-day, non-binding discussion period. During this time, both parties will perform due diligence and advance the preliminary valuation process. At the conclusion of this period, a mutual determination would be made as to whether to proceed forward with a transaction.
2. It is expressly understood that this Agreement, as well as any subsequent Agreement, is not effective until it is signed by both parties and approved by the BASA Board at a public meeting.
3. Notwithstanding anything else in this Agreement, or in any subsequent Agreement, to the contrary, BASA and PAWC shall each have the right to determine at any time and for any reason, in its sole and absolute discretion, not to pursue the culmination of the acquisition of BASA's sanitary sewer collection, treatment plant and all of its assets. Any party no longer wishing to pursue the asset purchase will notify the other of that fact in writing, whereupon this Agreement and all obligations hereunder will terminate.
4. PAWC needs certain initial information from BASA as well as possibly conducting field due diligence of BASA's system assets. The initial due diligence information is detailed on

Attachment A. These documents should be delivered to PAWC as soon as possible, but in no event later than two (2) weeks from the approval date of this Agreement. Upon receipt of these documents, PAWC may contact BASA's Executive Director to schedule a field due diligence trip to visit and tour the system assets. PAWC will then develop an initial asset acquisition proposal to BASA for it to sell all defined wastewater system assets to PAWC. These various assets are collectively referred to as the "Assets." The initial asset acquisition proposal will be provided to BASA within sixty (60) days of the approval of this Agreement.

5. PAWC shall provide an initial asset acquisition proposal under which it is assumed that no liabilities will be assumed by it. All proposals shall provide for the satisfaction of all of BASA's bond and long-term debt obligations.

The initial asset acquisition proposal shall also provide estimates, by line item from below showing net effect on the proposal, and assuming that PAWC would agree to:

- a. Not raise rates more than \$2.00 a month per equivalent dwelling unit (EDU)(assumes 4,000 gallons per month per EDU) per year over a period of five (5) years following any effective date of sale;
- b. Be bound by the collective bargaining agreement (the "CBA") between BASA and District Council 84, American Federation of State, County and Municipal Employees, AFL-CIO, hereinafter the "Union" which currently expires December 31, 2023;
- c. Provide equal or better health, vision and dental insurance coverages if those plans cannot be maintained with MBS as a result of the sale;
- d. Honor the obligation to provide health insurance coverages at equal or better levels for current retiree and eligible spouse and/or dependents;
- e. Honor the obligation to provide health insurance coverages for current employees, both non-Union and Union, hired on or before July 31, 2010, in retirement through a medicare advantage plan providing equal or better levels of coverage, as provided to current retiree and eligible spouse and/or dependents, in accordance the CBA in place as of the effective date of purchase;
- f. Assume the liability of all earned, accrued and unused paid vacation, personal and sick leave days for Union and non-Union employees as of the effective date of purchase; and
- g. Retain all Union and non-Union employees in the BASA service area for a minimum period of five (5) years, absent just cause for dismissal or voluntary resignation; and,
- h. Convert and/or establish a 401(k) plan to replace BASA's 401(a) and 457(b) plans, and which has the same contribution levels, vesting and benefit provisions, as such current plans.
- i. Make a deposit due promptly after execution of an Asset Purchase Agreement to cover BASA's closing costs, including legal fees for special deal legal counsel, fees for Act 12 licensed engineer, fees for an Act 12 utility valuation expert, filing fees with the PUC and other similar costs.

PAWC may also provide additional alternative valuation estimates based upon other assumptions.



6. During this 60-day period, BASA agrees not to solicit proposals from any other entities for the purchase of its assets. **Said period shall commence upon the last date of execution of this Agreement by BASA, and corresponding agreements by both the City of Butler and Butler Township.**

7. If the initial asset acquisition proposal from PAWC is acceptable, and BASA determines not to pursue requests for proposals from other potential buyers, the parties will begin negotiations for a Definitive Asset Purchase Agreement through the Act 12 process. Any acquisition of the Assets by PAWC would be effected only in accordance with the terms of a written definitive agreement that would be the subject of negotiations and executed by the parties (the "Definitive Agreement"). The Definitive Agreement would contain terms and conditions mutually satisfactory to PAWC and BASA, and would be conditioned upon, among other things, each party having obtained any required internal approvals, receipt of all applicable regulatory approvals, and PAWC's satisfactory completion of its due diligence review and investigations as referenced in Paragraph 1 of this Agreement. The Definitive Agreement will be conditioned upon and subject to the approval of the PUC.

~~8. In the event that the parties agree to utilize the Act 12 fair market value approach, described in 66 Pa.C.S. § 1329(a), in order to arrive at a purchase price, PAWC agrees to be responsible to pay for (a) the fees and expenses for the licensed engineer mutually selected to conduct an assessment of BASA's tangible assets as contemplated in Section 1329(a)(4); (b) the fees and expenses which are charged by the utility valuation expert selected by PAWC; and (c) the fees and expenses which are charged by the utility valuation expert selected by BASA, which shall be reimbursed to BASA at closing, subject to the limitations contained in Section 1329(b)(3).~~

8. In the event that the parties do not agree to utilize the Act 12 fair market value approach, described in 66 Pa.C.S. § 1329(a), in order to arrive at a purchase price, each party will be responsible for the fees and expenses of its own consultants incurred in connection with any process outlined in the Definitive Agreement and any transactions that may be contemplated therein.

9. Each of the parties will bear its own costs and expenses for legal services incurred in connection with any process outlined within this Agreement as well as the Definitive Agreement and any transactions that may be contemplated therein.

10. Although PAWC will be granted the opportunity to review documents and may tour facilities prior to the issuance of its initial asset acquisition proposal, BASA agrees to provide PAWC, its representatives and advisors with full and reasonable access, at agreed-upon times, to further review BASA's books, records, documents, facilities, and to speak with BASA's key personnel, attorneys, accountants and other representatives to discuss more fully, the business, financial condition of BASA as may be reasonably requested by PAWC and approved by BASA. Access to personally identifiable information (PII) related to health or other matters for any BASA employee will not be provided.

11. Confidentiality. Each party will keep strictly confidential all documents and information that it receives from, or learns about, the other party during the course of the discussions, performance of due diligence or development of a Definitive Agreement regarding the potential acquisition by PAWC of the Assets. A party receiving such information will use that information solely for the purposes contemplated by this Agreement and the process/transaction it describes, and will not disclose that information to any person other than its employees or other third parties who need to know that information for purposes of this Agreement and have agreed to be bound by the provisions of this Agreement. Each party will use no less than the same degree of care as it uses to protect its own trade secrets and confidential information, and no less than a reasonable degree of care, to protect from disclosure the confidential information of the other party. Each party will, on the request of the other party, and in any case on the termination of this Agreement, return to the other party all such information, and all documents or other communications incorporating or describing such confidential information, and will certify that the same has been done. The parties further agree that all discussions between the parties regarding the potential acquisition by PAWC of the Assets and the negotiation of the Definitive Agreement will be considered confidential information that is subject to this Paragraph. The undertakings in this Paragraph shall apply to all media on which confidential information is contained, reflected or incorporated, whether in written or electronic form. However, the restrictions of this Paragraph will not apply to any information that has come within the public domain through no fault of or action by the receiving party, or has been rightfully made available to the receiving party on a non-confidential basis prior to its disclosure by the other party, or becomes available to receiving party on a non-confidential basis from any third party that, in the course of disclosing such information, does not violate any contractual or legal obligation to the other party to this Agreement, or is determined to be a public record required to be produced by BASA under the Right-to-Know Law. PAWC shall use reasonable efforts to provide a written statement to BASA along with any information submitted to BASA that the information contains trade secrets, confidential proprietary information or is otherwise protected from disclosure. BASA agrees to promptly provide PAWC with a copy of any Right-to-Know Law request, up until any notice is received pursuant to Section 3 above, or until dissolution of BASA by its incorporating municipalities, whichever first occurs. The provisions of this Paragraph 12 shall survive the termination of this Agreement for a period of three (3) months, unless the legally-binding terms and conditions of this Agreement are superseded by the Definitive Agreement.

Notwithstanding anything to the contrary set forth above, the parties agree that this Agreement itself, if approved at a public meeting, is a public document, and BASA may notify its employees about it and its contents.

**IN WITNESS WHEREOF**, the above parties, intending to be legally bound, have executed this Exploration and Confidentiality Agreement the date(s) set forth below.



ATTEST:

Diana E. M. YL  
Secretary  
Executive Director

**BUTLER AREA SEWER AUTHORITY**

By: R. F. Spant  
Vice Chairman, Butler Area Sewer Authority Board

Date: 12/14/2021

ATTEST:

\_\_\_\_\_  
Secretary

**PENNSYLVANIA-AMERICAN WATER COMPANY**

By: [Signature]  
President FR. MANK OF BUSINESS DEV.

Date: 12/22/2021

**Attachment A**  
**Information for Due Diligence Analysis**

**Financial Modeling:**

1. Inter-Municipal Agreements, if applicable
2. Other contracts for bulk chemicals, transportation and/or treatment, if applicable
3. Approved Act 537 plan
4. Any EPA or DEP Consent Orders, Notices of Violation, Action Plans, etc., within the last five (5) years
5. Employee list by job title, wage, date of hire, year of birth, benefits coverage (ee only, family, etc.) - names to be excluded
6. Benefits summary plan descriptions
7. Documents detailing the 401(a) and 457(b) retirement savings plans
8. Copies of any current and anticipated debt documents (bonds, notes, loans, etc.)
9. Copies of any recent grants received/anticipated including source, amount, dates, and any associated grant requirements
10. Site visit to document current visible condition of assets and safety assessment

**Confirmatory Due Diligence:**

1. Recent Discharge Monitoring Reports (DMR) for the last three (3) years
2. Latest I&I Studies for CAP subsystems and Alameda Park area
3. Industrial Pre-Treatment Program reports for the last three (3) years
4. NPDES permit(s)
5. GIS mapping (shapes files) of sewer system showing mains, pump stations, treatment plants, EQ basins.
6. Copy of current insurance policies covering sewer system and three-year loss history
7. List of all property rights applicable to sewer system