

**Application of Pennsylvania-American Water Company for Acquisition of  
the Wastewater Assets of the Borough of Brentwood**

**66 Pa. C.S. § 1329**

**Application Filing Checklist – Water/Wastewater**

**Docket No. A-2021-3024058**

24. Asset Purchase Agreement (APA).
- a. Provide a copy of the APA that is signed by all parties.

**RESPONSE:**

- a. See enclosed Asset Purchase Agreement between Borough of Brentwood , as Seller, and Pennsylvania-American Water Company, as Buyer, Dated December 22, 2020, and First Amendment to the Asset Purchase Agreement dated March 2, 2023, attached as **Appendix A-24-a**.

**EXECUTION VERSION**

**ASSET PURCHASE AGREEMENT**

**By and Between**

**Brentwood Borough, Allegheny County**

**As Seller**

**and**

**Pennsylvania-American Water Company**

**As Buyer**

**Dated as of December 22, 2020**

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## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (“Agreement”), dated as of December 22, 2020 (the “Effective Date”), is made and entered into by and between BRENTWOOD BOROUGH, Allegheny County, a body corporate and politic, organized and existing under the laws of the Commonwealth of Pennsylvania (the “Seller”), and Pennsylvania-American Water Company (the “Buyer”), a corporation organized and existing under the laws of the Commonwealth of Pennsylvania.

### RECITALS:

**WHEREAS**, Seller, acting by and through the Borough Council of Seller, Allegheny County (the “Borough Council”) owns and operates a sanitary wastewater collection system (the “System”) that provides sanitary wastewater service to various customers in Brentwood Borough, Pennsylvania as set forth on Schedule A (the “Service Area”); and

**WHEREAS**, Buyer is a regulated public utility organized and existing under the laws of the Commonwealth of Pennsylvania that furnishes wastewater service to the public in several counties, including Allegheny County, Pennsylvania; and

**WHEREAS**, Buyer, in reliance upon the representations, warranties and covenants of Seller 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 the acquired assets, all on the terms and conditions set forth in this Agreement.

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

### ARTICLE I.

#### DEFINITIONS

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

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

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

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

“**Agreement**” has the meaning ascribed thereto in the Preamble 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.

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

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

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

“**Authorizations and Permits**” mean all licenses, permits, franchises, authorizations, certificates, registrations, consents, orders, adjudications, variances, waivers and approvals currently in effect issued or granted by Governmental Authorities, including without limitation, environmental permits, operating permits and approvals that are held by Seller that primarily relate directly or indirectly to the operation of the System, including those described in Schedule 4.12.

“**Borough Council**” the meaning specified in the recitals of this Agreement.

“**Borough Senior Staff**” means the Borough Manager, Assistant Manager and the Borough Engineer.

“**Business Day**” means any day that is neither a Saturday, 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 Fundamental Representations**” has the meaning specified in Section 8.01.

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

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

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

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

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

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

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

“**Consent Order**” means that certain Administrative Consent Order between the Seller and the Allegheny County Health Department dated January 2004.

“**Customer Sewer Laterals**” has the meaning specified in Section 2.02(j).

“**Direct Claim**” has the meaning specified in Section 8.05(a).

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

“**EDU**” means equivalent dwelling unit.

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

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

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

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

“**Environmental Liabilities**” means any legal obligation or liability arising under Environmental Requirements or related to or arising out of any Environmental Condition, including those consisting of or relating to any (a) duty imposed by, breach of or noncompliance with any Environmental Requirements; (b) environmental, health or safety matters or conditions (including on-site or off-site contamination, occupational safety and health and regulation of

Hazardous Materials); (c) Remedial Action undertaken by any Person; (d) bodily injury (including illness, disability and death, and regardless of when any such bodily injury occurred, was incurred or manifested itself), property damage (including trespass, nuisance, wrongful eviction and deprivation of the use of real or personal property), or other losses or damages incurred by any other Person (including any employee or former employee of such Person); (e) any injury to, destruction of, or loss of natural resources, or costs of any natural resource damage assessments; (f) exposure of any Person to any Hazardous Materials; and (g) the presence or Release of any Hazardous Materials.

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

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

**“Equipment and Machinery”** means (i) all the equipment, tangible personal property, machinery, office furniture and equipment, fixtures, tooling, spare maintenance or replacement parts, environmental testing equipment, and vehicles owned or leased by Seller (including all leases of such property), which are used in the operation of the System, (ii) any rights of Seller to warranties applicable to the foregoing (to the extent assignable), and licenses received from manufacturers and Seller of any such item, and (iii) any related claims, credits, and rights of recovery with respect thereto, as listed in Schedule 4.10.

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

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

**“Files and Records”** means all files and records of Seller relating to the System and the Acquired Assets, whether in hard copy, digital, or magnetic or other format including data, geographic information system data, plans, contracts and recorded knowledge relating to the Acquired Assets (including property records, related to the foregoing), 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, and computer software, whether stored on-site or off-site.

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

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

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

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

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

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

**“Insurable Claim”** has the meaning specified in Section 6.02(e).

“**Knowledge**” means either (i) the actual knowledge of a Representative of Buyer and the knowledge that each such person would reasonably be expected to obtain in the course of diligently performing his or her duties for Buyer or (ii) the actual knowledge of the Borough Council and the Borough Senior Staff, and, in the case of the Borough Senior Staff, the knowledge that each such person would reasonably be expected to obtain in the course of diligently performing his or her duties for Seller, as applicable based on the context in which the term is used.

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

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

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

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

“**Material Adverse Effect**” means any result, occurrence, fact, change, event or effect that has a materially adverse effect on the business, financial condition or results of operations of the System, except that no effect arising out of or in connection with or resulting from any of the following is deemed, either alone or in combination, to constitute or contribute to a Material Adverse Effect: (i) general economic conditions or changes in those conditions; (ii) financial, banking, currency or capital markets fluctuations or conditions (either in the United States or any international market and including changes in interest rates); (iii) conditions affecting the real estate, financial services, construction, water utility or sewer utility industries generally; (iv) any existing event, circumstance, condition or occurrence of which Buyer has 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 Buyer or its Representatives.

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

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

“**Outstanding Indebtedness**” means the indebtedness set forth on **Schedule 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 or Seller and the term “Parties” means collectively Buyer and Seller.

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

“**Pending Development Plan**” means any subdivision or land development plan that has been submitted to Seller for approval pursuant to the Pennsylvania Municipal Planning Code.

“**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 Owned Real Property and Easements as disclosed on Schedule 4.09; (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; and (d) 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.

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

“**Real Property**” means those certain parcels of land, with the buildings, improvements, and Equipment and Machinery thereon or therein, that are part of the System and fee simple title to which is to be conveyed by Seller to Buyer as part of the Acquired Assets.

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

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

**“Remedial Action”** means any and all actions to (a) investigate, clean up, remediate, remove, treat, contain or in any other way address any Hazardous Materials in the Environment, (b) prevent the Release or threat of Release or minimize the further Release of any Hazardous Materials so it does not migrate or endanger public health or welfare or the indoor or outdoor Environment, and (c) perform pre-remedial studies and investigations and post-remedial monitoring, maintenance and care. The term **“Remedial Action”** includes any action which constitutes (i) a “removal”, “remedial action” or “response” as defined by Section 101 of CERCLA, 42 U.S.C. §§ 9601(23), (24), and (25); (ii) a “corrective action” as defined in RCRA, 42 U.S.C. § 6901 et seq.; 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 Party, 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 9.03 and 10.04. Any disclosure set forth on any particular Schedule is 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 Fundamental Representations”** has the meaning specified in Section 8.01.

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

**“Service Area”** has the meaning set forth in the recitals to this Agreement.

**“Supplies”** means all lubricants, spare parts, fuel, chemicals, raw materials, and other supplies and inventory of Seller relating to the System and the Acquired Assets, 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, capital stock, franchise, profits, withholding, social security,

unemployment, disability, real property, personal property, parking, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated or other tax, levy, impost, stamp tax, duty, fee, withholding or similar imposition of any kind payable, levied, collected, withheld or assessed at any time, including any interest, penalty or addition thereto, whether disputed or not.

“**Third Party Claim**” has the meaning specified in Section 8.05(a).

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

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

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

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

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

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

“**Utility Valuation Expert**” means an expert that has applied and has been approved by the PaPUC and is currently, at the time of this Agreement, on the list of approved appraisers maintained by the PaPUC.

## ARTICLE II.

**TERMS OF PURCHASE AND ASSUMPTION OF LIABILITIES**

**Section 2.01. Purchase and Sale of Acquired Assets.** Subject to the terms and conditions set forth in this Agreement, at Closing, Buyer shall purchase from Seller and Seller shall sell, transfer, assign and deliver to Buyer, free and clear of all Liens except for Permitted Liens, all of Seller's right, title and interest in and to all assets, facilities, business, goodwill, properties and rights of 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), including any of the foregoing in which Seller is entitled to acquire rights in the future pursuant to Pending Development Plans (other than the rights of Seller pursuant to Section 2.02(d)) or development plans approved pursuant to this Agreement, but in all cases other than the Excluded Assets (collectively referred to as the "Acquired Assets"), including:

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

(b) all sanitary wastewater related conveyance facilities, including but not limited to all collection system mains (whether gravity or force mains), laterals (from the collection system main to the edge-of-road or curb-line when the main is located within a public right-of-way or the edge of an easement where the main is located within private property), manholes, and other related appurtenances and any billing and collections related assets necessary to own and operate the System;

(c) all contracts, licenses, and leases to which Seller is a party, including without limitation, all construction contracts, surety bonds, operation and maintenance agreements, management agreements, reserved capacity agreements, architect agreements and consultant agreements, and agreements relating to vehicles and other items of personal property as set forth on Schedule 4.13 (the "Assigned Contracts");

(d) all Supplies;

(e) all personal property and fixed assets, including all Equipment and Machinery, auxiliary equipment and plant equipment, including without limitation those items listed on Schedule 4.10 hereof;

(f) all expenses prepaid by Seller and security deposits paid by Seller;

(g) all Files and Records;

(h) all Authorizations and Permits of or held by Seller (to the extent transferrable to Buyer under Law), including all Authorizations and Permits which are environmental permits, other operating permits and those items listed or described on Schedule 4.14; and

(i) all goodwill of the System.

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE SELLER MAKES NO EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY REGARDING 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. NOTWITHSTANDING THE FOREGOING, ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE VALID UNTIL THE TIME OF CLOSING.

**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;
- (c) cash and cash equivalents, including (i) accounts receivable and amounts earned by Seller but not yet billed attributable to services rendered by Seller as of or before the Closing Date and (ii) EDU fees owed to Seller at or before the Closing Date for any Pending Development Plan but not yet paid to Seller;
- (d) all insurance policies of Seller and all rights to applicable claims and proceeds thereunder;
- (e) all rights to any outstanding lien related to non-payment by a System customer existing at or before the Closing Date and all actions, suits or claims of any nature available to or being pursued by Seller, whether arising by way of counterclaim or otherwise;
- (f) all assets, properties and rights used by Seller other than those which primarily relate to the operations of the System;
- (g) the assets, properties and rights specifically set forth on Schedule 2.02(g);
- (h) all municipal separate storm sewer system assets and stormwater assets of the Seller (and any related NPDES permits);
- (i) the rights which accrue or will accrue to Seller under this Agreement and any related agreement, exhibit or schedule; and

(j) any and all connecting facilities originating from Seller's terminus point of the collection facilities at the main or edge-of-road to and throughout the customer's property, including grinder pumps, if any (the "Customer Sewer Laterals").

**Section 2.03. Sale Free of Liens.** After Buyer fulfills its obligations pursuant to Section 3.01(a), on the Closing Date, the Acquired Assets will be free and clear of all Liens other than Permitted Liens. Seller shall convey the Acquired Assets by appropriate special warranty or other deed (subject to Section 6.02(c)), bills of sale, endorsements, assignments and other instruments of transfer or conveyance described herein, and if not expressly described herein, then by transfer documents satisfactory in form and substance reasonably acceptable to Buyer and Seller and their counsel in their reasonable, good faith discretion. At Closing, title to the Real Property shall be good and marketable and insured by the Title Company, at the Title Company's filed rates, as a good and marketable title, free and clear of all Liens and exceptions to coverage, except for the Permitted Liens, pursuant to an owner's policy of title insurance on the American Land Title Association's ("ALTA") Owner's Form 2006, subject to the terms of Section 6.02 (the "Title Policy").

**Section 2.04. Assumption of Liabilities.**

(a) On the terms and conditions set forth in this Agreement and excluding the Excluded Liabilities, Buyer shall assume and pay, perform and discharge when due any and all liabilities and obligations of Seller arising out of or relating to the System or the Acquired Assets on or after the Closing, defined as the following:

(i) all liabilities and obligations under the Assigned Contracts and Authorizations and Permits resulting from events that occur or conditions that arise on or after the Closing;

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

(iii) all liabilities and obligations under the Consent Order attributable to the period after the Closing Date;

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

(v) 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").

(b) At the Closing, to the extent Seller is not released therefrom, Buyer shall indemnify Seller against any Loss relating to the Assumed Liabilities in accordance with Section 8.03.

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

**Section 2.05. Further Assurances.** At any time and from time to time after the Closing Date, Seller shall, upon the request of Buyer, and Buyer shall, upon the request of Seller, at the cost of requesting Party, promptly execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such other instruments of conveyance and transfer and other documents, and perform or cause to be performed such further acts, as may be reasonably required to evidence or effectuate, or more fully evidence or effectuate, (a) the sale, conveyance, transfer, assignment and delivery hereunder of the Acquired Assets to Buyer, (b) the assumption by Buyer of any of the Assumed Liabilities, (c) performance by the Parties of any of their other respective obligations under this Agreement, (d) the vesting in Buyer of all right, title and interest in the Acquired Assets and the System as provided 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 Contracts.**

(a) Notwithstanding anything to the contrary in this Agreement, and subject to the provisions of this Section 2.06(a) and Section 2.06(b), to the extent that the sale, transfer, assignment, conveyance and delivery, or attempted sale, transfer, assignment, conveyance and delivery, to Buyer of any Assigned Contract or other Acquired Asset would result in a violation of Law, or would require the consent, authorization, approval or waiver of any Person (other than the Parties), including any Governmental Authority, and such consent, authorization, approval or waiver shall not have been obtained before 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, Seller and Buyer shall use its 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 and in no event will Buyer be required to pay any consideration therefor. 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 fifty percent (50%) by Buyer and fifty percent (50%) by Seller.

(b) Until such time as a Nonassignable Asset is transferred to Buyer pursuant to this Article II, Buyer 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 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 transfers and turns over all economic and beneficial rights with respect to each such Nonassignable Asset, Buyer shall, to the extent permitted under Law and the terms of any applicable contract that is a Nonassignable Asset, as agent or subcontractor for

Seller, 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 be Assumed Liabilities if the applicable consent or approval had been obtained on or before the Closing Date and such Nonassignable Asset had been assigned to Buyer at Closing. To the extent permitted under Law, Seller shall hold in trust for and pay to Buyer promptly upon receipt thereof, such Nonassignable Asset and all income, proceeds and other monies received by Seller with respect to such Nonassignable Asset in connection with the arrangements under this Article II.

(c) If, following the Effective Date and before the Closing, Buyer identifies any contract to which Seller is a party which is not set forth on Schedule 4.13, and Buyer reasonably determines such contract is necessary or useful to the operation of the System, Buyer shall notify Seller of such determination and Seller shall, promptly following receipt of such notice, deliver to Buyer an updated Schedule 4.13 reflecting the addition of such contract, and such contract will be an “Assigned Contract” for all purposes hereunder.

(d) If during the twelve (12) month period following the Closing, Buyer identifies any contract to which Seller was a party as of the Closing and which (i) was not set forth on Schedule 4.13 (as may be updated pursuant to (c)) and (ii) Buyer reasonably believes is necessary or useful to the operation of the System, Seller shall, promptly following Buyer’s written request therefor, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such other instruments of conveyance and transfer and other documents, and perform or cause to be performed such further acts, as may be reasonably required to evidence or effectuate, or more fully evidence or effectuate the assignment of such contract to Buyer for no additional consideration, and upon such assignment, such contract is deemed an Assigned Contract for all purposes hereunder.

### ARTICLE III.

#### PURCHASE PRICE

**Section 3.01. Purchase Price.** The purchase price for the Acquired Assets is Nineteen Million Two Hundred Thousand Dollars (\$19,200,000) (the “Purchase Price”) which Buyer shall pay as follows at Closing:

(a) Buyer shall provide for payment in full of the total amount of Outstanding Indebtedness directly to Seller’s obligees on account of the Purchase Price;

(b) Buyer shall pay, subject to any adjustment pursuant to Section 3.01(c) and Section 6.05(e), to Seller by wire transfer of immediately available funds the balance of the Purchase Price (remaining after the debt repayment pursuant to Section 3.01(a)) to one or more accounts that Seller designates and provides to Buyer at least three (3) Business Days before the Closing Date; and

(c) Final Billing: The Buyer is entitled to all customer billings with respect to sanitary wastewater customers services for the period on or after the Closing Effective Time, and Seller is entitled to all such billings for the period before the Closing Effective Time. The Parties shall cooperate to calculate an agreed upon proration of billing amounts and to the extent that either

Party collects billings that are attributable to service provided by the other Party, the Party holding the other Party's billing collections shall pay such amount to the other Party.

(d) In addition to the Purchase Price, Buyer shall pay Seller up to Seventy Thousand Dollars (\$70,000) as reimbursement for engineering and legal fees incurred related to this transaction to one or more accounts that Seller designates and provides to Buyer at least three (3) Business Days before the Closing Date. Seller shall provide Buyer with invoices evidencing the amount of transaction-related fees incurred at least five (5) Business Days before the Closing Date.

**Section 3.02. Fair Consideration.** The consideration provided for in this Article III represents fair consideration and reasonable equivalent value for the sale and transfer of the Acquired Assets and the transactions, covenants and agreements set forth in this Agreement, which consideration was agreed upon as the result of arm's-length good faith negotiations between the Parties and their respective Representatives.

**Section 3.03. 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 paid fifty percent (50%) by Buyer and fifty percent (50%) by Seller. The terms hereof survive Closing.

#### ARTICLE IV.

#### REPRESENTATIONS AND WARRANTIES OF SELLER

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

As a material inducement to Buyer to enter into this Agreement and to consummate the transactions contemplated by this Agreement, Seller 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, organized and existing under the Borough Code of the Commonwealth of Pennsylvania.

**Section 4.02. Power and Authority.** Seller has (i) duly adopted an 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 of its obligations contained in this Agreement. Seller has all requisite power and authority to own, lease and operate the Acquired Assets and the System and has the power and authority to enter into this Agreement and to do all acts and things and execute and deliver all other documents as are required 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 is a valid and legally binding obligation of Seller, enforceable against Seller

in accordance with the terms hereof, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity.

**Section 4.04. No Conflict or Violation.** The execution and delivery of this Agreement by Seller, the consummation of the transactions contemplated by this Agreement and the performance by Seller of the terms, conditions and provisions hereof has not and will not contravene or violate or result in a breach of (with or without the giving of notice or lapse of time, or both) or acceleration of any material obligations of Seller under (i) any 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.** Schedule 4.05 sets forth a list of each consent, waiver, authorization or approval of any Governmental Authority, or of any other Person, and each declaration to or filing or registration with any Governmental Authority required in connection with the execution and delivery of this Agreement by 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 liabilities or obligations of Seller, either accrued, absolute, contingent or otherwise, relating to the Acquired Assets, other than liabilities incurred in the ordinary course, that could not reasonably be expected to have a Material Adverse Effect on Buyer.

**Section 4.07. Absence of Certain Changes or Events.** Except as set forth on Schedule 4.07, since December 31, 2017, there has not been any transaction or occurrence that has resulted or is reasonably likely to result in a Material Adverse Effect and Seller has operated and maintained the System since that date in the ordinary course.

**Section 4.08. Tax Matters.** Except as set forth in Schedule 4.08 or as would not have a Material Adverse Effect, (i) Seller has timely paid all Taxes that may have been or may be due and payable by Seller on or before the Closing Date, arising from the ownership or operation of the Acquired Assets or the System on or before the Closing Date (ii) no taxing authority has asserted any claim against the Seller for the assessment of any additional tax liability or initiated any action or proceeding which could result in such an assertion; and (iii) the Seller has made all withholding of Taxes required to be made under all Laws and regulations, including without limitation, withholding with respect to compensation paid to employees, and the amounts withheld have been properly paid over to the appropriate taxing authorities.

**Section 4.09. Real Property and Easements.** Schedule 4.09 identifies all Real Property of Seller and separately identifies all Easements. Seller does not own or lease (as lessee) any real property that is used in the operation of the System. There are no pending condemnation proceedings relating to any of the Real Property or Easements nor has Seller actually received any written threats of any condemnation proceedings and, to the Knowledge of Seller, no such proceedings are threatened. Seller has not received any written notices of any violations of any Law from any Governmental Authority with respect to the Real Property or the Easements which has not been cured in all material respects and, to Seller's Knowledge, no such violations of Law exist. With respect to the Real Property, (i) there are no leases, options, rights of reversions or other rights of use or rights to acquire the Real Property held by third parties, (ii) Seller is in sole

possession of the Real Property, and (iii) to Seller's Knowledge there are no encroachments either way across the boundary of the Real Property, nor any dispute with adjacent real property owners over the location of boundaries or potential claims adverse to title. With respect to each Easement, (i) there are no leases, options, rights of reversions or other rights of use or rights to acquire the Easement held by third parties, and (ii) to Seller's Knowledge there are no disputes with adjacent real property owners of the owners of the real property encumbered by the Easement over the location of boundaries or potential claims adverse to title.

**Section 4.10. Equipment and Machinery.** All Equipment and Machinery included in the Acquired Assets is set forth and otherwise described on Schedule 4.10. Except as set forth in Schedule 4.10, Seller has good title, free and clear of all Liens (other than the Permitted Liens and Liens that will be released on or before Closing) to the Equipment and Machinery owned by Seller. Except as specifically disclosed on Schedule 4.10, all the Equipment and Machinery is owned by Seller, and none is leased or used under any conditional sales, title-retention, lease, license or similar arrangement.

**Section 4.11. Environmental Compliance.** Except as set forth in Schedule 4.11 or that otherwise could not be expected to have a Material Adverse Effect:

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

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

(c) Seller has not received notice of any Environmental Claims related to the System that have not been fully and finally resolved, and to the Knowledge of Seller no claims of Environmental Liabilities have been threatened allegedly arising from or relating to the System that have not been fully and finally resolved.

(d) Hazardous Materials are not present at or on the System or Acquired Assets, there has been no Release of Hazardous Materials at, on or from any part of the System or the Acquired Assets, in each case in a manner that violates any Environmental Requirements or has resulted in, or could reasonably be anticipated to give rise to, Environmental Liabilities.

(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 Hazardous Material on or off the Acquired Assets or a violation of any Environmental Requirement.

(f) There are no 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, plugged and abandoned in compliance with applicable Environmental Requirements in effect at the time of such closure.

(g) No PCB Equipment is on or at any of the Acquired Assets. Any PCB Equipment that previously existed at the Acquired Assets has been flushed of polychlorinated byphenyls or has been removed and properly disposed of, in compliance with applicable Environmental Requirements, and any remaining PCB Equipment is labeled to the extent required under applicable Environmental Requirements and being managed in compliance with applicable Environmental Requirements.

(h) No Regulated Asbestos Containing Material exists in or on the Acquired Assets in an aggregate amount that would reasonably be expected to result in an Environmental Liability; and any Regulated Asbestos Containing Material is being managed in compliance with all applicable Environmental Requirements.

(i) Seller has delivered to Buyer (1) all material environmental site assessments or reasonable and accurate summaries thereof pertaining to the System, (2) 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 (3) 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 4.12. Authorizations and Permits.** Schedule 4.12 lists or describes the Authorizations and Permits of Seller that are currently in full force and effect. Seller has made true and complete copies of all Authorizations and Permits available to Buyer; and, except as set forth on Schedule 4.12, Seller is in compliance 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. 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 4.13. System Contracts.**

(a) Schedule 4.13 contains a complete and accurate list of all the Assigned Contracts.

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

(c) All of the Assigned Contracts specified in Schedule 4.13 are in full force and effect. Seller has not, nor to the Knowledge of Seller has any other party thereto, breached any material provision of or defaulted under the material terms of, nor does any condition exist which, with notice or lapse of time, or both, would cause Seller, or to the Knowledge of Seller, any other party, to be in default under any Assigned Contract.

**Section 4.14. Compliance with Law; Litigation.**

(a) Seller has operated and is operating the System in compliance, in all material respects, with all Laws, Authorizations and Permits and is not in breach of any Law, Authorization

or Permit that would have a Material Adverse Effect on the operations of the System or on Buyer. 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 4.12.

(b) Except as set forth on Schedule 4.14, there are no facts, circumstances, conditions or occurrences regarding the System that could reasonably be expected to give rise to any environmental claims or governmental enforcement actions that could reasonably be expected to have a Material Adverse Effect, and there are no past, pending or threatened environmental claims or governmental enforcement actions against Seller that individually or in the aggregate could reasonably be expected to have a Material Adverse Effect.

(c) Except as set forth on Schedule 4.14, no action, suit or proceeding, at law or in equity, or before or by any Governmental Authority, is pending nor, to the Knowledge of Seller, threatened against Seller before or at the time of Closing that could reasonably be expected to have a Material Adverse Effect. As of the Effective Date, no action, suit or proceeding, at Law or in equity, or before or by any Governmental Authority, is pending nor, to the Knowledge of Seller, threatened against Seller which could materially affect the validity or enforceability of this Agreement.

**Section 4.15. Broker's and Finder's Fees.** No broker, finder, or Person is entitled to any commission or finder's fee by reason of any agreement or action of Seller in connection with this Agreement or the transactions contemplated by this Agreement. Seller shall pay when due the fees and expenses of their financial and technical advisors. Seller has employed Public Financial Management, Inc., as municipal advisor to provide transaction structuring advice and to provide Seller with municipal advice relating to the sale of the System. Seller shall pay all fees owed to Public Financial Management, Inc. in connection with the transactions contemplated by this Agreement.

**Section 4.16. Title to the Acquired Assets; Sufficiency.**

(a) Except as set forth on Schedule 4.16(a), Seller has good and marketable title to, all Real Property, and valid leasehold interest in or valid licenses or Easements to use and access, 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 before Closing. The use of the Acquired Assets is not subject to any Liens, other than Permitted Liens, and such use does not encroach on the property or the rights of any Person.

(b) Except as set forth on Schedule 4.16(b), the Acquired Assets are sufficient for, and constitute all the assets, properties, business, goodwill and rights of every kind and description, and services required for, the continued conduct and operation of the System by Buyer in substantially the same manner as currently conducted and operated by Seller. Except for the Excluded Assets and except as set forth on Schedule 4.16(b), (i) 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 (ii) there are no assets, properties, business, goodwill, rights or services used in the conduct or operation of the System that are owned by any Person other than Seller that

will not be licensed or leased to Buyer under valid, current license arrangements or leases. None of the Excluded Assets are material to the System.

**Section 4.17. Pending Development Plans.** Schedule 4.17 sets forth a full and complete list of all Pending Development Plans as of the Effective Date. Each Pending Development Plan, if consummated could result in the expansion of the Service Area. Seller provides no assurances whatsoever that any development or expansion of the Service Area associated with any Pending Development Plan will actually be undertaken or completed. The Parties expect that Schedule 4.17 will change from time to time between the Effective Date and Closing, and the Seller shall provide updates to Schedule 4.17 pursuant to Section 9.03.

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

**Section 5.01. Organization.** 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 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 is a valid and legally binding obligation of Buyer, enforceable against it in accordance with the terms hereof, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity.

**Section 5.03. No Conflict or Violation.** The execution and delivery of this Agreement by 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 material 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 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.** Schedule 5.04, sets forth a list of each consent, waiver, authorization or approval of any Governmental Authority, or of any other Person, and each declaration to or filing or registration with any Governmental Authority required in connection with the execution and delivery of this Agreement by Buyer or the performance by Buyer of its obligations hereunder.

**Section 5.05. Broker's and Finder's Fees.** No broker, finder or third party is entitled to any commission or finder's fee in connection with this Agreement or the transactions contemplated by this Agreement.

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

**Section 5.07. Sufficient Funds.** Buyer shall 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 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 nor any other Person has made any representation or warranty, express or implied, as to the accuracy or completeness of the System or information provided to Buyer, and (b) neither Seller nor any other Person shall have or be subject to any liability to Buyer or any other Person resulting from the distribution to Buyer, or Buyer 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 or costs of operation of the System.

**Section 5.09. Scheduled Matters.** Buyer acknowledges that: (a) the inclusion of any matter on any Schedule shall not be deemed an admission by Seller that such listed matter is material or that such listed matter has or could have a material adverse effect or constitutes a material liability with respect to the Acquired Assets; (b) matters reflected in the Schedules are not necessarily limited to matters required by this Agreement to be reflected in such Schedules; and (c) such additional matters are set forth for informational purposes only and do not necessarily include other matters of a similar nature.

**Section 5.10. 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 expressly contained in Article IV of this Agreement.

**Section 5.11. Litigation.** Buyer is not in breach of any Law that could have a material adverse effect on the operations of the System or Buyer. 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 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, no action, suit or proceeding, at law or in equity, or before or by any Governmental Authority, is pending nor, to the Knowledge of Buyer, threatened against Buyer before or at the time of Closing, which will have a material adverse effect on (i) the transactions contemplated by this Agreement or (ii) the validity or enforceability of this Agreement.

## ARTICLE VI.

### **TITLE TO REAL PROPERTY; EASEMENTS**

**Section 6.01. Evidence of Title.** Subject to Section 6.06, with respect to all Real Property, Buyer shall obtain at its sole cost and expense a commitment for a Title Policy (the "Title Commitment"), issued by a title insurance company selected by Buyer and licensed to insure title to real property by the Commonwealth of Pennsylvania (the "Title Company"). Promptly following the Effective Date, Buyer shall order the Title Commitment from the Title Company and shall provide Seller evidence of the order. Notwithstanding anything to the contrary in Section 6.02(a), a purported Objection Notice is void with respect to any parcel of Real Property if, within thirty (30) Business Days after the Effective Date, Buyer has not ordered the Title Commitment from the Title Company for such parcel of Real Property and provided Seller with evidence of the order.

### **Section 6.02. Objections to Title.**

(a) Notice of Objections. Within thirty (30) Business Days of Buyer's receipt of the Title Commitment for any of the parcels of Real Property, Buyer shall deliver to Seller a true, correct and complete copy of the Title Commitment and true, correct, complete and legible copies of all exception documents listed in the Title Commitment, along with Buyer's notice to Seller of any exceptions to title set forth on Schedule B of the Title Commitment to which Buyer objects (the "Objection Notice"). The exceptions listed in the Title Objection Notice are referred to as the "Title Objection Items." None of the following are Title Objection Items: (a) Permitted Liens, (b) items that pertain to Buyer or any requirements, conditions or obligations of Buyer, (c) matters of record that are set forth in the Title Commitment and adversely restrict or prevent the use of the Real Property in the operation of the System and (d) standard Title Company exceptions (such as the "survey" exception). Any Objection Notice which does not include a true, correct and complete copy of the Title Commitment and true, correct, complete and legible copies of any and all exception documents listed in the Title Commitment is void. If Buyer provides Seller with an Objection Notice, Seller shall use its commercially reasonable efforts to have all of the Title Objection Items cured, satisfied or released of record, or insured over, by the Title Company ("Cure" or "Cured") before or as of the Closing. At or before the Closing, Seller shall deliver written evidence to Buyer, in form and substance reasonably satisfactory to Buyer and at Seller's cost and expense, evidencing that Seller has Cured all Title Objection Items.

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

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

(d) License at Closing. Seller shall provide Buyer with a license agreement granting Buyer a license in all of Seller's rights to access Real Property in order to allow Buyer to operate and maintain the System until such time as Buyer is provided title to such Real Property as provided for in this Agreement. For the avoidance of doubt, Seller shall provide such title as soon as reasonably practicable in accordance with Section 6.01.

(e) Insurable Claims. To the extent any Claim for Losses under Article VIII is an Insurable Claim, Buyer shall assert and pursue with reasonable diligence the Insurable Claim against the Title Company (which includes commencing litigation and diligently prosecuting the Insurable Claim to a Final Order) before pursuing a Claim for Losses under Article VIII. Following a non-favorable Final Order that substantially denies the relief sought by Buyer from the Title Company in connection with the Insurable Claim (each a "Non-Favorable Judgment"), Buyer may, following such Non-Favorable Judgment, pursue Seller with a Claim for Losses under Article VIII (any Claim against Seller following an attempted Insurable Claim against the Title Company is a "Residual Title Claim"). Notwithstanding anything to the contrary in Article VIII, Buyer must assert a Claim for Losses based upon a Residual Title Claim within sixty (60) day of the Non-Favorable Judgment. For purposes of this Section 6.02(e), an "Insurable Claim" means a Claim that: (i) arises out of Buyer's discovery of a title defect or encumbrance with respect to any of the Real Property following the Closing Date that materially restricts or prevents the use of such Real Property in the operation of the System; and (ii) is a claim against the Title Company under the Title Policy. Buyer acknowledges that any Claims that it could otherwise bring as a breach of a covenant of title under the special warranty deed to the Real Property is included within the Claim for Losses under Article VIII and is subject to the terms of this Section 6.02(e) of first pursuing the same as an Insurable Claim.

**Section 6.03. Title Expenses**. Irrespective of whether Closing occurs, Buyer shall pay all costs and expenses for obtaining the Title Commitment, Title Policy and any survey. Seller shall pay for all expenses to release, satisfy or bond over any Liens, and to effect the Cure of any Title Objection Items that Seller undertakes to Cure, including the cost of any title endorsement to insure Buyer against any adverse effect of such Title Objection Items.

**Section 6.04. UCC Search; Releases**. Not later than ninety (90) Business Days after the Effective Date, Buyer shall obtain at its sole cost and expense a Uniform Commercial Code search against Seller covering any of the personal property or fixtures included among the Acquired

Assets from the Office of the Secretary of the Commonwealth of Pennsylvania and the Recorder of Allegheny County, Pennsylvania (the “UCC Search”). On or before the Closing, Seller shall obtain at its sole cost and expense releases of any and all Liens in any of the Acquired Assets which are not Permitted Liens. Seller shall provide the form of the releases of any Liens to Buyer on or before the Closing Date.

**Section 6.05. Easements.**

(a) Within sixty (60) Business Days after the Effective Date, Seller shall, at its sole cost and expense, cause an abstractor selected by Seller and reasonably acceptable to Buyer and the Title Company (the “Abstractor”), to perform a search of the public land records of Allegheny County, based on Seller’s records and plans of the System (and such other sources of information as are reasonably related thereto), by means of searching the grantee index in the names of Seller and such other searches as the Abstractor may reasonably make, to (i) identify and provide Buyer with title information on all recorded Easements, and (ii) together with Seller, identify all Missing Easements. During this process, as the Abstractor provides written search results to Seller (including updated versions of the Abstractor search result chart), Seller will promptly provide the same to Buyer for its review, and Seller shall, or shall cause the Abstractor to, provide Buyer with periodic updates (which shall occur no less frequently than bi-weekly) on the status of the activities set forth in the previous sentence. Within thirty (30) Business Days after the Effective Date, Seller shall develop a map of all collection pipes, services, pump stations, manholes of the System and identify each parcel within the Service Area that Seller’s sanitary wastewater conveyance facilities encroaches upon private property (“Easement Map”). The Easement Map will be used in connection with the Abstractor’s report to identify the Missing Easements Seller is obligated to obtain under Section 6.05.

(b) Notice of Objections. Within forty five (45) days of Buyer’s receipt from the Seller (or the Abstractor) of the information described in subsection (a) above, Buyer shall deliver to Seller written notice identifying the encumbrances on the Easements that, in Buyer’s reasonable opinion, could materially and adversely restrict or prevent the use of the Easements in the operation of the System, (an “Easement Objection Notice”). Buyer shall not be permitted to include in its Easement Objection Notice any encumbrances that: (a) are Permitted Liens, (b) pertain to the Buyer or any requirements, conditions or obligations of the Buyer, or (c) are matters of record and set forth in the Abstractor’s search results that do not, in Buyer’s reasonable opinion, materially and adversely restrict or prevent the use of the Easements in the operation of the System (specifically including mortgages or other instruments securing indebtedness incurred by the owner of the land burdened by the Easement) (such exceptions objected to in the Objection Notice, the “Easement Objection Items”). In the event that Buyer provides the Seller with an Easement Objection Notice, the Seller shall use commercially reasonable efforts to have the Easement Objection Items Cured, prior to or as of the Closing. At or prior to the Closing, the Seller shall deliver documentation to Buyer, in form and substance reasonably satisfactory to Buyer, evidencing that Seller has Cured all objections identified in the Easement Objection Notice. If Seller is unable to Cure any Objection Item pursuant to this Section 6.05(b), Seller shall: (i) grant Buyer a license pursuant to Section 6.05(d); and (ii) Seller’s obligation to assign such Easements to Buyer pursuant to Section 2.01(a) survives Closing.

(c) If during the process of Abstractor's review and investigation of the Allegheny County land records, Seller determines, based on the Abstractor's investigation, that there is a Missing Easement, Seller shall take any and all actions (including the use of its power of condemnation) to obtain any Missing Easements so that the same may be sold, assigned, transferred and conveyed to Buyer at the Closing pursuant to the terms and conditions of this Agreement. All costs and expenses incurred in connection with obtaining each Missing Easement (including any payment to a landowner in connection with condemnation, in lieu of condemnation or otherwise) shall be paid by Seller and no additional consideration shall be payable by Buyer for any Missing Easement. If Seller has not obtained all Missing Easements by the date that is sixty (60) Business Days after the date that Abstractor has completed its review of the County land records and delivered the last results to Seller (the "Abstract Completion Date"), then, no later than thirty (30) Business Days after the Abstract Completion Date (but in any event no later than thirty (30) days before the Closing), Seller shall commence and file in the Court of Common Pleas, Allegheny County, a condemnation or eminent domain proceeding to obtain any and all such Missing Easements. For the purposes of clarity, upon obtaining each Missing Easement (including upon the final resolution of a condemnation proceeding), each Missing Easement that has been acquired or obtained by Seller will be considered an Easement.

(d) License at Closing. Seller shall provide Buyer with a license agreement granting Buyer a license in all of Seller's rights to access Easements in order to permit Buyer to operate and maintain the System until such time as Buyer is provided title to the Easement.

(e) Escrow at Closing for Missing Easements. For all of the Missing Easements listed on attached Schedule 6.05(e) as of the Closing Date, Seller will have additional time following the Closing Date to secure and assign and transfer the Missing Easements to Buyer. Seller shall diligently pursue and deliver the Missing Easements on or before the third (3<sup>rd</sup>) anniversary of the Closing Date, subject to any extension as permitted by Escrow Agreement, in the form attached as Exhibit C, that will require, among other things, the funding of an escrow account in the amount of Two Thousand Dollars (\$2,000) for each Missing Easements set forth on Schedule 6.05(e) as of the Closing Date to secure the Seller's obligations under this Agreement and the Escrow Agreement.

**Section 6.06. Unscheduled Property.** The Parties acknowledge that Seller may own interests in or have the legal right to use or occupy the Real Property and Easements that is necessary or essential to the operation of the System and that is not specifically identified in Schedule 4.09 (the "Unscheduled Real Property"). If the Parties discover before or after the Closing Date, one or more parcels of Unscheduled Real Property, the discovering Party shall notify the non-discovering Party of the discovery. 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, without additional consideration payable by Buyer, in such a manner as to provide Buyer with reasonable assurances that Buyer may use or occupy the Unscheduled Real Property as it was used by Seller as of the Effective Date.

**ARTICLE VII.****OTHER AGREEMENTS**

**Section 7.01. Taxes.** Seller shall pay any and all Taxes, if any, arising out of the ownership of the Acquired Assets and out of the operation of the System before the Closing.

**Section 7.02. Cooperation on Tax Matters.** Seller shall furnish or cause to be furnished to Buyer, as promptly as practicable, whether before or after the Closing Date, such information and assistance relating to the System as is reasonably necessary for the preparation and filing by Buyer of any filings relating to any Tax matters.

**Section 7.03. Rates.**

(a) **Rates.** Buyer shall implement the Seller's sanitary wastewater rates then in effect at Closing, as set forth on Schedule 7.03(a), and inclusive of any PaPUC permitted or required surcharges or pass-through costs (the "Base Rate") as Buyer's effective sanitary wastewater rates, provided that the rates reflected on Schedule 7.03(a) (at Closing) shall not be lower than those in effect on the date the Effective Date. The Base Rate shall not be increased until after the second anniversary of the Closing Date. Buyer intends to bill customers on a monthly basis.

(b) **PaPUC Approval.** The Buyer shall include the rate provisions of Sections 7.03(a) in its requested PaPUC Governmental Approval.

**Section 7.04. Buyer Taxpayer.** From and after the Closing Date, Buyer acknowledges that, upon conveyance of the Acquired Assets to Buyer, Buyer will be subject to, among other Taxes, real estate Taxes, which Buyer shall pay when due.

**Section 7.05. PaPUC Approval.**

(a) Promptly after the Effective Date, Buyer shall timely initiate and faithfully prosecute the necessary proceedings to obtain from the PaPUC (i) the issuance of certificates of public convenience to Buyer to provide wastewater services in the Service Area and (ii) the approval of the acquisition of the System by Buyer under terms and conditions that are reasonably acceptable to Seller and Buyer. Seller shall cooperate with and assist Buyer in proceedings before the PaPUC.

(b) Buyer and Seller hereby agree that the procedures for determining fair market value of the System and Acquired Assets outlined in subsection (a) of Section 1329 of Title 66 of the Pennsylvania Consolidated Statutes ("Section 1329") shall be utilized and filed with the PaPUC as contemplated by Section 1329.

(c) The fees and expenses related to engaging the licensed engineer for such Section 1329 determination shall be paid fifty percent (50%) by Buyer and fifty percent (50%) by Seller.

(d) To the extent requested by Buyer, Seller shall participate in any proceedings before the PaPUC as an intervenor and active party. Seller may be represented by the counsel of its choice in any such proceedings.

(e) Buyer, in Buyer's first base rate proceeding with respect to the System following the Closing, shall propose the use of statutory and regulatory mechanisms available to benefit the Buyer's acquired customers for ratemaking purposes.

**Section 7.06. Remedies for Breach of Article VII Agreements.** If Buyer breaches of any of the covenants and agreements set forth in this Article VII following Closing, in addition to all other rights and remedies available at law or in equity, including specific performance and/or injunctive relief, Seller may commence proceedings before the PaPUC seeking enforcement of such covenants and agreements.

**Section 7.07. Utility Valuation Experts.** Buyer and Seller shall each be responsible for the costs associated with their respective Utility Valuation Expert for the preparation and completion of their respective Utility Valuation Expert's appraisal report and any additional work by their respective Utility Valuation Expert necessary to assist in the processing and prosecution of the application to the PaPUC in regard to this transaction under Section 1329.

**Section 7.08. Restoration of Property.** Buyer shall at all times act in accordance with all requirements imposed by the PaPUC and with the terms of any permits or approvals issued by Seller with regard to restoration of property on which construction or repair and replacement work is undertaken.

**Section 7.09. EDU Allocations.** In connection with EDU allocations, Buyer shall at all times act in compliance with Seller's ordinances, including those with respect to zoning and land use, the Seller's Act 537 plan and the Seller's comprehensive plans.

**Section 7.10. Covenant Survival.** The covenants set forth in this Article survive Closing.

## ARTICLE VIII.

### INDEMNIFICATION

**Section 8.01. Survival.** All representations and warranties contained in this Agreement shall survive until twelve (12) months following the Closing Date, except that (a) the representations and warranties of Seller set forth in Section 4.01 (Organization), Section 4.02 (Power and Authority), Section 4.03 (Enforceability) and Section 4.15 (Brokers' and Finders' Fees) (collectively, the "Seller Fundamental Representations") shall survive the Closing indefinitely or until the latest date permitted by Law, and (b) the representations and warranties of Buyer set forth in Section 5.01 (Organization), Section 5.02 (Authorization and Validity of Agreement), and Section 5.05 (Brokers' and Finders' Fees) (collectively, the "Buyer Fundamental Representations") shall survive the Closing indefinitely or until the latest date permitted by Law. The covenants and agreements of the Parties contained in this Agreement survive the Closing indefinitely or for the shorter period explicitly specified therein, except that for those covenants and agreements that survive for a shorter period, breaches thereof survive indefinitely or until the latest date permitted by Law. Notwithstanding the preceding sentences, (x) any breach of representation, warranty, covenant or agreement in respect of which indemnity may be sought under this Agreement shall survive the time at which it would otherwise terminate pursuant to the preceding sentences, if notice of the inaccuracy or breach thereof giving rise to such right of

indemnity shall have been given to the Party against whom such indemnity may be sought before such time, and (y) nothing contained in this Section 8.01 shall limit in any way any rights a Party may have to bring claims grounded in fraud, intentional misrepresentation or willful misconduct, which rights shall survive the Closing indefinitely.

**Section 8.02. Indemnification by Seller.** To the maximum extent permitted by Law and subject to the terms and conditions of this Article VIII, Seller shall indemnify, defend and hold harmless, Buyer and its successors and Affiliates and their respective employees, officers, directors, trustees and agents (the “Buyer Indemnified Persons”), from and against any and all claims for Losses arising from or relating to: (a) any misrepresentation as to, or any material inaccuracy in, any of the representations and warranties of Seller contained in this Agreement or in any exhibit, schedule, certificate or other instrument or document furnished or to be furnished by Seller before the Closing pursuant to this Agreement (without regard to any materiality, Material Adverse Effect or related qualifications in the relevant representation or warranty (except where such provision requires disclosure of lists of items of a material nature or above a specified threshold)); (b) any breach or nonfulfillment of any of the covenants or agreements of Seller contained in this Agreement or in any exhibit, schedule, certificate or other instrument or document furnished or to be furnished by Seller before the Closing pursuant to this Agreement; or (c) any Excluded Liability or Excluded Asset.

**Section 8.03. Indemnification by Buyer.** To the maximum extent permitted by Law and subject to the terms and conditions of this Article VIII, Buyer shall defend, indemnify and hold harmless Seller and its successors and Affiliates and each of their respective employees, officers, directors and agents (the “Seller Indemnified Persons”) from and against any and all claims for Losses arising from or relating to: (a) any material misrepresentation as to, or any material inaccuracy in, any of the representations and warranties of Buyer contained in this Agreement or in any exhibit, schedule, certificate or other instrument or document furnished or to be furnished by Buyer pursuant to this Agreement; (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 as and when payment and performance is due, including without limitation any liability related to any claims by any Governmental Authority; (d) Buyer’s actions involving Environmental Laws, Hazardous Materials or environmental claims from and after the Closing Date; or (e) the ownership, operation or control of the Acquired Assets or the System from and after the Closing Date.

**Section 8.04. Indemnification Procedure.**

(a) Third Party Claims. If any Indemnified Party receives notice of the assertion or commencement of any action, suit, claim or other legal proceeding made or brought by any Person who is not a party to this Agreement or an Affiliate of a party to this Agreement or a representative of the foregoing (a “Third Party Claim”) against such Indemnified Party with respect to which the Indemnifying Party may be obligated to provide indemnification under this Agreement, the Indemnified Party shall promptly notify the Indemnifying Party thereof. The failure to give such prompt notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits material rights or material defenses by reason of such failure. Such notice by the Indemnified Party shall describe the 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 may participate in, or by giving 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. If the Indemnifying Party assumes the defense of any Third Party Claim, subject to Section 8.04(b), it may 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 may, at its own cost and expense, to participate in the defense of any Third Party Claim with counsel selected by it subject to the Indemnifying Party's right to control the defense thereof. If the Indemnifying Party elects not to compromise or defend such Third Party Claim or fails to promptly notify the Indemnified Party in writing of its election to defend as provided in this Agreement, the Indemnified Party may, subject to Section 8.04(b), pay, compromise, 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 and Buyer shall reasonably and in good faith cooperate with each other in all reasonable respects in connection with the defense of any Third Party Claim, including making available records relating to such Third Party Claim and furnishing, without expense (other than reimbursement of actual out-of-pocket expenses) to the defending party, management employees of the non-defending party as may be reasonably necessary for the preparation of the defense of such Third Party Claim.

(b) Settlement of Third Party Claims. Notwithstanding any other provision of this Agreement, the Indemnifying Party shall not enter into settlement of any Third Party Claim without the prior written consent of the Indemnified Party (which consent shall not be unreasonably withheld or delayed), except as provided in this Section 8.04(b). If a firm offer is made to settle a Third Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnified Party and provides, in customary form, for the unconditional release of each Indemnified Party from all liabilities and obligations in connection

with such Third Party Claim and the Indemnifying Party desires to accept and agree to such offer, the Indemnifying Party shall promptly notify 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 8.04(a), it shall not agree to any settlement without the written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

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

#### **Section 8.05. Limitations on Indemnification Obligations.**

(a) Subject to the other limitations contained in this Section 8.05, neither Buyer nor Buyer Indemnified Persons shall seek indemnification pursuant to Section 8.02(a) (other than for an intentional breach of any agreement or covenant contained in this Agreement or for breach of Seller’s Fundamental Representations) unless the aggregate amount of Losses incurred by Buyer and Buyer Indemnified Persons under this Agreement exceeds one (1) percent of Purchase Price in the aggregate (the “Threshold Amount”), in which case Seller will then be liable only for Losses in excess of the Threshold Amount, except that the limitations contained in this Section 8.05(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 8.05 neither Seller nor the Seller Indemnified Persons shall seek indemnification pursuant to Section 8.03(a) (other than for an intentional breach of any agreement or covenant contained in this Agreement) unless the

aggregate amount of Losses incurred by Seller and Seller Indemnified Persons under this Agreement exceeds the Threshold Amount, in which case Buyer will then be liable only for Losses in excess of the Threshold Amount, except that the limitations contained in this Section 8.05(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), the Buyer Indemnified Parties shall only be entitled to assert claims under Section 8.02(a) (other than claims with respect to breaches of any of the Seller Fundamental Representations, which shall not be limited by this Section 8.05(c)) up to the aggregate amount of five (5) percent of Purchase Price (the “Liability Cap”), which shall represent the sole and exclusive remedy of Buyer and the other Buyer Indemnified Parties for any such claims under Section 8.02(a) (other than claims with respect to breaches of any of the Seller Fundamental Representations or in the case of fraud, intentional misrepresentation or willful misconduct which shall not be subject to the Liability Cap, but shall be capped at the Purchase Price).

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

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

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

(g) Subject to the provisions of Sections 3.01, 7.06, 15.11 and any other provisions for equitable relief and/or specific performance, the Parties’ 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, shall be pursuant to the indemnification provisions set forth in this Article VIII. 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 and their Affiliates and each of their respective representatives arising under or based upon any Law, except pursuant to the indemnification provisions set forth in this Article VIII. Nothing in this Section 8.05(g) shall limit any Party’s right to seek and obtain any equitable relief and/or specific performance pursuant to this Agreement.

**Section 8.06. Knowledge of Breach.** Neither Party shall be liable for any Losses based upon or arising out of any inaccuracy in or breach of any representations or warranties of such Party contained in this Agreement if the Party claiming such Losses had Knowledge of such inaccuracy or breach before the Closing.

## ARTICLE IX.

### PRE-CLOSING COVENANTS OF SELLER

**Section 9.01. Operation of the System.** Except as otherwise expressly permitted by this Agreement, as required by Law or with the prior written consent of Buyer (which consent shall not be unreasonably withheld, delayed or conditioned), from the Effective Date until the Closing, Seller shall (i) operate and manage the System only in the ordinary course of business in accordance with past practices and procedures, (ii) collect accounts receivable and pay accounts payable in the ordinary course and in a manner consistent with its past practices, (iii) comply in all material respects with all Laws and Authorizations and Permits, (iv) use its 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 System and its customers, lenders, suppliers, regulators, the Authority and others having business relationships with Seller and the System, (iv) continue to collect accounts receivable, EDU Fees, and sewer rents in a manner consistent with past practice, without discounting such accounts receivable, EDU Fees, and sewer rents; (v) perform all of its obligations under all Assigned Contracts; and (vi) not take any action, or omit to take any action, that would cause to occur a fact, circumstance, condition or occurrence regarding the System or any of the Acquired Assets that could reasonably be expected to have a Material Adverse Effect.

**Section 9.02. Cooperation.** Seller 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 9.03. Supplements and Updates.** Seller shall promptly deliver to Buyer any supplemental information updating the information set forth in the representations and warranties set forth in Article IV of this Agreement so that such representations and warranties as supplemented by such information will be true and correct as of the Closing Date (or such other date as provided in such representations and warranties) as if then made. Following the Effective Date, Seller shall promptly advise Buyer of any facts which would be a breach of a representation or warranty as of the date made or a default in a covenant contained herein.

**Section 9.04. Consents and Approvals.** Promptly after the execution of this Agreement, or as required by Law, except as otherwise expressly provided herein, Seller shall file all applications and reports that are required to be filed by Seller with any Governmental Authority as set forth on Schedule 4.05. Seller shall also promptly provide all information that any Governmental Authority may require in connection with any such application or report. Seller shall use its commercially reasonable efforts to obtain each consent, waiver, authorization or approval of any kind from any Person in connection with the transactions contemplated by this Agreement. All authorizations of any Governmental Authority necessary to consummate the

transactions contemplated by this Agreement will be in form and content reasonably satisfactory to Buyer and Seller before Closing and shall be final and non-appealable. If a party to the PaPUC proceeding appeals PaPUC authorization of the transaction, Buyer and Seller may mutually agree to proceed to consummate the transaction.

**Section 9.05. Pending Development Plan Agreements / Future Developments.** Seller shall enforce all of its rights and the counterparties' obligations under any agreements relating to Pending Development Plans in existence as of the Effective Date, which shall not be amended without notice to and the consent of Buyer, which consent shall not be unreasonably withheld and Buyer shall provide or withhold such consent to Seller within fifteen (15) days of notice from Seller or this consent requirement is deemed waived by Buyer after such date. After the Effective Date, Seller shall not enter into any new agreements (including Land Development Agreements and Financial Security Agreements) with landowners regarding the construction of any sewer facilities which, upon completion of construction, will be transferred to Buyer pursuant to Section 2.01 hereof without notice to and the consent of Buyer, which consent shall not be unreasonably withheld and Buyer shall provide such consent to Seller within seven (7) days of notice from Seller or this consent requirement is deemed waived by Buyer after such date. For the avoidance of doubt, any attempt by Buyer to withhold consent for entry into any amendment or new agreement by Seller pursuant to this Section 9.05 that is, in the opinion of Seller's solicitor, required pursuant to the Pennsylvania Municipal Planning Code is deemed unreasonable.

## ARTICLE X.

### **PRE-CLOSING COVENANTS OF BUYER**

**Section 10.01. Actions Before the Closing Date.** Buyer shall not take any action which shall cause it to be in breach of any representation, warranty, covenant or agreement contained in this Agreement or cause it to be unable to perform in any material respect its obligations hereunder, and Buyer shall use its commercially reasonable efforts (subject to any conditions set forth in this Agreement) to perform and satisfy all conditions to Closing to be performed or satisfied by Buyer under this Agreement, including action necessary to obtain all consents and approvals from any Person required to be obtained by Buyer to effect the transactions contemplated by this Agreement.

**Section 10.02. Consents and Approvals.** Promptly after the execution of this Agreement, or as required by Law, except as otherwise expressly provided herein, Buyer shall file all applications and reports that are required to be filed by Buyer with any Governmental Authority as set forth 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.

**Section 10.03. Cooperation.** Buyer shall reasonably cooperate with Seller and their employees, attorneys, accountants and other agents and, generally, do such other acts and things in good faith as may be reasonable to timely effectuate the purposes of this Agreement and the consummation of the transactions contemplated in accordance with the provisions of this Agreement.

**Section 10.04. 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 before the Closing Date, Buyer shall advise Seller of any facts which would be a breach of a representation or warranty as of the date made or a default in a covenant contained herein.

## ARTICLE XI.

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

**Section 11.02. Representations and Warranties of Buyer.** The representations and warranties made by Buyer in Article V which are (a) not qualified by materiality must 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 must be true and correct in all material respects as of such specified date) and (b) qualified by materiality must 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 must be true and correct in all respects as of such specified date), and Seller must have received a certificate to that effect from a duly authorized officer of Buyer dated as of the Closing Date.

**Section 11.03. PaPUC Approval.** PaPUC must have issued a Final Order approving the acquisition of the System under terms and conditions that are reasonably acceptable to Seller and Buyer. If a party to the PaPUC proceeding appeals or files a petition for reconsideration of PaPUC authorization of the transaction, Buyer and Seller may mutually agree to proceed to consummate the transaction.

**Section 11.04. No Injunctions.** Neither Seller nor Buyer are subject to any injunction, preliminary restraining order or other similar decree of a court of competent jurisdiction prohibiting the consummation of the transactions contemplated by this Agreement.

**Section 11.05. Performance of the Obligations of Buyer.** Buyer must 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 must have received a certificate to that effect from Buyer dated the Closing Date.

**Section 11.06. Deliveries by Buyer.** Buyer must have made delivery to Seller of the documents and items specified in Section 13.03 herein.

**Section 11.07. No Material Adverse Effect.** There shall not have occurred any event or condition which gives rise to a Material Adverse Effect with respect to the Acquired Assets or the System.

## ARTICLE XII.

### **CONDITIONS PRECEDENT TO OBLIGATIONS OF BUYER**

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

#### **Section 12.01. Consents and Approvals.**

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

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

**Section 12.02. Representations and Warranties of Seller.** The representations and warranties made by Seller in Article IV this Agreement (disregarding all “materiality” and “Material Adverse Effect” or similar qualifications contained therein) must be true and correct on and as of the Closing Date (except for representations and warranties expressly stated to relate to a specific date, in which case each such representation and warranty must be true and correct as of such earlier date), with only such exceptions as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, and Buyer must have received a certificate to that effect from Seller dated as of the Closing Date.

**Section 12.03. PaPUC Approval.** PaPUC must have issued a Final Order approving the acquisition of the System under terms and conditions that are reasonably acceptable to Seller and Buyer. If a party to the PaPUC proceeding appeals or files a petition for reconsideration of PaPUC authorization of the transaction, Buyer and Seller may mutually agree to proceed to consummate the transaction.

**Section 12.04. No Injunctions.** Neither Seller or Buyer are subject to any injunction, preliminary restraining order or other similar decree of a court of competent jurisdiction prohibiting the consummation of the transactions contemplated by this Agreement.

**Section 12.05. No Material Adverse Effect.** There shall not have occurred any event or condition which gives rise to a Material Adverse Effect with respect to the Acquired Assets or the System.

**Section 12.06. Deliveries by Seller.** Seller must have made delivery to Buyer of the documents and items specified in Section 13.02 herein.

**Section 12.07. Performance of the Obligations of Seller.** Seller must 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 must have received a certificate to that effect from Seller dated the Closing Date.

### ARTICLE XIII.

#### CLOSING

**Section 13.01. Closing Date.** The Closing shall take place at a place in Pennsylvania that is mutually agreed upon by the Parties, at 10:00 a.m. Eastern Standard Time on the earliest agreed upon date or within twenty (20) Business Days after the date upon which all the conditions precedent to Closing described in this Agreement have been fulfilled or waived and Buyer and Seller receive the last of the required consents, waivers, authorizations and approvals from the Governmental Authorities, in each case, for the transactions contemplated by this Agreement, or at such other place and time, by such other method, or on such other date, as may be mutually agreed to by the Parties (the "Closing Date"). The Closing will be effective at 12:01 a.m., Brentwood Borough, PA time, on the Closing Date (the "Closing Effective Time").

**Section 13.02. Deliveries by Seller.** At the Closing, Seller shall deliver 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 as Exhibit A;

(b) Possession of the Acquired Assets, including without limitation, the Real Property, the Easements and an interest in the Missing Easements, including a license from Seller to Buyer;

(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 as Exhibit B;

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

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

- (f) Copies or originals of all Files and Records, materials, documents and records in possession of Seller relating to the Real Property or the Assigned Contracts;
- (g) Certificate of Seller pursuant to Section 12.02 of this Agreement;
- (h) Certificate of Seller pursuant to Section 12.07 of this Agreement;
- (i) Any documents duly executed by Seller required by the Title Company to issue final owner's title policies in accordance with the provisions of Article VI;
- (j) A duly executed counterpart to the Escrow Agreement; and
- (k) All such other instruments of conveyance or other documents as shall, in the reasonable opinion of Buyer and its counsel, be necessary to transfer to Buyer the Acquired Assets in accordance with this Agreement or to carry out the terms of this Agreement, duly executed and acknowledged by Seller, if necessary, and in a recordable form.

**Section 13.03. Deliveries by Buyer.** At the Closing, Buyer shall deliver 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 11.02 of this Agreement;
- (d) Certificate of Buyer pursuant to Section 11.05 of this Agreement;
- (e) Evidence of PaPUC approval as provided in Section 12.03;
- (f) A duly executed counterpart to the Escrow Agreement; and
- (g) All such other instruments of assumption as shall, in the reasonable opinion of Seller and its counsel, be necessary for Buyer to assume the Assumed Liabilities in accordance with this Agreement.

#### **ARTICLE XIV.**

#### **TERMINATION**

**Section 14.01. Events of Termination.** This Agreement may be terminated and abandoned at any time before the Closing:

- (a) By the mutual consent of Seller and Buyer;
- (b) By either Seller or Buyer, upon notice, if:
  - (i) the Closing does not occurred on or before the Outside Date, except Buyer has the one-time right, upon notice to Seller, to extend the Outside Date for up to

ninety (90) days if, in the Buyer's sole discretion, any such amount of time up to ninety (90) days is necessary to obtain a required Governmental Approval; or

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

(c) By Seller (if Seller is not then in material breach of any provision of this Agreement) if a material breach of any covenant or agreement to be performed or complied with by Buyer pursuant to the terms of this Agreement or 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 notice thereof by Seller to Buyer or if such breach cannot be cured and (ii) would result in a condition to Closing set forth in Article XI of this Agreement not being satisfied (which condition has not been waived by Seller in writing); or

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

This Agreement may not be terminated after the Closing.

**Section 14.02. Effect of Termination.** If this Agreement is terminated by Seller or Buyer pursuant to Section 14.01, notice thereof will be given promptly to the other and all further obligations of the Parties terminate without further action by either Party and without liability or other obligation of either Party to the other Party hereunder, except that no Party will be released from liability hereunder if this Agreement is terminated and the transactions abandoned by reason of any willful breach of this Agreement.

**Section 14.03. Damages for Willful Breach.** If this Agreement is terminated as a result of willful breach by either Party as described in Section 14.02, the Party who willfully breached the Agreement is liable for Losses incurred by the non-breaching Party as a result of the breach in accordance with Article VIII hereof.

## ARTICLE XV.

### MISCELLANEOUS

**Section 15.01. Confidentiality.** Except as and to the extent required by Law (including but not limited to the Pennsylvania Right-To-Know Act at 65 Pa § 67.101) or pursuant to an order of a court of competent jurisdiction and as required hereunder to obtain any and all required

Governmental Approvals, neither Party shall, directly or indirectly, disclose or use (and no Party shall permit its Representatives to disclose or use) any Confidential Information with respect to the other Party furnished, or to be furnished, by such other Party or its shareholders, directors, officers, agents, or representatives to the other Party or its employees, directors, officers, agents or representatives in connection herewith at any time or in any manner other than in connection with the completion of the transactions contemplated by this Agreement and related transactions.

**Section 15.02. Public Announcements.** Subject to Law or listing rules of an exchange on which Buyer's parent corporation's stock is listed, and except as otherwise set forth 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 related to the sale of the System by one Party shall be provided to the other Party as soon as reasonably practicable before issuance.

**Section 15.03. 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:

Brentwood Borough  
3624 Brownsville Road  
Brentwood, PA 15227  
Attention: Borough Manager

with a copy to:

Brentwood Borough  
3624 Brownsville Road  
Brentwood, PA 15227  
Attention: Solicitor

in the case of Buyer:

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

with a copy to:

Pennsylvania-American Water Company  
852 Wesley Drive  
Mechanicsburg, PA 17055  
Attention: General Counsel

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

**Section 15.04. Headings.** The article, section and paragraph headings in this Agreement are for reference purposes only and do not affect the meaning or interpretation of this Agreement.

**Section 15.05. Severability.** If any term, provision, covenant or restriction contained in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions contained in this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

**Section 15.06. Entire Agreement.** This Agreement is the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, negotiations, discussions and understandings, written or oral, between the Parties. There are no representations, warranties, conditions or other agreements, whether direct or collateral, or express or implied, that form part of or affect this Agreement, or that induced any Party to enter into this Agreement or on which reliance is placed by any Party, except as specifically set forth in this Agreement. The Parties acknowledge and agree that (i) each has substantial business experience and is fully acquainted with the provisions of this Agreement, (ii) the provisions and language of this Agreement have been fully negotiated and (iii) no provision of this Agreement shall be construed in favor of any Party or against any Party by reason of such provision of this Agreement having been drafted on behalf of one Party rather than the other Party.

**Section 15.07. Amendments; Waivers.** The Parties may amend this Agreement only by the Parties' written agreement that identifies itself as an amendment to this Agreement. Any waiver of, or consent to depart from, the requirements of any provision of this Agreement will be effective only if it is in writing and signed by the Party giving it, and only in the specific instance and for the specific purpose for which it has been given. No failure on the part of any Party to exercise, and no delay in exercising, any right under this Agreement will operate as a waiver of such right. No single or partial exercise of any such right will preclude any other or further exercise of such right or the exercise of any other right.

**Section 15.08. 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 15.09. Anti-Assignment; Successors and Assigns.** Neither Party to this Agreement may assign any right or delegate any performance under this Agreement without the prior written consent of the other Party. A purported assignment or purported delegation without prior written consent is void. This agreement is binding upon, and inures to the benefit of, the Parties and their permitted respective successors and assigns.

**Section 15.10. Governing Law; Jurisdiction.** The laws of the Commonwealth of Pennsylvania (without giving effect to its conflicts of law principles) govern all matters arising and relating to this Agreement, including torts. The Parties irrevocably agree and consent to the jurisdiction of the United States District Court for the Western District of Pennsylvania and the Court of Common Pleas of Allegheny County, Pennsylvania, for the adjudication of any matters arising under or in connection with this Agreement. Any action initiated in court shall be filed and litigated (including all discovery proceedings) exclusively in the United States District Court for the Western District of Pennsylvania and the Court of Common Pleas of Allegheny County, Pennsylvania, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by mail to such Party's address set forth 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 15.11. Specific Performance.** Irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the Parties may seek specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity if the other Party has performed in accordance with the terms hereof.

**Section 15.12. Counterparts; Electronic Mail; Facsimile Execution.** This Agreement may be executed in any number of counterparts which, taken together, is one and the same agreement. This Agreement becomes effective when it has been executed by each Party and delivered to both Parties. To evidence the fact that it has executed this Agreement, a Party may send a copy of its executed counterpart to the other Party by electronic mail or facsimile transmission. Such Party is deemed to have executed and delivered this Agreement on the date it sent such electronic mail or facsimile transmission. In such event, such Party shall forthwith deliver to the other Party an original counterpart of this Agreement executed by such Party.

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SIGNATURES NEXT PAGE]

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

BRENTWOOD BOROUGH,  
ALLEGHENY COUNTY

PENNSYLVANIA-AMERICAN WATER  
COMPANY

By: Harold Smith

By: \_\_\_\_\_

Printed: Harold Smith

Printed: \_\_\_\_\_

Its: Borough Council President

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

ATTEST:

ATTEST:

By: George Zbojovskiy

By: \_\_\_\_\_

Printed: GEORGE ZBOJOVSKY

Printed: \_\_\_\_\_

Title: BOROUGH MANAGER

Title: \_\_\_\_\_

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

BRENTWOOD BOROUGH,  
ALLEGHENY COUNTY

PENNSYLVANIA-AMERICAN WATER  
COMPANY

By: \_\_\_\_\_

Printed: Harold Smith

Its: Borough Council President

By: 

Printed: F. Michael Doran

Its: President

ATTEST:

ATTEST:

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

By: 

Printed: Andrew L. Swape

Title: General Counsel

**ASSET PURCHASE AGREEMENT**

**By and Between**

**Brentwood Borough, Allegheny County**

**As Seller**

**and**

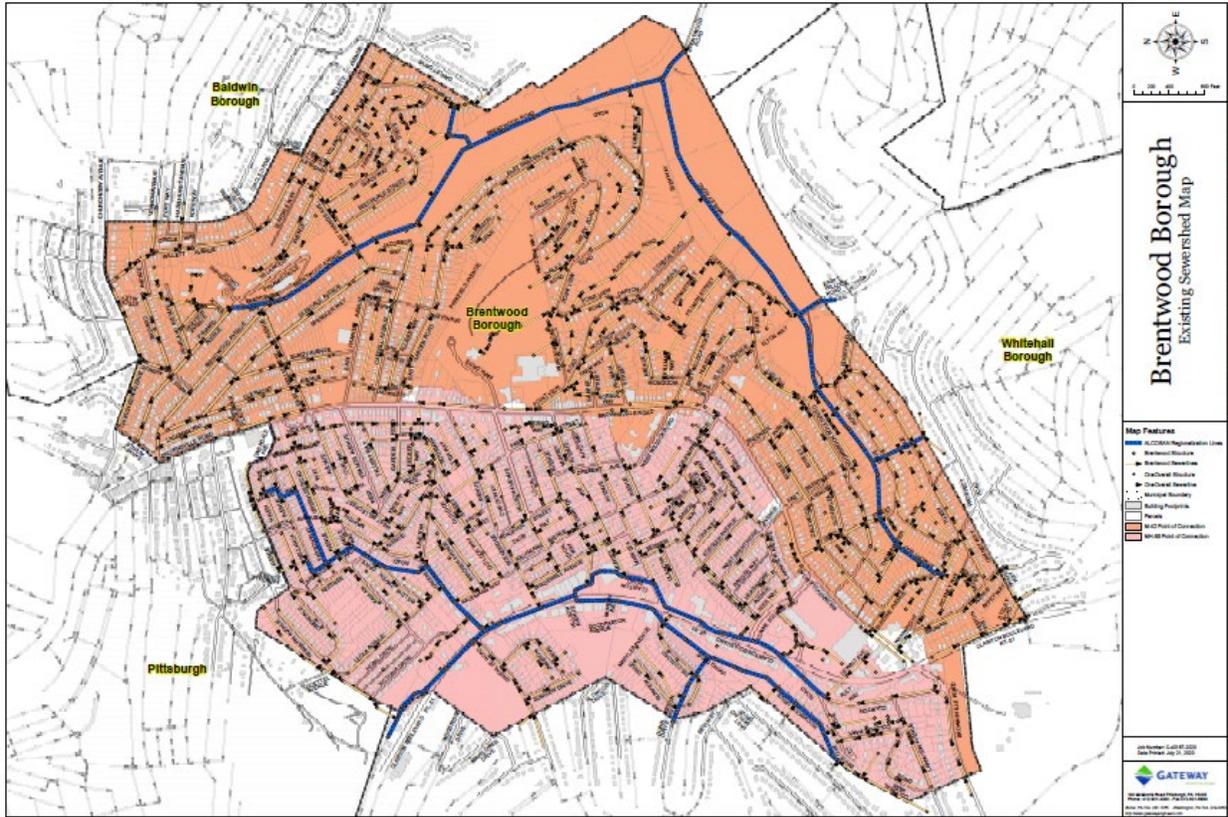
**Pennsylvania-American Water Company**

**As Buyer**

**SCHEDULES AND EXHIBITS**

Capitalized terms used in the Schedules which are not otherwise defined herein shall have the respective meanings ascribed to such terms in the Agreement. The Schedules are to be read in their entirety. Nothing in the Schedules is intended to broaden the scope of any representation or warranty in the Agreement. The disclosure of any item, explanation, exception or qualification in any Schedule is disclosure of that item for all purposes for which disclosure is required under the Agreement when it is reasonably apparent from the context that such item, explanation, exception or qualification also relates to another Schedule irrespective of whether any cross reference is made or no Schedule is provided with respect to a representation. Other than as expressly set forth herein or when the Schedules reference agreements or other matters not documented in a separate writing, all descriptions of agreements, written materials or other matters appearing herein, are summary in nature and are qualified by reference to the complete documents, which have been supplied to the Buyer or its counsel.

Schedule A  
Service Area



**Schedule B**

Outstanding Indebtedness

Loan with Pittsburgh Water & Sewer Authority (PWSA) from 2005. Amortization table is below:

		Loan Payble		
		2005 PWSA LOAN		
		Principal	Interest	Total
2020		\$ 23,298.58	\$ 1,837.34	\$ 25,135.92
2021		\$ 23,531.57	\$ 1,604.35	\$ 25,135.92
2022		\$ 23,766.89	\$ 1,369.03	\$ 25,135.92
2023		\$ 23,764.51	\$ 1,371.41	\$ 25,135.92
2024		\$ 2,095.00	\$ 2,095.00	\$ 4,190.00
		\$ 94,361.55	\$ 8,277.13	\$ 102,638.68

**Schedule 2.02(g)**

Excluded Assets

1. Any backflow preventers that the Borough may have installed on private property will continue to be the responsibility of the property owner.

**Schedule 4.05**

Required Governmental Consents

1. Pennsylvania Public Utility Commission (“PaPUC”) Approval of Transaction
2. PaPUC Approval of Consent to Assignment and Amendment to Sewer Service Agreements and Related Amendments
3. Pennsylvania Department of Environmental Protection (“PaDEP”) Approval of Sanitary Sewer Collection and Conveyance System Act 537 Plan recognizing transfer of wastewater collection system from Seller to Buyer
4. Allegheny County Health Department approval of transaction and/or any other necessary regulatory approval
5. EPA approval of transaction and/or any other necessary regulatory approvals

**Schedule 4.06**

Seller Liabilities

None.

**Schedule 4.07**

Events Having a Material Adverse Effect

None.

**Schedule 4.08**

Tax Matters

None.

**Schedule 4.09**Real Property and Easements; Liens**Sewer Easements:**

<b>Manhole A</b>	<b>Manhole B</b>	<b>Properties Traversed</b>
		2815 Willett
18	22	3022-3032 Churchview
29	32	2948-2960 Brevard
37	41	Grayson Court apartments
65	67	Brentshire Garden apartments
75	89	3217-3245 Villawood
82	85	3106-3128 Villawood
91	93	3220-3244 Villawood
94	119	3302-3420 Willett
		334 E Francis
		3210-3256 Shadyway
		3281 Beechdale
101	161	3280 Beechdale
114	116	436-442 Fairway
121	122	3416-3422 Villawood
125	136	3249-3341 Shadyway
		3340-3350 Shadyway
127	146	313-315 Lawnwood
		3280-3288 Beechdale
138	144	3300-3334 Shadyway
147	151	311 Lawnwood
148	149	3256-3264 Shadyway
159	163	3262 Beechdale
172	186	102-148 Catskill
		3234 Brentwood
198	242	403-461 E Garden
205	207	419-441 Jacobson
227	229	3101-3127 Clermont
244	247	440-480 Dailey
		475 Dailey
249	251	321 Radisson
		300-336 Radisson
255	260	197 Dailey
		312 Radisson
256	259	331 Dailey
265	819	Brentwood Park
267	275	Brentwood Park

## Appendix A-24-a

267	279	Brentwood Park
		54-120 Windsor
270	289	56 Pointview
		3727-3753 Woodrow
298	302	3700 Oakton
		3799 Woodrow
313	322	101-203 E Willock
315	317	3775 Woodrow
336	338	209-247 Kaplan
		212-238 Greenlee
		277 Greenlee
353	518	326 Bracken
354	362	314-366 Bracken
		317 Bracken
357	366	116-124 Sceneridge
365	367	132-138 Sceneridge
		330 Greenlee
		99 Victoria
369	375	Pine Tree Gardens apartments
387	388	238 Tyrol
398	401	400-422 Dailey
400	405	445 Dailey
407	849	4120 Rockwood
412	416	543 Pointview
		3892-4080 Edge
447	920	undeveloped PA Nature Conservancy property
		47 Owendale
455	1060	48 Bellanca
483	484	77 Greenlee
		120 Bellanca
504	1059	127 Owendale
510	561	209-223 Owendale
531	532	15-23 W Garden
		3310 Brownsville
533	539	3313 Bookman
549	550	227 Laveton
		2919 Saw Mill Run in Whitehall
565	569	2929 Saw Mill Run

566	571A	Pine Tree Gardens apartments 2929 Saw Mill Run
575	1074	25-41 Sceneridge
591	598	3336-3366 Jameson
594	595	3345 Sunview 3355 Jameson
618	619	4019-4035 Dalewood
636	997	4049-4061 Dalewood
657	661	3600-3612 Kaufmann
681	687	3500-3528 Brownsville
685	686	21-25 Hillson 3513 Pary
695	707	27-49 W Willock 210 Kaufmann
696	698	217-233 Kaufmann 210 Mira
728	736	3801-3853 Sunview 3884 Delco
734	743	3853 Sunview 3864-3884 Delco 3855 Delco
773	776	3912-3930 Brownsville
786	791	3924 Edge
800	1085	3901-4011 Meadowbrook 3966-3990 Tuxey
803	805	3903 Edge
811	846	3994-4100 Tuxey
824	896	Brentwood Towne Square shopping plaza
828	829	Brentwood Towne Square shopping plaza
842	843	1145-1177 Prospect in Whitehall 4025 Tuxey
851	872A	4164 Rockwood 4220-4258 White Oak 4360-4394 Colonial Park

		4223 Colonial Park
854	1070	4220-4242 Old Clairton
858	859	4237 Colonial Park
		4300 Lawnview
861	1047	4269-4273 Colonial Park
		4344-4356 Colonial Park
874	875	4263 White Oak
896	899	50 Towne Square
		4061 Meadowbrook
919	921	4103-09 Cloverlea
922	950	217 Burdine
926	298	4050-4080 Edge
931	933	4108-4140 Tuxey
		4230 Tuxey
939	940	241-245 Bauman
941	963	237 Bauman
942	965	232 Wainwright
		114-214 Burdine
946	949	4201 Brownsville rear building
984	985	3406-3420 Kaufmann
1031	1062	4146 Rockwood
1056	1066	200-228 Newburn
1086	1088	3313 Brownsville

*Other than noted as above, the Borough's engineer does not currently have any easements on file specifically to sanitary sewers.*

**Schedule 4.10**

Equipment and Machinery

None.

**Schedule 4.11**

Environmental Compliance

Administrative Consent Order dated October 6, 2022 between the Borough of Brentwood and the Allegheny County Health Department implemented in order to eliminate sanitary sewer overflows and comply with the Clean Streams Law

**Schedule 4.12**

Authorizations and Permits

None. There are presently no permits for the gravity flow of the sanitary sewer system.

## Schedule 4.13

Assigned Contracts

<b>Agreements</b>			
<b>Name of Contract</b>	<b>Parties to Contract</b>	<b>Date of Contract</b>	<b>Subject</b>
Agreement	Brentwood Borough City of Pittsburgh	October 14, 1936	Construction of a truck sanitary sewer along Streets Run and the Borough's connection thereto.
Streets Run Sewer Joint Management Agreement	Borough of Brentwood Borough of Baldwin Borough of Whitehall West Mifflin Sanitary Sewer Municipal Authority	July 19, 2000	The parties each use a common sanitary sewer trunk line (the "Streets Run Sewer") and wanted to enter into a collective agreement to formalize its intention to participate jointly in the substantial improvements of the Street Run Sewer

**Schedule 4.14**

Litigation

Robert G. Ganther, Jr. and Deidra A. Ganther, 473 Brentwood Road. The Ganthers alleged that they sustained property damage due to sanitary sewer backups as a result of the failure by the Borough of Brentwood and the Borough of Baldwin to maintain their sanitary sewer systems. The subject property is located in the Borough Baldwin and the Borough of Brentwood contributes flow to the sewer line serving the Ganther property. In March of 2020, a joint final offer was made to the Ganthers by both Boroughs which included installation of a grinder pump and reimbursement to the Ganthers for the cost of installing a sewer lateral connection to address the sewer backup issues. This offer was rejected by the Ganthers in June of 2021.

**Schedule 4.16(a)**

Exception to Title to Acquired Assets

Title to the Acquired Assets shall be under and subject to any Missing Easements or exceptions identified on any title reports or surveys obtained by Buyer with respect to conveyance of Seller's property. Seller, does not, and will not make any representation or warranty with respect to any Missing Easements or title exceptions, but shall use commercially reasonable efforts to work with Buyer to address the same.

**Schedule 4.16(b)**

Sufficiency

Sufficiency of the Acquired Assets shall be under and subject to any Missing Easements or exceptions identified on any title reports or surveys obtained by Buyer with respect to conveyance of Seller's property. Seller, does not, and will not make any representation or warranty with respect to any Missing Easements or title exceptions, but shall use commercially reasonable efforts to work with Buyer to address the same.

**Schedule 4.17**

Pending Development Plans

None.

**Schedule 5.04**

Buyer Consents and Approvals

1. Pennsylvania Public Utility Commission (the “PaPUC”) Approval of Transaction
2. PaPUC Approval of Consent to Assignment and Amendment to Sewage Treatment Agreements and Related Amendments
3. Pennsylvania Department of Environmental Protection (the “PaDEP”) Approval of Sanitary Sewer Collection and Conveyance System Act 537 Plan recognizing transfer of wastewater collection system from Seller to Buyer
4. Allegheny County Health Department approval of transaction and/or any other necessary regulatory or permit approvals.
5. EPA approval of any modified consent decree and/or any other necessary regulatory approvals.

**Schedule 5.11**

Buyer Litigation

None.

## Schedule 7.03(a)

Rates

**Ordinance No. 2022-1308:** Rates and charges effective January 1, 2023 and continuing on a calendar year basis:

Monthly Service Fee	Borough to assess \$4.57 per household Borough to collect \$7.30 per house fee on behalf of ALCOSAN  Total Service Fee: \$11.87 per thousand gallons of water used.
Consumption Fee	Borough to assess \$8.91 per thousand gallons of water used Borough to collect \$10.42 per thousand gallons fee on behalf of ALCOSAN  Total Consumption Fee: \$19.33 per thousand gallons of water used.

**Exhibit A**

Bill of Sale

**BILL OF SALE**

**THIS BILL OF SALE** is made as of this \_\_\_ day of \_\_\_\_\_, 2020, by and between Brentwood Borough (the “Seller”) and Pennsylvania-American Water Company (the “Buyer”).

**BACKGROUND:**

**A.** Seller and Buyer entered into that certain Asset Purchase Agreement dated \_\_\_\_\_ (the “Agreement”), pursuant to which Seller has agreed, among other things, to sell, transfer, convey, assign and deliver to Buyer and Buyer has agreed to purchase from Seller the Acquired Assets, including, without limitation, all of its personal property and fixed assets including equipment, machinery, vehicles, and auxiliary equipment as more thoroughly described on Exhibit “A” attached hereto and incorporated herein by reference (“Personal Property”).

**B.** Seller desires hereunder to transfer and assign to Buyer the Personal Property pursuant to the Agreement and Buyer desires to accept the sale, transfer, conveyance, assignment and delivery thereof.

**C.** All capitalized terms not defined herein shall have the meaning ascribed to such term in the Agreement.

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

1. Transfer and Assignment. Seller hereby sells, transfers, assigns, delivers and conveys to Buyer, its successors and assigns, all of Seller's right, title and interest in, to and under the Personal Property.

2. Acceptance of Transfer and Assignment. Buyer hereby accepts the transfer, conveyance, assignment and delivery of the Personal Property.

3. Absolute Transfer. It is the intention of Seller to transfer absolute title of the Personal Property to Buyer.

4. Counterparts. This Bill of Sale may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which shall together constitute one and the same instrument. This Bill of Sale shall be binding when one or more counterparts hereof,

individually or taken together, shall bear the signatures of all of the parties reflected on this Bill of Sale as the signatories.

5. Governing Law. This Bill of Sale shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania without giving effect to the conflicts of laws principles thereof.

6. Binding Effect. This Bill of Sale shall be binding upon and inure to the benefit of Seller and Buyer and their respective successors and assigns.

[Remainder of Page Intentionally Blank; Signature Page Immediately Follows]

**IN WITNESS WHEREOF**, the undersigned have caused this Bill of Sale to be duly executed on the day and year first above written.

**SELLER:**

**BRENTWOOD BOROUGH**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**BUYER:**

**PENNSYLVANIA-AMERICAN WATER  
COMPANY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A**

Personal Property

**Exhibit B**

Assignment and Assumption Agreement

**ASSIGNMENT AND ASSUMPTION AGREEMENT**

**THIS ASSIGNMENT AND ASSUMPTION AGREEMENT** (this "Assignment") is entered into effective as of this \_\_\_ day of \_\_\_\_\_, 2020, by and between Brentwood Borough (the "Assignor") and Pennsylvania-American Water Company (the "Assignee").

A. Assignor, as seller, and Assignee, as purchaser, are parties to that certain Asset Purchase Agreement dated \_\_\_\_\_ (the "Purchase Agreement"), pursuant to which Assignor has agreed, among other things, to sell, transfer, convey, assign and deliver to Assignee and Assignee has agreed to purchase from Assignor the Acquired Assets.

B. The Purchase Agreement contemplates that at Closing, Assignor will assign to Assignee and Assignee will accept and assume, all of Assignor's right, title and interest in and to any and all Assigned Contracts and Authorizations and Permits (the "Assigned Business Deliverables") necessary for the operation of the Acquired Assets.

C. Unless herein otherwise defined, all terms defined in the Purchase Agreement shall have the meanings ascribed to them in the Purchase Agreement when used in this Assignment.

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

1. Assignment of Assigned Business Deliverables. To the extent assignable, Assignor hereby assigns, transfers, sets over, conveys and delivers to Assignee, and Assignee hereby accepts, all of Assignor's right, title and interest in and to all Assigned Business Deliverables, together with all rights and privileges of any nature thereunder accruing to Assignor on or after the date hereof.

2. Indemnification by Assignor. Assignor hereby agrees to indemnify, defend and hold harmless Assignee and the Buyer Indemnified Persons from and against any and all claims for Losses in accordance with Section 8.02 of the Purchase Agreement.

3. Indemnification by Assignee. Assignee hereby agrees to indemnify, defend and hold harmless Assignor and the Seller Indemnified Persons from and against any and all claims for Losses in accordance with Section 8.03 of the Purchase Agreement.

4. Counterparts. This Assignment may be executed in any number of identical counterparts, each of which may be executed by any one or more of the parties hereto, all of which shall together constitute one and the same instrument, and shall be binding and effective when each party hereto has executed and delivered to the other party at least one counterpart. Counterparts delivered via email (.pdf) or facsimile shall be deemed to be originals for all purposes.

5. Successors and Assigns. The terms and provisions of this Assignment shall be binding upon and inure to the benefit of the respective parties hereto, and their respective successors and assigns.

6. Governing Law. This Assignment shall be governed by, and construed and enforced in accordance with, the laws of the Commonwealth of Pennsylvania (without giving effect to Pennsylvania's principles of conflicts of law) and the applicable laws of the United States of America.

7. Further Assurances. Assignor acknowledges and agrees that it shall use commercially reasonable efforts to assist Assignee with notice to the other contract parties under the Assigned Contracts with respect to the execution and effect of this Assignment. Without limiting the foregoing, Assignor acknowledges and agrees that it shall use commercially reasonable efforts as requested to by Assignee to effectuate the assignment of any additional contracts, permits, authorizations, licenses and warranties not covered hereunder.

8. Absolute Assignment. It is the intention of Seller to transfer absolute title of the Assigned Business Deliverables to Buyer, its successors and assigns, free of any redemption by Seller or its successors and assigns.

**[REMAINDER OF PAGE INTENTIONALLY BLANK;  
SIGNATURE PAGE IMMEDIATELY FOLLOWS]**

IN WITNESS WHEREOF, the parties hereto have caused this Assignment to be duly executed as of the day and year first written above.

**ASSIGNOR:**

**BRENTWOOD BOROUGH**

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**ASSIGNEE:**

**PENNSYLVANIA-AMERICAN WATER  
COMPANY**

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

## Exhibit C

Escrow Agreement**ESCROW AGREEMENT**

**THIS ESCROW AGREEMENT** (the "Escrow Agreement") is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by and among **PENNSYLVANIA-AMERICAN WATER COMPANY**, a corporation organized and existing under the laws of the Commonwealth of Pennsylvania ("Buyer"), **BRENTWOOD BOROUGH** ("Seller"), and [\_\_\_\_\_] a [\_\_\_\_\_] (the "Escrow Agent"), as escrow agent. Each of the Buyer, Seller and the Escrow Agent shall be referred to herein as a "Party" and collectively, as the "Parties".

WHEREAS, Buyer and Seller are Parties to that certain Asset Purchase Agreement (the "Purchase Agreement") dated \_\_\_\_\_, 2020. Solely as between Buyer and Seller, terms not otherwise defined herein shall have the respective meanings ascribed to them in the Purchase Agreement.

WHEREAS, concurrently with the execution and delivery of this Escrow Agreement, the Buyer and Seller are closing on the transactions contemplated by the Purchase Agreement.

WHEREAS, the Purchase Agreement requires Seller to transfer or assign certain real property interests to Buyer for Acquired Assets situated upon lands owned by third parties, specifically including sewer lines encroaching upon land owned by third parties (collectively referred to herein as "Easements"). The Easements are identified on Schedule 4.09 of the Purchase Agreement, [as that Schedule was amended as an attachment to the Closing Certificate delivered by Seller to Buyer on the date hereof.]

WHEREAS, as of the date of this Escrow Agreement, Seller has not transferred or assigned [\_\_\_\_\_] of the Easements (collectively, the "Missing Easements", the list of which is attached hereto as **Exhibit "A"** which therefore will not be transferred to Buyer at Closing. Seller and Buyer have agreed to permit Seller to assign and transfer the Missing Easements following Closing pursuant to the terms of this Escrow Agreement.

WHEREAS, Buyer has agreed to deposit **Two Thousand Dollars (\$2,000.00)** of the Purchase Price in escrow with the Escrow Agent (in accordance with Section 2 hereof) (the "Easement Escrow Fund" or the "Escrow Fund"), in order to secure Seller's obligations to assign and transfer all of the Missing Easements after the date hereof.

WHEREAS, the Parties are entering into this Escrow Agreement in furtherance of the Parties' agreement described in Section 6.05(e) of the Purchase Agreement between Seller and Buyer dated the date hereof.

NOW, THEREFORE, in consideration of the premises and the covenants and agreements set forth 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 hereto hereby agree as follows:

1. Escrow Fund. Buyer is delivering on the date hereof to the Escrow Agent an amount in cash equal to the Escrow Fund, which funds are to be held in escrow by the Escrow Agent pursuant hereto and released in accordance with the terms hereof.

2. Protection and Investment of Escrow Fund. The Escrow Agent shall separately hold and safeguard the Easement Escrow Fund for such period of time that any funds remain therein, shall treat the Escrow Fund as a separate escrow account in accordance with the terms of this Escrow Agreement and not as its property, and shall hold and dispose of the Escrow Fund only in accordance with the terms of this Escrow Agreement. The Escrow Fund shall be held in escrow in a separate account held in a national banking association regulated by the Office of the Comptroller of the Currency (OCC) and authorized to conduct business in Pennsylvania. The Escrow Agent shall deposit the Escrow Fund into an interest-bearing account.

3. Term. This Escrow Agreement shall be for a term ending on the third (3<sup>rd</sup>) anniversary of the date of this Escrow Agreement (the "Term"), subject to extension in the event that there are pending claims upon the expiration of the Term, or upon the Seller's delivery to Buyer of all Missing Easements, whichever is sooner.

4. Distributions from Easement Escrow Fund. The Easement Escrow Fund shall be distributed to Seller or Buyer (such Party in such capacity, the "Withdrawing Party") in accordance with the following terms:

(a) Subject to Section 4(c) below, the Easement Escrow Fund shall be distributed to Seller in accordance with the following terms:

(i) Seller shall be entitled to quarterly distributions from the Escrow Fund calculated as: the number of Missing Easements delivered to Buyer during the preceding calendar quarter which satisfy the criteria set forth herein (each, an "Easement Document"), multiplied by [\$ \_\_\_\_\_], subject to a maximum aggregate distribution under this subparagraph (i) during the Term of [ \_\_\_\_\_ **Dollars (\$ \_\_\_\_\_)**]. In order for a Missing Easement to be included as an Easement Document for purposes of determining distributions under this subsection (a), the Easement Document must satisfy the following criteria:

(A) the Easement Document shall be in the form of (1) a recorded deed of easement or a recorded deed in lieu of condemnation, in each case duly executed by the third party granting the rights set forth therein, or (2) a final, unappealable order of court in a condemnation proceeding; and

(B) the Easement Document shall be perpetual in duration and shall adequately describe the area of land encumbered by such Easement Document which shall include adequate vehicular access to the Acquired Assets situated therein and adequate area for maintaining, repairing and replacing said Acquired Assets when necessary;

(C) the Easement Document shall satisfy all requirements for recording such Easement Document as imposed by the Allegheny County Recorder of Deeds;

(D) any Easement Document in the form attached hereto as **Exhibit "B"** which, upon delivery to Buyer, complies with subparagraphs (A) through (C) above,

shall be deemed to satisfy all requirements upon which a release from the Escrow Fund is conditioned.

(ii) Subject to subparagraph (iii) below, the remaining [\_\_\_\_\_ Dollars (\$\_\_\_\_\_)] shall be distributed to Seller upon Seller's delivery of the last of the [\_\_\_\_\_] Missing Easement Documents (satisfying all criteria set forth in subparagraph (i) above) to Buyer in accordance with the terms hereof.

(b) All disbursements made under subparagraphs (a)(i) and (a)(ii) above shall occur within ten (10) days after the Escrow Agent has received a Withdrawal Request as set forth in Section 4(d) hereof.

(c) The balance in the Escrow Fund, if any, existing upon expiration of the Term following any distribution owed to Seller resulting from delivery of Easement Documents during the quarter in which the Term expires, shall be distributed to Buyer.

(d) Within ten (10) days following the end of each calendar quarter during the Term (in which case only Seller shall be the Withdrawing Party) or, in the event that there is a balance in the Escrow Fund existing upon expiration of the Term, then within ten (10) days of the expiration of the Term (in which case either Seller or Buyer may be the Withdrawing Party) the Withdrawing Party shall request a disbursement from the Easement Escrow Fund (a "Withdrawal Request") by delivering to Escrow Agent and the other Party to this Escrow Agreement a written notice of such request (a "Withdrawal Request Notice"). The Withdrawal Request Notice shall describe the basis and amount of the Withdrawal Request, which, with respect to Seller, shall be calculated in accordance with Section 4(a)(i) above, and shall include any documentation (including Easement Documents delivered to Buyer) evidencing the basis for the amount of the Withdrawal Request, and a certification that a copy of the Withdrawal Request has been delivered to the other Party. The Escrow Agent shall release to the Withdrawing Party the amount of the Withdrawal Request from the Easement Escrow Fund on or before the tenth (10<sup>th</sup>) day after the date when the Escrow Agent receives the Withdrawal Request Notice, provided that, if the Escrow Agent, within such period of ten (10) days, receives from the other Party (in such capacity, an "Objecting Party") a written notice of dispute of the Withdrawal Request (which notice shall include a certification by the Objecting Party that it has delivered a copy of such notice to Withdrawing Party) then the Escrow Agent shall continue to hold the amount set forth in the Withdrawal Request in the Easement Escrow Fund pursuant to this Escrow Agreement until the Escrow Agent receives either written instructions signed by the Withdrawing Party and the Objecting Party directing a release from the Easement Escrow Fund, or a final order of a court of competent jurisdiction (from which there is no further appeal or for which the time to appeal has expired without such appeal having been taken) directing a release from the Easement Escrow Fund. The Escrow Agent shall make distributions from the Easement Escrow Fund in accordance with such instructions or order within two (2) business days after receipt of either.

(e) Should a dispute arise between the Parties as to whether an Easement Document satisfies the criteria for release under subparagraph (a)(i) above, the Parties shall jointly select a neutral attorney with expertise in real property transactions to serve as mediator of the dispute and both Parties shall diligently pursue a resolution of such dispute in good faith. In the event that the Parties are unable to resolve such dispute within sixty (60) days following the

delivery by the Objecting Party to the withdrawing of the notice of objection, either Party may pursue a claim in the Allegheny County Court of Common Pleas.

### 5. Default & Remedies.

(a) It shall be a default of this Escrow Agreement if Seller shall fail to diligently pursue the delivery of all Easement Documents using commercially reasonable efforts and to transfer such interests to Buyer on or before the expiration of the Term (“Default”).

(b) In the event of a Default, Buyer may, at Buyer’s sole discretion, after first providing written notice to Seller and a thirty (30) day cure period thereafter to Seller, undertake to obtain such easements on its own or file suit in a court of competent jurisdiction seeking specific performance in the form of an order requiring Seller to obtain all Easement Documents, including by way of the exercise of its power of eminent domain. Buyer and Seller acknowledge that the remedies at law for any breach or threatened breach, including monetary damages, may be inadequate compensation for any loss and that any defense in any action for specific performance that a remedy at law would be adequate is waived. Any requirements for the securing or posting of a bond with such remedy are waived by the Buyer and Seller.

(c) If Seller Defaults and Buyer elects to pursue a remedy under Paragraph 5(b) above, Buyer shall be entitled to recover from Seller all actual damages, including costs and reasonable attorneys’ fees incurred in obtaining the outstanding easements or in bringing an action seeking specific performance of the terms of this Escrow Agreement. In the event Seller incurs a liability to Buyer under this Section 5(c), any amount distributed to Buyer pursuant to Section 4(c) above shall be applied as a credit to such amount owed by Seller to Buyer under this Section 5(c). The establishment of the amount of the Escrow Fund shall not limit Buyer’s right to recovery hereunder or under the Purchase Agreement.

### 6. Limitation of Escrow Agent's Liability.

(a) Limitation on Liability. The Escrow Agent shall incur no liability with respect to any action taken or suffered by it in reliance upon any notice, direction, instruction, consent, statement or other documents believed by it to be genuine and duly authorized, nor for other action or inaction, except its own willful misconduct or gross negligence. If any controversy arises between the Parties to this Escrow Agreement, or with any other Party, concerning the subject matter of this Escrow Agreement, its terms or conditions, the Escrow Agent will not be required to resolve the controversy or to take any action regarding it. The Escrow Agent may hold all documents and funds and may wait for settlement of any such controversy by final appropriate legal proceedings or by written agreement of Buyer and Seller. The Escrow Agent shall not be responsible for the sufficiency of this Escrow Agreement or any other agreement referred to herein. The Escrow Agent is not responsible for determining and verifying the authority of any person acting or purporting to act on behalf of any Party to this Escrow Agreement; provided, however, Escrow Agent shall use commercially reasonable efforts to ascertain whether or not such person has the requisite authority required to act on behalf of a Party. In all questions arising under this Escrow Agreement, the Escrow Agent may rely on the advice of counsel, and the Escrow Agent shall not be liable to anyone and shall be fully indemnified for anything done, omitted or suffered in good faith by the Escrow Agent based on such advice. The Escrow Agent shall not be required to take any action hereunder involving any expense unless the payment of such expense is made

or provided for in a manner satisfactory to it in its sole judgment. In no event shall the Escrow Agent be liable for indirect, punitive, special or consequential damages (including, but not limited to lost profits), even if Escrow Agent has been advised of the likelihood of such damages or penalty and regardless of the form of action. Escrow Agent undertakes to perform only such duties as are expressly set forth herein and no duties shall be implied. Escrow Agent's permissive rights shall not be construed as duties. Escrow Agent shall have no liability under and no duty to inquire as to the provisions of any document other than this Escrow Agreement, including without limitation any other agreement between any or all of the Parties hereto or any other persons even though reference thereto may be made herein and whether or not a copy of such document has been provided to Escrow Agent. Escrow Agent shall not be responsible for delays or failures in performance resulting from acts of God, strikes, lockouts, riots, acts of war or terror, epidemics, governmental regulations, fire, communication line failures, computer viruses, attacks or intrusions, power failures, earthquakes or any other circumstance beyond its control. Escrow Agent shall not be obligated to take any legal action in connection with the Escrow Fund, this Escrow Agreement or the Purchase Agreement or to appear in, prosecute or defend any such legal action. If any portion of the Escrow Fund is at any time attached, garnished or levied upon, or otherwise subject to any writ, order, decree or process of any court, or in case disbursement of the Escrow Fund is stayed or enjoined by any court order, Escrow Agent is authorized, in its sole discretion, to respond as it deems appropriate or to comply with all writs, orders, decrees or process so entered or issued, including but not limited to those which it is advised by legal counsel of its own choosing is binding upon it, whether with or without jurisdiction; and if Escrow Agent relies upon or complies with any such writ, order, decree or process, it shall not be liable to any of the parties hereto or to any other person or entity by reason of such compliance even if such order is reversed, modified, annulled, set aside or vacated. Notwithstanding the foregoing, Escrow Agent shall immediately provide written notice to Seller and Buyer if any portion of the Escrow Fund is at any time attached, garnished or levied upon, or otherwise subject to any writ, order, decree or process of any court, or, in case of disbursement of the Escrow Fund, is stayed or enjoined by any court order. Nothing herein shall preclude Escrow Agent from acting in any other capacity for any other Party hereto or for any other person or entity.

(b) Indemnification. Buyer and Seller agree jointly and severally to indemnify the Escrow Agent for, and hold it harmless against, any claim (whether asserted by Buyer, Seller or any other person or entity), loss, liability or expense incurred by the Escrow Agent except to the extent directly caused by gross negligence or willful misconduct on the part of the Escrow Agent (as determined by a court of competent jurisdiction), arising out of or in connection with its carrying out of its duties hereunder, and in connection therewith to indemnify the Escrow Agent, its directors, officers, partners, employees and agents against any and all expenses, including reasonable attorneys' fees and expenses and the cost of defending any action, suit or proceeding or resisting any claim or enforcing Buyer's or Seller's obligations under this Escrow Agreement. The obligations of Buyer and Seller under this Section shall survive any termination of this Escrow Agreement and the resignation or removal of Escrow Agent.

(c) Authority to Interplead. Buyer and Seller authorize the Escrow Agent, if a dispute exists with respect to any obligation of Escrow Agent hereunder or the Escrow Agent is threatened with litigation or is sued, to interplead all interested parties in any court located in Allegheny County, Pennsylvania and to deposit the Escrow Fund with the clerk of that court after deduction and payment to the Escrow Agent of all its unpaid reasonable and actual expenses. In

the event of any dispute, the Escrow Agent shall be entitled to petition a court of competent jurisdiction and shall perform any acts ordered by such court.

7. Successor Escrow Agents. The Escrow Agent may resign at any time upon giving at least thirty (30) days' written notice to Seller and Buyer and, after the date of such resignation notice, notwithstanding any other provision of this Escrow Agreement, Escrow Agent's sole obligation will be to hold the Escrow Fund pending appointment of a successor Escrow Agent. Similarly, Escrow Agent may be removed at any time by Buyer and Seller giving at least thirty (30) days' prior written notice to Escrow Agent specifying the date when such removal shall take effect. No such resignation or removal shall become effective until the appointment of a successor escrow agent, which shall be accomplished as follows: Buyer and the Seller shall use their commercially reasonable efforts to mutually agree on a successor escrow agent within thirty (30) days after receiving such notice. If the parties fail to agree upon a successor escrow agent within such time, the Escrow Agent may petition a court of competent jurisdiction to appoint a successor escrow agent, and all costs and expenses related to such petition shall be paid jointly and severally by Buyer and Seller. The successor escrow agent shall execute and deliver an instrument accepting such appointment and it shall, without further acts, be vested with all the estates, properties, rights, powers, and duties of the predecessor escrow agent as if originally named as escrow agent. Upon appointment of a successor escrow agent, and payment of the Escrow Fund to the successor escrow agent, after deduction and payment to the retiring Escrow Agent of all reasonable and actual expenses payable to, incurred by, or expected to be incurred by the retiring Escrow Agent in connection with the performance of its duties and the exercise of its rights hereunder, the Escrow Agent shall be discharged from any further duties and liability under this Escrow Agreement. After Escrow Agent's resignation or removal, the provisions of this Escrow Agreement shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Escrow Agent under this Escrow Agreement.

8. Further Instruments. If the Escrow Agent reasonably requires other or further instruments in connection with its performance of its duties, the necessary parties hereto shall join in furnishing such instruments.

9. Termination. This Escrow Agreement shall terminate upon the earlier of expiration of the Term or such time as no funds remain in the Easement Escrow Fund due to distribution in accordance with Section 4 of this Escrow Agreement.

10. Waiver & Other Remedies. The rights and remedies herein reserved to Buyer or Seller are cumulative and not alternative.

11. Compensation of Escrow Agent. The Escrow Agent shall not be compensated or charge fees for acting as Escrow Agent, but shall be reimbursed by the Parties for reasonable expenses actually paid to third parties and incurred for service as Escrow Agent only, subject to reasonable substantiation of such expenses.

12. General.

(a) Notices. All notices, requests, claims and other communications under this Escrow Agreement shall be in writing, shall state specifically that they are being given pursuant to this Escrow Agreement and shall be addressed as follows:

if to the Buyer, to:

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

with a copy to:

Pennsylvania-American Water Company  
852 Wesley Drive  
Mechanicsburg, PA 17055  
Attention: General Counsel

if to the Seller, to:

Brentwood Borough  
3624 Brownsville Road  
Brentwood, PA 15227  
Attention: Borough Manager

with copies to:

Obermayer Rebmann Maxwell & Hippel LLP  
Attention: Thomas Wyatt, Esq.  
Centre Square West  
1500 Market Street, Suite 3400  
Philadelphia, PA 19102-2101  
215.665.3200  
[Thomas.Wyatt@obermayer.com](mailto:Thomas.Wyatt@obermayer.com)

and

Brentwood Borough  
3624 Brownsville Road  
Brentwood, PA 15227  
Attention: Solicitor

if to the Escrow Agent, to:

**[ESCROW AGENT AND ESCROW AGENT ADDRESS]**

or such other person as a Party may from time to time designate by notice to the other Parties. A notice or other communication or approval is deemed to have been sent and received after ordinary business hours (time or place of receipt), the notice, other communication or approval is deemed to have been sent and received on the next business day or (ii) on the fourth business day after mailing if sent by United States registered or certified mail. Any notice addressed to the Escrow Agent shall be effective only upon receipt.

(b) Headings. The article, section and paragraph headings in this Escrow Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Escrow Agreement.

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

(d) Entire Agreement. This Escrow Agreement, including the relevant provisions of the Purchase Agreement pertaining to the parties' rights and obligations regarding the Missing Easements, 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 Escrow Agreement or on which reliance is placed by any Party, except as specifically set forth in this Escrow Agreement. The Parties acknowledge and agree that (i) each has substantial business experience and is fully acquainted with the provisions of this Escrow Agreement, (ii) the provisions and language of this Escrow Agreement have been fully negotiated and (iii) no provision of this Escrow Agreement shall be construed in favor of any Party or against any Party by reason of such provision of this Escrow Agreement having been drafted on behalf of one Party rather than the other Party.

(e) Amendments; Waivers. This Escrow 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 Escrow 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 Escrow 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.

(f) Parties in Interest; Third Party Beneficiary. Except as hereinafter provided, this Escrow Agreement is not intended to and shall not be construed to create upon any Person other than the Parties any rights or remedies hereunder.

(g) Anti-Assignment; Successors and Assigns. This Escrow Agreement shall be binding upon, and inure to the benefit of, the Parties hereto and their respective successors and assigns; provided, however, that no Party may assign any of its rights or delegate any of its duties under this Escrow Agreement without the prior written consent of the other Party hereto and any attempted assignment or delegation without prior written consent shall be void and of no force or effect.

(h) Governing Law and Jurisdiction. This Escrow Agreement shall be construed and enforced in accordance with, and governed by, the laws of the Commonwealth of Pennsylvania (without giving effect to the principles of conflicts of laws thereof). The Parties hereto irrevocably agree and consent to the jurisdiction of the United States District Court for the

Eastern District of Pennsylvania and the Court of Common Pleas of Allegheny 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 Eastern District of Pennsylvania and the Court of Common Pleas of Allegheny County, Pennsylvania, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by mail to such Party's address set forth 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 ESCROW AGREEMENT 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 ESCROW AGREEMENT, THE PURCHASE AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY TO THIS ESCROW 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 ESCROW AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

(i) Specific Performance. The Parties agree that irreparable damage would occur if any provision of this Escrow 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 to which they are entitled at law or in equity if the other Party has performed in accordance with the terms hereof.

(j) Counterparts; Facsimile; Execution. This Escrow Agreement may be executed in any number of counterparts which, taken together, shall constitute one and the same agreement. This Escrow Agreement shall be effective when it has been executed by each Party and delivered to all Parties. To evidence the fact that it has executed this Escrow Agreement, a Party may send a copy of its executed counterpart to the other Party by electronic mail or facsimile transmission. Such Party shall be deemed to have executed and delivered this Escrow Agreement on the date it sent such electronic mail or facsimile transmission. In such event, such Party shall forthwith deliver to the other Party an original counterpart of this Escrow Agreement executed by such Party.

(k) To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify and record information that identifies each person who opens an account. For a non-individual person such as a business entity, a charity, a trust or other legal entity, Escrow Agent requires documentation to verify its formation and existence as a legal entity. Escrow Agent may require financial statements, licenses or identification and authorization documents from individuals claiming authority to represent the entity or other relevant documentation. Buyer and Seller agree to provide all information requested by Escrow Agent in connection with any legislation or regulation to which

Escrow Agent is subject, in a timely manner. Escrow Agent's appointment and acceptance of its duties under this Escrow Agreement is contingent upon verification of all regulatory requirements applicable to Buyer, Seller and any of their permitted assigns, including successful completion of a final background check. These conditions include, without limitation, requirements under the USA Patriot Act, the USA FREEDOM Act, the Bank Secrecy Act, and the U.S. Department of the Treasury Office of Foreign Assets Control. If these conditions are not met, Escrow Agent may at its option promptly terminate this Escrow Agreement in whole or in part, and refuse any otherwise permitted assignment by Buyer or Seller, without any liability or incurring any additional costs.

13. Representations and Warranties. Buyer and Seller each respectively make the following representations and warranties to Escrow Agent:

(a) it has full power and authority to execute and deliver this Escrow Agreement and to perform its obligations hereunder; and this Escrow Agreement has been duly approved by all necessary action and constitutes its valid and binding agreement enforceable in accordance with its terms.

(b) each of the applicable persons designated on Exhibit "C" attached hereto has been duly appointed to act as its authorized representative hereunder and individually has full power and authority on its behalf to execute and deliver any instruction or direction, to amend, modify or waive any provision of this Escrow Agreement and to take any and all other actions as its authorized representative under this Escrow Agreement and no change in designation of such authorized representatives shall be effective until written notice of such change is delivered to each other Party to this Escrow Agreement pursuant to Section 13(b) and Escrow Agent has had reasonable time to act upon it.

(c) the execution, delivery and performance of this Escrow Agreement by Escrow Agent does not and will not violate any applicable law or regulation and no printed or other material in any language, including any prospectus, notice, report, and promotional material or the rights, powers, or duties of Escrow Agent under this Escrow Agreement shall be issued by any other parties hereto, or on such Party's behalf, without the prior written consent of Escrow Agent.

(d) it will not claim any immunity from jurisdiction of any court, suit or legal process, whether from service of notice, injunction, attachment, execution or enforcement of any judgment or otherwise.

14. Security Procedures. In the event instructions, including funds transfer instructions, address change or change in contact information are given to Escrow Agent (other than in writing at the time of execution of this Escrow Agreement), whether in writing, by facsimile or otherwise, Escrow Agent is authorized but shall not be required to seek confirmation of such instructions by telephone call-back to any person designated by the instructing Party on "Exhibit C" hereto, and Escrow Agent may rely upon the confirmation of anyone purporting to be the person so designated. The persons and telephone numbers for call-backs may be changed only in writing actually received and acknowledged by Escrow Agent and shall be effective only after Escrow Agent has a reasonable opportunity to act on such changes. Buyer and Seller agree that Escrow Agent may at its option record any telephone calls made pursuant to this Section. Escrow Agent in any funds transfer may rely solely upon any account numbers or similar identifying numbers provided by

Buyer or Seller to identify (i) the beneficiary, (ii) the beneficiary's bank, or (iii) an intermediary bank, even when its use may result in a person other than the beneficiary being paid, or the transfer of funds to a bank other than the beneficiary's bank or an intermediary bank so designated. Buyer and Seller acknowledge that these optional security procedures are commercially reasonable.

15. Tax Reporting. Escrow Agent shall have no responsibility for the tax consequences of this Escrow Agreement and Buyer and Seller shall consult with independent counsel concerning any and all tax matters. Buyer and Seller jointly and severally agree to (a) assume all obligations imposed now or hereafter by any applicable tax law or regulation with respect to payments or performance under this Escrow Agreement and (b) request and direct the Escrow Agent in writing with respect to withholding and other taxes, assessments or other governmental charges, and advise the Escrow Agent in writing with respect to any certifications and governmental reporting that may be required under any applicable laws or regulations. Except as otherwise agreed by Escrow Agent in writing, Escrow Agent has no tax reporting or withholding obligation except with respect to Form 1099-B reporting on payments of gross proceeds under Internal Revenue Code Section 6045 and Form 1099 and Form 1042-S reporting with respect to investment income earned on the Escrow Fund, if any. To the extent that U.S. federal imputed interest regulations apply, Buyer and Seller shall, no later than 5 Business Days after the effective date of this Escrow Agreement, so inform the Escrow Agent, provide the Escrow Agent with all imputed interest calculations and direct the Escrow Agent to disburse imputed interest amounts as Buyer and Seller deem appropriate. The Escrow Agent shall rely solely on such provided calculations and information and shall have no responsibility for the accuracy or completeness of any such calculations or information. Buyer and Seller shall provide Escrow Agent a properly completed IRS Form W-9 or Form W-8, as applicable, for each payee. If requested tax documentation is not so provided, Escrow Agent is authorized to withhold taxes as required by the United States Internal Revenue Code and related regulations. Buyer and Seller have determined that any interest or income on the Escrow Fund shall be reported on an accrual basis and deemed to be for the account of Seller.

*Signature page follows.*

IN WITNESS WHEREOF, each of the parties hereto has executed this Escrow Agreement as of the date first above written.

BUYER:

**PENNSYLVANIA-AMERICAN  
WATER COMPANY**

\_\_\_\_\_  
Name:  
Title:

SELLER:

**BRENTWOOD BOROUGH**

\_\_\_\_\_  
Name:  
Title:

ESCROW AGENT:

[ \_\_\_\_\_ ]

\_\_\_\_\_  
Name:  
Title:

**Exhibit A**

**MISSING EASEMENTS**

**Exhibit B**

**FORM OF EASEMENT TEMPLATE**

**Prepared By & Return To:**

[ ]

**Allegheny County Tax Parcel Number:**

**DEED OF EASEMENT**

**THIS DEED OF EASEMENT** is made this [ ] day of [ ], 20[ ] by and between [Grantor], having a mailing address of [address] (the "Grantor"), and PENNSYLVANIA-AMERICAN WATER COMPANY, a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, having a business address of 852 Wesley Drive, Mechanicsburg, Pennsylvania 17055(the "Grantee").

**RECITALS**

**WHEREAS**, Grantee owns and operates the sanitary wastewater collection system (the "System"), which provides sanitary wastewater service to various customers in Brentwood Borough, Pennsylvania.

**WHEREAS**, certain underground sanitary sewer lines owned by Grantee (the "Sewer Lines") are situated within the real property owned by the Grantor described on Exhibit "A" attached hereto (the "Property") which were never the subject of an instrument that was recorded in the Allegheny County Recorder of Deeds office.

**WHEREAS**, the parties wish to document Grantee's rights to own, operate, maintain and replace the Sewer Lines with the boundaries of the Property.

**NOW, THEREFORE**, the said Grantor, for and in consideration of the sum of Ten and 00/100 Dollars (\$10.00), lawful money of the United States of America, unto it well and truly paid by Brentwood Borough (as predecessor to Grantee as owner of the Sewer Lines) on behalf of the said Grantee, at or before the sealing and delivery hereof, the receipt of whereof is hereby acknowledged, by these presents hereby does grant, convey, bargain and sell, alien, enfeoff, release and confirm unto the said Grantee, its respective successors, and assigns forever, a permanent and perpetual, non-exclusive easement for access, ingress,

egress and regress to the Sewer Lines, and for using, operating, altering, inspecting, repairing, removing, improving, replacing, maintaining and installing the Sewer Lines, as they exist or may be installed and exist in the future on the real estate described on Exhibit "B" (the "Easement Area").

**TOGETHER WITH** the right to use, repair, remove, reconstruct and reinstall the Sewer Lines, the right to access such facilities, and the right to make excavations and trim or remove trees, brush, undergrowth, landscaping and other obstructions in the exercise of the foregoing rights.

**THE EASEMENT GRANTED HEREIN** are permanent and perpetual and are covenants running with the lands burdened by the easement described in this Deed of Easements.

**TO HAVE AND TO HOLD** this Deed of Easement with the wastewater system improvements thereon installed and erected, hereditaments and premises hereby granted, or mentioned and intended so to be, with appurtenances, all and singular and the rights, liberties, privileges, above-described, unto the said Grantee, its successors and assigns forever.

**AND THE SAID GRANTOR**, for itself, its successor and assigns, does by these presents covenant, promise, grant and agree, to and with the Grantee, its successors and assigns, by these presents, that it, the said Grantor and its successors and assigns, all and singular the hereditaments, premises, and land hereby described and granted, or mentioned and intended so to be, with the appurtenances, unto the said Grantee, its successors and assigns, against them the said Grantor and its successors and assigns, and against all and every person and persons whomsoever lawfully claiming or to claim the same or any part thereof, by, from or under it, them or any of them, shall and will WARRANT and forever DEFEND.

This Deed of Easement and all of the covenants herein contained shall inure to the benefit of, and shall be binding upon the Grantor, its successors and assigns, and Grantee, its successors and assigns.

*[Signature page to follow]*

**IN WITNESS WHEREOF, Grantor has duly executed this instrument as of the above written date.**

**GRANTOR:**

**By:** \_\_\_\_\_

**I hereby certify that the address of  
the within named Grantee is:**

**Pennsylvania-American Water Company  
852 Wesley Drive  
Mechanicsburg, PA 17055**

\_\_\_\_\_  
**On behalf of said Grantee**

***SIGNATURE PAGE FOR DEED OF EASEMENT***

COMMONWEALTH OF PENNSYLVANIA :  
: SS  
COUNTY OF ALLEGHENY :

On this day of , 20\_\_, before me, the undersigned officer, personally appeared [**Grantor**], who, known to me or satisfactorily proven, acknowledged himself to be the person who executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

---

Notary Public

My commission expires on:

Exhibit A: Legal description for fee interest in Property

Exhibit B: Legal description of Easement Area

**Exhibit C**

**AUTHORIZED PERSONS**

**FIRST AMENDMENT TO ASSET PURCHASE AGREEMENT****DATED March 2, 2023**

THIS FIRST AMENDMENT TO ASSET PURCHASE AGREEMENT (“First Amendment”) is made as of the 2nd day of March, 2023, by and between, Brentwood Borough, Allegheny County, a body corporate and politic, organized and existing under the laws of the Commonwealth of Pennsylvania (the “Seller”), and Pennsylvania-American Water Company, a corporation organized and existing under the laws of the Commonwealth of Pennsylvania (the “Buyer”).

**RECITALS:**

WHEREAS, Seller and Buyer entered into that certain Asset Purchase Agreement dated December 22, 2020 (the “Agreement”); and

WHEREAS, because Seller made capital expenditures in a prudent manner in the System since the Effective Date, Seller and Buyer desire to amend a certain provision of the Agreement to become effective upon the date of this First Amendment; and

WHEREAS, the Seller and Buyer desire to reaffirm all other provisions of the Agreement not specifically amended by this First Amendment; and

WHEREAS, capitalized terms not otherwise defined in this First Amendment have the meaning ascribed to such terms in the Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties to this First Amendment, intending to be legally bound, agree as follows:

1. The amount of Purchase Price in Section 3.01 of the Agreement is hereby amended as set forth below:

“Purchase Price. The purchase price for the Acquired Assets is Nineteen Million Three Hundred Sixty-Four Thousand Four Hundred Forty-Three Dollars (\$19,364,443) (the “Purchase Price”) which Buyer shall pay as follows at Closing:”

2. All other provisions, terms, and conditions of the Agreement not specifically amended by this First Amendment, including the remaining provisions of Section 3.01 of the Agreement, remain in full force and effect. Seller and Buyer reaffirm the Agreement as amended by this First Amendment.
3. Neither Party to this First Amendment may assign any right or delegate any performance under this First Amendment without the prior written consent of the other Party. A purported assignment or purported delegation without prior written consent is void.

4. The laws of the Commonwealth of Pennsylvania (without giving effect to its conflicts of law principles) govern all matters arising and relating to this First Amendment, including torts. The Parties irrevocably agree and consent to the jurisdiction of the United States District Court for the Western District of Pennsylvania and the Court of Common Pleas of Allegheny County, Pennsylvania, for the adjudication of any matters arising under or in connection with this First Amendment. Any action initiated in court shall be filed and litigated (including all discovery proceedings) exclusively in the United States District Court for the Western District of Pennsylvania and the Court of Common Pleas of Allegheny County, Pennsylvania, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by mail to such Party's address set forth 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 FIRST AMENDMENT 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 FIRST AMENDMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY TO THIS FIRST AMENDMENT 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.
  
5. This First Amendment may be executed in any number of counterparts which, taken together, is one and the same agreement. This First Amendment becomes effective when it has been executed by each Party and delivered to both Parties. To evidence the fact that it has executed this First Amendment, a Party may send a copy of its executed counterpart to the other Party by facsimile transmission. Such Party is deemed to have executed and delivered this First Amendment on the date it sent such facsimile transmission. In such event, such Party shall forthwith deliver to the other Party an original counterpart of this First Amendment executed by such Party.

[Remainder of Page Intentionally Blank; Signature Page Immediately Follows]

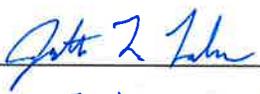
Execution Version

IN WITNESS WHEREOF, the Parties have duly executed this First Amendment on the date first written above.

BRENTWOOD BOROUGH,  
ALLEGHENY COUNTY

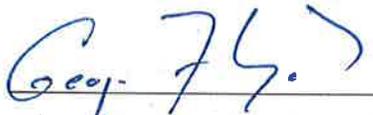
PENNSYLVANIA-AMERICAN WATER  
COMPANY

By:   
Printed: DENNIS TROY  
Its: COUNCIL PRESIDENT

By:   
Printed: Justin L. Ladner  
Its: PAWC President

ATTEST:

ATTEST:

By:   
Printed: GEORGE ZROYOVSKY  
Title: BOROUGH MANAGER

By:   
Printed: MICHAEL SALVO  
Title: SENIOR MANAGER BUSINESS DEVELOPMENT