

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In re: Application of Pennsylvania-American  
Water Company under Section 1102(a) of the  
Pennsylvania Public Utility Code, 66 Pa C.S.  
§ 1102(a), for approval of (1) the transfer, by  
sale, to Pennsylvania-American Water  
Company, of substantially all of the assets,  
properties and rights related to the wastewater  
collection and treatment system owned by the  
York City Sewer Authority and operated by the  
City of York, (2) the rights of Pennsylvania-  
American Water Company to begin to offer or  
furnish wastewater service to the public in the  
City of York, Pennsylvania, and to three bulk  
service interconnection points located in North  
York Borough, Manchester Township and York  
Township, York County, Pennsylvania. (3) the  
rights of Pennsylvania-American Water  
Company to begin to offer or furnish Industrial  
Pretreatment Program wastewater service to  
qualifying industrial customers in the City of  
York, Manchester Township, Spring Garden  
Township and West Manchester Township, York  
County, Pennsylvania.

Docket No. A-2021-3024681

**DIRECT TESTIMONY  
AND EXHIBITS**

**OF**

**MICHAEL R. HELFRICH**

**ON BEHALF OF THE CITY OF YORK**

**July 1, 2021**

**DIRECT TESTIMONY OF MICHAEL R. HELFRICH  
ON BEHALF OF THE CITY OF YORK**

1 **Q. PLEASE STATE YOUR FULL NAME AND BUSINESS ADDRESS.**

2 **A.** My name is Michael Ray Helfrich and my business address is 101 S. George St., York,  
3 Pennsylvania, 17401.

4

5 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

6 **A.** I serve the City of York as its Mayor. In my capacity as Mayor of the York City I am  
7 responsible for overseeing all departments of government for the York City, including  
8 Economic and Community Development, Business Administration, the Fire, Police, and  
9 Public Works. As relevant to this proceeding, the City's Public Works Department is  
10 responsible for sewer operations.

11

12 **Q. PLEASE DESCRIBE YOUR PROFESSIONAL EXPERIENCE.**

13 **A.** In 2001, I started the non-profit Codorus Creek Improvement Partnership, leading  
14 volunteers in an effort to restore York City's main natural resource. From 2005 through  
15 2017, I served as the Executive Director of the Stewards of the Lower Susquehanna and as  
16 the Lower Susquehanna Riverkeeper, a legal and political advocate for improvement of  
17 waterways and communities around central Pennsylvania and northern Maryland.

18 My involvement with the York City government began when I was elected to City  
19 Council in 2011. I served on Council from 2012 through 2018, including serving as Vice  
20 President of Council from January 4, 2016, to November 8, 2016, and serving as President

1 of Council from November 9, 2016, to January 1, 2018. I was elected Mayor of the York  
2 City in 2017 and have held that position from January 2, 2018, to date.

3 I have also held several volunteer positions, including sitting on the York County  
4 Community Foundation Codorus Watershed Endowment Advisory Board, serving as  
5 Director of the Board of Keep York Beautiful and the Watershed Alliance of York, and  
6 serving as Vice-Chair of the York NAACP Labor and Industry Committee.

7  
8 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE PENNSYLVANIA**  
9 **PUBLIC UTILITY COMMISSION?**

10 **A.** No.

11  
12 **Q. IN SUPPORT OF WHOM ARE YOU TESTIFYING IN THIS PROCEEDING?**

13 **A.** I am testifying on behalf of the City of York in this proceeding. As more-fully explained  
14 below, Pennsylvania Public Utility Commission (“PUC” or “Commission”) approval of  
15 the Application will provide numerous benefits for the City of York, its residents, and the  
16 surrounding communities.

17  
18 **Q. PLEASE DESCRIBE THE PURPOSE OF YOUR TESTIMONY.**

19 **A.** The purpose of my testimony is to review the City’s role in the process of selling the York  
20 City sewer system and the benefits accruing to the City and the public from the proposed  
21 sale of the sewer system (the “Transaction”) to the Pennsylvania-American Water  
22 Company (the "PAWC").

1 **Q. PLEASE PROVIDE A BRIEF OVERVIEW OF THE YORK SYSTEM.**

2 **A.** The York City Sewer Authority (“Authority”) owns the sewer system providing treatment,  
3 conveyance, and collection service to the City of York, and treatment and conveyance  
4 service to several surrounding municipalities (“York System”). The municipalities  
5 receiving treatment and conveyance services through intermunicipal agreements are  
6 Manchester Township, West Manchester Township, York Township, North York  
7 Borough, West York Borough and Spring Garden Township. Notably, the intermunicipal  
8 agreement with West York Borough was assigned to The York Water Company in 2016  
9 upon approval from this Commission through its December 22, 2020, Order at PUC Docket  
10 No. A-2016-2552403. Additionally, the City has a more-limited intermunicipal agreement  
11 with Springettsbury Township for emergency flows. Note that throughout my testimony,  
12 I will collectively refer to these intermunicipal contract customers as the (“Connected  
13 Municipalities”).

14 The York System is comprised of a 26 million gallons per day (“MGD”) treatment  
15 plant, approximately 65,000 linear feet (“lf”) of interceptors, and approximately 489,000  
16 lf of collection pipelines and other system assets serving the City of York. Notably, the  
17 collection systems serving the Connected Municipalities are not part of the York System  
18 and are not being transferred to PAWC as part of this transaction.

19  
20 **Q. PLEASE DESCRIBE THE CITY’S INTEREST IN THE TRANSACTION.**

21 **A.** The York System was originally constructed by the City, transferred to the Authority by  
22 deed in 1952 and is currently operated by the City pursuant to a long-term lease entered  
23 into with the Authority in 1987. Through Act 12 of 2016, the General Assembly removed



1 restrictions on the ability to pay market value for public water and sewer assets in order to  
2 encourage regionalization and consolidation of the Commonwealth's water and sewer  
3 systems. The sale process codified in Section 1329 of the Public Utility Code could result  
4 in sale proceeds benefitting the City of York and the York System customers by generating  
5 structural debt relief. For example, in developing the 2021 budget, the City identified a  
6 \$13.5 million budget shortfall. Absent a sale, such shortfalls would continue as the City's  
7 financial condition deteriorates. Additionally, sale to PAWC, a qualified buyer will  
8 provide critical operational efficiencies by transferring ownership of the York System to a  
9 more experienced and sophisticated utility operator.

10  
11 **Q. PLEASE SUMMARIZE THE TRANSACTION.**

12 **A.** For the reasons described above, the City issued a public RFP on July 10, 2020, seeking  
13 proposals for purchase of the entire York System from any and all interested bidders.  
14 Among four proposals received in response to the RFP, PAWC's proposal to purchase to  
15 York System for \$235 million was selected as the successful proposal on December 22,  
16 2020. The City conducted two public input hearings on January 14, 2021, to review  
17 PAWC's proposal and discuss the potential sale with interested members of the public.  
18 City Council subsequently approved the Asset Purchase Agreement on March 2, 2021. See  
19 **City Exhibit\_\_MRH-1**. The Authority's Board similarly authorized execution of the  
20 Asset Purchase Agreement on April 6, 2021. See **City Exhibit\_\_MRH-2**. The City has  
21 since worked with the Authority to support PAWC in preparing this Application for  
22 Commission approval and in preparing for the smooth transition of ownership and service  
23 obligations.

1 **Q. WHAT ARE THE BENEFITS OF THE TRANSACTION?**

2 **A.** PAWC is the largest water system operator and one of the largest wastewater system  
3 operators in Pennsylvania. As detailed in PAWC's testimony, it has access to the capital  
4 needed to fund significant capital improvements. The most-recent capital plan approved  
5 for the treatment plant shows approximately \$44 million of necessary capital upgrades over  
6 the next five years. See **City Exhibit\_\_MRH-3**. Additionally, the collection system  
7 serving the City will require capital upgrades as well with as much as 86% of the City's  
8 collection system consisting of clay or brick pipes installed before 1950. See **Appendix A-**  
9 **15-a**. The City believes PAWC will be better positioned to meet these costs through its  
10 more extensive customer base and industry expertise.

11 Additionally, PAWC has committed to specific benefits accruing to customers.  
12 First, PAWC committed to maintain an in-person customer service center within the City  
13 of York, ensuring that the sale will preserve access to local representatives for customers.  
14 PAWC has also committed, subject to Commission approval, to a moratorium on any base  
15 rate increases for a period of three years following Closing of the Transaction. Lastly,  
16 PAWC's acquisition of the York System will result in access to payment assistance for the  
17 most vulnerable retail customers served by the York System as they will also now be  
18 eligible for payment assistance through PAWC's H2O Help to Others Program. See PAWC  
19 Statement No. 2 at 20.

20  
21 **Q. PLEASE EXPLAIN HOW THE TRANSACTION PROCEEDS WILL**  
22 **SPECIFICALLY BENEFIT THE YORK COMMUNITY.**

1 A. Sale proceeds realized by the Authority will be applied to repay or defease sewer debt and  
2 the remaining proceeds will be transferred to the City upon Closing of the Transaction and  
3 dissolution of the Authority. These remaining proceeds would be available to address  
4 critical public service needs in the community, including additional municipal bond debt,  
5 municipal pension obligations, social programs, infrastructural improvements, and other  
6 key initiatives. The City has not determined a specific use for all of the proceeds but has  
7 retained the Pennsylvania Economy League to advise on best uses of proceeds to provide  
8 long-term benefits to City residents and other stakeholders in the community.

9  
10 **Q. HOW DOES THE TRANSACTION IMPACT THE CITY'S EMPLOYEES**  
11 **ASSIGNED TO THE YORK SYSTEM?**

12 A. Throughout the process of exploring a sale, the City remained committed to protecting the  
13 interest of the employees assigned to the York System. Consistent with the terms of the  
14 RFP, PAWC has agreed to offer employment to each of these employees, thus providing  
15 job protection for the sewer system employees.

16  
17 **Q. HOW DOES THE TRANSACTION IMPACT THE CONNECTED**  
18 **MUNICIPALITIES?**

19 A. As wholesale customers receiving treatment and conveyance services, the Connected  
20 Municipalities would benefit from PAWC's operational expertise and efficiencies in the  
21 same manner as the retail customers. However, from an administrative perspective, the  
22 Connected Municipalities are positioned differently from the retail customers within the  
23 City of York as each of these customers takes wholesale sewer service on terms set forth

1 in their intermunicipal agreements. These intermunicipal agreements will be assigned to  
2 PAWC as part of the Transaction.

3  
4 **Q. DID THE CITY NOTIFY THE CONNECTED MUNICIPALITIES OF THE**  
5 **PENDING ASSIGNMENT OF THESE INTERMUNICIPAL AGREEMENTS?**

6 **A.** Yes. The City forwarded Notices of Assignment to the Connected Municipalities on  
7 May 18, 2021, advising them of the pending assignment. See **City Exhibit\_\_MRH-4.**

8  
9 **Q. ARE YOU AWARE OF RECENT CITY LEGISLATION RELATED TO THE**  
10 **INTERMUNICIPAL AGREEMENTS?**

11 **A.** Yes. On June 1, 2021, the York City Council passed Bill No. 15, which amended the City  
12 Code to implement backup wholesale sewer service rates to take effect during any period  
13 in which an intermunicipal agreement for wholesale sewer service is terminated or  
14 otherwise not effective.

15  
16 **Q. WHAT IS THE PURPOSE OF BILL NO. 15?**

17 **A.** The Ordinance provides a means for continued service to the wholesale customers in the  
18 undesirable event that an intermunicipal contract would be terminated without readily  
19 available service alternatives for the affected customers. This is a backstop measure; it is  
20 not my expectation that this Ordinance would be invoked.

21  
22 **Q. DOES THE BILL MODIFY OR SUPERSEDE THE EXISTING**  
23 **INTERMUNICIPAL AGREEMENTS?**

1 A. No. The existing intermunicipal agreements remain fully effective.

2

3 **Q. HAS THE CITY RETAINED A COMMISSION-APPROVED UTILITY**  
4 **VALUATION EXPERT (“UVE”) TO PREPARE A FAIR MARKET VALUE**  
5 **APPRAISAL FOR USE IN THIS SECTION 1329 PROCEEDING?**

6 A. Yes. On behalf of the Authority, the City retained ScottMadden, Inc. to prepare a fair  
7 market value appraisal for this proceeding.

8

9 **Q. OVERALL, DO YOU BELIEVE THIS TRANSACTION IS IN THE PUBLIC**  
10 **INTEREST?**

11 A. Yes. For the reasons stated throughout my testimony, the City of York believes the  
12 Transaction is in the public interest and will provide significant short and long-term  
13 benefits for the City of York residents, residents of the surrounding areas, and the general  
14 public. I respectfully request that the Commission approve the Transaction.

15

16 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

17 A. Yes, although I reserve the right to submit rebuttal or surrebuttal testimony as may be  
18 necessary. Thank you.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In re: Application of Pennsylvania-American Water Company under Section 1102(a) of the Pennsylvania Public Utility Code, 66 Pa C.S. § 1102(a), for approval of (1) the transfer, by sale, to Pennsylvania-American Water Company, of substantially all of the assets, properties and rights related to the wastewater collection and treatment system owned by the York City Sewer Authority and operated by the City of York, (2) the rights of Pennsylvania-American Water Company to begin to offer or furnish wastewater service to the public in the City of York, Pennsylvania, and to three bulk service interconnection points located in North York Borough, Manchester Township and York Township, York County, Pennsylvania. (3) the rights of Pennsylvania-American Water Company to begin to offer or furnish Industrial Pretreatment Program wastewater service to qualifying industrial customers in the City of York, Manchester Township, Spring Garden Township and West Manchester Township, York County, Pennsylvania.

Docket No. A-2021-3024681

**EXHIBITS  
OF  
MICHAEL R. HELFRICH**

**ON BEHALF OF THE CITY OF YORK**

**July 1, 2021**

- Click [here](#) to view purchase agreement.
- Click [here](#) to view disclosure schedules.

Council of City of York, PA  
Session 2021  
Bill No. 6  
Ordinance No. 6

INTRODUCED BY: **Sandie Walker**

DATE: **February 16, 2021**

**AN ORDINANCE**

AUTHORIZING THE EXECUTION BY THE CITY OF YORK, YORK COUNTY, PENNSYLVANIA (THE “CITY”) OF AN ASSET PURCHASE AGREEMENT (THE “PURCHASE AGREEMENT”) BY AND AMONG THE CITY, THE YORK CITY SEWER AUTHORITY (THE “AUTHORITY”), AND PENNSYLVANIA-AMERICAN WATER COMPANY (THE “BUYER”); AUTHORIZING THE TERMINATION OF THE EXISTING LEASE, AS SUPPLEMENTED (THE “CITY LEASE”), BETWEEN THE CITY AND THE AUTHORITY (THE “AUTHORITY”), AS TO THE WASTEWATER UTILITY SYSTEM; AUTHORIZING THE REFUNDING AND/OR DEFEASANCE TO MATURITY OF ALL OBLIGATIONS ISSUED BY THE AUTHORITY IN CONNECTION WITH THE WASTEWATER UTILITY SYSTEM (THE “SYSTEM OBLIGATIONS”); AUTHORIZING AND DIRECTING THE AUTHORITY TO TERMINATE ITS EXISTENCE IN ACCORDANCE WITH THE MUNICIPAL AUTHORITIES ACT, AND DELIVER TO THE CITY THE NECESSARY CERTIFICATE REQUESTING TERMINATION FORTHWITH UPON THE REFUNDING AND/OR DEFEASANCE OF THE SYSTEM OBLIGATIONS; APPROVING THE FORM OF CERTIFICATE OF TERMINATION OF THE AUTHORITY AND AUTHORIZING THE FILING OF SUCH CERTIFICATE IN THE OFFICE OF THE SECRETARY OF THE COMMONWEALTH; AUTHORIZING ALL ACTIONS RELATING TO THE EXECUTION OF THE PURCHASE AGREEMENT, THE TERMINATION OF THE CITY LEASE, THE REFUNDING AND/OR DEFEASANCE TO MATURITY OF THE SYSTEM OBLIGATIONS, THE TERMINATION OF THE AUTHORITY AND THE ASSUMPTION OF ALL OF THE AUTHORITY’S OBLIGATIONS UNDER AND PURSUANT TO THE PURCHASE AGREEMENT THEREUPON; AUTHORIZING INCIDENTAL ACTION TO BE TAKEN BY THE PROPER OFFICERS OF THE CITY; RESCINDING INCONSISTENT ORDINANCES AND RESOLUTIONS; AND STATING THE EFFECTIVE DATE.

**WHEREAS**, the City of York, York County, Pennsylvania (the “City”) is a political subdivision of the Commonwealth of Pennsylvania and is governed by the City Council (the “Governing Body”); and

**WHEREAS**, the City, acting through its Governing Body, has heretofore incorporated the York City Sewer Authority (the “Authority”) pursuant to the Pennsylvania Municipal Authorities Act, Act of Jun. 19, 2001, P.L. 287, as amended, 53 Pa.C.S. §5601 *et seq.* (the “Authorities Act”); and

**WHEREAS**, the Authority owns all of the assets comprising the wastewater utility system of the City (the “Sewer System”), and the Authority has leased the Sewer System to the City for operation pursuant to a Lease dated September 15, 1987, as supplemented to date (the “City Lease”); and

**WHEREAS**, the Authority has heretofore issued its (i) Guaranteed Sewer Revenue Bond, Series of 2008 (the “2008 Bond”); (ii) Guaranteed Sewer Revenue Bond, Series of 2011 (the “2011 Bond”); (iii) Guaranteed Sewer Revenue Bonds, Series of 2017 (the “2017 Bonds”) and (iv) Guaranteed Sewer Revenue Bond, Series of 2019 (the “2019 Bond”, and together with the 2008 Bond, the 2011 Bond, and the 2017 Bonds, the “System Obligations”), all of which System Obligations are currently outstanding and the proceeds of which were used to finance various improvements to the Sewer System; and

**WHEREAS**, the System Obligations are secured by a Trust Indenture, dated as of September 15, 1987, as supplemented to date (the “Indenture”), between the Authority and Manufacturers and Traders Trust Company, as trustee (the “Trustee”); and

**WHEREAS**, the City has heretofore issued a Request for Proposals, dated July 10, 2020, as amended, for the Sale of the Municipal Wastewater System currently operated by the City under the City Lease (the “RFP”); and

**WHEREAS**, qualified firms and entities, including Pennsylvania-American Water Company (the “Buyer”), submitted responses to the RFP; and

**WHEREAS**, the Buyer heretofore submitted a bid proposal pursuant to the terms of the RFP (the “Proposal”), which Proposal was accepted by the City pursuant to a Resolution adopted by the City Council on January 20, 2021; and

**WHEREAS**, the City desires to enter into an Asset Purchase Agreement (the “Purchase Agreement”) with the Authority and the Buyer, providing for the sale of the Sewer System in accordance with the terms and conditions set forth therein and in the Proposal; and

**WHEREAS**, to facilitate the execution of the Purchase Agreement, the City desires to terminate the City Lease and to authorize and approve the refunding and/or defeasance to maturity of the System Obligations by the Authority, all as effective as of closing on the sale of the Sewer System pursuant to the Purchase Agreement; and

**WHEREAS**, upon the execution of the Purchase Agreement, the termination of the City Lease and the refunding and/or defeasance to maturity of the System Obligations, the



Authority intends to terminate its existence in accordance with the Authorities Act, and that all of its rights and responsibilities under the Purchase Agreement be assigned to the City by operation of law.

**NOW, THEREFORE, BE IT ORDAINED AND ENACTED**, by the City Council of the City of York, York County, Pennsylvania, as follows:

**Section 1.** The City hereby authorizes and approves the execution of the Purchase Agreement, in the form attached hereto as Exhibit A, and the termination of the City Lease. The proper officers of the City are authorized and directed on behalf of the City to execute any and all papers and documents and to do and cause to be done any and all actions and things necessary or proper to carry out the transactions contemplated by the Purchase Agreement and to terminate the City Lease.

**Section 2.** The City hereby authorizes and approves the refunding and/or defeasance to maturity of the System Obligations by the Authority, in accordance with the Authorities Act and the operative finance documents underlying such obligations, and the proper officers of the City are authorized and directed on behalf of the City to execute any and all papers and documents and to do and cause to be done any and all actions and things necessary or proper to accomplish such refunding and/or defeasance.

**Section 3.** The City hereby authorizes the termination of the Authority's existence in accordance with the Authorities Act, and directs the proper officers of the Authority to deliver to the City the necessary certificate requesting termination for approval by the City, in the form attached hereto as Exhibit B (the "Termination Certificate").

The proper officers of the City are hereby authorized to file, on the day of closing on sale of the Sewer System pursuant to the Purchase Agreement, the Termination Certificate in the Office of the Secretary of the Commonwealth of Pennsylvania. Upon receipt of the Termination Certificate, the Secretary of the Commonwealth shall note the termination of existence of the Authority on the Authority's record of incorporation and return the Certificate with approval to the City. Upon receipt thereof, the Governing Body of the City is hereby authorized to record the Certificate in the Office of the Recorder of Deeds of York County. Upon recordation of the Termination Certificate with the York County Recorder of Deeds, all property of the Authority shall pass to the City and the Authority will be effectively terminated.

Provided, however, that the termination of the Authority shall be contingent upon, and shall not occur until, the completion of the all of the following: (1) the execution of the Purchase Agreement by all the parties thereto and the occurrence of the closing thereunder; (2) the termination of the City Lease; and (3) the refunding and/or defeasance to maturity of the System Obligations in accordance with the Authorities Act and the operative finance documents underlying such obligations.

The proper officers of the City are authorized and directed on behalf of the City to execute any and all papers and documents and to do and cause to be done any and all actions and things necessary or proper to facilitate the termination of the Authority, and the execution, delivery and filing of the Termination Certificate.

**Section 4.** The proper officers of the City are further authorized and directed, in the name of and on behalf of the City, to execute and deliver such other documents, instruments, amendments, waivers, certificates and confirmations as may be necessary or appropriate in furtherance of the actions contemplated hereby and to carry out the transactions contemplated herein.

**Section 5.** All ordinances, parts of ordinances, resolutions or parts of resolutions inconsistent herewith be and the same are hereby rescinded, cancelled and annulled.

**Section 6.** This Ordinance shall take effect immediately.

**[Remainder of Page Intentionally Left Blank; Signatures Follow]**

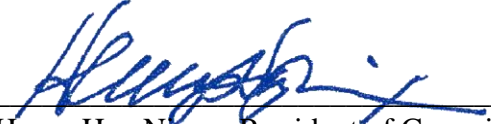
**ORDAINED AND ENACTED** into law by the City of York on this 2<sup>nd</sup> day of March, 2021.

PASSED FINALLY: March 2, 2021

BY THE FOLLOWING VOTE:

YEAS: Rivera, Ritter-Dickson, Walker, Nixon – 4, \_\_\_\_\_

NAYS: Washington - 1

  
\_\_\_\_\_  
Henry Hay Nixon, President of Council

ATTEST:

  
\_\_\_\_\_  
Dianna L. Thompson-Mitchell, City Clerk

Presented to the Mayor for approval this 2<sup>nd</sup> day of March 2021.

APPROVED:  \_\_\_\_\_ 3/2/2021  
Mayor Date

VETOED: \_\_\_\_\_  
Mayor Date

## YORK CITY SEWER AUTHORITY

## RESOLUTION NO. 210324-02

A RESOLUTION AUTHORIZING EXECUTION BY THE YORK CITY SEWER AUTHORITY OF AN ASSET PURCHASE AGREEMENT BY AND AMONG THE CITY OF YORK, THE AUTHORITY, AND PENNSYLVANIA-AMERICAN WATER COMPANY; AUTHORIZING THE REFUNDING AND/OR DEFEASANCE TO MATURITY OF ALL OBLIGATIONS ISSUED BY THE AUTHORITY IN CONNECTION WITH THE WASTEWATER UTILITY SYSTEM; AUTHORIZING THE TERMINATION OF THE EXISTING LEASE, AS SUPPLEMENTED, BETWEEN THE CITY AND THE AUTHORITY; AUTHORIZING TERMINATION OF THE EXISTENCE OF THE AUTHORITY IN ACCORDANCE WITH THE MUNICIPALITIES AUTHORITY ACT; AND AUTHORIZING ALL ACTIONS RELATED TO THE EXECUTION AND IMPLEMENTATION OF THE PURCHASE AGREEMENT, THE REFUNDING AND/OR DEFEASANCE TO MATURITY OF THE SYSTEM OBLIGATIONS, THE TERMINATION OF THE LEASE, AS SUPPLEMENTED, BETWEEN THE CITY AND THE AUTHORITY, AND THE TERMINATION OF THE AUTHORITY

WHEREAS, the York City Sewer Authority of York County, Pennsylvania (the “Authority”) is a municipal authority organized and existing under the Municipality Authorities Act; and

WHEREAS, the Authority owns a wastewater treatment and conveyance system (the “Sewer System”), which has been leased to the City of York, York County, Pennsylvania (the “City”) for operation pursuant to a Lease, as supplemented (the “City Lease”); and

WHEREAS, the Authority has issued various System Obligations, which are currently outstanding, the proceeds of which were used to finance various improvements to the sewer system, including, but not limited to: 1) Guaranteed Sewer Revenue Bond Series of 2008; 2) Guaranteed Sewer Revenue Bond Series of 2011; 3) Guaranteed Sewer Revenue Bonds Series of 2017; and 4) Guaranteed Sewer Revenue Bond Series of 2019; and

WHEREAS, the City issued a Request for Proposals dated July 10, 2020, as amended, for the sale of the Sewer System (the “RFP”); and

WHEREAS, qualified firms and entities, including Pennsylvania-American Water Company (the “Buyer”), submitted responses to RFP; and

WHEREAS, the Buyer submitted its bid proposal pursuant to the terms of the RFP, which proposal was accepted by the City pursuant to a Resolution adopted by City Council in January 2021; and

WHEREAS, on March 2, 2021, the City approved the execution of an Asset Purchase Agreement (the “Purchase Agreement”) with the Buyer, whereby the Authority and the City agreed to sell, transfer, and convey to Buyer all the assets of the Sewer System, and in

connection therewith, agrees to assume certain ongoing obligations and liabilities of the Authority and the City related to such acquired assets; and

WHEREAS, the Authority has approved an agreement with the City whereby the City will agree to assume responsibilities for actions of the Authority under the Purchase Agreement and fully indemnify the Authority from a variety of actions and inactions related to the Purchase Agreement and the operation and ownership of the Sewer System (the "City Agreement"); and

WHEREAS, it is expected that the City Agreement will be approved by York City Council by resolution on April 6, 2021; and

WHEREAS, the City is requesting that the Authority approve the Purchase Agreement conditioned on the City's approval and execution of the City Agreement.

NOW, THEREFORE, BE IT RESOLVED, this 24<sup>th</sup> day of March, 2021, by the Board of the York City Sewer Authority, and it is hereby resolved by the authority of the same as follows:

1. Upon approval by the Council of the City of York and execution by the City of the City Agreement, the Authority hereby authorizes and approves the execution of the Purchase Agreement in the form attached hereto as **Exhibit "A"**. Proper officers of the Authority are hereby authorized and directed on behalf of the Authority to execute any and all papers and documents and to be cause to be done any and all actions and things necessary and proper to carry out the transactions contemplated by the Purchase Agreement.

2. The Authority hereby authorizes and approves the refunding and/or defeasance to maturity of the System Obligations in accordance with the Municipality Authorities Act upon receipt of the Purchase Price, as defined and contemplated in the Purchase Agreement, and authorizes and directs the proper officers of the Authority to execute any and all papers and documents and, to do and cause to be done any and all actions and things necessary and proper to accomplish such refunding and/or defeasance at the time of Closing.


3. Upon refunding or defeasance to maturity of the System Obligations, the Authority hereby approves the termination of the City Lease. Proper Authority officers are authorized and directed to undertake any and all such actions and execute necessary documentation to terminate the City Lease.

4. Upon refunding and/or defeasance to maturity of the System Obligations and transfer of all Authorizations and Permits held by the Authority, such proper officers of the Authority are hereby authorized to deliver to the City the necessary certificate requesting termination of the existence of the Authority.

5. This Resolution shall take effect immediately.

ATTEST:

YORK CITY SEWER AUTHORITY

  
Michael Connor, Secretary

  
Philip W. Briddell, Chairman

Seal

ASSET PURCHASE AGREEMENT

By and Among

York City Sewer Authority  
As Seller

The City of York

and

Pennsylvania-American Water Company  
As Buyer

Dated as of [DATE]

## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this “**Agreement**”), dated as of [DATE] (the “**Effective Date**”), is made and entered into by and among The York City Sewer Authority, York County, a body corporate and politic, duly organized under the Pennsylvania Municipality Authorities Act, 53 Pa. C.S. §§ 5601 *et seq.* (the “**Seller**”), the City of York, Pennsylvania, a political subdivision of the Commonwealth of Pennsylvania organized under the Third Class City Code, Act of November 24, 2015, P.L. 67, 11 Pa. C.S. §10101 *et seq.* (the “**City**”) and Pennsylvania-American Water Company, (the “**Buyer**”), a Pennsylvania corporation.

### WITNESSETH:

**WHEREAS**, Seller, acting by and through the Board (defined below), owns and the City operates a wastewater system (the “**System**”) that provides public wastewater collection and treatment service to various customers in the City and public wastewater treatment and conveyance services to the City, Manchester Township, West Manchester Township, York Township, North York Borough, West York Borough, Spring Garden Township, and Springettsbury Township; and

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

**WHEREAS**, Buyer, in reliance upon the representations, warranties and covenants of Seller and City herein, desires to purchase and acquire from Seller, and Seller, in reliance upon the representations, warranties and covenants of Buyer herein, 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 Seller related to such acquired assets, all on the terms and conditions set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the foregoing and of the mutual representations, warranties, covenants, and agreements herein contained, the receipt and sufficiency of which hereby are acknowledged, intending to be legally bound, the Parties hereto 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 therein), shall have the meanings set forth in this Article I:

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

“**Act 537 Official Plan**” means the official plan required under the Pennsylvania Sewage Facilities Act, 35 P.S. §§ 75101—750.20a, and 25 Pa. Code Chapter 71, titled “York City Sewer Authority Regional Act 537 Plan,” dated March 1999 and prepared by Buchart Horn, Inc.

“**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



shall include, 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 shall be 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 shall be 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 shall be 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 ascribed thereto in the recitals to this Agreement (and includes all Schedules and Exhibits referred to herein), as amended, modified and supplemented from time to time in accordance with the terms hereof.

“**Agreement Proposal Security**” means the \$5,000,000 bid bond made by Buyer for the account of Seller under and pursuant to that Cash Deposit Escrow Agreement, dated December 8, 2020, by and among Fulton Bank, N.A., Buyer and the City.

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

“**Assignment and Assumption Agreement**” has the meaning specified in Section 12.02(c).

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

“**Authorizations and Permits**” means all licenses, permits, franchises, authorizations, plans, certificates, registrations, consents, orders, adjudications, enforcement agreements, variances, waivers and approvals currently in effect issued or granted by Governmental Authorities, including without limitation, permits, authorizations, and plans issued under any Laws governing protection of the Environment, operating permits, and approvals that are held by Seller or the City that primarily relate directly or indirectly to the operation of the System, including those described in Schedule 4.14.

“**Average Daily AR Payment**” has the meaning specified in Section 6.12.

“**Board**” means the Board of the York City Sewer Authority.

“**Business Day**” means any day that is neither a Saturday, a Sunday nor a day observed as a holiday by either the Commonwealth of Pennsylvania or the United States government.

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

“**Buyer Indemnified Persons**” has the meaning specified in Section 7.02.

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

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

“**City’s Benefit Obligations**” has the meaning specified in Section 4.11.

“**City Deposit**” has the meaning specified in Section 3.01.

“**City’s Plans**” has the meaning specified in Section 4.11.

“**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 hereby, all in accordance with the terms and conditions of this Agreement and as provided for in Article XII.

“**Closing Date**” has the meaning specified in Section 12.01.

“**Closing Effective Time**” has the meaning specified in Section 12.01.

“**COBRA**” means Title X of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, including, without limitation, Sections 2201 through 2208 of the Public Health Service Act and Part 6 of Subtitle B of the Employee Retirement Income Security Act of 1974, as amended.

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

“**Collective Bargaining Agreement**” means the existing collective bargaining agreement between Teamsters Local 776 and the City for the period of January 1, 2019 to December 31, 2022.

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

“**Consent Order**” has the meaning specified in Section 6.13.

“**Deposit Note**” means the tax and revenue anticipation note substantially in the form as set forth in Exhibit A and to be issued by the City to the Buyer in connection with the Buyer’s agreement to make the City Deposit as set forth in Section 3.01.

“**Easements**” means all easements, rights of way, licenses, use agreements, occupancy agreements, leases and other agreements and appurtenances for the operation of the System located on and over the real property of third parties.

“**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 Regulated Materials or the presence of Regulated Materials on, in, under or within any property (including the presence in the Environment), other than the presence of Regulated 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 Regulated 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 Regulated Materials; and (g) the presence or Release of any Regulated Materials.

**“Environmental Requirements”** mean all present Laws (including common law), rules, regulations, legally binding or otherwise enforceable requirements and any Authorizations and Permits relating to human health, pollution, or protection of the Environment, including (i) those relating to emissions, discharges, Releases, or threatened Releases of Regulated Materials, and (ii) those relating to the identification, generation, manufacture, processing, distribution, use, treatment, storage, disposal, release, recovery, transport or other handling of Regulated Materials, (iii) the regulations promulgated pursuant to the above-listed federal statutes, and (iv) counterpart Laws and regulations promulgated or issued by any state or local Governmental Authority.

**“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 Seller or the City (including all leases of such property), which are primarily used in the operation of the System, (ii) any rights of Seller or the City to warranties applicable to the foregoing (to the extent assignable), and licenses received from manufacturers and sellers of any such item (to the extent assignable), 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.

**“ERISA”** means the Employee Retirement Income Security Act of 1974, as amended.

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

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

**“Files and Records”** means all files and records of Seller or the City primarily relating to the System, whether in hard copy, digital or magnetic or other format including data, geographic system data, 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 Transferred Personnel, 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 reconsideration or rehearing 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 that is required for Closing or otherwise for compliance with the law.

**“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, the York County Conservation District, and the Board.

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

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

**“Knowledge”** means, (i) with respect to Seller, the actual knowledge of Michael Helfrich, Mayor, Daniel Hevner, Assistant Business Administrator, Thomas Ray, Business Administrator, Chaz Green, Director of Public Works, and (ii) with respect to Buyer, the actual knowledge of the Bernard Grundusky Jr., Keith Gabage, Michael Doran.

**“Law”** means any applicable law, statute, regulation, ordinance, rule, order, judicial, administrative and regulatory decree, judgment, adjudication, consent decree, consent agreement, 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.

**“Liability Cap”** has the meaning specified in Section 7.05(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 VII; *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 any event, occurrence, change, circumstance, fact, or condition that has either individually or in the aggregate with all other events, changes, circumstances, effects or other matters, with or without notice, lapse of time or both, a material adverse impact on (a) the System, Acquired Assets, Assumed Liabilities, or properties or condition (financial or otherwise) of the System, or (b) the ability of Seller to perform its obligations under this Agreement or to consummate the transactions contemplated by this Agreement. *provided, however*, that no effect arising out of or in connection with or resulting from any of the following shall be deemed, either alone or in combination, to constitute or contribute to a Material Adverse Effect: (i) general economic conditions or changes therein; (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 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 Seller or Buyer or their Representatives.

“**Municipal Industrial Pretreatment Program**” means the program administered by the City on behalf of Seller under Part 9 Title 3, Article 931 of the City’s Codified Ordinances.

“**Outside Date**” means 365 days after the date of the application to the PaPUC is accepted as complete by the PaPUC and the statutory six-month period for PaPUC final action is initiated under 66 Pa. C.S. § 1329(d)(2).

“**Outstanding Indebtedness**” means the outstanding indebtedness of Seller as set forth on Schedule 4.06.

“**Nonassignable Asset**” has the meaning specified in Section 2.07(a).

“**Nonassignable Authorization or Permit**” has the meaning specified in Section 2.06(a).

“**Operational Arrangement**” has the meaning specified in Section 2.06(b).

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

“**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; (c) other than with respect to Real Property owned by Seller, Liens arising under original purchase price conditional sales contracts and equipment leases with third parties entered into in the ordinary course of business; (d) any right reserved to or vested in any Governmental Authority by any statutory provision or under common law; and (e) other imperfections of title or Liens, if any, that have not had, and would not have, a Material Adverse Effect.

“**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 employees of the City as provided in Schedule 6.03(a).

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

“**City Deposit**” has the meaning specified in Section 3.01.

“**Real Property**” means all real property that Seller owns in fee and uses or holds for use in the operation of the System.

“**Regulated Materials**” means any material regulated under any Environmental Requirement, including solid, liquid, gas, odor, heat, sound, vibration, radiation or other substance or emission that is a contaminant, pollutant, dangerous substance, toxic substance, hazardous waste, residual waste, solid waste, hazardous material or hazardous substance which is defined and 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).

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

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

“**Remedial Action**” means any and all actions to (a) investigate, characterize, clean up, remediate, remove, treat, contain or in any other way address any Regulated Materials in the Environment, (b) prevent the Release or threat of Release or minimize the further Release of any Regulated Materials so it does not migrate or endanger public health or welfare or the indoor or outdoor Environment, (c) perform pre-remedial studies and investigations and post-remedial monitoring, maintenance and care, and (d) mitigate impacts to wetlands, surface water bodies, and/or

environmentally sensitive areas. 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.*; or (iii) a “response” or “interim response” as defined in the Pennsylvania Hazardous Sites Cleanup Act, 35 P.S. §6020.103.

“**Representative**” means, with respect to any Person, any director, 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 8.04 and 9.04. 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 7.03.

“**Supplies**” means all lubricants, fuel, chemicals, raw materials, and other supplies, 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 shall include the Acquired Assets and exclude 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, permit transfer and/or assignment fees, capital stock, franchise, profits, withholding, social security, unemployment, disability, real property, personal property, parking, sales, use, transfer, 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.

“**Tax Return**” means any return, report, statement, schedule, notice, form, declaration, claim for refund or other document or information filed with or submitted to any Governmental Authority in connection with the determination, assessment, collection or payment of Taxes.

“**Threshold Amount**” has the meaning specified in Section 7.05(a).

“**Third-Party Claim**” has the meaning specified in Section 7.04(a).

“**Transfer Taxes**” has the meaning specified in Section 3.02.

“**Transferred Personnel**” has the meaning specified in Section 6.03(d).

“**Union**” means the International Brotherhood of Teamsters, Local 776.

“**Unscheduled Real Property**” has the meaning specified in Section 6.11.

## 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 Seller and Seller and the City shall sell, transfer, assign and deliver to Buyer, free and clear of all Liens except for Permitted Liens, all of Seller’s and the City’s right, title and interest in and to all assets, facilities, business, goodwill, properties and rights of 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 Seller), but in all cases other than the Excluded Assets (the foregoing collectively referred to as the “**Acquired Assets**”), including:

(a) all real property and appurtenant interests, Easements, property rights and privileges owned, held, licensed or leased by Seller and used in the operation of the System, including the Real Property, leases, licenses and other arrangements by or between Seller and third Persons with respect to the Real Property or other Acquired Assets and fixtures;

(b) all sanitary sewer related treatment, collection, mains (including laterals from main to curb-line and edge of road or edge of easement, where collection facilities are located within private property) interceptors, metering locations and meters as well as conveyance facilities, including but not limited to: (i) Seller’s sewer treatment plant, including cogeneration facilities, located at 1701 Black Bridge in York, PA; and (ii) Seller’s pumping stations, manholes, pipelines, and billing and collections related assets necessary to run the System;

(c) all contracts, licenses, agreements, orders and leases identified on Schedule 4.15 as contracts to be assigned (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 Seller or the City (to the extent transferrable to Buyer under applicable Law), listed or described on Schedule 4.14 hereto;

(i) any accounts receivable to the extent attributable to services or products to be sold, delivered or provided from and after the Closing; and

(j) all goodwill of the System.



EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, (A) THE ACQUIRED ASSETS SHALL BE SOLD, TRANSFERRED, ASSIGNED AND DELIVERED TO BUYER "AS IS", "WHERE IS", AND "WITH ALL FAULTS", AND (B) 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 herein 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 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) subject to Section 4.11, all City's Plans or other assets attributable thereto;
- (f) 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;
- (g) all assets, properties and rights used by Seller other than those which primarily relate to the operations of the System;
- (h) the assets, properties and rights specifically set forth on Schedule 2.02(h);
- (i) all right, title and interest in and to any facilities, rights of way or real property interests granted or conveyed to Seller in any of the documents identified on Schedule 4.09 that do not relate to the System, including, without limitation, any and all water utility and storm sewer assets; and
- (j) 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(a) and Article X, the Acquired Assets to be sold, conveyed, transferred, assigned and delivered by Seller and the City to Buyer, as herein provided, shall be on the Closing Date, free and clear of all Liens other than Permitted Liens. Such Acquired Assets shall be conveyed by appropriate special warranty or other deed, bills of sale, endorsements, assignments and other instruments of transfer or conveyance described herein, and if not expressly described herein, then by transfer

documents satisfactory in form and substance reasonably acceptable to Buyer, City and Seller and their counsel in their reasonable, good faith discretion.

**Section 2.04 Assumption of Liabilities.**

(a) On the terms and conditions set forth in this Agreement, Buyer shall assume and agrees to pay, perform and discharge when due any and all liabilities and obligations of Seller or the City arising out of or relating to the System or the Acquired Assets on or after the Closing, including, without limitation, the following:

(i) all liabilities and obligations arising on or after the Closing under Seller's Authorizations and Permits;

(ii) all liabilities and obligations under the Assigned Contracts arising on or after the Closing;

(iii) all liabilities and obligations under the Collective Bargaining Agreement arising on or after the Closing;

(iv) all liabilities and obligations relating to employee benefits, compensation or other arrangements with respect to any Transferred Personnel arising on or after the Closing;

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

(vi) all liabilities and obligations for Taxes relating to the System, its operation, the Acquired Assets and the Assumed Liabilities for any tax liabilities attributable to the period after the Closing Date;

(vii) all liabilities and obligations under the Consent Order arising on or after the Closing; and

(viii) 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 of the aforementioned liabilities in this Section 2.04(a) are referred to as the "**Assumed Liabilities.**" Any other liabilities are Excluded Liabilities).

(b) At the Closing, to the extent Seller is not released therefrom, Seller and the City shall be indemnified against its obligations under the Assumed Liabilities in accordance with Section 7.03.

(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, Seller or the City shall, upon the request of Buyer, and Buyer shall, upon the request of Seller or the City, 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 herein, 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 Authorizations and Permits.**

(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 Authorization or Permit would result in a violation of applicable Law, or would require the consent, authorization, approval or waiver of any Person (other than the Parties hereto), 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 Authorization or Permit, a “**Nonassignable Authorization or Permit**”). Following the Closing, Seller, the City 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 Authorization or Permit to Buyer and in no event will Buyer be required to pay any additional consideration therefor. Once such consent, authorization, approval, waiver, release, substitution or amendment is obtained, Seller or the City shall sell, transfer, assign, convey and deliver to Buyer the relevant Authorization or Permit 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 one-half by Buyer and one-half by Seller.

(b) Until such time as a Nonassignable Authorization or Permit is transferred to Buyer pursuant to this Article II, Buyer Seller, or the City shall cooperate in any commercially reasonable and economically feasible arrangements (such as co-permitting, subleasing, sublicensing or subcontracting) to provide to the Parties the economic and, to the extent permitted under applicable Law, operational equivalent of the transfer of such Nonassignable Authorization or Permit at the Closing and the performance by Buyer of its obligations with respect thereto (“**Operational Arrangement**” or “**Operational Arrangements**”), and so long as Seller or the City transfers and turns over all economic and beneficial rights with respect to each such Nonassignable Authorization or Permit, Buyer shall, to the extent permitted under applicable Law and the terms of any applicable Authorization or Permit that constitutes a Nonassignable Authorization or Permit, as co-permittee, designee, agent, contractor, subcontractor, or operator for Seller or the City, pay, perform and discharge the Liabilities and obligations of Seller or the City 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 Authorization or Permit had been assigned to Buyer at Closing. To the extent permitted under applicable Law, Seller or the City shall, at Seller’s or the City’s expense, hold in trust for and pay to Buyer promptly upon receipt thereof, such Nonassignable Authorization or Permit and all income, proceeds and other monies received by Seller with respect to such Nonassignable Asset, Authorization or Permit in connection with any Operational Arrangement under this Article II. For purposes of Article X and Article XI herein, the establishment of an Operational Arrangement on or prior to the Closing Date between the Parties under this Section 2.06(b) regarding any Authorization or Permit

shall, to the extent applicable, satisfy the conditions set forth in Sections 10.01(b) and 11.01(c) with respect to such Authorization or Permit.

(c) If, following the Effective Date and prior to the Closing, Buyer identifies any authorization or permit to which Seller is a party which is not identified on Schedule 4.14 as an Authorization or Permit as of the date hereof, and Buyer reasonably determines such authorization or permit is necessary to the operation of the System, Buyer shall give notice of such determination to Seller and Seller shall, promptly following receipt of such notice, deliver to Buyer an updated Schedule 4.14 identifying such authorization or permit, and such authorization or permit shall thereafter constitute and be deemed an Authorization or Permit for all purposes hereunder.

(d) In the event that, during the twelve (12) month period following the Closing, Buyer identifies any authorization or permit to which Seller or the City was a party as of the Closing and which (i) was not set forth on or properly identified on Schedule 4.14 (as may be updated pursuant to (c)) and (ii) Buyer reasonably believes is necessary to the operation of the System, Seller or the City 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 authorization or permit to Buyer for no additional consideration, and upon such assignment, such authorization or permit shall be deemed an Authorization or Permit for all purposes hereunder.

#### **Section 2.07 Certain Transfers; Assignment of Contracts.**

(a) Notwithstanding anything to the contrary in this Agreement, and subject to the provisions of this Section 2.07(a) and Section 2.07(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 applicable Law, or would require the consent, authorization, approval or waiver of any Person (other than the Parties hereto), 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 City 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. Once such consent, authorization, approval, waiver, release, substitution or amendment is obtained, 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 one-half by Buyer and one-half by Seller.

(b) Until such time as a Nonassignable Asset is transferred to Buyer pursuant to this Article II, Buyer, the City, and Seller shall cooperate in any commercially reasonable and economically feasible arrangements (such as subleasing, sublicensing or subcontracting) to provide to the Parties the economic and, to the extent permitted under applicable 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 Seller or the City transfers and turns over all economic and beneficial rights with respect to each such Nonassignable Asset, Buyer shall, to the extent permitted under applicable Law and the terms of any applicable contract that constitutes a Nonassignable Asset, as agent or subcontractor for Seller or the City, pay, perform and discharge the Liabilities and obligations of 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 applicable Law, Seller or the City shall, at Seller's or the City's expense, hold in trust for and pay to Buyer promptly upon receipt thereof, such Nonassignable Asset and all income, proceeds and other monies received by 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 Seller or the City 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 Seller or the City and Seller or the City shall, promptly following receipt of such notice, deliver to Buyer an updated Schedule 4.15 identifying such contract, and such contract shall thereafter constitute and be deemed an Assigned Contract for all purposes hereunder.

(d) In the event that, during the twelve (12) month period following the Closing, Buyer identifies any contract to which Seller or the City 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 (c)) and (ii) Buyer reasonably believes is necessary to the operation of the System, Seller or the City 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.

#### PURCHASE PRICE

##### **Section 3.01 Purchase Price; Agreement Proposal Security.**

(a) **Purchase Price for the Assets; Adjustment for City Deposit.** Subject to the terms and conditions of this Agreement, the purchase price ("Purchase Price") for the Acquired Assets shall be (i) \$235,000,000, *plus* (ii) the Average Daily AR Payment. The Purchase Price shall be delivered as follows:

(i) Within 60 days of the Effective Date, Buyer shall deposit Twenty Million Dollars (\$20,000,000) of the Purchase Price, payable to the City in immediately available funds ("**City Deposit**"), subject to Sections 4.03, 6.06, 9.05 and 13.02 and secured by the City with a tax and revenue anticipation note (the "**Deposit Note**") substantially in the form attached hereto as Exhibit A; and

(ii) the Buyer, upon cancellation of the Deposit Note and return of the same to the City, shall be entitled to deduct from the Purchase Price the City Deposit when paying the Purchase Price to the Seller, which shall be payable directly to Seller on the Closing Date by wire transfer.

(b) **Agreement Proposal Security.** Within 180 days of the date the Agreement Proposal Security was delivered by Buyer, Buyer shall have the option to renew the Agreement Proposal Security for an additional term of 180 days. If the Closing has not yet occurred prior to the expiration of the first renewal term of 180 days, Buyer shall have the option to renew the Agreement Proposal Security for a second additional term of 180 days.

(c) **Use of Fair Market Valuation Process.** Following the execution of this Agreement, Buyer and Seller shall use commercially reasonable efforts to invoke, commence and complete the fair market valuation process set forth in Section 1329 of the Public Utility Code, 66 Pa. C.S. §1329. Without limiting the generality of the foregoing, Buyer and Seller shall each engage a utility valuation expert from the list of such experts maintained by the PaPUC and shall jointly utilize a licensed engineer selected by City for the purposes set forth in Section 1329(a)(4) of the Public Utility Code, 66 Pa. C.S. §1329(a)(4). All costs and expenses associated with the licensed engineer jointly utilized by the parties shall be shared equally between Buyer and the City. Buyer agrees to prosecute an application for approval of the transaction contemplated by this Agreement in accordance with Section 6.06 and Section 10.03.

(d) **Fair Consideration.** The Parties acknowledge and agree that the Purchase Price 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 was agreed upon as the result of an arm's-length good faith competitive bidding process involving the Parties and their respective Representatives and other bidders and their respective Representatives.

**Section 3.02 Transfer Taxes.** Any and all deed stamps or transfer Taxes which may be due the Commonwealth of Pennsylvania or any political subdivision in connection with the sale, transfer, assignment, conveyance and delivery hereunder of the Acquired Assets to Buyer (collectively, "Transfer Taxes"), shall be split equally by Buyer and Seller. The terms hereof shall survive Closing.

## ARTICLE IV.

### REPRESENTATIONS AND WARRANTIES OF SELLER AND THE CITY

Seller and the City makes only the representations and warranties that are set forth in this Article IV related to the Seller or the City, respectively.

As a material inducement to Buyer to enter into this Agreement and to consummate the transactions contemplated by this Agreement, Seller and City, as applicable represents and warrants, as of the Effective Date and as of the Closing 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.** Seller is a body corporate and politic, duly organized and existing under the Pennsylvania Municipality Authorities Act, 53 Pa. C.S. §§ 5601 *et seq.* The City is a third-class city and political subdivision of the Commonwealth of Pennsylvania.

**Section 4.02 Power and Authority.** Each of Seller and the City has (i) duly adopted the Authorizing Ordinance authorizing the transactions contemplated herein, 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 Seller and the City of its respective obligations contained in this Agreement. Seller and the City have all requisite power and authority to own, lease and operate the Acquired Assets and the System and have 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.

**Section 4.03 Enforceability.** This Agreement has been duly authorized, executed and delivered by Seller and the City and constitutes a valid and legally binding obligation of Seller and the City, enforceable against Seller and the City 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.

The Deposit Note has been duly authorized and when executed and delivered by the City shall constitute a valid and legally binding obligation of the City, enforceable in accordance with the terms thereof, subject only to applicable bankruptcy, insolvency and similar laws affecting enforceability of the rights of creditors generally and to the general principles of equity.

**Section 4.04 No Conflict or Violation.** The execution and delivery of this Agreement by Seller and the City, the consummation of the transactions contemplated hereby and the performance by Seller and the City 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 Seller and the City under (i) any applicable Law or (ii) any agreement, instrument or document to which Seller is a party or by which it is bound.

**Section 4.05 Consents and Approvals.** Except as set forth in Schedule 4.05 or as would not have a Material Adverse Effect, there are no consents, waivers, authorizations or approvals 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 Seller or the performance by Seller of its obligations hereunder.

**Section 4.06 Undisclosed Liabilities.** Except as set forth in Schedule 4.06, there are no material liabilities or obligations of Seller, either accrued, absolute, contingent or otherwise, relating to the Acquired Assets that would be required to be set forth on a balance sheet prepared under accounting principles applicable to municipalities and the Authority, other than liabilities incurred in the ordinary course. All of the Outstanding Indebtedness is set forth on Schedule 4.06 and can be repaid or defeased by Seller or the City and any security interests granted by Seller or the City 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 Seller and the City have operated and maintained the System since the date of this Agreement in the ordinary course.

**Section 4.08 Tax Matters.** Except as set forth in Schedule 4.08 (i) Seller and the City have filed all Tax Returns that were required to be filed on or before the Closing Date and 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 Governmental Authority has asserted any claim against Seller or the City for the assessment of any additional liability for Taxes or initiated any action or proceeding which could result in such an assertion; and (iii) Seller and the City have made all withholding of Taxes required to be made under all applicable 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 Governmental Authority. This section does not apply to any Tax matter related to an employee benefit plan or compensation arrangement that is addressed separately in Section 4.11.

**Section 4.09 Real Property and Easements.** Seller represents that, to its Knowledge, all of the Real Property and Easements held by Seller and used in the operation of the System are set forth on Schedule 4.09 which are to Seller's Knowledge all the Real Property and Easements that are necessary to operate the System. There are no pending condemnation proceedings relating to any of the Real Property and Easements, and, to the Knowledge of Seller, Seller has not received any written threats of any condemnation proceedings. To Seller's Knowledge, Seller has not received any written notices of any violations of any Law from any Governmental Authority with respect to the Real Property and Easements that have not been cured in all material respects. Buyer acknowledges and agrees that, notwithstanding anything to the contrary in this Agreement (i) this Section 4.09 contains all of the representations and warranties of Seller to Buyer with respect to the Real Property and Easements, and no other representation or warranty set forth in this Agreement with respect to the Acquired Assets is intended to apply to the Real Property and Easements, and (ii) to the extent that any of the documents identified on Schedule 4.09 contain rights or interests not relating or applicable to the System, such rights or interests shall not be construed or deemed to be part of the Real Property or Easements.

**Section 4.10 Equipment and Machinery.** All material Equipment and Machinery included in the Acquired Assets is set forth and otherwise described on Schedule 4.10. Except as set forth in Schedule 4.10, Seller or the City have good title, free and clear of all Liens (other than the Permitted Liens and Liens which are released on or prior to Closing) to the Equipment and Machinery owned by Seller.

**Section 4.11 Employee Benefit Plans.**

(a) As used in this Section 4.11, the following terms have the meanings set forth below:

**“City’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 City’s Plans), that are owed, adopted or followed by the City. City’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.

**“City’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, profit sharing, stock option, stock bonus, 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 City is a plan sponsor or to which the City otherwise contributes or has contributed within the last six (6) years, or in which the City otherwise participates or has participated within the last six (6) years.

(b) Schedule 4.11(b) contains a true and complete list of all City's Plans and City'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 City's Plans and City'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 applicable Laws, and with any applicable 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 City under the Code or other applicable Law with respect to any City's Plans or City's Benefit Obligations;

(c) Except as set forth in Schedule 4.11(c), with respect to the System, the City does not sponsor, maintain, contribute to, nor is it required to contribute to, any "multiemployer plan" within the meaning of Section 14(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;

(d) Except as set forth on Schedule 4.11(d), City 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 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;

(e) The City 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

(f) Except as set forth in Schedule 4.11(f), the City 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 the City for which Buyer shall have any liability.

#### **Section 4.12 Personnel; Labor Matters.**

(a) Schedule 4.12(a) sets forth all collective bargaining agreements and commitments, contracts, agreements, arrangements or understandings (whether written, oral, formal or informal) with Personnel relating to the System to which the City, is a party, including the identification of the parties thereto and the expiration dates.

(b) Except as set forth on Schedule 4.12(b), it shall be solely the City's obligation to pay, or cause to be paid, the Personnel for accrued but unused and unpaid vacation and sick leave awarded or earned during the Personnel's period of City employment at a time either appropriately negotiated or on terms set forth in any contract or agreement and/or as required under by applicable Law.

**Section 4.13 Environmental Compliance.** Except as set forth in Schedule 4.13 or that otherwise could not be expected to have a Material Adverse Effect, Seller represents:

(a) The System as currently operated by the City and all operations and activities conducted by the City with respect to the System are in compliance in all material respects with all applicable Environmental Requirements.

(b) Seller and the City have generated, used, handled, treated, stored and disposed of all Regulated 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) Seller and the City have 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.

(d) Regulated Materials are not present at, in, or on the System or Acquired Assets, there has been no Release of Regulated 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.

(e) 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 Regulated Material on or off the Acquired Assets or a violation of any Environmental Requirement.

(f) There are no operational underground storage tanks on or at any of the Acquired Assets. Any underground storage tanks previously located at the Acquired Assets have been removed or otherwise closed, removed, filled, and/or abandoned in compliance with applicable Environmental Requirements in effect at the time of such closure.

(g) Seller has delivered to Buyer (i) all material environmental site assessments or reasonable and accurate summaries thereof pertaining to the System, (ii) the written reports of all material compliance audits or compliance assurance reviews prepared within the previous five (5) years or reasonable and accurate summaries thereof relating to compliance with Environmental Requirements by the System, and (iii) reasonable and accurate summaries of, or all material 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 Seller.

**Section 4.14 Authorizations and Permits.** Seller and the City represent that (i) Schedule 4.14 lists or describes the Authorizations and Permits of Seller or the City that are currently in full force and effect; (ii) except as set forth on Schedule 4.14, Seller or the City have made true and complete copies of all Authorizations and Permits available to Buyer; and (iii) except as set forth on Schedule 4.13, Seller and the City are 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 Seller threatened relating to the revocation or limitation of any of the Authorizations or Permits, other than those revocations or limitations which do not individually or in the aggregate have a Material Adverse Effect.

**Section 4.15 System Contracts.**

(a) Schedule 4.15 contains a complete and accurate list of all the contracts related to the System.

(b) Seller or the City have made available to Buyer true and complete copies of the Assigned Contracts set forth on Schedule 4.15.

(c) Seller further represents that, to its Knowledge, all of the Assigned Contracts specified in Schedule 4.15 are in full force and effect. To the Knowledge of Seller, Seller has not, nor has any other party thereto, materially breached any material provision of or materially defaulted under the material terms of, nor does any condition exist which, with notice or lapse of time, or both, would cause Seller, or to the Knowledge of Seller, any other party, to be in material default under the terms of any Assigned Contract.

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

(a) Except as disclosed to Buyer in writing or as could not reasonably be expected to result in a Material Adverse Effect to the Knowledge of Seller, Seller has operated and is operating the System in compliance, in all material respects, with all applicable Laws, Authorizations and Permits and is not in breach of any applicable Law, Authorization or Permit. Except as could not reasonably be expected to result in a Material Adverse Effect, when considered singularly or collectively, 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 listed in Schedule 4.14.

(b) Except as set forth in Schedule 4.13 or disclosed to Buyer prior to the Effective Date, there are no facts, circumstances, conditions or occurrences regarding the System that could reasonably be expected to give rise to any Environmental Claims or enforcement actions by any Governmental Authority that could reasonably be expected to have a Material Adverse Effect, and there are no past, pending or threatened Environmental Claims or enforcement actions by any Governmental Authority against Seller that individually or in the aggregate could reasonably be expected to have a Material Adverse Effect.

(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 Seller, threatened against Seller prior to or at the Closing Effective Time that could reasonably be expected to have a Material Adverse Effect. As of the date of this Agreement, 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 Seller, threatened against Seller which could reasonably be expected to materially and adversely affect the validity or enforceability of this Agreement.

**Section 4.17 Broker's and Finder's Fees.** Seller and the City represent that 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. Seller and the City agree to pay when due the fees and expenses of their financial, legal, and technical advisors.

**Section 4.18 Title to the Acquired Assets; Sufficiency.**

(a) Except as set forth on Schedule 4.18, Seller or the City have good and marketable title to, 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. Except for the Excluded Assets (as disclosed in Section 2.02), the Permitted Liens and any Liens that will be fully and unconditionally released at or prior to Closing, 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 and the City. Except for the Excluded Assets (as disclosed in Section 2.02), the Permitted Liens and any Liens that will be fully and unconditionally released at or prior to Closing, the Acquired Assets, taken as a whole, comprise all the assets, properties, business, goodwill and rights of every kind and description used or held for use in, or useful or necessary to the operation of the System as currently operated by Seller and the City.

**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 Seller and the City to enter into this Agreement and to consummate the transactions contemplated hereby, Buyer hereby represents and warrants to Seller and the City, 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.** 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.** Buyer has the power and authority to enter into this Agreement and, subject to Governmental Approvals, 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 Buyer and constitutes a valid and legally binding obligation of Buyer, enforceable against it in accordance with the terms hereof, subject only to Governmental Approvals, applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally, and general principles of equity.

**Section 5.03 No Conflict or Violation.** The execution and delivery of this Agreement by Buyer, the consummation of the transactions contemplated hereby and the performance by Buyer 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 Buyer under (i) any applicable Law, (ii) any material agreement, instrument or document to which Buyer is a party or by which it is bound or (iii) the articles, bylaws or governing documents of Buyer.

**Section 5.04 Consents and Approvals.** Except as set forth on Schedule 5.04, there are no consents, waivers, authorizations or approvals 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 hereunder.

**Section 5.05 Broker's and Finder's Fees.** Buyer represents that no broker, finder or other Person is entitled to any commission or finder's fee in connection with this Agreement or the transactions contemplated by this Agreement.

**Section 5.06 Financial Wherewithal.** Buyer represents that upon Closing, and after giving effect to the consummation of the transactions contemplated hereby and the incurrence of any indebtedness in connection therewith, Buyer will have the financial ability and will have sufficient working capital for its needs and reasonably anticipated needs to operate the System as a certificated public utility system regulated by the PaPUC authorized, among things, to provide wastewater utility services to residential, commercial, industrial, and municipal customers of the System.

**Section 5.07 Sufficient Funds.** Buyer represents that Buyer will have sufficient funds available at Closing to consummate the transactions contemplated by this Agreement, to pay the Purchase Price in accordance with Article III and expenses related to the transactions contemplated by this Agreement, and on and after Closing, to generally provide ownership, operation and capital for the operations and capital needs of the System following the Closing, and assuring 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 applicable Law.

**Section 5.08 Independent Decision.** Except as expressly set forth in this Agreement, or any of the related agreements, Buyer acknowledges that (a) neither Seller, City 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, City 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 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 income potential, operating expenses, costs of operation, or uses or fitness for a particular purpose of any Acquired Assets or the System.

**Section 5.09 Scheduled Matters.** Buyer acknowledges that: (a) the inclusion of any matter on any Schedule shall not necessarily be deemed an admission by Seller or City 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 5.10 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 Seller and City expressly contained in Article IV of this Agreement.

**Section 5.11 Litigation.** Buyer is not in breach of any applicable Law that could have a Material Adverse Effect on the operations of the System, Buyer or Buyer's ability, after the Closing, to provide wastewater utility services to residential, commercial, industrial, and municipal customers of the System. Neither Buyer nor any Affiliate of 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 Seller may not do business under applicable 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 5.11, 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 Buyer, threatened against Buyer prior to or at the Closing Effective Time, 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.

### OTHER AGREEMENTS

**Section 6.01 Taxes.** Except as provided herein (including Section 3.03), Seller or the City 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. Notwithstanding the prior sentence, any special assessments on the Real Property incurred on or after the Closing Date, whether or not currently due and payable, shall be paid by Buyer in accordance with their terms.

**Section 6.02 Cooperation on Tax Matters.** Seller or City 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 6.03 Personnel Matters.**

(a) Subject to applicable Law, Buyer shall, or shall cause an Affiliate of Buyer to, offer employment effective on the Closing Date, to the Personnel set forth in Schedule 6.03(a), 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. Prior to employment, Buyer will provide appropriate notification explaining that the wages and benefits offered by Buyer to all Personnel. For Union employees, such notice will be in accordance with the Collective Bargaining Agreement as required by Section 6.03(b)(ii). Schedule 6.03(a) shall not be amended after the date this Agreement is executed without the prior written consent of Buyer, provided, however, that Seller or the City have absolute discretion without the consent of Buyer to fill existing positions as set forth on Schedule 6.03(a) to meet operational requirements. Upon Closing, Buyer shall follow Section 6.03(b)(i) and all applicable federal labor laws regarding the recognition of the Union and negotiate in good faith with the Union as required by federal labor laws.

(b) Effective as of and conditioned upon Closing, Buyer shall (i) recognize the Union as the exclusive bargaining representative for all Union employees; and (ii) adopt the Collective Bargaining Agreement for the Union Employees. Such offers of employment shall consist of the same terms and conditions of employment as set forth in the Collective Bargaining Agreement unless otherwise agreed to by the Union and the Buyer. Buyer shall not give any notice that it is setting initial terms of employment for Union employees that are contrary to the terms of the Collective Bargaining Agreement.

(c) The Personnel who accept such employment and commence employment on the Closing Date, shall be referred to in this Agreement as the “**Transferred Personnel.**” Transferred Personnel, who are non-union Personnel, if any, shall be employees-at-will of Buyer.

(d) This Section 6.03 shall be binding upon and inure solely to the benefit of each of the Parties to this Agreement, and nothing in this Section 6.03, express or implied, shall confer upon any other person any rights or remedies of any nature whatsoever under or by reason of this Section. The Parties acknowledge and agree that the terms set forth in this Section 6.03 shall not create any right in any Transferred Personnel or any other person to bring a third-party cause of action against Buyer or the City. Nothing in this Section 6.03(d) is intended to limit the right of any Transferred Personnel to file unfair labor practice charges with the National Labor Relations Board.

#### **Section 6.04 Rates.**

(a) Buyer shall implement Seller’s wastewater base rates, as set by the City, then in effect at Closing, as reflected on Schedule 6.04(a) (the “**Base Rate**”) as Buyer’s effective wastewater base rates within the City, provided such rates shall not be lower than those in effect on the date this Agreement is executed. Buyer shall additionally implement monthly billing for all customers within the City at and after Closing. Buyer shall apply, at and after Closing, its then-existing miscellaneous fees and charges, rules and regulations for wastewater service as set forth in its Tariff; provided that Buyer shall be able to implement an industrial pretreatment program and associated fees comparable to Buyer’s similar systems as permitted by applicable law. Buyer agrees that Distribution System Improvement Charges, as defined in 66 Pa. C.S. § 1351, shall not be charged to customers on the System at any point prior to the effective date of Buyer’s next PaPUC-approved base rate increase.

(b) Buyer shall have no obligation to fulfill or maintain any agreements or other understandings for the provision of free or otherwise subsidized or discounted services to any party.

(c) Buyer shall, subject to PaPUC approval in a future base rate proceeding, maintain base rates for System customers for a minimum period of three (3) years from the Closing Date.

(d) The rate provisions of this Section 6.04 shall be part of and subject to the requested PaPUC Governmental Approval.

**Section 6.05 Buyer Taxpayer.** From and after the Closing Date, Buyer acknowledges that, upon conveyance of the Acquired Assets to Buyer, Buyer will be subject to Taxes arising out of ownership of the Acquired Assets, which shall be paid by Buyer.

**Section 6.06 PaPUC Governmental Approval.** Promptly after the Effective Date, Buyer covenants and agrees to 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 as necessary to operate the System; (ii) the approval of the acquisition of the System by Buyer under terms and conditions that are reasonably acceptable to Seller, City and Buyer; and (iii) the issuance of certificates of filing or other evidence of approval for contracts between Buyer and municipal corporations related to the acquisition of the System. Nothing contained herein shall be construed to limit or prevent Buyer from making arguments to the Commission for separate approval of the Deposit Note, regardless of the status of approval of this Agreement. Seller shall cooperate with and assist Buyer in proceedings before the PaPUC. Buyer, Seller and City hereby agree that the procedures for determining fair market value of the System and Acquired Assets outlined in 66 Pa. C.S. § 1329(a) shall be utilized and filed with the PaPUC as contemplated by 66 Pa. C.S. § 1329(c).

**Section 6.07 Remedies for Breach of Article VI Agreements.** In the event of a breach by Buyer of any of the covenants and agreements set forth in this Article VI, in addition to all other rights and remedies available at law or in equity, including specific performance and/or injunctive relief, Seller or City shall also be entitled to commence proceedings before the PaPUC seeking enforcement of such covenants and agreements but only to the extent that such covenants and agreements were a condition of the PaPUC Governmental Approval or otherwise within the jurisdiction of the PaPUC.

**Section 6.08 Customer Service.** Buyer agrees to establish, continue operating or cause the continued operation on Business Days of a customer service center within the City. The customer service center must be staffed by in-person customer service representatives and remain open for walk-in service and telephone service during normal business hours. Normal business hours shall be understood to mean, at minimum, 9:00 a.m. – 5:00 p.m.

**Section 6.09 Unscheduled Real Property or Easements.** The Parties acknowledge that Seller may own interests in or have the legal right to use or occupy the Real Property or Easements that are necessary or essential to the operation of the System and that are not specifically identified in Schedule 4.09 or Section 2.02 (the “**Unscheduled Real Property or Easements**”). If the Parties discover prior to or after the Closing Date, one or more parcels of Unscheduled Real Property or Easements, the discovering Party shall give written 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 or Easements 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 or Easements as it was used by Seller as of the Effective Date.

**Section 6.10 Act 537 Official Plan Revision.** Promptly after the Effective Date, each of Buyer and Seller, in accordance with applicable Laws and Environmental Requirements, including the Pennsylvania Sewage Facilities Act, 35 P.S. § 750.1—750.20a, the regulations codified at 25 Pa. Code Chapter 71, and available guidance from PaDEP, shall use commercially reasonable efforts and cooperate in preparing, submitting, and receiving necessary Governmental Approval from applicable Governmental Authorities, including PaDEP, of a revision or amendment to the Act 537 Official Plan, the cost of which shall be paid by Buyer. Using commercially reasonable efforts, each of Buyer and Seller shall cooperate to obtain the necessary Governmental Approvals of the revision or amendment to the Act 537 Official Plan, but in no event shall one or more Governmental Approvals of, or a Final Order regarding, the revision or amendment to the Act 537 Official Plan be construed or interpreted as a condition precedent to Closing under either Article X or Article XI herein.

**Section 6.11 Municipal Industrial Pretreatment Program.** The parties acknowledge that, upon Closing, Seller’s and the City’s obligations to implement the Municipal Industrial Pretreatment Program will cease, and Buyer may implement its own version as may be necessary to ensure continued



compliance with applicable Laws, Environmental Requirements, and the Authorizations and Permits. The parties also acknowledge that there may be a transition period, including after Closing, with respect to the Municipal Industrial Pretreatment Program. Accordingly, before and after Closing, each of Buyer, the City and Seller shall use commercially reasonable efforts to cooperate and facilitate the transition, including, as necessary, obtaining applicable Governmental Approvals to address Environmental Requirements under the Laws and Authorizations and Permits. In no event shall one or more Governmental Approvals of, or a Final Order regarding, the Municipal Industrial Pretreatment Program be construed or interpreted as a condition precedent to Closing under either Article X or Article XI herein or as an obligation of Seller and the City to continue implementing, or participate in implementing, the Municipal Industrial Pretreatment Program.

**Section 6.12 Accounts Receivable.** The Buyer is entitled to all customer billings with respect to sanitary wastewater services for the period on or after the Closing Effective Time and the Seller and the City are entitled to all such billings for the period before the Closing Effective Time except that Buyer agrees to pay the Seller at Closing an amount equal to the average daily System revenue based on the City's most recent audited financial statement (calculated by taking the total metered revenue collected for the applicable year, divided by 365 and multiplied by the number of days between the final meter reading and Closing) for the period from Seller's final meter read through the Closing Date ("**Average Daily AR Payment**"). Excluding any period for which an Average Daily AR Payment is paid by Buyer, Buyer and Seller agree that payments received for bills rendered by the other will be remitted to the party which billed for sewer service for the period of time for which the payment was received within 30 days after receiving notice from the customer or the billing party.

**Section 6.13 Consent Order.** Unless EPA indicates in writing that it does not intend to pursue an order or action pursuant to the provisions of Section 309(a) or (b) of the Federal Clean Water Act, 33 U.S.C. § 1319(a)-(b), promptly after the Effective Date, the Seller, Buyer and the City shall use reasonable best efforts to negotiate and enter into a consent order agreement with the EPA, to be effective upon Closing, pursuant to such provisions (the "Consent Order"), in a form reasonably satisfactory to Seller, Buyer and the City, which addresses the alleged violations relating to the System as described in the EPA Notice of Potential Violations and Opportunity to Confer dated December 10, 2020 or related alleged violations subsequently identified in writing by EPA ("Alleged Noncompliance"), and contains the following elements: (1) descriptions of and reasonable implementation schedules for the corrective actions to be taken to address the Alleged Noncompliance; (2) agreement by the Buyer to be responsible for all obligations arising under and compliance with the Consent Order on and after Closing of the transaction; (3) substitution of the Buyer for the Seller and City as respondents under the Consent Order effective upon Closing of the transaction; and (4) a release of the Seller and City from all obligations and liabilities under Consent Order for obligations to be performed or violations occurring on or after Closing of the transaction.

## ARTICLE VII.

### INDEMNIFICATION

**Section 7.01 Survival.** All representations and warranties of Seller or City contained in this Agreement or any certificate or other Agreement delivered by Seller or City hereunder or relating to the subject matter of this Agreement shall survive until twelve (12) months following the Closing Date.

All representations and warranties of Buyer contained in this Agreement or any certificate or other agreement delivered by Buyer hereunder or relating to the subject matter of this Agreement shall survive until twelve (12) months following the Closing Date. The covenants, agreements and other obligations of Seller and City contained in this Agreement or any certificate or other agreement delivered by Seller or City hereunder or relating to the subject matter of this Agreement shall survive the Closing until twelve (12) months following the Closing Date or for the shorter period explicitly specified therein, (a) except for such other agreements by Seller or City that explicitly state that they survive for a longer period and (b) except that Buyer may seek specific performance, as its sole and exclusive remedy, for any Acquired Assets not properly conveyed on the Closing Date for a period of five (5) years following the Closing Date. The covenants, agreements and other obligations of Buyer contained in this Agreement or any certificate or other agreement delivered by Buyer hereunder or relating to the subject matter of this Agreement shall 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 within such shorter period shall survive indefinitely or until the latest date permitted by applicable Law. Additionally, notwithstanding anything to the contrary (i) once the survival period or periods described above have ended, the applicable representation, warranty, covenant or agreement shall terminate and be of no further force or effect and (ii) any claim, demand, or cause of action with respect to any breach of such representation, warranty, covenant or agreement must be made or brought, if at all, within the period or periods described above. No Party shall permit its respective Affiliates or Representatives, and shall additionally cause its respective Affiliates and Representatives not to, make or bring any such claim, demand, or cause of action with respect to any such breach of a representation, warranty, covenant or agreement that may not otherwise be made directly by such Party hereunder.

**Section 7.02 Indemnification by Seller and City.** Subject to the terms and conditions of this Article VII and applicable Law, Seller and City agree to 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 Losses arising from or relating to: (a) any material misrepresentation as to, or any material inaccuracy in, any of the representations and warranties of Seller or City contained in this Agreement or in any exhibit, schedule, certificate or other instrument or document furnished or to be furnished by Seller or City prior to the Closing pursuant to this Agreement; (b) any material breach or material nonfulfillment of any of the covenants or agreements of Seller or City contained in this Agreement or in any exhibit, schedule, certificate or other instrument or document furnished or to be furnished by Seller or City prior to the Closing pursuant to this Agreement; or (c) any Excluded Liability or Excluded Asset.

**Section 7.03 Indemnification by Buyer.** Subject to the terms and conditions of this Article VII and applicable Law, Buyer agrees to defend, indemnify and hold harmless Seller, City and their respective successors and Affiliates and each of their respective employees, officers, directors and agents (the “**Seller Indemnified Persons**”) from and against any and all 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; (b) any material breach 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 Buyer pursuant to this Agreement; (c) any Assumed Liability, including without limitation any liability related to any claims by any Governmental Authority; (d) Buyer’s actions involving Environmental Laws, Regulated Materials or environmental claims on and after the Closing Date; or (e) the ownership, operation or control of the Acquired Assets or the System on and after the Closing Date.

**Section 7.04 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 written notice thereof. The failure to give such prompt written 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 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 written notice to the Indemnified Party (and subject to the other requirements herein) 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 Buyer 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. In the event that the Indemnifying Party assumes the defense of any Third-Party Claim, subject to Section 7.04(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 7.04(b), pay, compromise, defend such Third-Party Claim and seek indemnification for any and all Losses based upon, arising from or relating to such Third-Party Claim. Seller, City 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 7.04(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 written 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 in such firm offer to settle such Third-Party Claim. If the Indemnified Party has assumed the defense pursuant to Section 7.04(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 written notice thereof. The failure to give such prompt written 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 written 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 7.05 Limitations on Indemnification Obligations.**

(a) Subject to the other limitations contained in this Section 7.05, neither Buyer nor Buyer Indemnified Persons shall be entitled to indemnification pursuant to Section 7.02 unless the aggregate amount of Losses incurred by Buyer and Buyer Indemnified Persons under this Agreement exceeds 1% of the Purchase Price in the aggregate (the “**Threshold Amount**”), in which case Seller or City shall then be liable for Losses in excess of the Threshold Amount; *provided, however*, that the foregoing limitations contained in this Section 7.05(a) shall not apply to any claims for indemnification based on fraud, intentional misrepresentation or willful misconduct.

(b) Subject to the other limitations contained in this Section 7.05 neither Seller, City nor Seller Indemnified Persons shall be entitled to indemnification pursuant to Section 7.03(a) unless the aggregate amount of Losses incurred by Seller, City 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 7.05(a) 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), Buyer Indemnified Parties shall only be entitled to assert claims under Section 7.02 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 7.02.

(d) Payments by an Indemnifying Party pursuant to Section 7.02 or Section 7.03 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 from a third party insurer and any indemnity, contribution or other similar payment received from a third party insurer 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 7.02 or Section 7.03 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 in accordance with applicable law.

(g) Subject to the provisions of Sections 3.01 and 14.11 and any other provisions for 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 herein or otherwise relating to the subject matter of this Agreement, unless such claims are based on fraud, intentional misrepresentation or willful misconduct, shall be pursuant to the indemnification provisions set forth in this Article VII. 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 herein or otherwise relating to the subject matter of this Agreement, it may have against the other Party hereto 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 VII or unless such claims or causes of action allege fraud, intentional misrepresentation or willful misconduct. Nothing in this Section 7.05(g) shall limit any Person’s right to seek and obtain specific performance to which such Person shall be entitled pursuant to this Agreement.

**Section 7.06 Knowledge of Breach.** Except to the extent any facts, circumstances or events are inconsistent with any Seller representation in this Agreement, Seller and City shall not be liable to Buyer, including under this Article VII, for any Losses based upon or arising out of any facts, circumstances or events if such fact, circumstance or event was made available to Buyer prior to Closing in a document provided in the dataroom hosted by McNeese Wallace & Nurick, LLC pursuant

to the Request for Proposals dated July 10, 2020, or if Buyer had Knowledge of such fact, circumstance or event, in each case prior to the Closing.

## ARTICLE VIII.

### PRE-CLOSING COVENANTS OF SELLER

**Section 8.01 Operation of the System.** Except as otherwise expressly permitted by this Agreement, as required by applicable 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, Seller or City 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 applicable Laws and Authorizations and Permits, and (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 Seller and the City and the System and their customers, lenders, suppliers, regulators and others having business relationships with Seller, the City, and the System.

**Section 8.02 Negative Covenants of Seller.** Except as otherwise contemplated by this Agreement, beginning on the date of this Agreement and prior to the Closing, Seller shall not without the prior written approval of Buyer, do or agree to do any of the following in connection with Seller's operation of the Acquired Assets:

- (a) Dispositions. Sell, assign, lease or otherwise transfer or dispose of any Acquired Assets outside of the ordinary course of business;
- (b) Contracts. Enter into any material Contracts relating to the Acquired Assets or the System or incur any material obligation or liability (contingent or absolute) relating exclusively to the System outside of the ordinary course of business;
- (c) Actions Affecting Licenses, Other Authorizations. Take any action outside of the ordinary course of business that invalidates or makes unenforceable any material Authorizations and Permits; and
- (d) Encumbrances. Allow any Lien (other than a Permitted Lien) to be placed on any of the Acquired Assets.

**Section 8.03 Cooperation.** Seller and City shall reasonably 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.

**Section 8.04 Supplements and Updates.** Seller or City shall promptly deliver to Buyer any supplemental information updating the Schedules or 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. At least three (3) Business Days prior to the Closing Date, Seller and City 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 herein. In such 3-Business Day period, the only remedy available to Buyer based on such supplemental or

updated information shall be to terminate the Agreement pursuant to the terms of Section 13.01 and the other terms and provisions of this Agreement, and if not so terminated and the Closing occurs, Seller and City shall have no liability whatsoever to Buyer based on such supplemental or updated information or the breach or default that had been caused until such supplemental or updated information was provided.

**Section 8.05 Governmental Approvals.** Promptly after the execution of this Agreement, or as required by Law, except as provided in Section 6.06 or otherwise expressly provided herein, Seller or City shall file all applications and reports that are required to be filed by Seller or City with any Governmental Authority as provided on Schedule 4.05. Seller and City shall also promptly provide all information that any Governmental Authority may require in connection with any such application or report. Seller and City 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 by this Agreement. All authorizations of any Governmental Authority necessary to consummate the transactions contemplated by this Agreement shall have been obtained in form and content reasonably satisfactory to Seller and City prior to Closing. In the event a party to the PaPUC proceeding appeals PaPUC approval of the transaction, Buyer, Seller and City will work in good faith to determine whether to consummate the transaction before the appeal process has concluded. If the parties cannot agree in good faith, the transaction will not consummate until after the appeal process has concluded.

**Section 8.06 Bond Defeasance.** No later than thirty (30) days prior to the Closing Date, the Board shall have approved, subject to and conditioned upon a successful Closing: (i)(A) the defeasance and redemption of any outstanding bonds issued by Seller on the System included in Outstanding Indebtedness and (B) the discharge of any other outstanding debt issued to Seller and payable to any current lender and (ii) the transfer to Buyer or for its benefit of related funds held in any construction fund or account under any indenture(s) being held by Seller or any lender to 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).

## ARTICLE IX.

### PRE-CLOSING COVENANTS OF BUYER

Buyer covenants and agrees to comply with the following provisions:

**Section 9.01 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 hereunder, and Buyer shall use its best efforts 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 9.02 Governmental Approvals.** Promptly after the execution of this Agreement, or as required by Law, except as otherwise expressly provided herein, 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 9.03 Cooperation.** Buyer shall reasonably cooperate with Seller and the City 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.

**Section 9.04 Supplements and Updates.** Buyer shall promptly deliver to 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 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 herein.

**Section 9.05 City Deposit.** Buyer shall deliver to City the City Deposit, and the City shall deliver to the Buyer the executed Deposit Note and evidence of the filing with the Pennsylvania Department and Community and Economic Development pursuant to Section 8128 of the Local Government Unit Debt Act, 53 Pa. C.S. § 8001 *et seq.*, as amended, no later than 60 days after the execution of this Agreement.

## ARTICLE X.

### **CONDITIONS PRECEDENT TO OBLIGATIONS OF SELLER**

The obligation of 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 Seller in its sole discretion:

#### **Section 10.01 Consents and Approvals.**

(a) Receipt of all required material, non-governmental third-party consents and any other approvals necessary to consummate the transactions contemplated by this Agreement set forth in Schedule 10.01(a); and

(b) Except as provided in Sections 2.06 and 6.11 herein, receipt of any required environmental and other Governmental Approvals required for transfer and operation of the System by Buyer, with terms and conditions reasonably acceptable to Seller, including without limitation all required EPA and PaDEP approvals and all such Authorizations and Permits and Governmental Approvals shall be final (and not subject to any appeal and any applicable appeal period having expired).

**Section 10.02 Representations and Warranties of Buyer.** The representations and warranties made by Buyer in Article V that are (a) not qualified by materiality or Material Adverse Effect 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 or Material Adverse Effect 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 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 10.03 PaPUC Governmental Approval.** Consistent with Section 6.06 herein, PaPUC shall have issued a Final Order approving the acquisition of the System under terms and conditions that are reasonably acceptable to Seller, City and Buyer. In the event a party to the PaPUC proceeding appeals PaPUC authorization of the transaction, Buyer, Seller and City will work in good faith to determine whether to consummate the transaction before the appeal process has concluded. If the parties cannot agree in good faith, the transaction will not consummate until after the appeal process has concluded.

**Section 10.04 No Injunctions.** Neither 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 10.05 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 Seller shall have received a certificate to that effect from Buyer dated the Closing Date.

**Section 10.06 Deliveries by Buyer.** Buyer shall have made delivery to Seller of the documents and items specified in Section 12.03 herein.

**Section 10.07 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 XI.

### 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 11.01 Consents and Approvals.**

(a) Receipt of all required material, non-governmental third-party consents and any other approvals necessary or advisable to consummate the transactions contemplated by this Agreement set forth in Schedule 11.01(a); and

(b) Approval, subject to and conditioned upon a successful Closing, by the Board for: (i)(A) defeasance and redemption of any outstanding bonds issued by on the System included in the Outstanding Indebtedness and (B) discharge of any other outstanding debt issued to 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 Seller or any lender to 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); and

(c) Except as provided in Sections 2.06 and 6.11 herein, receipt of any required environmental and other Governmental Approvals required for transfer and operation of the System by Buyer, with terms and conditions reasonably acceptable to Buyer, including without limitation all required PaPUC, EPA and PaDEP approvals and all such Authorizations and Permits and Governmental Approvals shall be final (and not subject to any appeal and any applicable appeal period having expired), provided however, that the inability under Law and/or any Environmental Requirements to transfer one or more Authorizations or Permits and/or any requirement under any Environmental Requirement or Law that Buyer apply for and obtain additional authorizations or permits to continue operation of the System by Buyer shall not constitute conditions precedent to Buyer's obligation to consummate the transactions provided for in this Agreement.

**Section 11.02 Representations and Warranties of Seller.** The representations and warranties made by Seller or City in Article IV that are (a) not qualified by materiality or Material Adverse Effect 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 or Material Adverse Effect 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 Buyer shall have received a certificate to the effect of the foregoing from a duly authorized officer of Seller dated as of the Closing Date.

**Section 11.03 PaPUC Governmental Approval.** Consistent with Section 6.06 herein, PaPUC shall have issued a Final Order approving the acquisition of the System under terms and conditions that are reasonably acceptable to Seller, City and Buyer. In the event a party to the PaPUC proceeding appeals PaPUC authorization of the transaction, Buyer, Seller and City will work in good faith to determine whether to consummate the transaction before the appeal process has concluded. If the parties cannot agree in good faith, the transaction will not consummate until after the appeal process has concluded.

**Section 11.04 No Injunctions.** Neither 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 No Material Adverse Effect.** From the date this Agreement is executed, there shall not have occurred any event or condition which gives rise or is reasonably expected to give rise to a Material Adverse Effect with respect to the Acquired Assets or the System.

**Section 11.06 Deliveries by Seller.** Seller shall have made delivery to Buyer of the documents and items specified in Section 12.02 herein.

**Section 11.07 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 11.08 No Liens.** Seller shall have good and marketable title to the Acquired Assets, free and clear of all Liens, except Permitted Liens.

**Section 11.09 Lease.** Seller shall have caused the Lease Agreement that leases the System Assets to the City, dated September 15, 1978, as amended, by and between Seller and the City to be terminated.

## ARTICLE XII.

### CLOSING

**Section 12.01 Closing Date.** The Closing shall take place at the offices of McNees Wallace & Nurick LLC, 316 N. George Street York, PA or as otherwise determined by Seller, at 10:00 a.m. eastern standard time on the earliest agreed upon date or within five (5) Business Days after the date upon which all the conditions precedent to Closing described in this Agreement have been fulfilled or waived 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 Standard Time, on the Closing Date (the “**Closing Effective Time**”).

**Section 12.02 Deliveries by Seller.** At the Closing, Seller and City 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 B;

(b) Possession of the Acquired Assets, including without limitation, the Real Property and the Easements;

(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 C;

(d) The consents to transfer all of the Assigned Contracts and Authorizations and Permits (including Authorizations and Permits issued under any Environmental Requirement), to the extent required hereunder and as set forth in Schedule 4.15;

(e) One or more special warranty or other deeds in recordable form reasonably acceptable to Buyer transferring fee simple title of Real Property;

(f) Certificate of Seller pursuant to Section 11.02 of this Agreement;

(g) Certificate of Seller pursuant to Section 11.06 of this Agreement; and

(h) 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 12.03 Deliveries by Buyer.** At the Closing, Buyer shall have delivered or caused to be delivered to 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) Certificate of Buyer pursuant to Section 10.02 of this Agreement;
- (d) Certificate of Buyer pursuant to Section 10.05 of this Agreement;
- (e) Evidence of PaPUC approval as provided in Section 10.03; and
- (f) 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, including any necessary actions or assignments to transfer or assign the Consent Order to Buyer.

### **ARTICLE XIII.** **TERMINATION**

**Section 13.01 Events of Termination.** This Agreement may, by notice given in the manner hereinafter provided, be terminated and abandoned at any time prior to completion of the Closing:

- (a) By the mutual consent of Seller, the City, and Buyer;
- (b) By either Seller and the City or Buyer if:
  - (i) the Closing shall not have occurred on or prior to the Outside Date; provided, however, either Seller, the City, or Buyer shall have the one-time right to extend the Outside Date for up to ninety (90) days if any such amount of time up to ninety (90) days is necessary to obtain a required Governmental Approval; or
  - (ii) any Governmental Authority shall have issued 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 will have become final and non-appealable; provided, however, that the Party seeking termination pursuant to this clause (b) of this Section 13.01 is not in breach in any material respect of any of its representations, warranties, covenants or agreements contained in this Agreement;
- (c) By Seller and the City (if Seller and City are not then in material breach of any provision of this Agreement) in the event of a material breach (A) of any covenant or agreement to be performed or complied with by Buyer pursuant to the terms of this Agreement or (B) of any representation or warranty of Buyer contained in this Agreement, which breach (i) has continued without cure for a period of sixty (60) days following written notice thereof by Seller and the City to Buyer or if such breach cannot be cured and (ii) would result in a condition to Closing set forth in Article X of this Agreement not being satisfied (which condition has not been waived by Seller and the City in writing); or

(d) By Buyer (if Buyer is not then in material breach of any provision of this Agreement) in the event of a material breach (A) of any covenant or agreement to be performed or complied with by Seller or the City pursuant to the terms of this Agreement or (B) of any representation or warranty of Seller or the City contained in this Agreement, which breach (i) has continued without cure for a period of sixty (60) days following written notice thereof by Buyer to Seller or the City 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 Buyer in writing).

This Agreement may not be terminated after completion of the Closing.

**Section 13.02 Effect of Termination.** If this Agreement is terminated by Seller or Buyer pursuant to Section 13.01, written notice thereof will forthwith be given to the other and all further obligations of the parties hereto under this Agreement will terminate without further action by either Party and without liability or other obligation of either Party to the other Party hereunder; provided, however, (i) 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 and (ii) that if this Agreement is terminated and the transactions abandoned for any reason, the City shall remain obligated on the Deposit Note, provided, however, the Parties shall not be deemed to have waived any rights or claims pursuant to this Agreement. With regard to any termination of this Agreement, the Seller and the City hereby affirmatively waive any defense to the validity and enforcement of the Deposit Note on the grounds that the Deposit Note is invalid as a result of not receiving any Governmental Approval. The Seller and the City further agree, at the request of the Seller, to cooperate at their own expense with any filing by the Buyer, even in connection with a termination, for any required Governmental Approval of the Deposit Note.

#### ARTICLE XIV.

#### MISCELLANEOUS

**Section 14.01 Confidentiality.** Except as and to the extent required by applicable Law (including but not limited to the Pennsylvania Right-To-Know Law, 65 P.S. §§ 67.101-67.3104, and the Pennsylvania Sunshine Act, 65 Pa. C.S. §§ 701-716) 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 hereto shall, directly or indirectly, disclose or use (and no Party shall permit its Representatives to disclose or use) any Confidential Information of the other Party furnished, or to be furnished, by such other Party or its 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 14.02 Public Announcements.** Subject to applicable Law or listing rules of an exchange on which Buyer's direct or indirect parent corporation's stock is listed, and except as otherwise set forth herein, the initial public announcement relating to the transactions contemplated herein 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 14.03 Notices.** All notices, other communications and approvals required or permitted by this Agreement shall be in writing, shall state specifically that they are being given pursuant to this Agreement and shall be addressed as follows:

in the case of Seller:

Barley Snyder LLC  
100 East Market Street  
York, PA 17401  
Attn: Stacey R. MacNeal

in the case of the City:

City of York  
101 South George Street  
York, PA 17401  
Attn: Solicitor

with a copy to:

McNees Wallace & Nurick LLC  
100 Pine Street  
PO Box 1166  
Harrisburg, PA 17108-1166  
Attn: Adeolu Bakare

in the case of Buyer:

Pennsylvania-American Water Company  
852 Wesley Drive  
Mechanicsburg, PA 17055  
Attn: President

With a copy to:

Pennsylvania-American Water Company  
852 Wesley Drive  
Mechanicsburg, PA 17055  
Attn: 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 shall be 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 of place of receipt), the notice, other communication or approval shall be 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 14.04 Bulk Sales Laws.** The Parties hereby waive compliance with the provisions of any bulk sales, bulk transfer or similar Laws of any jurisdiction that may otherwise be applicable with respect to the sale of any or all of the Purchased Assets to Buyer.

**Section 14.05 Costs.** Except as otherwise specifically provided in this Agreement, each Party shall be responsible for its own costs and expenses incurred in connection with its entrance into and performing and observing its obligations and covenants under this Agreement.

**Section 14.06 Headings.** The article, section and paragraph headings in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

**Section 14.07 Severability.** If any term, provision, covenant or restriction contained in this Agreement is held by a court of competent jurisdiction or PaPUC to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions contained in this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated unless the term, provision or restriction is a material term, the absence of which would significantly change the transaction to the detriment of Seller, Buyer or both.

**Section 14.08 Entire Agreement.** This Agreement and the other agreements required to be delivered pursuant to this Agreement constitutes 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 14.09 Construction.** As used in this Agreement, (a) the gender of any word includes the masculine, feminine and neuter, (b) the number of any word includes the singular and plural, (c) the word “including” is exemplary, and not exclusive or limiting, and means “including, without limitation”, (d) the word “or” is not exclusive, (e) the words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to this Agreement, and (f) all references to Articles and Sections refer to articles and sections of this Agreement, and all references to Schedules or Exhibits are to schedules or exhibits attached hereto, each of which is made a part hereof for all purposes.

**Section 14.10 Amendments; Waivers.** This Agreement may be amended, changed or supplemented only by a written agreement signed by the Parties. Any waiver of, or consent to depart from, the requirements of any provision of this Agreement shall 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 shall operate as a waiver of such right. No single or partial exercise of any such right shall preclude any other or further exercise of such right or the exercise of any other right.

**Section 14.11 Parties in Interest; Third Party Beneficiary.** Except as hereinafter 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 14.12 Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Parties named herein and their respective successors and permitted assigns. Neither Party hereto shall assign or delegate this Agreement or any rights or obligations hereunder without the

prior written consent of the other Parties hereto and required Governmental Approvals, and any attempted assignment or delegation without prior written consent and required Governmental Approvals shall be void and of no force or effect.

**Section 14.13 Non-Liability of Public Officials.** Buyer may not charge any official, officer, employee, advisor or consultant of Seller or City personally with any liability or expenses of defense or hold any official, officer, employee, advisor or consultant of Seller personally liable to them under any term or provision of this Agreement or because of the execution, attempted execution or any breach of this Agreement by Seller or City.

**Section 14.14 No Partnership.** Nothing contained in this Agreement shall constitute or be deemed to create a partnership, joint venture, principal and agent relationship or employer and employee relationship between the Parties or their Representatives.

**Section 14.15 Governing Law; Jurisdiction.** This Agreement and any disputes arising in connection herewith shall be governed by and construed and enforced in accordance with, and governed by, the laws of the Commonwealth of Pennsylvania, without giving effect to any conflict or choice of law rule or principle that would result in the imposition of the laws of a jurisdiction other than the Commonwealth of Pennsylvania. The Parties hereto irrevocably agree and consent to the jurisdiction of Pa PUC, the United States District Court for the Middle District of Pennsylvania and the Court of Common Pleas of York 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 Middle District of Pennsylvania and the Court of Common Pleas of York County, Pennsylvania, and each Party irrevocably, except where the PaPUC has exclusive or primary jurisdiction, 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 herein 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 14.16 Specific Performance.** The Parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the Parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy, subject to the limitations in Section 7.05, to which they are entitled at law or in equity.

**Section 14.17 Counterparts; Facsimile Execution.** This Agreement may be executed in any number of counterparts which, taken together, shall constitute one and the same agreement. A



signature to this Agreement delivered by facsimile or email of a PDF document shall be deemed an original signature hereto and such delivery shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[THIS SPACE INTENTIONALLY LEFT BLANK;

SIGNATURES NEXT PAGE]

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

YORK CITY SEWER AUTHORITY

PENNSYLVANIA-AMERICAN WATER  
COMPANY

By: \_\_\_\_\_  
Printed: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Printed: \_\_\_\_\_  
Its: \_\_\_\_\_

CITY OF YORK

By: \_\_\_\_\_  
Printed: \_\_\_\_\_  
Its: \_\_\_\_\_

**EXHIBIT A**  
**FORM OF NOTE**

**UNITED STATES OF AMERICA**  
**COMMONWEALTH OF PENNSYLVANIA**  
**CITY OF YORK, YORK COUNTY**  
**TAX AND REVENUE ANTICIPATION NOTE, SERIES A OF 2021**

<u>INTEREST</u> <u>RATE</u>	<u>DATED</u> <u>DATE</u>	<u>MATURITY</u> <u>DATE</u>	<u>CUSIP</u> <u>NUMBER</u>
0.00%	_____, 2021	December 31, 2022	N/A

FOR VALUE RECEIVED, THE CITY OF YORK, YORK COUNTY, PENNSYLVANIA (the "City"), hereby promises to pay to Pennsylvania-American Water Company (the "Company"), or registered assigns, the principal sum of TWENTY MILLION DOLLARS (\$20,000,000), together with interest at the rate hereinafter provided, in such coin or currency of the United States of America which, at the respective times of payment, is legal tender for payment of public and private debts.

Interest Rate. This Note shall bear interest on the outstanding principal amount hereof from the Date of Issuance set forth above at the rate as specified above.

Interest shall be computed on the basis of a 360-day year consisting of twelve 30-day months. Interest, principal and any other monies due hereunder, shall be payable in full on December 31, 2022, the maturity date of the Note, subject to the City's right of prepayment set forth herein.

The Note is secured by the pledge of, security interest in and a lien and charge on the taxes and revenues of the City to be received during the period within which the Note is outstanding. The pledge, lien and charge shall be fully perfected as against the City, all creditors thereof and all third parties from and after the filing of any financing statement or statements required under the Uniform Commercial Code as in effect in the Commonwealth of Pennsylvania and Section 8125 of the Act. The filing of appropriate financing statements is hereby authorized and directed.

This Note may not be transferred by the Company without the written consent of the City.

No recourse shall be had for the payment of the principal of this Note, or for any claim based hereon or on the Resolution, against any member, officer or employee, past, present or future, of the City or of any successor body, either directly or through the City or any successor body, under any constitutional provision, statute or rule of law, and all such liability of such members, officers or employees is released as a condition of and as consideration for the execution and issuance of this Note.

## ASSIGNMENT AND ASSUMPTION AGREEMENT

**THIS ASSIGNMENT AND ASSUMPTION AGREEMENT** (the “**Agreement**”) dated as of [DATE] (the “**Effective Date**”), is made and entered into by and among The York City Sewer Authority, York County, a body corporate and politic, duly organized under the Pennsylvania Municipality Authorities Act, 53 Pa. C.S. §§ 5601 *et seq.* (the “**Assignor**”), the City of York, Pennsylvania, a political subdivision of the Commonwealth of Pennsylvania organized under the Third Class City Code, Act of November 24, 2015, P.L. 67, 11 Pa. C.S. §10101 *et seq.* (the “**City**”) and Pennsylvania-American Water Company, (the “**Assignee**”), a Pennsylvania corporation.

### BACKGROUND

This Agreement is made pursuant to the Asset Purchase Agreement dated [DATE] (the “**APA**”), by and among Assignor, City and Assignee, in which Assignor and City are concurrently herewith selling, transferring, conveying, assigning and delivering to Assignee the Acquired Assets, as defined in the APA. Capitalized terms used and not defined herein shall have the meanings given to them in the APA.

Pursuant to the APA, as part of the consideration for the Acquired Assets, Assignee is required to assume and agree to perform, pay or discharge, when due, certain Assumed Liabilities, as defined in the APA.

NOW, THEREFORE, in consideration of the premises, the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereby covenant and agree as follows:

1. The Recitals of this Agreement are incorporated herein as if set forth in full. Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the APA.
2. Assignor and City hereby sell, transfer, assign, convey and deliver to Assignee all of Assignor’s and City’s right, title and interest in and to all of the Acquired Assets, on the terms and subject to the conditions set forth in the APA.
3. Assignor and City hereby assigns, and Assignee hereby assumes and agrees to pay, perform and discharge, in accordance with their terms, the Assumed Liabilities (and no other liabilities or obligations of Assignor or City), on the terms and subject to the conditions set forth in the APA.
4. Notwithstanding the foregoing or any other provision of this Agreement, Assignee will not assume or be bound by and shall be deemed not to have assumed, agreed to pay, perform, fulfill or discharge any of the Excluded Liabilities.
5. The assumption by Assignee of the Assumed Liabilities shall not be construed to defeat, impair or limit in any way the rights, claims or remedies of Assignee under the APA.

IN WITNESS WHEREOF, the undersigned have executed this Assignment and Assumption Agreement as of the day and year first above written.

YORK CITY SEWER AUTHORITY

PENNSYLVANIA-AMERICAN WATER  
COMPANY

By: \_\_\_\_\_  
Printed: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Printed: \_\_\_\_\_  
Its: \_\_\_\_\_

CITY OF YORK

By: \_\_\_\_\_  
Printed: \_\_\_\_\_  
Its: \_\_\_\_\_

**BILL OF SALE**

This BILL OF SALE (“**Bill of Sale**”) dated as of [DATE] (the “**Effective Date**”), is made and entered into by and among The York City Sewer Authority, York County, a body corporate and politic, duly organized under the Pennsylvania Municipality Authorities Act, 53 Pa. C.S. §§ 5601 *et seq.* (the “**Seller**”), the City of York, Pennsylvania, a political subdivision of the Commonwealth of Pennsylvania organized under the Third Class City Code, Act of November 24, 2015, P.L. 67, 11 Pa. C.S. §10101 *et seq.* (the “**City**”) and Pennsylvania-American Water Company, (the “**Buyer**”), a Pennsylvania corporation.

**RECITALS:**

WHEREAS, pursuant to that certain Asset Purchase Agreement by and among Seller, City and Buyer dated [DATE] (the “**APA**”), Seller and City have agreed to sell and Buyer has agreed to purchase, certain assets of Seller as more particularly described in Section 2.01 of the APA (the “**Acquired Assets**”) owned and used in connection with that certain wastewater system (the “**System**”) that provides public wastewater collection and treatment service to various customers in the City and public wastewater treatment and conveyance services to the City, Manchester Township, West Manchester Township, York Township, North York Borough, West York Borough, Spring Garden Township, and Springettsbury Township; and

WHEREAS, the use, maintenance and right of access to the Acquired Assets constituting interests in real property are being transferred on the date hereof by Seller or City to Buyer by deeds, assignments and/or a license; and

WHEREAS, Seller and City intend to convey the Acquired Assets not constituting interests in real property as more particularly described in the APA.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, Seller, City and Buyer agree as follows:

1. **Recitals; Capitalized Terms.** The Recitals of this Bill of Sale are incorporated herein as if set forth in full. Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the APA.
2. **Transfer of Acquired Assets.** Seller and City hereby sell, assign, convey, transfer, and grant to Buyer all of Seller’s and City’s right, title and interest in and to the Acquired Assets, on the terms and subject to the conditions set forth in the APA.
3. **Further Assurances.** Promptly upon request of the other party, Buyer, Seller and City shall each execute and deliver to the others such further assurances and take such further actions as may be reasonably required or appropriate to perfect the transfer of the Acquired Assets and otherwise carry out the intent and purpose of this Bill of Sale.
4. **Binding Effect.** All of the terms and provisions of this Bill of Sale shall be binding upon, inure to the benefit of and be enforceable by the legal representatives, successors and assigns of Seller, City and Buyer.

**IN WITNESS WHEREOF**, the parties have executed this Bill of Sale under seal as of the date first above written.

YORK CITY SEWER AUTHORITY

PENNSYLVANIA-AMERICAN WATER  
COMPANY

By: \_\_\_\_\_  
Printed: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Printed: \_\_\_\_\_  
Its: \_\_\_\_\_

CITY OF YORK

By: \_\_\_\_\_  
Printed: \_\_\_\_\_  
Its: \_\_\_\_\_

**ASSET PURCHASE AGREEMENT**  
**DISCLOSURE SCHEDULES**

These Disclosure Schedules (these “**Schedules**”) are dated as of [\_\_\_\_\_], 2021 (the “**Effective Date**”), and shall be updated and delivered as of the Closing Date and are provided pursuant to the certain Asset Purchase Agreement dated as of [\_\_\_\_\_], 2021 (the “**Agreement**”), by and among York City Sewer Authority as Seller (the “**Seller**”), the City of York, and Pennsylvania-American Water Company as Buyer (the “**Buyer**”). Capitalized terms used in these Schedules but not defined herein shall have the respective meanings assigned to such terms in the Agreement.

The disclosures set forth herein, which have been numbered to correspond to the section numbers of the Agreement, supplement and are a part of the representations and warranties of the Seller in the Agreement. Any disclosures made under the heading of one section of these Schedules shall be deemed to constitute a disclosure for purposes of all applicable representations and warranties set forth within the Agreement (whether or not such representation and warranty makes specific reference to that (or any) Schedule).

These Schedules are qualified in their entirety by reference to specific provisions of the Agreement, and are not intended to constitute, and shall not be construed as constituting, additional representations and warranties of the Seller except as and to the extent provided in the Agreement. The inclusion of any item in these Schedules: (a) does not represent a determination by the Seller that such item is material nor shall it be deemed to establish a standard of materiality; (b) does not represent a determination by the Seller that such item did not arise in the ordinary course of business; and (c) shall not constitute, or be deemed to be, an admission to any third party concerning such item by the Seller.

The headings set forth in these Schedules are for convenience of reference only and do not constitute a part of these Schedules and shall not be deemed to limit, characterize or in any way affect the meaning or interpretation of these Schedules.



**Schedule 2.02(h)  
Excluded Assets**

**VEHICLES**

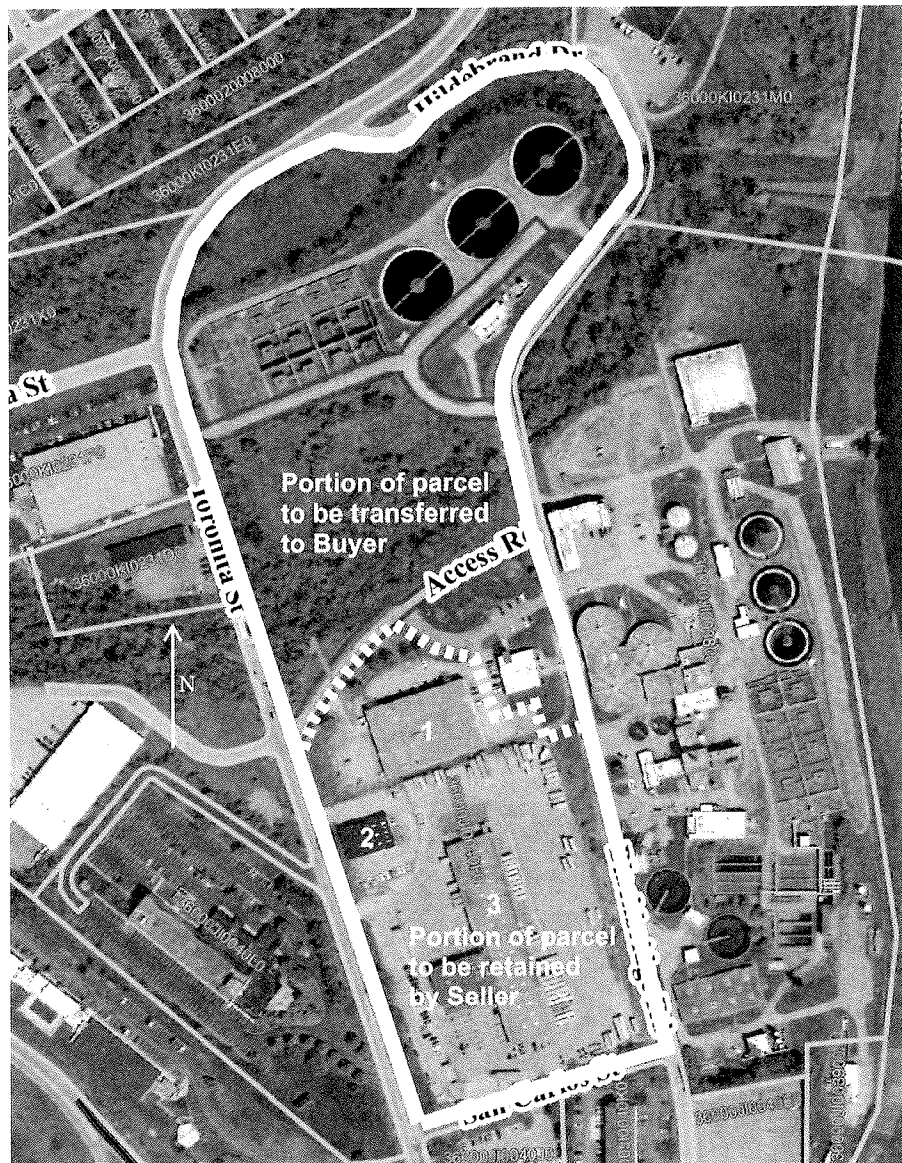
PLATE NUMBER	VIN #	VEHICLE #	REGISTERED OWNER ON TITLE
MG 7771K	1FTBF2B67JEC64860	2018 F250 w/Lift Gate	Enterprise
MG 0271L	1FMCU9GD0JUC91006	2018 Escape	Enterprise
MG 0267L	1FMCU9GD7JUC87874	2018 Escape	Enterprise
MG 3994L	1FTBF2B61KEG05834	2019 F250 w/Lift Gate	Enterprise
MG 3993L	1FTBF2B63KEG05835	2019 F250 w/Lift Gate	Enterprise
MG 5657B	1FMYU93105KE15536	2005 Escape	Phillips Ford
MG 5967F	1FMCU9D70BKB92455	2011 Escape	Apple Ford
MG 6501K	1HTGRSJT3CJ621257	2012 Dump Truck	Five Star
MG 8803L	5KKHAXFE5LPLH9398	2020 Dumpster Truck	River's
MG 99768	1GBP7D1YXGV108875	1986 Dump Truck	Chevrolet
MG 8946F	1FDRF3F67BEC58259	2011 Stake Body Truck	Apple Ford
MG 4961H	1FMCU9GX1EUD51892	2014 Escape	Apple Ford
MG 5686B	1FMYU93195KE15535	2005 Escape	Phillips Ford
MG 6206L	JF2SKAAC4KH564760	2019 Wagon	Enterprise
MG 6770H	1FMCU9D77AKD33827	2010 Escape	Apple Ford
MG 6207L	JF2SKAAC4KH565780	2019 Wagon	Enterprise
MG 0269L	1FMCU9GD2JUC87877	2018 Escape	Enterprise
MG 7039E	1FMCU93779KB19126	2009 Escape	Apple Ford
MG 7763L	1FDXE4FS7HDC52506	2017 CCTV Truck	Cues
MG 5917K	1FD8X3HT8HEF26479	2017 4x4 Dump Truck	Enterprise
MG 1803K	1FD7X2B61HEE99294	2017 Super Duty	Enterprise
MG 4348L	1FDRF3H69JEC65144	2018 Truck	Enterprise
MG 7766K	1FDRF3GT6JEC65142	2018 F350 Stake Body	Enterprise
MG 92319	2FZHATDC36AX21449	2006 LT7500 Camel Flusher	
MG 7023D	1FDSF35538EE30449	2008 Truck	Hoffman Ford
MG 0719G	1HTWKAZR1CJ632650	2012 Truck w/ Camel	
E450	1FDXE4FS7HDC52506	2017 Ford Econoline Camera Truck CCTV	Fulton Leasing Company

In addition to the vehicles listed above, all vehicles owned by the City and used exclusively for non-System purposes.

In addition to the vehicles listed above, all vehicles leased by the City, including any leased vehicles used in operation of the System.

## REAL ESTATE

Seller intends to retain the southern portion of the tax parcel in the image below (36-000-JI-0040.F0-00000), which is the area below the dotted line. The area to be retained includes the UPS facility and the two storage buildings (all described below) just south of the proposed subdivision line.



- Building 1 – Electrical maintenance building (listed as the “Vehicle Storage Building” in the Engineer’s Report)
- Building 2 – Small storage building (not included in the Engineer’s Report)
- Building 3 – UPS facility (not included in the Engineer’s Report)

**Schedule 4.05  
Seller's Governmental Consents and Approvals**

Pennsylvania Public Utility Commission

Pennsylvania Department of Environmental Protection Approval of Act 537 Official Plan Revision or Amendment recognizing transfer of System from Seller to Buyer

Pennsylvania Department of Environmental Protection Transfer or Assignment of All Authorizations and Permits, except NPDES Permit No. PAC670168

York County Conservation District Transfer or Assignment of NPDES Permit No. PAC670168

Agreement with Metropolitan Edison Company for Alternate Feed Electric Service	- Met-Ed Company - City of York	January 31, 2012
E-Finity Distributed Generation, LLC Contract	- E-Finity Distributed Generation, LLC - City of York	June 6, 2017
Shiple Energy Natural Gas Sales Agreement	- Shiple Choice LLC - City of York	May 1, 2019
TalenEnergy Retail Electricity Agreement	- TalenEnergy - City of York	January 1, 2020
Aquatic Informatics	- City of York - Aquatic Informatics	July 1, 2020
Billing and Revenue Service Agreement	- City of York - York Water Company	October 18, 2019

**Schedule 4.06  
Liabilities**

<b>Series of Bonds</b>	<b>Principal Amount Outstanding as of 12/1/2020</b>
Guaranteed Sewer Revenue Bond, Series of 2008	\$5,780,000.00
Guaranteed Sewer Revenue Bond, Series of 2011	\$104,815.47
Guaranteed Sewer Revenue Bonds, Series of 2017	\$21,010,000.00
Guaranteed Sewer Revenue Bond, Series of 2019	\$3,996,485.63 <sup>1</sup>

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<sup>1</sup> The Seller's Guaranteed Sewer Revenue Bond, Series of 2019 is a short-term construction loan, maturing on April 15, 2022, in the maximum principal amount of \$10,000,000. The Seller anticipates making additional draws on the loan as funds are needed for the projects that are being financed with the proceeds: (1) a filter replacement project; and (2) a SCADA replacement project. The Seller has secured permanent financing for the filter replacement project, in the amount of \$6.8 million, from the Pennsylvania Infrastructure Investment Authority ("PennVEST"). The loan from PennVEST evidencing the permanent financing has not yet closed. The Seller anticipates that it will apply for permanent financing for the SCADA replacement project from PennVEST in the ordinary course of business, with closing to occur in the second quarter of 2021.

**Schedule 4.07**  
**Certain Changes or Events**

None.

**Schedule 4.08**  
**Tax Matters**

None.

**Schedule 4.09  
Real Property and Easements**

**PERMITS FOR CONSTRUCTION AND EXPANSION OF THE SYSTEM**

<b>GRANTEE</b>	<b>GRANTOR</b>	<b>REC. DATE</b>	<b>BOOK / PAGE</b>	<b>DESCRIPTION</b>
City of York	Commonwealth of PA	10/22/1909	16-S / 376	Permit
City of York	Commonwealth of PA	6/21/1913	18-V / 367	Permit
City of York	Commonwealth of PA	7/1/1914	19-L / 208	Permit
City of York	Commonwealth of PA	3/12/1915	19-O / 649	Permit
City of York	Commonwealth of PA	7/3/1915	19-V / 499	Permit
City of York	Commonwealth of PA	1/10/1916	20-A / 312	Permit
City of York	Commonwealth of PA	9/8/1922	22-C / 497	Permit
City of York	Commonwealth of PA	3/12/1915	19-O / 649	Permit
City of York	Commonwealth of PA	12/5/1933	25-P / 574	Permit
City of York	Commonwealth of PA	10/11/1935	26-F / 557	Permit
City of York	Commonwealth of PA	9/30/1936	26-N / 620	Permit
City of York	Commonwealth of PA	11/8/1941	29-A / 104	Permit
City of York	Commonwealth of PA	11/8/1941	29-A / 109	Permit
City of York	Commonwealth of PA	3/16/1943	29-T / 298	Permit
City of York	Commonwealth of PA	5/11/1945	31-A / 610	Permit
City of York	Commonwealth of PA	2/17/1950	35-A / 504	Permit
York City Sewer Auth	Commonwealth of PA	6/8/1961	51-H / 580	Permit – York
York City Sewer Auth	Commonwealth of PA	1/11/1973	66-C / 1028	Permit – York
York City Sewer Auth	Commonwealth of PA	10/5/1973	67-C / 790	Permit – York
York City Sewer Auth	Commonwealth of PA	7/23/1974	68-B / 130	Permit – York
York City Sewer Auth	Commonwealth of PA	7/29/1981	83-F / 923	Permit – Manch Twp
York City Sewer Auth	PA Dept. Envr. Resources	4/20/1987	95-I / 455	Permit – Manch Twp
York City Sewer Auth	PA Dept. Envr. Resources	7/11/1991	201 / 1094	Permit – Manch Twp

**REAL PROPERTY AND EASEMENTS**

<b>GRANTEE</b>	<b>GRANTOR</b>	<b>REC. DATE</b>	<b>BOOK / PAGE</b>	<b>DESCRIPTION</b>
City of York	Guardian Trust Co.	12/28/1911	18-A / 357	York
City of York	P A & S Small Land Co.	11/5/1914	19-G / 642	Agreement
City of York	Jane Gresly	6/28/1915	19-U / 368	ROW
City of York	Joseph R. Jones	5/22/1917	20-L / 263	Sewer Rents
City of York	Bilmeyer & Small Co.	8/8/1918	20-S / 377	ROW
City of York	West End Sewer Co.	10/21/1919	21-E / 35	Sewer System
City of York	Jacob Bare Est.	7/23/1926	23-N / 558	ROW
City of York	William M. Boger	9/23/1926	23-Q / 236	ROW
City of York	Ralph K. Trimmer	9/29/1926	23-O / 650	Agreement
City of York	Grier Hersh	7/10/1931	24-Z / 628	ROW
City of York	York County Poor District	1/27/1932	25-F / 36	ROW
City of York	Annie M. Menough	5/6/1932	25-E / 665	ROW
City of York	Frederick C. Boesch Exr	5/6/1932	25-E / 666	ROW

GRANTEE	GRANTOR	REC. DATE	BOOK / PAGE	DESCRIPTION
City of York	Community Swimming Assn Inc	5/10/1932	25-E / 667	ROW
City of York	Norard Hosiery Mills Inc.	8/9/1933	25-R / 4	ROW
City of York	Agnes Kehm	12/21/1933	25-R / 279	ROW
City of York	Sallie S. Bond	12/21/1933	25-4 / 280	ROW
City of York	York Hospital	5/11/1936	26-K / 238	York Co
City of York	David M. Myers Exr	8/30/1937	26-Z / 267	ROW
City of York	York County Institution Dist	6/10/1938	27-I / 515	ROW
City of York	J. Victor Jones	6/10/1938	27-I / 516	ROW
City of York	York Tack & Nail Works	6/10/1938	27-I / 518	ROW
City of York	New York Wire Cloth Co	6/10/1938	27-I / 520	ROW
City of York	Home Furniture Co	6/10/1938	27-I / 522	ROW
City of York	David P. Klinedinst Trust	6/10/1938	27-I / 524	ROW
City of York	American Chain & Cable Co. Inc.	6/10/1938	27-I / 525	ROW
City of York	George H. Wolf	6/10/1938	27-I / 527	ROW
City of York	Maryland & Penna. Railroad Co.	6/10/1938	27-I / 529	ROW
City of York	York County Institution Dist	6/24/1938	27-I / 636	ROW
City of York	Ella L. Kleffman	7/21/1938	27-K / 209	ROW
City of York	George D. Deardorff	7/21/1938	27-K / 210	ROW
City of York	Sarah E. Miller	7/21/1938	27-K / 211	ROW
City of York	Howard E. Holland	3/31/1939	27-R / 352	ROW
City of York	York Water Co	6/30/1939	27-U / 566	York
City of York	York Water Co.	1/10/1941	28-M / 376	Agreement
City of York	Ray S. Noonan	9/12/1941	28-W / 267	ROW
City of York	Maryland & Penna R R Co	9/12/1941	28-W / 269	ROW
City of York	York Independent Oil Co.	9/12/1941	28-W / 272	Consent
City of York	Fannie M. Free	7/7/1945	31-I / 182	ROW
City of York	Motor Freight Express Inc.	10/20/1945	31-N / 162	Agreement
City of York	Pauline L. Lavetan	4/10/1947	32-V / 533	Agreement
City of York	C. Kauffman Miller	4/22/1947	33-B / 14	Agreement
City of York	Harry R. Lenker	1/17/1950	35-C / 606	Agreement
City of York	Marie A. Garner	7/19/1950	35-M / 532	Agreement
City of York	George S. Freed	7/19/1950	35-M / 535	Agreement
City of York	Heistand Frey	8/1/1950	35-L / 583	ROW
City of York	David Y. Herbst	11/4/1950	35-T / 632	ROW
City of York	Penn Dairies Inc.	12/11/1950	35-Y / 108	Agreement
City of York	Penn Dairies Inc.	12/11/1950	35-Y / 113	Agreement
York City Sewer Auth	City of York	4/15/1952	36-U / 546	Deed – Transfer of Sewer System
York City Sewer Auth	Commonwealth of PA	2/6/1969	61-X / 562	ROW – Manch Twp
York City Sewer Auth	Commonwealth of PA	2/6/1969	U / 130 Ref. 61X / 562	Plan – Manch Twp



GRANTEE	GRANTOR	REC. DATE	BOOK / PAGE	DESCRIPTION
York City Sewer Auth	GTE Sylvania Inc.	7/9/1971	64-I / 237	ROW – W Manch Twp
York City Sewer Auth	Robert Eichelberger	7/9/1971	64-I / 240	ROW – W Manch Twp
York City Sewer Auth	York Stone and Supply Co.	7/9/1971	64-I / 243	ROW – W Manch Twp
York City Sewer Auth	York Drilling Co. Inc.	7/9/1971	64-I / 246	ROW – W Manch Twp
York City Sewer Auth	Williams Tool & Machine	7/9/1971	64-I / 249	ROW – W Manch Twp
York City Sewer Auth	Luther D. March	7/9/1971	64-I / 252	ROW – W Manch Twp
York City Sewer Auth	Robert Eichelberger	7/9/1971	U / 486 Ref. 64I / 240	Plan – W Manch Twp
York City Sewer Auth	York Stone and Supply Co.	7/9/1971	U / 487 Ref. 64I / 243	Plan – W Manch Twp
York City Sewer Auth	York Drilling Co. Inc.	7/9/1971	U / 488 Ref. 64I / 246	Plan – W Manch Twp
York City Sewer Auth	Williams Tool & Machine	7/9/1971	U / 489 Ref. 64I / 249	Plan – W Manch Twp
York City Sewer Auth	Luther D. March	7/9/1971	U / 490 Ref. 64I / 252	Plan – W Manch Twp
York City Sewer Auth	Sun Oil Company	1/5/1972	64-W / 1194	ROW – York
York City Sewer Auth	Sun Oil Company	1/5/1972	U / 571 Ref. 64W / 1194	Plan – York
York City Sewer Auth	Commonwealth of PA	1/11/1973	66-C / 1028	Order – York
York City Sewer Auth	Metropolitan Edison Co.	4/7/1978	76-B / 151	ROW – Manch Twp
York City Sewer Auth	Metropolitan Edison Co.	7/27/1981	83-F / 524	ROW – Manch Twp
York City Sewer Auth	Merchants Terminal Corp.	10/9/1984	88-F / 1002	Declaration – Manch Twp
York City Sewer Auth	Metropolitan Edison Co.	5/28/1985	89-M / 909	ROW – Manch Twp
York City Sewer Auth	United States of America	6/27/1985	89-T / 348	ROW – Manch Twp
York City Sewer Auth	Merchants Terminal Corp.	8/23/1985	90-E / 489	Deed – Manch Twp
York City Sewer Auth	Theodore R. Jones	4/3/1986	91-V / 414	Deed – Manch Twp
York City Sewer Auth	N/A	4/29/1986	FF / 799	Plan – Manch Twp
York City Sewer Auth	Manchester Township	10/3/1986	93-O / 284	Agreement – Manch Twp
York City Sewer Auth	Bob Evans Farms Inc.	10/30/1986	93-U / 992	Deed – Manch Twp
York City Sewer Auth	City of York	4/30/1987	95-L / 665	ROW – York
York City Sewer Auth	York City Redev. Auth.	4/30/1987	95-L / 672	ROW – York
York City Sewer Auth	Champion Intl. Corp.	4/30/1987	95-L / 679	ROW – York
York City Sewer Auth	Larry Liebgott	4/30/1987	95-L / 687	ROW – York
York City Sewer Auth	York City School District	4/30/1987	95-L / 694	ROW – York
York City Sewer Auth	York College of PA	4/30/1987	95-L / 702	ROW – Spring Garden Twp
York City Sewer Auth	York City Redev. Auth.	4/30/1987	95-L / 707	ROW – York
York City Sewer Auth	Robert D. Hechinger	4/30/1987	95-L / 715	ROW – York
York City Sewer Auth	City of York	4/30/1987	95-L / 723	ROW – York
York City Sewer Auth	City of York	4/30/1987	95-L / 731	ROW – York
York City Sewer Auth	City of York	4/30/1987	95-L / 739	ROW – York

GRANTEE	GRANTOR	REC. DATE	BOOK / PAGE	DESCRIPTION
York City Sewer Auth	L. Levetan & Sons	4/30/1987	95-L / 747	ROW – York
York City Sewer Auth	City of York	4/30/1987	95-L / 756	ROW – York
York City Sewer Auth	York City Redev. Auth.	4/30/1987	95-L / 765	ROW – York
York City Sewer Auth	City of York	4/30/1987	95-L / 773	ROW – York
York City Sewer Auth	City of York	4/30/1987	95-L / 782	ROW – York
York City Sewer Auth	York College of PA	4/30/1987	GG / 421 Ref. 95-L / 702	Plan – Spring Garden Twp
York City Sewer Auth	Maryland and PA Railroad	5/8/1987	95-N / 1010	ROW – York
York City Sewer Auth	Metropolitan Edison Co.	5/20/1987	95-Q / 993	ROW – York
York City Sewer Auth	City of York	12/7/1987	97-R / 350	Memo of Lease – Sewer System
York City Sewer Auth	Dennis L. Edleblute	7/6/1988	99-R / 979	ROW – York
York City Sewer Auth	Metropolitan Edison Co.	7/27/1988	99-Z / 254	ROW – Manch Twp
York City Sewer Auth	York City Redev. Auth.	7/27/1988	99-Z / 257	Agreement – York
York City Sewer Auth	Evelyn Jane Silberman	11/21/1988	101-F / 376	Agreement – York
York City Sewer Auth	Maryland and PA Railroad	12/19/1988	101-L / 868	Addendum – York
York City Sewer Auth	Columbia Gas of PA Inc.	1/25/1989	101-T / 1085	ROW – York
York City Sewer Auth	N/A	5/25/1989	JJ / 318	Plan – Manch Twp
York City Sewer Auth	Metropolitan Edison Co.	7/14/1989	103-J / 122	ROW – Manch Twp
York City Sewer Auth	City of York	9/8/1993	714 / 354	ROW – York
York City Sewer Auth	Dentsply Intl. Inc.	11/30/1993	776 / 482	Agreement – York
York City Sewer Auth	Theodore R. Jones	8/2/1994	948 / 608 Ref. 91-V / 414	Termination – Manch Twp
York City Sewer Auth	Springettsbury Twp	10/29/1999	1381 / 6381	ROW – Springettsbury Twp
York City Sewer Auth	Springettsbury Twp	10/29/1999	GG / 1806 Ref. 1381 / 6381	ROW – Springettsbury Twp
York City Sewer Auth	York Building Prod. Co.	8/17/2000	1407 / 8871	ROW – W Manch Twp
York City Sewer Auth	Maryland and PA Railroad	2/7/2001	1424 / 4281	ROW – York
York City Sewer Auth	Maryland and PA Railroad	2/7/2001	1424 / 4286	Addendum – York
York City Sewer Auth	York City School Dist.	3/12/2001	1427 / 6924	ROW – W Manch Twp
York City Sewer Auth	John E. Gearhart	3/12/2001	1427 / 6935	ROW – York
York City Sewer Auth	York College of PA	5/24/2001	1438 / 4147	Termination – Spring Garden Twp
York City Sewer Auth	B.B., Jr., Inc.	12/11/2002	1533 / 7073	ROW – Manch Twp
York City Sewer Auth	Creekside Investors, LP	1/10/2003	1539 / 7893	ROW – York
York City Sewer Auth	Bradley B. Smith	6/23/2004	1660 / 6513	Order – York
York City Sewer Auth	John E. Gearhart	1/18/2008	1943 / 7314	Declaration – York
York City Sewer Auth	Cresticon Inc.	1/18/2008	1943 / 7327	Declaration – York
York City Sewer Auth	Svedala Industries Inc.	3/20/2008	1954 / 5867	ROW – Spring Garden Twp
York City Sewer Auth	York College of PA	6/16/2008	1970 / 5362	ROW – Spring Garden Twp

<b>GRANTEE</b>	<b>GRANTOR</b>	<b>REC. DATE</b>	<b>BOOK / PAGE</b>	<b>DESCRIPTION</b>
York City Sewer Auth	Bradley B. Smith	9/10/2008	1984 / 6347	Order – York
York City Sewer Auth	Metso Minerals Indust. Inc.	12/17/2009	2056 / 3789	Extension – Spring Garden Twp
York City Sewer Auth	Metso Minerals Indust. Inc.	1/17/2010	2079 / 7388 Ref. 1954 / 5867	Extension – Spring Garden Twp
York City Sewer Auth	John E. Gearhart	11/18/2010	2102 / 2115	ROW – York
York City Sewer Auth	Harley-Davidson Mot. Co.	7/18/2013	2241 / 7178	ROW – Manch Twp
York City Sewer Auth	County of York PA	11/13/2014	2299 / 3520	ROW – Manch Twp
York City Sewer Auth	Columbia Gas of PA Inc.	12/20/2017	2452 / 2737	ROW – Manch Twp
York City Sewer Auth	Manchester Twp Mun Auth	5/4/2018	2469 / 991	ROW – Manch Twp
York City Sewer Auth	Molt LLC	7/23/2018	2479 / 7170	ROW – Manch Twp
York City Sewer Auth	County of York PA	9/18/2019	2536 / 3183	ROW – Manch Twp
York City Sewer Auth	Harley-Davidson Mot. Co.	12/3/2019	2548 / 2149 Ref. 2241 / 7178	Amendment – Manch Twp

**Schedule 4.10  
Equipment and Machinery**

[To be provided]<sup>2</sup>

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<sup>2</sup> All items not specifically noted as Excluded Assets in Schedule 2.02(h) will be included. The equipment and machinery list in the Engineer's Assessment prepared by Buchart Horn will be incorporated by reference.

**Schedule 4.11(b)**  
**City's Plans and City's Benefit Obligations**

Collective Bargaining Agreement between Teamsters Local 776 and the City of York.  
Expires December 31, 2022.

City of York Officers and Employees Retirement Fund

Deferred Compensation 457(b) Plan by Nationwide

Capital Blue Cross Health Insurance Plan (PPO)

Delta Dental Basic and Enhanced Dental Plans

Vision Coverage by Vision Benefits of America

Prescription Drug Coverage by Express Scripts

Flexible Spending Account (FSA) by Chard Snyder

OSS Company Direct Program

Ancillary Benefits by Colonial Life (Disability, Accident, Cancer, Critical Illness, Life)

Life Insurance and Supplemental Life Insurance by The Standard

Education Assistance Program Tuition Reimbursement

**Schedule 4.11(c)**  
**Multiemployer Plans**

None.

**Schedule 4.11(d)**  
**Employee Benefit Plans**

Collective Bargaining Agreement between Teamsters Local 776 and the City of York.  
Expires December 31, 2022.

City of York Officers and Employees Retirement Fund

Deferred Compensation 457(b) Plan by Nationwide

Capital Blue Cross Health Insurance Plan (PPO)

Delta Dental Basic and Enhanced Dental Plans

Vision Coverage by Vision Benefits of America

Prescription Drug Coverage by Express Scripts

Flexible Spending Account (FSA) by Chard Snyder

OSS Company Direct Program

Ancillary Benefits by Colonial Life (Disability, Accident, Cancer, Critical Illness, Life)

Life Insurance and Supplemental Life Insurance by The Standard

Education Assistance Program Tuition Reimbursement

**Schedule 4.11(f)**  
**Severance Agreements**

None.



**Schedule 4.12(a)**  
**Personnel Contracts**

Collective Bargaining Agreement between Teamsters Local 776 and the City of York.  
Expires December 31, 2022.

**Schedule 4.12(b)**  
**Accrued Personnel Vacation and Sick Leave**

None.

**Schedule 4.13  
Environmental Compliance**

**Administrative Order for Compliance on Consent**

On April 2, 2020, the City of York received a Request for Information under Section 308 of the federal Clean Water Act issued by the U.S. Environmental Protection Agency (“EPA”). The City of York responded to the Request for Information on May 22, 2020. On December 10, 2020, the City of York received a Notice of Potential Violations and Opportunity to Confer regarding NPDES Permit No. PA0026263. A draft Administrative Order for Compliance on Consent (“AOCC”) was attached to EPA's December 10, 2020 correspondence.

**PADEP Notices of Violation**

<b>Date</b>	<b>Summary</b>
August 13, 2012	Unauthorized discharge resulting from loss of electrical power.
December 9, 2015	Unauthorized discharge due to centrifuge malfunction.
March 23, 2016	Unauthorized discharge resulting from loss of electrical power.
July 1, 2016	Sampling and operation and maintenance violations.
January 31, 2017	Past due aboveground storage tank integrity inspection.
July 26, 2017	Unauthorized discharge to stormwater collection system.
March 25, 2019	Effluent exceedances between July 31, 2017 and November 30, 2018.
July 9, 2019	Operation of tertiary sand filtration system.
September 4, 2019	Unauthorized discharge resulting from third-party industrial wastewater discharge to sewer system.

**Consent Assessment of Civil Penalty**

On November 9, 2012, the York City Sewer Authority entered into a Consent Assessment of Civil Penalty ("CACP") with the Pennsylvania Department of Environmental Protection ("PADEP") to resolve violations of NPDES Permit No. PA0026263 as described in the August 13, 2012 Notice of Violation.

**Consent Order and Agreement**

On July 12, 2017, the York City Sewer Authority entered into a Consent Order and Agreement ("COA") with PADEP to resolve violations of NPDES Permit No. PA0026263 occurring between January 2012 and June 2016, as described in the December 9, 2015, March 23, 2016, and July 1, 2016

Notices of Violation. The COA prescribed four corrective actions consisting of (1) the submission of a High Flow Management Plan; (2) the submission of an engineer's evaluation of Outfall No. 002's final effluent flow meter system; (3) the installation of a new flow meter at Outfall No. 002; and (4) the repair and/or replacement of the sluice gate valve on the gravity discharge line from the stormwater collection basin to Outfall No. 001. Each corrective action as detailed in the COA has been completed.

**Schedule 4.14  
Seller's Authorizations and Permits**

<b>Permit No.</b>	<b>Facility</b>
PAG-08-3501 and all amendments, modifications, and/or revisions	York City Wastewater Treatment Plant 1701 Black Bridge Road York, PA 17402
67-05013 and all amendments, modifications, and/or revisions	York City Wastewater Treatment Plant 1701 Black Bridge Road York, PA 17402
PAC670168 and all amendments, modifications, and/or revisions	YCSA Manchester Interceptor 1701 Black Bridge Road York, PA 17402
PA0026263 and all amendments, modifications, and/or revisions	York City Wastewater Treatment Plant 1701 Black Bridge Road York, PA 17402
6709402 and all amendments, modifications, and/or revisions	York City Wastewater Treatment Plant 1701 Black Bridge Road York, PA 17402
6796408 and all amendments, modifications, and/or revisions	York City Wastewater Treatment Plant 1701 Black Bridge Road York, PA 17402
6717409 and all amendments, modifications, and/or revisions	York City Wastewater Treatment Plant 1701 Black Bridge Road York, PA 17402
6708401 and all amendments, modifications, and/or revisions	York City Wastewater Treatment Plant 1701 Black Bridge Road York, PA 17402
6785418 and all amendments, modifications, and/or revisions <sup>3</sup>	York City Wastewater Treatment Plant 1701 Black Bridge Road York, PA 17402
6700404 and all amendments, modifications, and/or revisions	York City Wastewater Treatment Plant 1701 Black Bridge Road York, PA 17402
6784419 and all amendments, modifications, and/or revisions	York City Wastewater Treatment Plant 1701 Black Bridge Road York, PA 17402
6795410 and all amendments, modifications, and/or revisions	York City Wastewater Treatment Plant 1701 Black Bridge Road York, PA 17402
Storage Tank Registration Permit/Certification and all	York City Wastewater Treatment Plant 1701 Black Bridge Road

<sup>3</sup> The City of York has provided copies of Amendment Nos. 99-1 and 02-1 to WQMP No. 6785418. A copy of the original 1986 WQMP No. 6785418 could not be located.

<b>Permit No.</b>	<b>Facility</b>
amendments, modifications, and/or revisions	York, PA 17402

**Schedule 4.15  
System Contracts**

<b>No.</b>	<b>Name of Contract</b>	<b>Parties to Contract</b>	<b>Date of Contract</b>
1	2018 CSL – City of York Agreement	- CSL Services, Inc. - City of York	June 28, 2018
2	Aquatics Informatics Services Agreement	- City of York - Aquatic Informatics	July 1, 2020
3	Articles of Agreement with Spring Garden Township	- Spring Garden Township - City of York	December 8, 1976
4	Articles of Agreement with Manchester Township	- Manchester Township - City of York	December 9, 1976
5	Articles of Agreement with North York Borough	- North York Borough - City of York	December 10, 1976
6	Articles of Agreement with West Manchester Township	- West Manchester Township - City of York	December 10, 1976
7	Articles of Agreement with West York Borough	- West York Borough - City of York	December 13, 1976
8	Articles of Agreement with York Township	- York Township - City of York	December 10, 1976
12	BH Proposal for Engineering Serv. 3-27-20	- Buchart Horn, Inc. - City of York	April 16, 2020
13	BH Proposal for Filter Replacement Project	- Buchart Horn, Inc. - Authority	January 15, 2020
14	BH Proposal for Clarifier Upgrades Construction Phase Design	- Buchart Horn, Inc. - Authority	December 10, 2019

15	BH Renewal for On Call Technical Support 2020	<ul style="list-style-type: none"> <li>- Buchart Horn, Inc.</li> <li>- City of York</li> </ul>	January 15, 2019
16	Billing and Revenue Service Agreement City of York as Filed with PUC	<ul style="list-style-type: none"> <li>- City of York</li> <li>- York Water Company</li> </ul>	October 18, 2019
17	City of York, PA, and Sunshine Call Center Contract	<ul style="list-style-type: none"> <li>- Sunshine Communication Services</li> <li>- City of York</li> </ul>	November 1, 2016
18	Control Systems 21 Instrumentation Repair and Maintenance Service Agreement	<ul style="list-style-type: none"> <li>- City of York</li> <li>- Control Systems 21</li> </ul>	January 2, 2018
21	Executed Aqua Aerobics Change Order for Filter Replacement	<ul style="list-style-type: none"> <li>- Authority</li> <li>- Aqua-Aerobic Systems</li> </ul>	April 16, 2020
22	Executed Aqua Aerobics Proposal for Filter Replacement	<ul style="list-style-type: none"> <li>- Authority</li> <li>- Aqua-Aerobic Systems</li> </ul>	January 22, 2020
23	Executed BH Proposal for 2020 Interceptor Master Plan	<ul style="list-style-type: none"> <li>- Buchart Horn, Inc.</li> <li>- Authority</li> </ul>	April 16, 2020
24	Executed Buchart Horn Proposal for Prospect Street Interceptor	<ul style="list-style-type: none"> <li>- Buchart Horn, Inc.</li> <li>- Authority</li> </ul>	April 16, 2020
25	Executed CPP Construction Agreement for Primary Clarifier Upgrade	<ul style="list-style-type: none"> <li>- CPP Construction Company</li> <li>- Buchart Horn Inc.</li> <li>- Authority</li> </ul>	January 15, 2020
26	Executed CPP Construction Change Order No. 1 for	<ul style="list-style-type: none"> <li>- CPP Construction Company</li> </ul>	February 20, 2020



	Primary Clarifier Upgrade	<ul style="list-style-type: none"> <li>- Buchart Horn Inc.</li> <li>- Authority</li> </ul>	
27	Executed Garden Spot Mechanical Agreement for Filter Replacement	<ul style="list-style-type: none"> <li>- Garden Spot Mechanical, Inc.</li> <li>- Buchart Horn Inc.</li> <li>- Authority</li> </ul>	May 22, 2020
28	Executed PSI Pumping Solutions Agreement for Electrical Contract for Filter Replacement	<ul style="list-style-type: none"> <li>- PSI Pumping Solutions, Inc.</li> <li>- Buchart Horn Inc.</li> <li>- Authority</li> </ul>	May 22, 2020
29	Executed PSI Pumping Solutions Agreement for General Contract for Filter Replacement	<ul style="list-style-type: none"> <li>- PSI Pumping Solutions, Inc.</li> <li>- Buchart Horn Inc.</li> <li>- Authority</li> </ul>	May 22, 2020
30	Garden Spot Mechanical Agt. Effluent Filter Replacement 2020	<ul style="list-style-type: none"> <li>- Garden Spot Mechanical, Inc.</li> <li>- Buchart Horn Inc.</li> <li>- Authority</li> </ul>	May 22, 2020
32	Microturbine Maintenance (Efinity) Contract	<ul style="list-style-type: none"> <li>- E-Finity Distributed Generation, LLC</li> <li>- City of York</li> </ul>	June 6, 2017
35	PSI Electrical Contract 2020	<ul style="list-style-type: none"> <li>- PSI Pumping Solutions, Inc.</li> <li>- Buchart Horn Inc.</li> <li>- Authority</li> </ul>	May 22, 2020
36	PSI General Contract 2020	<ul style="list-style-type: none"> <li>- PSI Pumping Solutions, Inc.</li> </ul>	May 22, 2020

		- Buchart Horn Inc. - Authority	
37	Shipley Choice Natural Gas Sales Agreement 2019-2022	- Shipley Choice LLC - City of York	April 15, 2019
38	Shut Off Agreement York Water Company and City of York	- The York Water Company - City of York	September 1, 2010
39	Springettsbury Pump Station Agreement 2002	- Springettsbury Township - City of York	March 19, 2002
40	Synagro – City of York 2020 Contract Extension	- Synagro Central, LLC - City of York	April 25, 2020
41	Synagro Agreement 2013	- Synagro Central, LLC - City of York	January 25, 2013
42	Synagro Performance Bond	- Synagro Central, LLC - City of York	April 24, 2015
43	TalenEnergy Retail Electricity Agreement 2020-2021	- Talen Energy Marketing, LLC - City of York	January 13, 2020
44	York Manchester Interceptor Agreement	- Manchester Township - York City Sewer Authority	May 23, 1989

*\*\*This schedule remains subject to modification as mutually agreed by the City and the Buyer.*

**Schedule 4.16**  
**Compliance with Law, Litigation**

Schedule 4.13 is incorporated herein by reference.

Wanda Rios Martinez v. City of York – EEOC Charge No. 530-2017-02650

**Schedule 4.18**  
**Title to Acquired Assets; Sufficiency**

None.

**Schedule 6.03(a)  
Personnel**

<b>Employee Name</b>	<b>2020 Position/Title</b>
Altland, Jesse	Wastewater Plant Operator II
Brooks, Gary L	Wastewater Plant Operator II
Brose, Matthew K	WWTP Maintenance Mechanic II
Bullock, Percy	Sewer Maintenance Supervisor
Campagne, Frankie	General Manager
Casillas, Eric	WWTP Maintenance Mechanic II
Chavez, Veronica L Whaley	Pretreatment Permit/Compliance Manager
Concino, Joseph A	Senior Chemist
Curry, Justin D	Wastewater Plant Operator II
Cusaac, Anthony	WWTP Maintenance Mechanic II
Diaz Arias, Hidalgo S	Wastewater Treatment Plant Operations Shift Supervisor
Fealtman, Crystal A	Administrative Assistant
Gwynn, Ervin	WWTP Maintenance Mechanic II
Harris, Eric T	Wastewater Collection Operator II
Hoffnagle, James D	Wastewater Collection Operator I
Hoh, Sara	Chemist
Howell, Kevin L	Wastewater Collection Operator II
Kinard, Michael J	Wastewater Collection Operator I
Lewis, Eugene E.	Wastewater Plant Operator II
Longstreet, Erin B	Chemist
Lopez, Hector	Wastewater Plant Operator II
Maszczyk, Eugene	Wastewater Plant Operator II
Millar, Scott T	Wastewater Treatment Plant Maintenance Mechanic Supervisor
Rawlison, James L	Wastewater Collection Operator I
Rivera, Channon K	Wastewater Plant Operator II
Santiago, Joshua J	WWTP Maintenance Mechanic II
Shaffer, Ronald Lee	Wastewater Plant Operator II
Stoudt, John E	Wastewater Plant Operator II
Thomas, Galen	Wastewater Plant Operator II
Trimmer, Jody A	WWTP Maintenance Mechanic II
Walters, Paul D	Wastewater Plant Operator II
Weidman, Miranda L	Wastewater Plant Operator II
Yeatts, Joseph D	Wastewater Collection Operator II
Yeng, Chhoeuth	Wastewater Plant Operator II

<b>Vacant Positions</b>	
Vacant	WWTP Operations Manager

Vacant	Wastewater Treatment Plant Operations Shift Supervisor
Vacant	Wastewater Treatment Plant Operations Shift Supervisor
Vacant	Compliance Officer II
Vacant	Chemist
Vacant	Wastewater Plant Operator II

**Schedule 6.04(a)**  
**Base Rate**

Annual Sanitary Sewer Rates for Domestic and Commercial Metered Water Users:

- (a) Monthly quantity charge—For each 1000 gallons per month: \$9.37
- (b) Minimum Charge- \$18.00 which shall entitle users 1920 gallons per month of sewer service.

Sewer Rent or Charge for Industrial Waste:

- (a) Monthly charge- For each 1000 gallons per month: \$9.37

Bulk Sewer Rates for Municipalities are set by negotiated contracts.

**Schedule 10.01(a)  
Seller's Consents and Approvals**

Agreement with Metropolitan Edison Company for Alternate Feed Electric Service	<ul style="list-style-type: none"> <li>- Met-Ed Company</li> <li>- City of York</li> </ul>	January 31, 2012
E-Finity Distributed Generation, LLC Contract	<ul style="list-style-type: none"> <li>- E-Finity Distributed Generation, LLC</li> <li>- City of York</li> </ul>	June 6, 2017
Shiple Energy Natural Gas Sales Agreement	<ul style="list-style-type: none"> <li>- Shiple Choice LLC</li> <li>- City of York</li> </ul>	May 1, 2019
TalenEnergy Retail Electricity Agreement	<ul style="list-style-type: none"> <li>- TalenEnergy</li> <li>- City of York</li> </ul>	January 1, 2020
Aquatic Informatics	<ul style="list-style-type: none"> <li>- City of York</li> <li>- Aquatic Informatics</li> </ul>	July 1, 2020
Billing and Revenue Service Agreement	<ul style="list-style-type: none"> <li>- City of York</li> <li>- York Water Company</li> </ul>	October 18, 2019



**YORK CITY WASTEWATER TREATMENT PLANT  
CAPITAL IMPROVEMENTS PLAN REVIEW  
PRIORITY PROJECTS LISTING**

Item	Project Category	Project Description	Priority	Status	Recommended Timeline	Planning Level Project Cost	Notes
1	CMP	Primary Clarifier Overhaul - Hydraulic Improvements	Very High	Scheduled	As Soon as Possible	\$ 1,300,000	NOV Impact; Clarifier performance identified by staff as cause for NOVs due to poor Fecal, CBOD, TP removals and also contributing to downstream grease buildup
2	CMP	Primary Clarifier Pump Station Upgrades	Very High	Upgrades Needed	As Soon as Possible	Inc in #1	Staff notes that project is required for compliance due to current performance of primary clarifiers
3	CMP	Screw Pump Replacement Project	Very High	In Process	As Soon as Possible	\$ 250,000	2 pumps recently completed; Remaning cost is for repairs to 3rd Pump
4	CMP	Scum Removal System Repair	Very High	In Design	As Soon as Possible	Inc in #1	NOV Impact; Project is intended to be performed to protect filters from fouling
5	CMP	Tertiary Filter Replacement Project	Very High	In Design	As Soon as Possible Following Primary Clarifier Upgrades	\$ 7,500,000	NOV Impact; Project will replace existing sand filter system with new Aqua-Aerobics Systems, Inc. diamond cloth media filter
6	CMP	SCADA System & Instrumentation & Controls Replacement & Improvements	Very High	In Design	As Soon as Possible	\$ 750,000	Staff identifies this project as one of highest priority for plant due to inability to properly monitor plant operations and issues with incorrect reporting; existing equipment is outdated, mismatched with various manufacturer's components and requires replacement with new technology
7	AGE	Work Order System Implementation	Very High	Recommended for Continued Operations and Preventive Maintenance	As Soon as Possible	\$	Staff notes that system is not utilized to fullest capacity; additional cleaning and preventive maintenance will increase equipment longevity and reduce necessary equipment repairs and replacement activities
		<b>sub-total- Immediate Projects</b>				<b>\$ 9,800,000</b>	

YORK CITY WASTEWATER TREATMENT PLANT  
CAPITAL IMPROVEMENTS PLAN REVIEW  
PRIORITY PROJECTS LISTING

Item No.	Project Category	Project Description	Priority	Status	Recommended Timeline	Planning Level Project Cost	Notes
8	CMP	Manual Chlorination - 001 EFF	High	Upgrades Needed	Within 1 Year or as Mandated by PA DEP	\$ 100,000	NOV Impact; Plant does not have ability to chlorinate at Outfall 001 based on loading; manual chlorination at high flows; Changed to totes; modified injection siste and dose
9	CMP	No Dechlorination -001 EFF	High	Further Investigation and PA DEP Response Needed	Within 1 Year or as Mandated by PA DEP	\$ 100,000	NOV Impact; TRC excursions occur due to inability to control chlorine dosing to Outfall 001. Staff will seek PA DEP input on whether this is required if improvements to chlorine dosing are implemented.
10	CMP	Ammonia Removal Modifications	High	Need to Evaluate Cause of Violations	Within 1 Year or as Mandated by PA DEP	\$ 500,000	NOV Impact; Staff have indicated low temperatures and seasonal operations issues may contribute to violations; currently performing bench testing and mapping of ammonia removal through plant
11	CMP	Ferric Chloride Chemical Addition System	High	Need to Evaluate Effectiveness of Chemical Addition	Within 1 Year or as Mandated by PA DEP	\$ 150,000	NOV Impact; Staff indicated that evaluation of chemical addition is high priority; project may require re-coating of chemical storage tanks
12	CMP	Infiltration/Inflow Removal - WWTP	High	Need to Evaluate Source and Repair Options	Within 1 to 2 Years	\$ 250,000	Staff indicates that there is an I/I problem within piping in plant; stormwater conveyance lines need evaluated and repaired/replaced
13	AGE	Fine Screens Replacement & Building Renovations	High	Recommended	Within 1 to 2 Years	\$ 1,000,000	Existing Screens are functional, but require replacement to better protect downstream treatment and mechanical equipment; HVAC equipment is badly deteriorated due to H2S corrosion
14	AGE	Replacement of existing Gates	High	In Process	Within 1 to 2 Years	\$ 89,000	Staff currently working to replace non-functional gates
15	AGE	Grit Removal System Investigation	High	Recommended	Within 1 to 2 Years	\$ 50,000	Equipment Installed in 1991; Recommend inspection to determine what repairs are required for long-term operation
16	AGE	Utility Water Pump Repairs & Modifications	High	Recommended	Within 1 to 2 Years	\$ 100,000	Recommend adding automatic backwashing strainer; pump bases need replaced; pumps in good operating condition
17	AGE	Utility Water Yard Piping	High	Recommended	Within 1 to 2 Years	\$ 100,000	Recommend replacement of deteriorated yard piping and replacement of non-functional yard hydrants
		sub-total- High Priority Projects Awaiting Funding				\$ 2,439,000	

YORK CITY WASTEWATER TREATMENT PLANT  
CAPITAL IMPROVEMENTS PLAN REVIEW  
PRIORITY PROJECTS LISTING

Item No.	Project Category	Project Description	Priority	Status	Recommended Timeline	Planning Level Project Cost	Notes
18	AGE	Primary Sludge Pump Station Upgrades	High	Recommended	Within 2 to 3 Years	\$ 150,000	Replacement of deteriorated HVAC and Electrical equipment
19	AGE	Evaluate Substation 4 & Future Replacement	High	Needs Evaluated	Within 2 to 3 Years	\$ 2,300,000	Replacement of aged equipment required for reliable plant operations
20	CMP	UV Disinfection System Replacement & Building Renovations	Medium to High	Recommended	Within 2 to 3 Years	\$ 500,000	Existing UV system is functional but with limited effectiveness at high loadings; Building modifications are high priority per staff
21	CMP	Supplemental Carbon Feed System - Permanent System	Medium to High	Need to Evaluate Effectiveness of Chemical Addition	Within 2 to 3 Years	\$ 250,000	as decreasing secondary treatment performance; staff would like to evaluate supplemental carbon feed due to
22	OPP	Digester Cleaning & Repairs	Medium to High	Recommended	Within 2 to 3 Years	\$ 450,000	Removal of grit and struvite, For all 3 Digesters; Digesters 1 & 3 priority; Digester 2 in future
23	AGE	Stormwater Pumps Upgrades & Groundwater Well Pump Replacement	Medium to High	Recommended	Within 2 to 3 Years	\$ 150,000	maintenance performed; Groundwater pump could provide backup or additional service to utility water
24	OPP	Primary Digester Conversion & Sludge Drying	Medium to High	In Design	Within 2 to 3 Years	\$ 7,500,000	Project is currently in evaluation and design phase. Will convert to Thermophilic in Digester #1; Mesophilic in Digester #2
25	OPP	Digester Mixing	Medium	Needs Further Evaluated	Within 2 to 3 Years		Poor mixing may contribute to low gas production
26	OPP	Food Waste to Energy Improvements	Medium to High	Currently Being Evaluated	Within 2 to 3 Years	\$ 1,500,000	Staff is currently evaluating liquid food waste; will evaluate ability for solid waste acceptance and processing
27	AGE	Process Electrical Equipment Upgrades	Medium to High	Recommended	Within 2 to 3 Years	\$ 340,000	Raw Sewage and Primary Effluent Pump VFD Replacement; Annual electrical Preventive Maintenance Program
28	AGE	Motor Control Centers	Medium to High	Recommended	Within 2 to 3 Years	\$ 1,000,000	Replacement of aged equipment required for reliable plant operations
29	AGE	Miscellaneous Electrical Repairs/Replacement	Medium to High	Recommended	Within 2 to 3 Years	\$ 500,000	Wiring Replacement; UPS Replacement
30	AGE	Building Repairs	Medium to High	Recommended	Within 2 to 3 Years	\$ 200,000	Building and Solids Handling Building Improvements; Maintenance Building Improvements; Microturbine Building Improvements; Train 1 Oxygen Compressor
31	AGE	Laboratory Instrumentation/Equipment Replacements/Upgrades	Medium to High	Recommended	Within 2 to 3 Years	\$ 100,000	Various Needs to improve plant performance (compliance) and process performance
		sub-total- Recommended Projects				\$ 14,940,000	

**YORK CITY WASTEWATER TREATMENT PLANT  
CAPITAL IMPROVEMENTS PLAN REVIEW  
PRIORITY PROJECTS LISTING**

Item No.	Project Category	Project Description	Priority	Status	Recommended Timeline	Planning Level Project Cost	Notes
32	AGE	RAS Pumps - Train 2	Medium	Needs Evaluated	Within 3 to 4 Years	\$ 50,000	Pump bases need replaced
33	CMP	Replacement of Handrail & Kickplates	Medium	Recommended	Within 3 to 4 Years	\$ 150,000	Existing rail is aged and in poor condition; replace as time and funds allow
34	CMP	Confined Space Entry Equipment	Medium	In Process	Within 3 to 4 Years	\$ 100,000	Staff currently working to purchase cranes and install base plates throughout plant; required at 18 tanks for proper entrance
35	AGE	Grit Removal System Replacement	Medium to Low	Needs Evaluated Based on Inspection Results	Within 3 to 5 Years	\$ 350,000	Equipment Installed in 1991
36	AGE	Final Clarifiers - Train 2	Medium to Low	Recommend inspection of Lower Bearing	Within 3 to 5 Years	\$ 50,000	Recommend inspection of lower bearing be performed; Repairs as needed based on inspection
37	CMP	New Influent Flow Meter			Within 3 to 5 Years		6/6/2016 Inspection noted inaccurate readings per COA
38	AGE	Chemical Feed Equipment-Train 2	Medium to Low	Needs Evaluated	Within 3 to 5 Years	\$ 25,000	Ferrous Sulfate Injection System (1985)
39	AGE	Final Clarifiers - Train 3	Medium to Low	Needs Evaluated	Within 3 to 5 Years	\$ 100,000	Recommend inspection and repair/replacement based on condition assessment
40	AGE	Scum Mixers - Train 3	Medium to Low	Needs Evaluated	Within 3 to 5 Years	\$ 50,000	Recommend inspection and repair/replacement based on condition assessment
41	AGE	Chemical Feed Equipment - Train 3	Medium to Low	Needs Evaluated	Within 3 to 5 Years	\$ 50,000	Recommend inspection and repair/replacement based on condition assessment
42	AGE	Replacement of existing Pumps	Medium to Low	Recommended on As-Needed Basis	Ongoing	\$ 350,000	Various sump pumps; Effluent Screw Pumps, Storm Bypass Pumps
43	OPP	Sludge Thickening Equipment Replacement	Medium to Low	Could Also be Considered Age Replacement	Within 3 to 5 Years	\$ 500,000	Existing provide good performance; evaluate rotary drum thickeners
44	OPP	Dewatering Equipment Replacement	Medium to Low	Could Also be Considered Age Replacement	Within 3 to 5 Years	\$ 800,000	Replacement of existing centrifuges with new; Replace conveyors
45	OPP	Odor Control Improvements	Medium to Low	Needs Further Evaluated	Within 3 to 5 Years	\$ 500,000	Headworks; Tanks 20 & 21; Thickening Equipment are areas identified by staff as requiring odor control; previous carbon system not in use
46	AGE	WAS Pumps -Train 3	Low	Needs Evaluated	5 Years+ or as Funds Allow	\$ 165,000	Recommend inspection and repair/replacement based on condition assessment
		<b>sub-total-Age Related Replacement Projects</b>				<b>\$ 3,240,000</b>	

**YORK CITY WASTEWATER TREATMENT PLANT  
CAPITAL IMPROVEMENTS PLAN REVIEW  
PRIORITY PROJECTS LISTING**

Item No.	Project Category	Project Description	Priority	Status	Recommended Timeline	Planning Level Project Cost	Notes
47	AGE	Site & Utilities Repairs	Low	Recommended on As-Needed Basis	When Needed	\$ 225,000	Replace Potable and other process lines; Paving repairs
48	OPP	Septage Receiving Improvements		Currently Being Evaluated			
49	OPP	Aerator Replacement; Fine Bubble Diffusers	Low	Not Recommended	5 Years+ or as Funds Allow	\$ 1,100,000	Existing surface aerators are functional and were rebuilt in 2010. This project would decrease energy demand by decreasing connected horsepower and using VFD and D.O. monitoring for aeration control.
50	CAP	Future Plant Upgrades at Excess of 18 MGD - Phase 2 Upgrades	Very Low	Not Required Based on Flow	Not Expected within 20 Year Period	, ?	Current Flows to WWTP are significantly less than 18 MGD; Future Projections from contributing municipalities do not show reaching 18 MGD within 20 year period
		<b>sub-total- Projects Needing Further Evaluation</b>				<b>\$ 1,325,000</b>	

<b>Estimated Construction Cost per listing</b>	<b>\$ 31,744,000</b>
<b>Project Contingency @15%</b>	<b>\$ 4,761,600</b>
<b>Subtotal</b>	<b>\$ 36,505,600</b>
<b>Project Overheads: Engineering/Legal/Finance @ 25%</b>	<b>\$ 7,936,000</b>
<b>GRAND TOTAL - ESTIMATED COST FOR ALL PROJECTS</b>	<b>\$ 44,441,600</b>

- Project Type:
1. CMP = Compliance Related Project
  2. OPP = Operational Efficiency Project
  3. AGE = Equipment Replacement Project ("end of useful life" replacement)
  4. CAP = Capacity Related Project

**The City of York  
Pennsylvania**

The Honorable Michael R. Helfrich, Mayor



York City Hall  
101 South George Street  
York, PA 17401  
www.yorkcity.org

May 17, 2021

Richard Shank  
Borough Council President  
North York Borough  
350 E 6th Ave.  
York, PA 17404

9171 9690 0935 0074 9851 94

**RE: NOTICE OF ASSIGNMENT AND DUTY TO RENEGOTIATE**

Dear Mr. Shank:

The City of York ("City") and the York City Sewer Authority ("Authority") have entered into an Asset Purchase Agreement with Pennsylvania-American Water Company ("PAWC") to sell the Authority's wastewater collection and treatment system ("System"), as operated by the City, to PAWC ("Transaction"). As part of the Transaction, the City will, upon closing of the Transaction ("Closing"), cause the retirement of bonds and the redemption or defeasance by the Authority of all debt obligations outstanding that are secured by the System ("Debt Retirement").

This correspondence serves as official notice of: (i) the City's assignment of its interest in the December 10, 1976 Intermunicipal Agreement, as amended, ("IMA") between North York Borough ("Borough") and the City to PAWC upon Closing; and (ii) the Borough's contractual duty under Section 12 of the IMA to renegotiate a new bulk collection and treatment agreement with PAWC because of the Debt Retirement. The City strongly encourages the Borough to immediately commence renegotiations of the IMA with PAWC, as assignee of the City, in order to avoid any potential gap in the bulk collection and treatment service provided to the Borough and any uncertainty regarding the rates to be charged by PAWC to the Borough upon Closing.

Sincerely,

Michael R. Helfrich  
Mayor

c: Walter A. Tilley, Solicitor  
Stock and Leader  
Susquehanna Commerce Center East  
221 W. Philadelphia St. Ste. E600  
York, PA 17401



**The City of York  
Pennsylvania**

The Honorable Michael R. Helfrich, Mayor



York City Hall

101 South George Street  
York, PA 17401  
www.yorkcity.org

May 17, 2021

Lisa D. Wingert  
Board of Supervisors Chairperson  
Manchester Township  
3200 Farmtrail Road  
York, PA 17406-5699

9171 9690 0935 0074 9852 00

**RE: NOTICE OF ASSIGNMENT AND DUTY TO RENEGOTIATE**

Dear Ms. Wingert:

The City of York ("City") and the York City Sewer Authority ("Authority") have entered into an Asset Purchase Agreement with Pennsylvania-American Water Company ("PAWC") to sell the Authority's wastewater collection and treatment system ("System"), as operated by the City, to PAWC ("Transaction"). As part of the Transaction, the City will, upon closing of the Transaction ("Closing"), cause the retirement of bonds and the redemption or defeasance by the Authority of all debt obligations outstanding that are secured by the System ("Debt Retirement").

This correspondence serves as official notice of: (i) the City's assignment of its interest in the December 9, 1976 Intermunicipal Agreement, as amended, ("IMA") between Manchester Township ("Township") and the City to PAWC upon Closing; and (ii) the Township's contractual duty under Section 12 of the IMA to renegotiate a new bulk collection and treatment agreement with PAWC because of the Debt Retirement. The City strongly encourages the Township to immediately commence renegotiations of the IMA with PAWC, as assignee of the City, in order to avoid any potential gap in the bulk collection and treatment service provided to the Township and any uncertainty regarding the rates to be charged by PAWC to the Township upon Closing.

Sincerely,

A handwritten signature in black ink, appearing to read 'Michael R. Helfrich', written over a white background.

Michael R. Helfrich  
Mayorc: Larry Young  
Solicitor  
CGA Law Firm  
135 N George St Ste 400  
York, PA 17401

**The City of York  
Pennsylvania**

The Honorable Michael R. Helfrich, Mayor



York City Hall  
101 South George Street  
York, PA 17401  
www.yorkcity.org

May 17, 2021

Kelly K. Kelch  
Township Manager  
West Manchester Township  
380 East Berlin Road  
York, PA 17408

9171 9690 0935 0074 9852 17

**RE: NOTICE OF ASSIGNMENT AND DUTY TO RENEGOTIATE**

Dear Mr. Kelch:

The City of York ("City") and the York City Sewer Authority ("Authority") have entered into an Asset Purchase Agreement with Pennsylvania-American Water Company ("PAWC") to sell the Authority's wastewater collection and treatment system ("System"), as operated by the City, to PAWC ("Transaction"). As part of the Transaction, the City will, upon closing of the Transaction ("Closing"), cause the retirement of bonds and the redemption or defeasance by the Authority of all debt obligations outstanding that are secured by the System ("Debt Retirement").

This correspondence serves as official notice of: (i) the City's assignment of its interest in the December 10, 1976 Intermunicipal Agreement, as amended, ("IMA") between West Manchester Township ("Township") and the City to PAWC upon Closing; and (ii) the Township's contractual duty under Section 12 of the IMA to renegotiate a new bulk collection and treatment agreement with PAWC because of the Debt Retirement. The City strongly encourages the Township to immediately commence renegotiations of the IMA with PAWC, as assignee of the City, in order to avoid any potential gap in the bulk collection and treatment service provided to the Township and any uncertainty regarding the rates to be charged by PAWC to the Township upon Closing.

Sincerely,

Michael R. Helfrich  
Mayor

c: Andrew C. Herrold  
Solicitor  
Griest, Himes, Herrold, Reynosa, LLP  
129 East Market St.  
York, PA 17401



**The City of York  
Pennsylvania**

The Honorable Michael R. Helfrich, Mayor



York City Hall  
101 South George Street  
York, PA 17401  
www.yorkcity.org

May 17, 2021

9171 9690 0935 0074 9852 24

Marcy L. Krum-Tinsley  
Township Manager  
Spring Garden Township  
340 Tri Hill Road, Suite A  
York, PA 17403

**RE: NOTICE OF ASSIGNMENT AND DUTY TO RENEGOTIATE**

Dear Ms. Krum-Tinsley:

The City of York ("City") and the York City Sewer Authority ("Authority") have entered into an Asset Purchase Agreement with Pennsylvania-American Water Company ("PAWC") to sell the Authority's wastewater collection and treatment system ("System"), as operated by the City, to PAWC ("Transaction"). As part of the Transaction, the City will, upon closing of the Transaction ("Closing"), cause the retirement of bonds and the redemption or defeasance by the Authority of all debt obligations outstanding that are secured by the System ("Debt Retirement").

This correspondence serves as official notice: of (i) the City's assignment of its interest in the December 8, 1976 Intermunicipal Agreement, as amended, ("IMA") between Spring Garden Township ("Township") and the City to PAWC upon Closing; and (ii) the Township's contractual duty under Section 12 of the IMA to renegotiate a new bulk collection and treatment agreement with PAWC because of the Debt Retirement. The City strongly encourages the Township to immediately commence renegotiations of the IMA with PAWC, as assignee of the City, in order to avoid any potential gap in the bulk collection and treatment service provided to the Township and any uncertainty regarding the rates to be charged by PAWC to the Township upon Closing.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael R. Helfrich".

Michael R. Helfrich  
Mayor

c: Steven M. Hovis  
Solicitor  
Stock and Leader  
Susquehanna Commerce Center East  
221 W. Philadelphia St. Ste. E600  
York, PA 17401

**The City of York  
Pennsylvania**

The Honorable Michael R. Helfrich, Mayor



York City Hall  
101 South George Street  
York, PA 17401  
www.york.city.org

May 17, 2021

Mark Hodgkinson  
Township Manager  
Springettsbury Township  
1501 Mount Zion Road  
York, PA 17402  
Mark.Hodgkinson@springettsbury.com

9171 9690 0935 0074 9852 31

**RE: NOTICE OF ASSIGNMENT**

Dear Mr. Hodgkinson:

This correspondence serves as official notice of assignment of the March 19, 2002 Intermunicipal Agreement ("IMA") between Springettsbury Township ("Township") and the City of York ("City") to the Pennsylvania-American Water Company ("PAWC"). The City and the York City Sewer Authority ("Authority") have entered into an Asset Purchase Agreement with PAWC to sell the Authority's wastewater collection and treatment system, as operated by the City, to PAWC ("Transaction"). As part of the Transaction, the City will assign its interest in the IMA to PAWC upon closing of the Transaction. The City encourages the Township to begin discussions with PAWC now regarding the future of the IMA.

Sincerely,

A handwritten signature in black ink, appearing to read 'Michael R. Helfrich', written over a light blue horizontal line.

Michael R. Helfrich  
Mayor

c: Charles R. Rausch,  
Township Solicitor  
Blakey, Yost, Bupp & Rausch, LLP  
17 E. Market Street  
York, PA 17401

**The City of York  
Pennsylvania**

The Honorable Michael R. Helfrich, Mayor



York City Hall  
101 South George Street  
York, PA 17401  
www.yorkcity.org

May 17, 2021

Gary Milbrand  
Township Manager  
York Township  
190 Oak Road,  
Dallastown, PA 17313

9171 9690 0935 0074 9852 48

**RE: NOTICE OF ASSIGNMENT AND DUTY TO RENEGOTIATE**

Dear Mr. Milbrand:

The City of York (“City”) and the York City Sewer Authority (“Authority”) have entered into an Asset Purchase Agreement with Pennsylvania-American Water Company (“PAWC”) to sell the Authority’s wastewater collection and treatment system (“System”), as operated by the City, to PAWC (“Transaction”). As part of the Transaction, the City will, upon closing of the Transaction (“Closing”), cause the retirement of bonds and the redemption or defeasance by the Authority of all debt obligations outstanding that are secured by the System (“Debt Retirement”).

This correspondence serves as official notice of: (i) the City’s assignment of its interest in the December 10, 1976 Intermunicipal Agreement, as amended, (“IMA”) between York Township (“Township”) and the City to PAWC upon Closing; and (ii) the Township’s contractual duty under Section 12 of the IMA to renegotiate a new bulk collection and treatment agreement with PAWC because of the Debt Retirement. The City strongly encourages the Township to immediately commence renegotiations of the IMA with PAWC, as assignee of the City, in order to avoid any potential gap in the bulk collection and treatment service provided to the Township and any uncertainty regarding the rates to be charged by PAWC to the Township upon Closing.

Sincerely,

Michael R. Helfrich  
Mayor

c: Steven M. Hovis, Solicitor  
Stock and Leader  
Susquehanna Commerce Center East  
221 W. Philadelphia St. Ste. E600  
York, PA 17401



The City of York  
Pennsylvania

The Honorable Michael R. Helfrich, Mayor



York City Hall  
101 South George Street  
York, PA 17401  
www.yorkcity.org

May 17, 2021

Jeffrey R. Hines  
President and CEO  
The York Water Company  
130 East Market Street  
York, PA 17404

9171 9690 0935 0074 9852 55

John M. Longstreet  
Assistant Superintendent – Wastewater Service  
The York Water Company  
130 East Market Street  
York, PA 17404

**RE: NOTICE OF ASSIGNMENT AND DUTY TO RENEGOTIATE**

Dear Mr. Hines and Mr. Longstreet:

The City of York (“City”) and the York City Sewer Authority (“Authority”) have entered into an Asset Purchase Agreement with Pennsylvania-American Water Company (“PAWC”) to sell the Authority’s wastewater collection and treatment system (“System”), as operated by the City, to PAWC (“Transaction”). As part of the Transaction, the City will, upon closing of the Transaction (“Closing”), cause the retirement of bonds and the redemption or defeasance by the Authority of all debt obligations outstanding that are secured by the System (“Debt Retirement”).

This correspondence serves as official notice of: (i) the City’s assignment of its interest in the December 13, 1976 Intermunicipal Agreement, as amended, (“IMA”) between West York Borough (“Borough”) and the City (and subsequently assigned by the Borough to the York Water Company) to PAWC upon Closing; and (ii) the York Water Company’s contractual duty under Section 12 of the IMA to renegotiate a new bulk collection and treatment agreement with PAWC because of the Debt Retirement. The City strongly encourages the York Water Company to immediately commence renegotiations of the IMA with PAWC, as assignee of the City, in order to avoid any potential gap in the bulk collection and treatment service provided to the York Water Company and any uncertainty regarding the rates to be charged by PAWC to the York Water Company upon Closing.

Sincerely,

Michael R. Helfrich  
Mayor

**The City of York  
Pennsylvania**

The Honorable Michael R. Helfrich, Mayor



**York City Hall**

101 South George Street  
York, PA 17401  
www.yorkcity.org

May 17, 2021

Jeffrey R. Hines  
President and CEO  
The York Water Company  
130 East Market Street  
York, PA 17404

9171 9690 0935 0074 9852 62

John M. Longstreet  
Assistant Superintendent – Wastewater Service  
The York Water Company  
130 East Market Street  
York, PA 17404

**RE: NOTICE OF ASSIGNMENT AND DUTY TO RENEGOTIATE**

Dear Mr. Hines and Mr. Longstreet:

The City of York (“City”) and the York City Sewer Authority (“Authority”) have entered into an Asset Purchase Agreement with Pennsylvania-American Water Company (“PAWC”) to sell the Authority’s wastewater collection and treatment system (“System”), as operated by the City, to PAWC (“Transaction”). As part of the Transaction, the City will, upon closing of the Transaction (“Closing”), cause the retirement of bonds and the redemption or defeasance by the Authority of all debt obligations outstanding that are secured by the System (“Debt Retirement”).

This correspondence serves as official notice of: (i) the City’s assignment of its interest in the December 13, 1976 Intermunicipal Agreement, as amended, (“IMA”) between West York Borough (“Borough”) and the City (and subsequently assigned by the Borough to the York Water Company) to PAWC upon Closing; and (ii) the York Water Company’s contractual duty under Section 12 of the IMA to renegotiate a new bulk collection and treatment agreement with PAWC because of the Debt Retirement. The City strongly encourages the York Water Company to immediately commence renegotiations of the IMA with PAWC, as assignee of the City, in order to avoid any potential gap in the bulk collection and treatment service provided to the York Water Company and any uncertainty regarding the rates to be charged by PAWC to the York Water Company upon Closing.

Sincerely,

Michael R. Helfrich  
Mayor