

**Application of Pennsylvania-American Water Company for the Acquisition of
the Wastewater Treatment Plant and Collection System Owned and Operated by
Elizabeth Borough Municipal Authority (“EBMA”)**

Docket No. A-2023-3038717

66 Pa. C.S. § 1329

Application Filing Checklist – Water/Wastewater

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 Elizabeth Borough Municipal Authority, as Seller, and Pennsylvania-American Water Company, as Buyer, dated January 24, 2023, and First Amendment dated July 5, 2023 attached as **Appendices A-24-a.1** and **A-24-a.2**, respectively.

ASSET PURCHASE AGREEMENT
BETWEEN ELIZABETH BOROUGH MUNICIPAL AUTHORITY
AND
PENNSYLVANIA-AMERICAN WATER COMPANY

JANUARY 24, 2023

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE Agreement (“**Agreement**”), dated as of the 24th day of January, 2023 (the “**Effective Date**”) by and between the Elizabeth Borough Municipal Authority, a municipal authority organized and existing under the laws of the Commonwealth of Pennsylvania, having a mailing address of 1 Locust Street, Elizabeth PA 15037, Pennsylvania (“**Seller**”), and Pennsylvania-American Water Company, a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with a business address of 852 Wesley Drive, Mechanicsburg, PA 17055 (“**PAWC**”). In addition to the capitalized terms defined elsewhere in this Agreement, capitalized terms as used in this Agreement have the meanings set forth in **Appendix 1** unless otherwise specified herein.

RECITALS

A. Seller owns and operates a wastewater treatment plant and collection system in Elizabeth Borough, identified with the Pennsylvania Department of Environmental Protection (“**DEP**”) National Pollutant Discharge Elimination System (“**NPDES**”) Permit No. PA0028436 (the “**NPDES Permit**”) (collectively, the “**System**”) that provides wastewater service to various customers in the Elizabeth Borough, Elizabeth Township, Lincoln Borough and Forward Township, as more fully set forth in the service area map on **Schedule 1.0**.

B. PAWC is a regulated public utility that furnishes water and wastewater services to the public in various counties throughout Pennsylvania, as reflected in PAWC’s duly-filed and effective tariffs, as may be amended from time to time upon application by the company or as ordered by the Pennsylvania Public Utility Commission (“**Tariff**”).

C. Seller desires to sell, and PAWC desires to purchase the System, as well as substantially all assets, properties and rights of Seller owned and used in connection with the System, upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the recitals and the covenants, representations, warranties and agreements herein contained, and intending to be legally bound hereby, the parties agree as follows:

ARTICLE 1

THE TRANSACTION

1.1 **Sale and Purchase of Assets.** Subject to the terms, representations and conditions set forth in this Agreement, PAWC shall purchase from Seller, and Seller shall sell, assign, transfer, grant, convey and deliver to PAWC at Closing, the Assets. The Assets shall be sold free and clear of all mortgages, liens, pledges, security interests, charges, claims, restrictions and encumbrances of any and all nature (collectively, the “**Encumbrances**”).

1.2 **Assets Further Defined.**

The Assets shall, without limitation to the definition stated in **Appendix 1**, include the following (but excluding the Excluded Assets):

- (a) the Assigned Contracts;

(b) all interests in real estate (excepting streets), mains, pipes, pipelines, manholes, facilities, meters, tanks, storage facilities, valves, wastewater system network and related appurtenances, structures, improvements, fixtures, rights-of-way, rights, uses, franchises, licenses and easements owned by Seller and relating to the System, or in which Seller has an interest, and all hereditaments, tenements and appurtenances belonging, appertaining or relating thereto;

(c) all machinery, equipment, tools, keys and locks, leasehold improvements, goods, and other tangible personal property relating to the System owned by Seller, or in which Seller has an interest;

(d) all rights of Seller under any written or oral contract, easement, license, agreement, lease, plan, instrument, registration, permit, certificate, or other authorization or approval of any nature, or other document, commitment, arrangement, undertaking, practice or authorization, relating to the System;

(e) all rights and choices in action of Seller arising out of occurrences before or after the Closing relating to the Assets, including any rights of Seller under any warranties or insurance claims related to the Assets; and

(f) all information, files, records, data, plans, contracts and recorded knowledge relating to the Assets, including customer and supplier lists and property records, related to the foregoing.

1.3 Retained Liabilities.

(a) Except as explicitly provided in **Section 1.3(b)** below, PAWC shall not assume and shall not be liable for any liabilities or obligations of Seller of any nature whatsoever (including any obligations related to the Assets or operation of the System), whether express or implied, fixed or contingent, known or unknown at the time of Closing. Except as explicitly provided in **Section 1.3(b)** below, all of Seller's liabilities and obligations, whether incurred in connection with the operation of the System, ownership of the Assets or otherwise, shall remain the sole responsibility of, and shall be retained, paid, performed and discharged solely by Seller. Without limiting the foregoing, Seller shall be and shall remain liable for all obligations and liabilities relating to (i) employees of Seller (including those who worked on the System) and any employee benefits related thereto (including any pension benefits), (ii) all taxes on the business of Seller, (iii) accounts payable of Seller, and (iv) failure to comply with any Environmental Laws or any Permits for the Assets or operation of the System on or before the Closing Date.

(b) Following the Closing, PAWC shall assume only those contractual liabilities arising after the Closing Date under the Assigned Contracts (specifically excluding any liability under the Assigned Contracts arising out of or relating to a breach or other circumstances that occurred on or prior to the Closing Date).

1.4 Excluded Assets. Notwithstanding anything to the contrary contained in this Agreement, the Assets shall not include any of the following (the "**Excluded Assets**"): The facilities and equipment identified in **Schedule 1.4(a)** (the "**Retained WWTP Assets**");

(a) Any and all connecting facilities (customer's sewer laterals) from Seller's wastewater lines, mains or collection facilities at the curb-line or edge-of-road or rights of way line that are within a customer's property (the "**Customer Sewer Laterals**");

(b) Any and all piping and fixtures, including grinder pumps, internal to each individual customer's structure (whether residential, commercial, industrial or other types);

(c) Any and all stormwater system facilities located on, in, within, or under the real property, including easements and any and all storm water system facilities that are connected to the System and located within the public right-of-way; provided that this exclusion does not exclude facilities for the collection and discharge of stormwater runoff generated and located on the property containing the WWTP;

(d) Seller's cash on hand on the date of Closing and Seller's account receivables related to the System for services rendered through the close of business on the Closing Date;

(e) All rights of Seller under this Agreement and related Bill of Sale and Assignment of Contracts Agreement as it pertains to the transfer and sale herein contemplated; and

(f) The specific assets, properties and rights of Seller set forth on **Schedule 1.4**.

1.5 Accounts Receivable. Accounts receivable for wastewater services related to the System rendered through the close of business on the Closing Date shall be Excluded Assets as per **Schedule 1.4**, and accounts receivable for wastewater services related to the System rendered thereafter shall belong to PAWC.

(a) Any payments made in advance by Seller's wastewater customers for post-Closing service will be refunded by Seller to its customers at or after Closing with an appropriate explanation that the customer will be billed by PAWC for services provided by PAWC post-Closing. PAWC shall not receive a credit toward the Purchase Price in **Section 2.1** at Closing for any prorated amounts of such customer advance payments for the period following Closing. Seller shall address all related issues with customers that arise with refunds due to its customers for such advance payments.

ARTICLE 2

PURCHASE PRICE

2.1 Purchase Price for the Assets. Subject to the terms and conditions of this Agreement, the purchase price (the "**Purchase Price**") for the Assets shall be Twenty-Eight Million Dollars (\$28,000,000). The Purchase Price shall be payable directly to Seller on the Closing Date by wire transfer or by corporate check, at Buyer's discretion.

2.2 Use of Fair Market Valuation Process. Following the execution of this Agreement, PAWC and Seller shall each take such actions as are necessary to invoke, commence and complete the fair market valuation process set forth in Section 1329 of the Public Utility Code, 66 Pa.C.S. § 1329. Without limiting the generality of the foregoing, PAWC and Seller shall each engage a utility valuation expert from the list of such experts maintained by the PUC and shall jointly select and engage a licensed engineer for the purposes set forth in Section 1329(a)(4) of the Public Utility Code, 66 Pa.C.S. § 1329(a)(4). All costs and expenses associated with the utility valuation experts shall be the responsibility of the party engaging such expert. All costs and expenses associated with the licensed engineer jointly selected by the parties shall be shared equally between PAWC and Seller. Seller agrees to provide such assistance and cooperation as is reasonably requested by PAWC to file and prosecute an application for approval of the transaction contemplated by this Agreement.

2.3 Payment of Outstanding Debt. At Closing, the proceeds of the Purchase Price shall be first used to pay and discharge in full the total amount of all outstanding indebtedness of Seller as set forth in **Schedule 2.4** (the "**Outstanding Indebtedness**") and Seller shall take all actions necessary to defease any and all bonds or other instruments related to such Outstanding Indebtedness.

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

ARTICLE 3

THE CLOSING

3.1 Closing. Subject to the terms and conditions of this Agreement, the closing of the sale and purchase of the Assets ("**Closing**") shall take place at the offices of PAWC or such other mutually agreed upon location, commencing within thirty (30) days following the date on which all of the conditions set forth in **ARTICLE 10** of this Agreement have been met (or waived). The date of the Closing is referred to herein as the "**Closing Date**".

3.2 Deliveries and Proceedings at Closing.

(a) Subject to the terms and conditions of this Agreement, at the Closing, Seller shall deliver or cause to be delivered to PAWC:

- (i) Bills of Sale and instruments of assignment duly executed by Seller as necessary to transfer all of the Assets to PAWC, including an assignment of contracts agreement covering the assignment and assumption of the Assigned Contracts in substantially the form of **Exhibit A** ("**Assignment of Contracts Agreement**");
- (ii) A copy of each permit, license, easement, land-right and other necessary authority for the operation of the System and the Assets, in each case validly issued in the name of Seller, and showing in full force and effect;
- (iii) The consents to transfer all Assigned Contracts, leases, intellectual property, Permits and other Assets requiring such consents to be transferred to PAWC;
- (iv) All written consents (of third parties or otherwise) and governmental approvals necessary to ensure that PAWC will continue to have the same full rights with respect to the Assets that Seller had immediately prior to the Closing;
- (v) Evidence satisfactory to PAWC of the transfer of all utilities with respect to the System from Seller to PAWC in accordance with **Section 6.1(b)** below;
- (vi) One or more general warranty deeds of conveyance of the real estate and easements to PAWC, duly executed and acknowledged by Seller and in recordable form, each sufficient to convey the title and rights of access to the Assets;
- (vii) Such other deeds, bills of sale, assignments, certificates of title, documents and other instruments of transfer and conveyance as may reasonably be requested by PAWC, each in form and substance reasonably satisfactory to PAWC;

- (viii) Certified copies of all ordinances and all Resolutions duly adopted by Seller authorizing the execution, delivery and performance of this Agreement and all related agreements and the transactions contemplated hereby and thereby;
- (ix) As applicable, a payoff letter from each lender (whether institutional or otherwise) from which Seller has incurred indebtedness or borrowed money that is outstanding, and a release of all Encumbrances relating to the Assets (along with Form UCC3 Financing Statements effectuating a termination of all outstanding financing statements covering the Assets) executed, filed and/or recorded by the holder of or parties to each such Encumbrance, if any, in each case in substance and form reasonably satisfactory to PAWC and its counsel;
- (x) The certificates and other documents required to be delivered by Seller under this Agreement as set forth in **Schedule 3.2(a)** hereof;
- (xi) The Opinion of Seller's Counsel as set forth in **Exhibit C** hereof;
- (xii) The Escrow Agreement, duly executed by Seller and Escrow Agent; and
- (xiii) All such other agreements, documents and instruments of conveyance required by this Agreement or as shall, in the reasonable opinion of PAWC and its counsel, be necessary to transfer the Assets to PAWC in accordance with this Agreement, and where necessary, in recordable form.

(b) Subject to the terms and conditions of this Agreement, at the Closing, PAWC shall deliver or cause to be delivered to Seller:

- (i) The Purchase Price; and
- (ii) The certificates and other documents required to be delivered by PAWC under this Agreement as set forth in **Schedule 3.2(b)** hereof.

ARTICLE 4

REPRESENTATIONS AND WARRANTIES OF SELLER

4.1 **Seller's Representations.** Seller hereby represents and warrants to PAWC as follows:

(a) **Organization; Legal Authority.** Seller is a duly organized municipality authority of the Commonwealth of Pennsylvania, validly existing, solvent, and in good standing under the laws of the Commonwealth of Pennsylvania, and Seller has the full power and lawful authority to transfer to PAWC the rights, title and interest in and to the Assets.

(b) **Assets Ownership.** Seller has clear, good, and marketable right and title to, or a valid leasehold interest in, all of the assets, property and facilities comprising the Assets, free and clear of all Encumbrances. **Schedule 4.1(b)** lists all Assets that are subject to a leasehold interest (i.e., not owned by Seller). None of the Assets are leased or on loan by Seller to any third party. The Assets constitute all of the assets, property and facilities that, together with the rights granted or conveyed under the transaction documents, are necessary for the operation of the System, the business thereof, and the Assets as of the date

hereof. Upon the Closing, PAWC shall continue to be vested with good title or a valid leasehold interest in the System and all of the Assets.

(c) Financial Statements. Seller's Financial Statements that have been made available to PAWC by Seller and have been prepared by Seller in accordance with GAAP (subject in the case of the Unaudited Financial Statements to normal year-end adjustments and the absence of footnotes). The Financial Statements were prepared from the books and records of Seller, are true, correct and complete and present fairly in all material respects the financial condition, operating results and cash flows of Seller as of the dates and during the periods indicated therein (subject in the case of the Unaudited Financial Statements to normal year-end adjustments and the absence of footnotes).

(d) Due Authorization; Valid and Binding; No Encumbrances. Seller has the full power and lawful authority to enter into this Agreement and all related agreements and to consummate and perform the transactions contemplated hereby and thereby. Seller has duly and validly authorized the execution and delivery of this Agreement (which has been duly executed and delivered) and all related documents and agreements to which Seller is a party by all necessary proceedings, and this Agreement and all related documents and agreements constitute the valid and binding obligations of Seller enforceable against it in accordance with its terms. No filings or registrations with, notifications to, or authorizations, consents or approvals of, a Governmental Authority or third party are required to be obtained or made by Seller in connection with the execution, delivery or performance by Seller of this Agreement, all related agreements, or the consummation by Seller of the transactions contemplated herein or therein. Neither the contemplated transactions, nor this Agreement will result in the creation of any Encumbrance against any of the Assets.

(e) Current Operations. Seller has all requisite power and authority and all agreements, contracts, commitments, leases, certificates, licenses, Permits, regulatory authorizations and other instruments required to conduct the operations of the System as it has been and is now being conducted and to own and operate the Assets.

(f) No Approvals or Violations. This Agreement does not require any further approvals of any other party, does not violate any law, ordinance or regulation, does not conflict with any order or decree, and does not conflict with or result in a breach of any contract, lease or Permit to which Seller is a party or is otherwise bound or affected, or by which the Assets may be bound or affected. The execution and delivery of this Agreement and all related documents and agreements, and the consummation of the transactions contemplated hereby and thereby, do not violate, conflict with or result in the breach of any term, condition or provision of Seller's articles of incorporation, bylaws or other governing documents, or any instrument, contract, lease, agreement, Permit, certificate or other document to which Seller is a party or is otherwise bound or affected, or by which the Assets may be bound or affected.

(g) Accounts Receivable. All accounts receivable being retained by Seller (whether billed or unbilled) (collectively, the "**Retained Accounts Receivable**"), are valid, genuine and existing and arose (or will have arisen on or prior to Closing) from bona fide sales of products or services actually made in the ordinary course of business on or prior to the Closing Date. All products and services with regard to the Retained Accounts Receivable have been provided by Seller (and no further obligations exist), and no offset, agreement for deduction, free goods, discount or deferred price or quantity adjustment has been made with respect to any Retained Accounts Receivable (or with respect to PAWC's accounts receivable for the period after Closing).

(h) Free Service; Customer List; Prepayments. Seller has not entered into any agreements or other understandings for the provision of free or otherwise subsidized or discounted services to any parties. The data contained in the customer records provided to PAWC under **Section 6.1(i)** is true and accurate in all material respects. Except as set forth in **Schedule 4.1(u)**, Seller has not received payments made in advance by any third party for future service (including service after the Closing) with regard to the System or the Assets.

(i) Seller Outstanding Indebtedness; Undisclosed Liabilities. **Schedule 2.4** contains a complete and accurate listing of all outstanding bonds, loans or other indebtedness of Seller. Except as set forth in **Schedule 2.4** and **Schedule 4.1(i)**, there are no material liabilities or obligations of Seller, either accrued, absolute, liquidated or unliquidated, contingent or otherwise, relating to the Assets that would be required to be set forth on a balance sheet prepared under GAAP as applicable to municipal authorities, other than liabilities incurred in the ordinary course. There is no basis for any claim against Seller, the System or any of the Assets for any such liability or obligation, and there is no basis for any such liability or obligation to become the liability or obligation of PAWC from and after the Closing.

(j) Condition of Assets. All the tangible property included within the Assets is in good operating condition and repair, is usable in the regular course of business and conforms to all Applicable Laws, ordinances, codes, Permits, rules and regulations relating to their construction, use and operation, and is free from any defects except such defects as do not materially interfere with the continued use thereof in the conduct of the System's operations.

(k) Contracts. **Schedule 4.1(k)** contains a true, complete and accurate list of all agreements (including all verbal agreements and intermunicipal agreements), contracts, leases (including any leasehold interests constituting part of the Assets as described in **Section 4.1(b)**), licenses, commitments, arrangements and instruments related to the Assets to which Seller is a party or the Assets are otherwise subject or bound, along with all amendments and addenda related thereto (collectively, the "Contracts"). **Schedule 4.1(k)** also identifies with an asterisk any Contract which requires consent to, or prohibits, assignment of the Contract. All Contracts are in full force and effect and are valid and enforceable in accordance with their terms, and the parties thereto are in material compliance with the provisions thereof, and there exists no event or condition which with the giving of notice or lapse of time, or both, would constitute a default thereunder. Seller has received, or will receive prior to the Closing, the written consent of each party to the Assigned Contracts designated on **Schedule 4.1(k)** as requiring consent to the assignment, or otherwise complied with Seller's obligations under **Section 6.1(b)** hereof. Seller has delivered to PAWC correct and complete copies of those Contracts requested by PAWC, as well as copies of the requisite assignments for each of the Assigned Contracts which effectuates the transfer of the Assigned Contracts to PAWC as of the Closing Date. Except as disclosed on **Schedule 4.1(k)(i)**, Seller is not a party to any contract or subject to any arrangement for future payment of refunds under any extension agreement, customer deposit agreement or similar arrangement (including any prepaid tap fee) with respect to the Assets or the System.

(l) Adequacy of Property Rights; Real Property and Easements.

(i) Seller possesses all property rights necessary to operate the Assets, and Seller owns and has good and marketable title to the real property, free and clear of all options, leases, covenants, conditions, easements, agreements, claims, and other encumbrances of every kind, and there exists no restriction on the use or transfer of such property. As it relates to the Assets, **Schedule 4.1(l)(i)** contains a complete and accurate list of

the real property owned by Seller and a complete and accurate list of each lease of real property to which Seller is a party (as the lessor, lessee or otherwise). Seller's current use and occupancy of the real property and its operation of the System thereon does not violate any easement, covenant, condition, restriction or similar provision in any instrument of record or other unrecorded agreement affecting such real property. All leases, licenses, rights of way, and easements related in any manner to the assets and properties comprising the Assets and all other instruments, documents and agreements pursuant to which Seller has obtained the right to use any real property in connection with the Assets are in good standing, valid and effective in accordance with their respective terms, and with respect thereto, there is no existing material default or event that could constitute a material default. The real property is properly classified under applicable zoning laws, ordinances, and regulations for the current and continued operation of the System on the real property. No proceeding that could adversely affect the zoning classification of the real property is pending or threatened. At and after the Closing, PAWC shall have the right to maintain and use the real property, including the space, facilities and appurtenances outside of building lines, whether on, over or under the ground, and to conduct such activities thereon as maintained, used or conducted by Seller on the date hereof, and such right is not subject to revocation. Seller has made available to PAWC copies of all title reports, surveys, title policies and appraisals relating to the real property.

- (ii) Set forth on **Schedule 4.1(I)(ii)** hereto is a true, correct and complete list of all easements and rights of way relating to the real property and the Assets. All of such easements and rights of way are valid and will be transferred to PAWC and remain in full force as of the Closing and thereafter. Seller has not received any notice of violation of any easements, covenants, restrictions or similar instruments and there is no basis for the issuance of any such notice or the taking of any action for such violation. At and after the Closing, PAWC shall have all rights, easements and agreements necessary for the use and maintenance of water, sewer or other utility pipelines, poles, wires, conduits or other like facilities, and appurtenances thereto, over, across and under the real property.
- (iii) There are no outstanding options, rights of first refusal or rights of first offer to purchase any of the real property or any portion thereof or interest therein, except as otherwise set forth on **Schedule 4.1(I)(iii)**.
- (iv) All improvements located on, and the use presently being made of, the real property comply with all applicable zoning and building codes, ordinances and regulations and all applicable fire, environmental, occupational safety and health standards and similar standards established by Applicable Law, and the same use thereof by PAWC following Closing will not result in any violation of any such code, ordinance, regulation or standard. No improvements encroach on any land that is not included in the real property or on any easements affecting such real property, or violate any building lines or set-back lines, and there are no encroachments onto the real property, or any portion thereof, that would interfere with the use or occupancy of such real property or the continued operation of the System as currently conducted.

- (v) There is no unpaid tax, levy or assessment against the real property (except for encumbrances relating to assessments not yet due and payable), nor is there pending or threatened any condemnation proceeding against the real property or any portion thereof. **Schedule 4.1(l)(v)** contains a list of all impending taxes, levies and assessments that are due and owing after the Closing Date.
- (vi) Except as set forth in **Schedule 4.1(l)(vi)**, there is no condition affecting the real property or the improvements located thereon that requires repair or correction to restore the same to reasonable operating condition.
- (vii) Notwithstanding the foregoing, if and to the extent Seller or PAWC determines that Seller is missing or unable to locate the recording information for any easements or rights of way relating to the Assets and is unable to locate or obtain a new easement for the same (each a “**Missing Easement**”, and collectively, the “**Missing Easements**”), Seller covenants and agrees that it shall use its commercially reasonable and diligent efforts, including condemnation, to obtain all of the Missing Easements as promptly as reasonably possible before Closing. For the avoidance of doubt, Seller acknowledges and agrees that it will establish and maintain the Missing Easement Escrow for any Missing Easements that have not been obtained prior to Closing on the terms and conditions set forth in **Section 11.4** of this Agreement.

(m) Litigation. Except as disclosed on **Schedule 4.1(m)**, there is no action, suit, claim or litigation, arbitration, proceeding, judgment, injunction, audit or legal, administrative or governmental investigation pending (including any citations, notices, summons or orders), and none are known to be threatened against, pertaining to or affecting the System or any of the Assets (including any such actions, litigation and other claims against Seller) before any court, arbitrator or Governmental Authority (including any governmental agency board or instrumentality), nor is there any order, writ, injunction or decree of any court, arbitrator or Governmental Authority, in existence against, pertaining to or affecting Seller (including its commissioners, directors or officers), the System or any of the Assets. Except as noted in **Schedule 4.1(m)**, all matters disclosed in **Schedule 4.1(m)** are fully covered by Seller’s insurance. There are no known laws, ordinances, regulations or official orders now in effect or pending that could reasonably be expected to have a material adverse effect on the System or the ownership, condition or operation of the System or the Assets. There are no actions, suits, claims, proceedings or investigations pending or, to the knowledge of Seller, threatened against Seller, and Seller is not subject to any outstanding judgment, order or decree of any court or governmental body, which would in either case, reasonably be expected to prevent or materially interfere with or delay Seller’s ability to perform its obligations under this Agreement.

(n) Tax Matters.

- (i) Seller has timely and properly filed all tax returns that it was required to file. All such tax returns were complete and correct in all material respects and were prepared in compliance with all Applicable Laws. All taxes owed by Seller have been paid. Seller is not the beneficiary of any extensions of time within which to file any tax return. There are no Encumbrances on any of the Assets that arose in connection with any failure (or alleged failure) to pay any tax.
- (ii) Seller has withheld and paid all taxes required to have been withheld and paid in connection with any amounts paid or owing to any employee, independent contractor,

supplier, vendor, creditor, or other third party. Forms W-2 and 1099 required with respect thereto have been properly completed and timely filed.

- (iii) There are no audits or examinations of any tax returns pending or threatened that relate to Seller's operation of the System or the Assets. Seller is not a party to any action or proceeding by any Governmental Authority for the assessment or collection of taxes relating to the operation of the System, nor has such event been asserted or threatened. There is no waiver or tolling of any statute of limitations in effect with respect to any tax returns relating to Seller's operation of the System or the Assets.

(o) No Material Adverse Conditions: Insurance. There are no facts, circumstances or conditions existing or threatened that would have, or would be reasonably be expected to have, a material adverse effect on the condition, properties, assets, indebtedness, liabilities, commitments, operations or prospects of the System or the Assets. Seller maintains and has maintained appropriate insurance necessary for the full protection of all of the Assets, the System, and all related operations, products and services. All such policies are in full force and effect and Seller will use commercially reasonable efforts to cause such policies to be outstanding and in full force and effect as of Closing and immediately following the execution of this Agreement and the consummation of the contemplated transactions. There are no pending claims or proceedings arising out of, based upon or with respect to any of such policies of insurance and, to Seller's knowledge, no basis for any such claims or proceedings exists. Seller is not in default with respect to any provisions contained in any such insurance policies, and no insurance provider is in default with respect to such insurance policies.

(p) Compliance with Law. Except as disclosed on **Schedule 4.1(p)**, Seller is and has been in material compliance with all laws, ordinances, and governmental rules and regulations, whether civil or criminal, of any federal, state, local or foreign Governmental Authority applicable to the operation of the System and the Assets, including Environmental Laws and employee labor, pension and benefits laws, to which Seller, the System or the Assets are subject, and has not failed to obtain, or to adhere to the requirements of, any certificate, license, Permit or other governmental authorization necessary for the operation of the System and the Assets, nor has Seller committed any violation of law or any provision of its governing documents applicable to the System or the Assets. Except as disclosed on **Schedule 4.1(p)**, Seller has not received, and has no reason to believe that it will receive, notice of any violation of law.

(q) Adequacy of Permits. Set forth in **Schedule 4.1(q)** is a complete and correct list of all permits, licenses, registrations, approvals and other authorizations (collectively, the "Permits") used by Seller in the continuing ownership, use, operation and maintenance of the System and for the Assets. Such Permits constitute all those necessary for the continuing ownership, use, operation and maintenance of the System and for the Assets, all such Permits are in full force and effect, and no such Permit is subject to any appeal or other administrative or judicial proceeding. No fact or circumstance exists that is reasonably likely to cause any such Permit to be revoked, suspended or materially altered subsequent to the execution of this Agreement and the Closing Date, and neither the execution of this Agreement, nor the Closing do or will constitute or result in a default under or violation of any such Permit. Seller likewise has obtained and continues to possess all Permits required under, by or pursuant to Environmental Laws, has filed such timely and complete renewal applications as may be required prior to the Closing Date, and also has complied with all reporting and record keeping requirements under Environmental Laws. Such Permits shall be issued prior to Closing in a form and with terms and conditions that are reasonably satisfactory to PAWC.

(r) Sewer System / Storm Water.

(i) The portion of the System within Elizabeth Borough constitutes a Combined Sewer System. All portions of the System outside of Elizabeth Borough and the wastewater collection systems serving municipalities outside of the Elizabeth Borough which discharge into the System constitute Sanitary Sewer Systems, and such collection systems do not constitute a Combined Sewer System.

(ii) Except as set forth in **Schedule 4.1(r)**:

(A) Seller has completed all requirements and undertaken all actions required to be performed by Seller prior to the date hereof and prior to the Closing pursuant to the Long Term Control Plan and the Nine Minimum Controls Plan;

(B) The CSO Control Measures are being implemented in accordance with the Long Term Control Plan and implementation schedule approved by DEP; and all work performed by or on behalf of Seller pursuant to the Long Term Control Plan (including work performed by architects, design professions, engineers and contractors) is being performed and has been performed in accordance with the terms and conditions of the DEP-approved Long Term Control Plan and on schedule in a manner sufficient to achieved completion of the CSO Control Measures by the dates required under the Long Term Control Plan schedule approved by DEP.

(s) Environmental Matters. Except as set forth in **Schedule 4.1(s)**:

(i) To the best of Seller's knowledge, there are no past or present events, conditions, circumstances, activities, practices, incidents, actions or plans pertaining or relating to the Assets or the System that may materially impede or prevent compliance with Environmental Laws, and Seller is, and at all times has been, in full compliance with and has not been, and is not in violation of or liable under any applicable Environmental Law. Seller has no basis to expect, nor has it received any actual or threatened order, notice or other communication from any Governmental Authority or other person of any actual or potential violation or failure to comply with any Environmental Law or of any actual or threatened obligation to undertake or bear the cost of any environmental, health and safety liabilities with respect to real property or any other properties or assets (whether real, personal or mixed) in which Seller has or has had an interest or with respect to the real property or any other real property at or to which hazardous materials were generated, manufactured, refined, transferred, imported, used or processed by Seller or any other person for whose conduct it is or may be held responsible, or from which hazardous materials have been transported, treated, stored, handled, transferred, disposed, recycled or received.

(ii) There are no pending or threatened claims, encumbrances or other restrictions of any nature, resulting from any environmental, health and safety liabilities or arising under or pursuant to any Environmental Law with respect to or affecting Seller's real property or any other properties and assets (whether real, personal or mixed) in which Seller has or had an interest. Neither Seller nor any other person for whose conduct it is or may be held to be responsible has any material environmental, health and safety liabilities with respect to Seller's real property or with respect to any other properties and assets (whether real, personal or mixed) in which Seller (or any predecessor) has

or has had an interest or at any property geologically or hydrologically adjoining the real property or any such other property or assets.

- (iii) There are no hazardous materials, except those used in connection with the ordinary course operation of the System in accordance with all Environmental Laws, present on or in the environment at the real property or at any geologically or hydrologically adjoining property, including any hazardous materials contained in barrels, above or underground storage tanks, landfills, land deposits, dumps, equipment (whether moveable or fixed) or other containers, either temporary or permanent and deposited or located in land, water, sumps or any other part of the real property or such adjoining property or incorporated into any structure therein or thereon. Neither Seller, nor any other person for whose conduct it is or may be held to be responsible has permitted or conducted, or is aware of, any hazardous activity conducted with respect to the real property or any other properties or assets (whether real, personal or mixed) in which Seller has or has had an interest except in material compliance with all applicable Environmental Laws. There has been no release or threat of release, of any hazardous materials at or from the real property or from or by any other properties and assets (whether real, personal or mixed) in which Seller has or has had an interest (e.g., other properties that may impact or affect the Assets or the System), or any geologically or hydrologically adjoining property, whether by Seller or any other person.
- (iv) Except as set forth in **Schedule 4.1(s)**, none of the following exists at the System or on the real property that is part of the Assets: (1) underground storage tanks; (2) asbestos-containing material in any form; (3) materials or equipment containing polychlorinated biphenyl; (4) groundwater monitoring wells; or (5) landfills, surface impoundments, or disposal areas.
- (v) Seller has delivered to PAWC true and complete copies and results of any reports, studies, analyses, tests or monitoring possessed or initiated by Seller or its predecessors pertaining to hazardous materials or hazardous activities in, on or under the real property, or concerning compliance by Seller, its predecessors, or any other person for whose conduct Seller is or may be held to be responsible, with Environmental Laws, said reports, studies, analyses, tests and monitoring to include without limitation, any and all Phase I and Phase II environmental reports now or hereafter in the possession or control of Seller.
- (vi) Seller has been and is in compliance with all administrative and judicial orders, consent orders, decrees, consent decrees, judgments, directives and notices of violation issued by any Governmental Authority concerning or related to the Assets under or in connection with any applicable Environmental Laws.
- (vii) Except as set forth in **Schedule 4.1(s)**, No wastewater discharged into the System or treated at the WWTP contains any materials that would constitute Hazardous Waste (as defined under RCRA and 40 C.F.R. Part 261), including by virtue of being mixed with Hazardous Waste or derived from the treatment of Hazardous Waste, in the absence of the exemption provided in 40 C.F.R. § 261.4(a)(1) for mixtures of domestic sewage and other wastes that passes through a sewer system to a publicly-owned treatment works.

(t) Brokers. Seller has not employed any investment banker, broker or finder or incurred any liability for any investment banking fees, brokerage fees, commissions or finders' fees or any similar other fees or commissions in connection with the transactions contemplated by this Agreement for which PAWC has or could have any liability.

(u) Customer Advances. Set forth in **Schedule 4.1(u)** is a complete and accurate list of all unexpired customer advances for construction held by Seller as of the date of this Agreement and extension deposit agreements (or similar agreements) to which Seller is a party (each an "**Extension Deposit Agreement**"), and which contain unexpired obligations of Seller to provide for the payment of periodic refunds to parties making advances for the construction of facilities for wastewater service. Seller will provide to PAWC within fifteen (15) days of the execution of this Agreement (to be updated at Closing), accurate and complete copies of each such customer advances (records) and Extension Deposit Agreement. All records of Seller relating to each Extension Deposit Agreement are complete and accurate in all material respects and, together with the relevant Extension Deposit Agreement, represents all the information reasonably required to determine Seller's obligations to each party to the Extension Deposit Agreements; and there are no disputes or disagreements with any party to an Extension Deposit Agreement relating to the amount due under that agreement or the method of calculating that amount. **Schedule 4.1(u)** may be updated at Closing only with the mutual consent of the parties. Seller shall remain solely responsible for all refunds or payments pursuant to the Extension Deposit Agreement before or after Closing.

(v) Service Area Map. The map contained in **Schedule 1.0** accurately and completely describes the area served by the System. Seller has not entered into any agreements or commitments to provide, whether on a retail or wholesale basis, wastewater conveyance or treatment services currently or in the future to any customers, sources or area outside of the service area depicted in **Schedule 1.0**.

ARTICLE 5

REPRESENTATIONS AND WARRANTIES OF PAWC

5.1 PAWC's Representations. PAWC hereby represents and warrants to Seller as follows:

(a) Organization. PAWC is a corporation duly organized, validly existing and subsisting under the laws of the Commonwealth of Pennsylvania.

(b) Due Authorization; Valid and Binding. PAWC has the full power and lawful authority to execute this Agreement and, following approval by its Board of Directors, to consummate and perform the transactions contemplated hereby, and PAWC has duly and validly authorized the execution of this Agreement by all necessary proceedings. This Agreement constitutes the valid and binding obligations of PAWC.

(c) Assigned Contracts. PAWC has identified on **Schedule 5.1(c)** those Contracts which PAWC has agreed to assume ("**Assigned Contracts**"), subject to receiving all necessary consents to assignment in accordance with the terms of **Sections 4.1(k), 6.1(b), and 9.1(g)**. PAWC may update **Schedule 5.1(c)** between the date hereof and up to twenty (20) days before Closing to include any of the Contracts.

(d) Financial Wherewithal. PAWC has sufficient funds to pay the amounts due pursuant to this Agreement.

(e) Absence of Litigation. There are no actions, suits, proceedings or investigations pending or, to the knowledge of PAWC, threatened against PAWC, and PAWC is not subject to any outstanding judgment, order or decree of any court or governmental body, which would in either case, reasonably be expected to prevent or materially interfere with or delay PAWC's ability to perform its obligations under this Agreement.

(f) Brokers. PAWC has not employed any investment banker, broker or finder or incurred any liability for any investment banking fees, brokerage fees, commissions or finders' fees or any similar other fees or commissions in connection with the transactions contemplated by this Agreement for which Seller has or could have any liability.

ARTICLE 6

COVENANTS

6.1 Covenants of Seller. From and after the date of this Agreement, Seller covenants and agrees that:

(a) Conduct of Business. Between the date of this Agreement and the Closing Date, Seller shall carry on the operation of the System, the business and the Assets in the ordinary course of business and in compliance with law, not introduce any materially new method of management or operation, use reasonable best efforts to preserve the System, the business and the Assets, conserve the goodwill and relationships of its customers, suppliers, Governmental Authorities and others having business relations with it, maintain in full force and effect all policies of insurance now in effect for the benefit of Seller, maintain supplies at a level that is sufficient to operate the System in accordance with past practice and maintain the Assets in substantially the condition currently existing, normal wear and tear excepted. Without limiting the foregoing, Seller shall not sell, lease, dispose, retire, distribute or encumber any of the Assets, or construct, purchase or acquire any new assets, properties or rights relating to the System or Assets, or enter into a commitment or contract to do any of the foregoing (other than the purchase and use of supplies and maintenance of the System and the Assets in the ordinary course of business), without the prior written consent of PAWC.

(b) Contracts and Commitments. Except normal and usual commitments for the purchase of materials and supplies consistent with past practice, no contract or commitment shall be entered into by or on behalf of Seller relating to the System or the Assets that would place an Encumbrance thereon or materially affect the operation of the System, the business or the Assets after Closing, except for those commitments approved or ratified in writing by PAWC. Seller shall use reasonable commercial efforts to obtain, prior to Closing, the written consent of each party to the Assigned Contracts designated on **Schedule 4.1(k)** as requiring consent to the assignment. Notwithstanding any other provision of this Agreement, to the extent that any consent necessary for the assignment from Seller to PAWC of the Assigned Contracts is not obtained, or cannot be obtained, prior to the Closing Date, Seller shall use its commercially reasonable efforts to secure an arrangement reasonably satisfactory to PAWC intended to provide for PAWC following the Closing all of the material benefits of Seller under such Assigned Contracts; provided that nothing in this **Section 6.1(b)** shall constitute a waiver of the condition set forth in **Section 9.1**; and provided, further, that PAWC shall not be obligated to assume, and shall not be liable under, any Assigned Contract for which Seller has not obtained all necessary consents, or otherwise secured an alternative arrangement

satisfactory to PAWC (in its sole discretion) as provided above. Seller shall transfer all of the utilities used or necessary for the System from Seller to PAWC effective as of the Closing Date, and Seller shall be responsible to pay all bills and fees for these utilities for the period prior to and including the Closing Date. PAWC shall provide any necessary information reasonably required by Seller to effectuate this transfer.

(c) Release of Encumbrances. Seller shall take all action necessary to cause the release, cancellation and discharge of any and all Encumbrances, so that as of the Closing Date, the Assets will be free and clear of any and all such Encumbrances. Seller also agrees not to create any new Encumbrances on the System or Assets from and after the date of this Agreement without the prior written consent of PAWC.

(d) Material Events and Circumstances. Seller shall promptly inform PAWC in writing of any specific event or circumstance of which Seller is aware, or of which Seller receives notice, that has or is reasonably likely to have, individually or in the aggregate, taken together with the other events or circumstances, a material adverse effect on the System or the Assets.

(e) Supplemental Information.

- (i) Seller shall provide PAWC, within fifteen (15) days of execution or the date of receipt thereof, a copy of (a) each of the Contracts entered into by Seller after the date hereof and prior to Closing relating to the System or the Assets; (b) a copy of any written notice of assessments for public improvements against any of the Assets received after the date hereof and prior to Closing; (c) any writs of summons or complaints filed against Seller or its representatives for any and all claims relating to the System or the Assets; and (d) a copy of the filing of any condemnation, eminent domain or similar proceeding affecting all or any portion of the System or the Assets received after the date hereof, but prior to the Closing.
- (ii) Seller shall notify PAWC within fifteen (15) days of the receipt of any notice of violation.

(f) Regulatory Consents. Seller shall at all times, use its best efforts to and diligently pursue all approvals, authorizations, consents and Permits required to be obtained to consummate the transaction contemplated by this Agreement, including approval of any necessary revision to the Act 537 Plans for each of the municipalities served by the System. Seller shall (i) as promptly as practicable, make or cause to be made such filing and submissions under the laws, rules and regulations applicable to it as may be required for Seller to sell the Assets pursuant to the terms of this Agreement; and (ii) keep PAWC apprised of the status of any filing or submission to any such governmental or regulatory agency.

(g) Municipal Ordinances. Seller shall use reasonable commercial efforts to cause all municipalities served by the System to adopt and to maintain ordinances or laws that require properties within the areas served by the System to connect to and remain connected to the System.

(h) Access. Seller shall provide PAWC and its representatives free and full access to and right to inspect, during normal business hours and upon prior written notice, all of the premises, properties, assets, records, Permits, contracts and other documents relating to the Assets and shall permit PAWC to consult with its officers, employees and other representatives for purposes of making such investigation of

the Assets as PAWC shall desire to make, provided that no investigation shall unreasonably interfere with Seller's operation of the System.

(i) Customer List. Within thirty (30) days of execution of this Agreement, Seller shall provide PAWC an accurate and complete listing of all bulk, wholesale and retail customers of the System. This customer list shall provide the customer names, account information, service addresses, billing addresses, and all other relevant billing information, such as metering and equivalent dwelling unit information. The parties will continue to work together to determine additional information that should be included on the customer list, which shall be updated prior to Closing to include such additional information. This customer list shall be true and correct as of the date such list is provided to PAWC and shall be updated at Closing and provided to PAWC at Closing so as to be true and correct as of the Closing Date.

(j) Customer Advances. Prior to the Closing Date, Seller shall complete the construction of all mains and facilities for which Seller has received customer advances and return all unexpended customer advances to the appropriate depositor. Provided, however, that for projects acceptable to and approved in writing by PAWC, Seller may pay over to PAWC the unexpended, non-refundable customer advances, and PAWC shall assume all of the responsibility of Seller as to those unexpired customer advances and shall be bound by the terms and conditions contained in the Extension Deposit Agreements. PAWC shall not assume any responsibility for any unexpired customer advances received by Seller, or for any Extension Deposit Agreements to which Seller becomes a party, except as specifically agreed to in writing.

(k) Updating of Information. Between the date of this Agreement and the Closing Date, Seller will deliver revised or supplementary Schedules to this Agreement, containing accurate information as of the Closing Date, in order to enable PAWC to confirm the accuracy of Seller's representations and warranties and otherwise effectuate the provisions of this Agreement. The receipt by PAWC of any revised or supplementary Schedules to this Agreement shall in no way prejudice PAWC's right to terminate this Agreement based upon the failure of any condition to be satisfied under **Section 10.1** hereof or seek indemnification under **Section 11.1**. Seller will promptly inform PAWC, in writing, of the occurrence or failure of any action or event that would violate Seller's representations and warranties under this Agreement or render them inaccurate as of the date hereof or the Closing Date or that would constitute a breach of any covenant of Seller under this Agreement or a failure of any condition to the obligations of either Seller or PAWC under this Agreement. Each month prior to Closing, Seller will notify PAWC regarding any changes to information previously provided to PAWC related to the System or this Agreement.

(l) Retention of Records. Seller shall preserve any books and records relating to the System and the business that are not delivered to PAWC hereunder for a period no less than seven (7) years after the Closing Date (or such longer period as shall be required by Applicable Law), and Seller shall make available such books and records for review and copying to PAWC and its authorized representatives following the Closing at PAWC's expense upon reasonable notice during normal business hours. During such period, Seller shall permit, to the extent permitted by Applicable Law and upon request of PAWC, PAWC and any of its agents, representatives, advisors or consultants reasonable access to all properties, books, contracts and records of Seller related to the System and employees of or servicing the business for information related to periods up to and including the Closing.

6.2 Title Information. Within thirty (30) days following the execution of this Agreement, Seller shall deliver to PAWC true, correct and complete copies of all existing title policies, surveys, leases, deeds, instruments and agreements in Seller's possession relating to title to the real estate and easements constituting part of the Assets, as well as any amendments thereto through to Closing. Thereafter, PAWC and Seller shall

conduct an abstract of such title information to determine whether Seller has sufficient real estate rights and continuous rights-of-way to permit PAWC, upon Closing, to operate a continuous wastewater system, including lines, facilities fittings and appurtenances necessary to operate such wastewater system, and that such rights are represented by legal instruments in appropriate form, duly recorded. Upon notification by PAWC that such legal rights for the System are not sufficient for the operation of the System, Seller shall, at its sole expense, secure such additional legal rights as PAWC may request.

6.3 Storm Water Facilities. Seller shall retain ownership of any and all storm water system facilities in Elizabeth Borough that are located within the public right-of-way or otherwise dedicated to Seller by offer and acceptance, plan or other action, up to the point of connection with the sewer system. Seller shall cause all other municipalities with collection systems that discharge into the System to adopt, maintain and enforce, ordinances that prohibit storm water facilities from being connected to or from causing storm water infiltration into the System. Such ordinances shall be no less restrictive with regard to storm water discharges into or infiltrating the System after Closing than they were prior to Closing, to the extent permitted by law.

6.4 Dual Meter Readings. On or about the Closing Date, PAWC and Seller shall take a dual meter reading for each of the customers of the System, which shall be used for (i) Seller to issue a final invoice to customers covering the period on and before the Closing Date, and (ii) PAWC to obtain its initial meter reading for future invoices covering the period after the Closing Date. The parties shall coordinate in good faith and agree upon these meter readings at such time, which shall be used for such invoices and all accounts receivable being retained by Seller under **Section 1.5**.

6.5 POTW Status. Within thirty (30) days following the execution of this Agreement, PAWC and Seller shall jointly submit a request to DEP and USEPA to obtain confirmation from each such agency that the arrangements as set forth in this Agreement under which Seller retains ownership of the Retained WWTP Assets, Seller leases the Retained WWTP Assets to PAWC, and PAWC operates, maintains and manages the Retained WWTP Assets after Closing, the WWTP will continued to be classified as a Publicly Owned Treatment Works for purposes of the “domestic sewage exclusion” contained in 40 C.F.R. §261.4(a)(1) and RCRA (the “**POTW Status Confirmations**”). If DEP or USEPA condition any such POTW Status Confirmations upon any adjustments to the arrangements set forth in this Agreement, Seller and PAWC shall in good faith consider and negotiate reasonable and appropriate adjustments to such arrangements, provided that such adjustments do not materially alter the value of the Assets or the obligations or liabilities undertaken by Seller or PAWC with respect to the operation and management of the System.

6.6 CSO Controls; Long Term Control Plan; Consent Order and Agreement.

(a) Between the Effective Date and the Closing, Seller shall diligently perform and implement the CSO Controls, the Nine Minimum Controls Plan, and the Long Term Control Plan in accordance with the NPDES Permit and plans and schedules as approved by DEP. Seller shall confer with PAWC prior to proposing any revisions to the projects or schedules contained in the Long Term Control Plan, and Seller shall not agree to the expansion or acceleration of any such project without the prior written approval of PAWC.

(b) The Seller and PAWC shall cooperate in seeking and negotiating a consent order and agreement with DEP that contains the following elements: (i) recognition that the system will continue to be governed by the CSO Policy; (ii) modification of the Nine Minimum Controls Plan to reflect the manner and methods by which PAWC, as a public utility, would implement the Nine Minimum Controls Plan, including identification of those activities (such as street sweeping and enforcement of ordinances) that would continue

to be performed by the Seller; (iii) revisions to the schedules for design, permitting, construction and completion of the components comprising Alternative B-1 as described in the Long Term Control Plan, considering the current state of work on such components and providing a practicable schedule for completion of such components following Closing; and (iv) provisions setting forth required corrective actions for any other significant outstanding compliance issues concerning the WWTP or System (the “COA”).

6.7 Industrial Pretreatment Program.

(a) *Industrial User Information.* Within thirty (30) days of execution of this Agreement, Seller shall provide PAWC with (1) an accurate and complete listing of entities who are classified as Categorical Industrial Users, Significant Industrial Users, or Non-Significant Industrial Users as those terms are defined under CWA regulations (collectively, “**Regulated Industrial Users**”) that discharge wastewaters directly or indirectly into the System; (2) information concerning the nature and characteristics of wastewaters discharged by each such Regulated Industrial User; (3) an accurate and complete copy of the industrial pretreatment program regulations and procedures adopted and enforced by Seller; (4) copies of all industrial pretreatment program permits issued to any Regulated Industrial Users; and (5) records concerning the compliance of all such Regulated Industrial Users with applicable industrial pretreatment program regulations and permits.

(b) *IPP Program After Closing.* Effective on and after Closing, Seller and PAWC shall cooperate in the adoption and enforcement of an Industrial Pretreatment Program that complies with all applicable requirements of the NPDES Permit and 40 C.F.R. Part 403 (the “**IPP**”) as provided in this subsection.

(i) PAWC shall prepare applicable IPP regulations and ordinances. PAWC shall adopt the applicable IPP regulations pursuant to the Tariff, and Seller shall adopt, or cause to be adopted, ordinances and resolutions that adopt the IPP and Tariff requirements and authorize implementation and enforcement of the IPP and Tariff requirements by PAWC and Seller as set forth in **Section 6.7(b)(iii)**. The ordinances and resolutions shall establish requirements for Industrial Users that are at least as stringent as those set forth in the IPP and Tariff requirements. Within [90] days of any change to the IPP or Tariff requirements, Seller shall adopt, or cause to be adopted, any necessary amendments to such ordinances and resolutions to be consistent with the new IPP or Tariff requirements.

(ii) All Industrial Users in the Service Area shall be required to comply with the IPP and Tariff requirements. All Significant Industrial Users (“**SIUs**”) shall additionally be required to obtain an Individual Waste Discharge Permit (“**IWDP**”) from PAWC. Pursuant to the IPP, PAWC may also require certain Industrial Users who are not SIUs to obtain an IWDP. All SIUs and other Industrial Users that are required to obtain an IWDP are referred to as “**IWDP Users**.”

(iii) PAWC shall be primarily responsible for implementation and enforcement of the IPP and Tariff with respect to IWDP Users within the Service Area, including the issuance and enforcement of IWDPs. Seller authorizes PAWC, as the agent of Seller, to conduct such inspections and monitoring, issue notices of violation, and to undertake on behalf of and in the name of the Seller such enforcement actions as necessary to implement and obtain compliance with the IPP and Tariff. Seller and PAWC shall take all necessary actions to assist and support each other in the enforcement of the IPP and Tariff requirements as provided in this subsection.

6.8 Further Assurances. Each party to this Agreement shall cooperate and deliver such instruments and take such action as may be reasonably requested by the other party in order to carry out the provisions and

purposes of this Agreement and the transactions contemplated hereby. After the Closing, each party shall take such other actions and execute such other documents, instruments certifications, and further assurances as Seller or PAWC, as the case may be, may reasonably require in order to make effective the transactions contemplated hereby (including to transfer to PAWC or to put PAWC more fully in possession of any of the Assets).

6.9 Cooperation. Subject to the terms and conditions of this Agreement, the parties shall cooperate fully with each other and their respective counsel and accountants in connection with, and take or cause to be taken and do or cause to be done, any actions required to be taken under Applicable Law to make effective the contemplated transactions as promptly as practicable. Prior to the Closing, the parties shall proceed expeditiously and in good faith to make such filings and take such other actions as may be reasonably necessary to satisfy the conditions to Closing set forth herein. Any and all filing fees in respect of such filings shall be paid by Seller, with the exception of those fees implemented by the PUC, which shall be paid by PAWC. On or after the Closing Date, the parties shall, on request, cooperate with one another by furnishing any additional information, executing and delivering any additional documents and instruments, including contract assignments not obtained prior to Closing, and doing any and all such other things as may be reasonably required by the parties or their counsel to consummate or otherwise implement the transactions contemplated by this Agreement. Seller hereby agrees to cooperate with PAWC to ensure a proper transition of all customers with respect to billing and customer service activities, including assisting PAWC to place all customer information in a format reasonably requested by PAWC.

6.10 Rates. Effective upon Closing, PAWC shall (1) implement the rates set forth in **Schedule 6.10** as PAWC's effective wastewater base rates applicable to Seller's customers ("**Base Rates**"), and (2) apply PAWC's then existing miscellaneous fees and charges, rules and regulations for wastewater service as set forth in PAWC's PUC-approved Tariff, including PAWC's industrial pretreatment program and associated fees related thereto. As provided in 66 Pa.C.S. § 1329(d)(4), the Base Rates established in **Schedule 6.10** shall remain in place until the effective date of new rates approved by the PUC as the result of a base rate case proceeding before the PUC ("**New Rates**"). The New Rates shall be just and reasonable and consistent with PUC ratemaking principles. PAWC agrees that Distribution System Improvement Charges, as defined in 66 Pa.C.S. § 1351, shall not be charged to customers on the System at any point prior to the first revision of PAWC's Long-Term Infrastructure Improvement Plan that occurs after Closing or the effective date of PAWC's next PUC-approved base rate increase, whichever is sooner.

6.11 CSO Control Measures Claims. Seller shall be solely responsible for any and all obligations, liabilities and claims arising out of and relating to contracts entered into by Seller with respect to the design and construction of those portions of the CSO Control Measures work that are to be performed prior to Closing in accordance with the Long Term Control Plan milestones and schedules as approved by DEP prior to the Effective Date. At Closing: (1) Seller shall convey the title to the Assets free and clear of any Encumbrances arising out of any work performed or required to be performed by Seller in accordance with the CSO Control Measures milestones and schedules as approved by DEP prior to the Effective Date; and (2) if and to the extent requested by PAWC, Seller shall assign to PAWC all rights to any outstanding contracts for performance of the CSO Control Measures work still to be completed, in which case PAWC shall assume the obligations to pay for that CSO Control Measures work which is to be performed after the Closing Date pursuant to the milestones and schedules approved by DEP.

ARTICLE 7

EMPLOYEE MATTERS

7.1 Employee Matters.

(a) Subject to the obligations of Seller under Applicable Law and PAWC's rights and obligations set forth in this **ARTICLE 7**, PAWC shall offer employment effective on the Closing Date, to all active Personnel set forth in **Schedule 7.1** who are employed by Seller in operating the System as of the Closing Date and who are available to commence work on the Closing Date, subject to PAWC's existing standard hiring policies and procedures applicable to new employees (including but not limited to, a criminal background check and drug screening and written acknowledgment of PAWC's Code of Conduct and other employment policies, if applicable, from all Personnel), except with respect to benefits as otherwise provided in **ARTICLE 7**. **Schedule 7.1** shall not be amended after the date this Agreement is executed without the prior written consent of PAWC. For purposes of clarity, nothing contained in this **ARTICLE 7** limits, restricts or prohibits PAWC from interviewing the Personnel for informational purposes only in connection with the transfer of employment of the Personnel to PAWC as provided in this **ARTICLE 7**.

(b) Subject to the obligations of Seller under Applicable Law, Transferred Personnel shall be employees-at-will of PAWC. PAWC shall provide each of Transferred Personnel compensation and benefits which are substantially comparable to the compensation and benefits then provided to similarly situated employees of PAWC. Nothing in this Agreement shall require PAWC to provide any particular form or type of employee benefit program, plan or policy to any Transferred Personnel as a result of the transaction contemplated by this Agreement.

(c) Subject to the obligations of Seller under Applicable Law, PAWC's rights and obligations set forth in this **ARTICLE 7**, and PAWC's applicable employee benefit plan documents, with respect to employee benefit plans maintained by PAWC for the benefit of its employees (i.e., paid vacation leave, PAWC's 401k Savings Plan), effective as of the Closing, PAWC shall recognize the Transferred Personnel's length of service with Seller as if such service were with PAWC for eligibility and vesting under PAWC's employee benefit plans and programs (except where doing so would result in a duplication of benefits). PAWC's pension plans and retiree medical plans are excluded from the foregoing sentence.

(d) Subject to the obligations of Seller under Applicable Law, effective as of the Closing, the Transferred Personnel shall cease active participation in Seller's Plans. Seller shall remain liable for all eligible claims for benefits under Seller's Plans that are incurred prior to the Closing Date. Subject to the obligations of Seller under Applicable Law, Seller shall remain liable to make any contributions to Seller's Plans related to, and/or to fund any retirement benefits accrued by, the Transferred Personnel prior to Closing. For purposes of this Agreement, the following claims shall be deemed to be incurred as follows: (i) life, accidental death and dismemberment, short-term disability, and workers compensation insurance benefits, on the event giving rise to such benefits, (ii) medical, vision, dental, and prescription drug benefits, on the date the applicable services, materials or supplies were provided, (iii) long-term disability benefits, on the eligibility date determined by the long-term disability insurance carrier for the plan in which the applicable Personnel participates.

(e) This **ARTICLE 7** shall be binding upon and inure solely to the benefit of each of the parties to this Agreement, and nothing in this **ARTICLE 7**, express or implied, shall confer upon any other person any rights or remedies of any nature whatsoever under or by reason of this **ARTICLE 7**. The parties

acknowledge and agree that the terms set forth in this **ARTICLE 7** shall not create any right in any Transferred Personnel or any other person to any continued employment with PAWC or compensation or benefits of any nature or kind whatsoever, and shall not be deemed to restrict PAWC in the exercise of its independent business judgment in establishing or modifying any terms or conditions of the employment of the Transferred Personnel. Nothing contained in this **ARTICLE 7** shall constitute an amendment of, or an undertaking to amend any employee benefit plan, program or arrangement maintained by PAWC or is intended to prevent PAWC from amending or terminating any such employee benefit plan, program or arrangement in accordance with its terms.

(f) No later than the Closing Date, Seller shall transfer all records pertaining to the employment of the Transferred Personnel to PAWC including all Personnel and human resources files and records.

ARTICLE 8

LEASE AND OPERATION OF RETAINED WWTP ASSETS

8.1 Lease of Retained WWTP Assets: In consideration of the Purchase Price, and without any additional charge or other rent, effective at Closing Seller shall lease the Retained WWTP Assets to PAWC for a period of thirty (30) years (the “**Term**”), which Term shall be extended automatically for additional periods of five (5) years unless PAWC provides written notice to Seller at least 180 days before the expiration of such Term of PAWC’s decision to terminate such lease.

8.2 Management of Retained WWTP Assets: For the Term of the lease provided in this ARTICLE 8, PAWC shall at PAWC’s sole expense monitor, operate, maintain, repair, replace and manage the Retained WWTP Assets in accordance with all Applicable Laws, Permits and Prudent Industry Practice.

8.3 NPDES Permit. To the extent required to obtain and maintain the POTW Status Confirmations and comply with Applicable Law, Seller agrees to be a co-permittee on the NPDES Permit for the WWTP, and to cooperate with PAWC in its capacity as a co-permittee in timely executing and submitting such documents as required to obtain, maintain and comply with such NPDES Permit and Applicable Law. With respect to the obligations under the NPDES Permit, PAWC shall be responsible for all required monitoring and reporting with respect to operation of the WWTP, including the Retained WWTP Assets leased to PAWC. PAWC shall timely prepare any applications, monitoring reports and notifications required under the NPDES Permit. If Seller’s approval or execution is required prior to submission of any document to DEP or other Governmental Authorities, PAWC shall provide such document to Seller at least two business days prior to the due date for such document’s submission.

8.4 Indemnification. PAWC agrees to indemnify, defend and hold harmless Seller and its affiliates and their respective officers, directors and agents at all times after the date of this Agreement, from, against and in respect of any and all Claims or Damages resulting from PAWC’s operation and management of the Retained WWTP Assets leased to PAWC pursuant to this Article occurring after the Closing Date and during the Term of such lease, except to the extent that such Claims and Damages arise from the breach by Seller of Seller’s obligations under this Article, or Seller’s gross negligence or willful misconduct.

ARTICLE 9

PENNSYLVANIA PUBLIC UTILITY COMMISSION APPROVAL

9.1 Pennsylvania Public Utility Commission (“PUC”) Approval. The obligation of PAWC to consummate the transactions contemplated by this Agreement is conditioned upon PAWC receiving the approvals of the PUC, in a form reasonably acceptable to PAWC. PAWC covenants and agrees to initiate, and use commercially reasonable efforts to prosecute the necessary proceedings to obtain the approval of the PUC for: (a) this Agreement and the transactions contemplated hereby which require approval by the PUC, including the transfer by sale of the Assets to PAWC and the Assignment of Contracts Agreement; (b) the right of PAWC to provide wastewater service to the public primarily in the service area presently being served by Seller’s System; (c) the right of PAWC to apply after Closing PAWC’s existing rules and regulations for service as set forth in PAWC’s Tariff for the service area presently being served by Seller’s System; (d) the right of PAWC to adopt Seller’s rates as PAWC’s rates in the area to be served at the time of Closing consistent with **Section 6.10**; and (e) any other approval as may be appropriate to consummate the transactions contemplated by this Agreement. Seller, by this Agreement, covenants and agrees to provide such information, documents and assistance as may be reasonably requested by PAWC in connection with any such proceedings and to otherwise cooperate in the initiation and prosecution of any such proceeding.

ARTICLE 10

CONDITIONS PRECEDENT

10.1 Conditions Precedent to PAWC’s Obligations. The obligation of PAWC to consummate the transactions contemplated hereby are subject to the satisfaction, on or prior to the Closing, of each of the following conditions (any one or more of which may be waived in writing in whole or in part by PAWC in its sole discretion):

(a) Representations and Warranties. Seller’s representations and warranties set forth in this Agreement or in any Schedule, list, certificate or document delivered pursuant to this Agreement shall be true, correct and accurate as of the date made and at and as of the time of the Closing with the same force and effect as though such representations and warranties were made at and as of the Closing Date (without giving effect to any supplement to the Schedules), and PAWC shall have received from a proper representative of Seller a certificate to such effect, in form and substance reasonably satisfactory to PAWC.

(b) Performance of Covenants and Agreements. Seller shall have performed and complied with in all material respects all covenants, agreements and conditions required by this Agreement to be performed or complied with by it prior to or at the Closing, and PAWC shall have received from a proper representative of Seller a certificate to such effect, in form and substance reasonably satisfactory to PAWC.

(c) Adverse Change. There shall not have been a material adverse change, occurrence or casualty, financial or otherwise, to the System or the Assets (including a material loss of customers or Contracts), whether covered by insurance or not.

(d) Release of Liens. All necessary action shall have been taken to cause the release, cancellation and discharge of any and all Encumbrances so that as of the Closing, the Assets shall be free and clear of any and all Encumbrances, and Seller shall have provided PAWC with such opinions, instruments or documents as PAWC may reasonably request, and in form and substance satisfactory to PAWC, evidencing

the release, cancellation and discharge of any and all Encumbrances and that the Assets are not subject to any liens or Encumbrances.

(e) Other Regulatory Consents. Seller shall have obtained the written, final and unappealable approvals, authorizations and consents (including consents for Permit transfers) that are required to consummate the transactions contemplated by this Agreement and for PAWC to operate the System and the Assets after the Closing, including the approval of an appropriate NPDES Permit from the DEP and every regulatory agency of federal, state or local government that may be required in PAWC's opinion, each in form and substance (including with respect to the terms and conditions contained in any such approval) acceptable to PAWC in its sole and absolute discretion, and all waiting periods under existing laws, and all extensions thereof, the passing of which is necessary to consummate the contemplated transactions and finalize a Closing, shall have expired.

(f) Opinion of Counsel and Resolution. Seller shall have delivered to PAWC a written Opinion of Seller's Counsel, dated as of the Closing Date and addressed to PAWC, in the form set forth in **Exhibit C**, along with a copy of the Resolutions, certified by their proper representatives, approving the execution, delivery and performance of this Agreement by Seller, together with the certificate of its proper representatives that the Resolutions are in full force and effect and were duly adopted.

(g) Contractual Consent. Seller shall have obtained written approvals, authorizations and consents of transfer to all Assigned Contracts and Permits, to the extent specifically required by the terms of such Assigned Contracts and Permits, on terms reasonably satisfactory to PAWC.

(h) Certification of Financial Information. Seller shall have delivered to PAWC a certificate, in substantially the form set forth in **Exhibit D**, executed by its authorized representative in the form and substance satisfactory to PAWC, listing (i) the amount of its net outstanding long-term debt or notes, if any, related to the System (ii) all unexpired customer advances for construction and unexpired contributions in aid of construction as of the Closing Date, and (iii) any and all additions or retirements to the System during the period from the date of execution of this Agreement to the Closing Date, together with the cost thereof.

(i) Closing Deliveries. Seller shall have delivered all documents required to be delivered by it pursuant to **Section 3.2(a)**.

(j) Act 537 Plans. Any and all Act 537 Plans that DEP requires to be updated as a result of PAWC's purchase shall be revised and approved prior to Closing unless otherwise agreed to in writing by the parties to this Agreement.

(k) Proceedings. No provision of any law or order shall be in effect, and no proceeding by any person shall be threatened or pending before any Governmental Authority, or before any arbitrator, that would: (i) prevent consummation of the contemplated transactions; (ii) have a likelihood of causing the contemplated transactions to be rescinded following consummation; (iii) adversely affect the right of PAWC to own any of the Assets or operate the System; or (iv) adversely affect the System prospects or the value or condition of any of the Assets or the System.

(l) Due Diligence. PAWC shall have completed and be satisfied, in its sole and absolute discretion, with the results of its due diligence review of the System, the Assets and Seller, including with the results of any environmental assessment performed with respect to any real property or the Assets or chain

of title search, all material contracts and operating Permits and licenses of the System, and Seller's operations, contracts, employment practices, compliance, accounting and other items as PAWC deems necessary, as each of the foregoing items relate to the System or the Assets.

(m) Authorization of Contemplated Transactions. PAWC shall have obtained all necessary corporate approvals to consummate the contemplated transactions, including the approval of its Board of Directors.

(n) PUC Approval. The PUC shall have entered an order (or orders) providing the approvals set forth in **Section 9.1**, and such order(s) shall be in a form reasonably acceptable to PAWC and not be subject to appeal, challenge, supersedeas or injunction.

(o) POTW Status Confirmations. DEP and USEPA shall have issued the POTW Status Confirmations upon terms and conditions that are reasonably acceptable to PAWC.

(p) COA. DEP shall have agreed to a COA on terms and conditions that are reasonably acceptable to PAWC.

10.2 Conditions Precedent to Seller's Obligations. The obligation of Seller to consummate the transactions contemplated hereby are subject to the satisfaction, on or prior to the Closing, of each of the following conditions (any one or more of which may be waived in writing in whole or in part by Seller in its sole discretion):

(a) Representations and Warranties. PAWC's representations and warranties contained in this Agreement or in any Schedule, list, certificate or document delivered pursuant this Agreement shall be true, correct and accurate as of the date made and at and as of the time of the Closing, with the same force and effect as though such representations and warranties were made at and as of the Closing Date (without giving effect to any supplement to the Schedules), and Seller shall have received from an officer of PAWC a certificate to such effect, in form and substance reasonably satisfactory to Seller.

(b) Performance of Agreements. PAWC shall have performed and complied, in all material respects, with all covenants, agreements and conditions required by this Agreement to be performed or complied with by it prior to or at the Closing, and Seller shall have received from an officer of PAWC a certificate to such effect, in form and substance reasonably satisfactory to Seller.

(c) Closing Deliveries. PAWC shall have delivered the Purchase Price and all documents required to be delivered by it pursuant to **Section 3.2(b)**.

ARTICLE 11

INDEMNIFICATION

11.1 Indemnification by Seller. Seller shall fully pay, protect, defend, indemnify and hold harmless PAWC and its affiliates and their respective officers, directors and agents and representatives ("PAWC Indemnified Parties") from any and all Claims or Damages arising out of, resulting from, relating to or caused by: (i) a misrepresentation, inaccuracy in or breach of (or any claim by any third party alleging or constituting a misrepresentation, inaccuracy in, or breach of) any representation or warranty of, or any failure to perform or nonfulfillment of any provision or covenant contained in this Agreement or any other transaction document, by Seller; (ii) any and all liabilities of Seller of any nature (including the retained liabilities in **Section 1.3(a)**),

whether due or to become due, whether accrued, absolute, contingent or otherwise, whether accruing prior to or after the Closing Date, or arising out of any transaction entered into, any state of facts existing or any event occurring on or prior to such date, and any Encumbrance affecting the Assets or the System; (iii) assessments, charges and other similar claims due or owing, directly or indirectly, by Seller or otherwise as a result of or on account of the Assets or the System at any time on or prior to the Closing Date; (iv) the ownership and/or operation of any of the Assets or the System on or prior to the Closing Date; (v) any proceeding now existing or hereafter arising and relating to the Assets or the System and arising from events or matters occurring on or prior to the Closing Date, regardless of when realized; (vi) any liabilities arising from or related to assets, properties and rights of Seller excluded from the Assets; (vii) any and all liabilities relating to the employees, agents and independent contractors of Seller who performed services for Seller or related to the System or the Assets, regardless of whether such liabilities arose from events occurring prior to or after the Closing; (viii) the failure to comply with the provisions of any so-called bulk transfer or bulk sale law of any jurisdiction in connection with the sale of the System and the Assets to PAWC, and (ix) transaction costs and expenses incurred by or on behalf of Seller in connection with this Agreement or the contemplated transactions.

No information or knowledge acquired, or investigations conducted, by PAWC or its representatives, of Seller, the Assets, the System or otherwise, shall in any way limit, or constitute a waiver of, or a defense to, any claim for indemnification by PAWC Indemnified Parties under this Agreement.

11.2 Indemnification by PAWC. PAWC agrees to indemnify, defend and hold harmless Seller and its affiliates and their respective officers, directors and agents at all times after the date of this Agreement, from, against and in respect of any and all Claims or Damages resulting from (i) a misrepresentation, an inaccuracy in or breach of (or any claim by any third party alleging or constituting a misrepresentation, an inaccuracy in, or breach of) any representation or warranty of, or any failure to perform or nonfulfillment of any provision or covenant contained in this Agreement or any other transaction document, by PAWC, and (ii) any and all liabilities of PAWC of any nature related to PAWC's operation of the System and the Assets and occurring after the Closing Date.

11.3 Survival of Representations and Warranties. All representations, warranties, covenants and agreements made by the parties in this Agreement or in any agreement, document, statement or certificate furnished hereunder or in connection with the negotiation, execution and performance of this Agreement shall survive the Closing. Notwithstanding any investigation or audit conducted before or after the Closing Date, or the decision of any party to complete the Closing, each party shall be entitled to rely upon the representations, warranties, covenants and agreements set forth herein and therein. Notwithstanding anything contained herein or elsewhere to the contrary, all "material" and "material adverse effect" or similar materiality type qualifications contained in the representations and warranties set forth in this Agreement shall be ignored and not given any effect for purposes of the indemnification provisions hereof, including for purposes of determining the amount of any Claims or Damages.

11.4 Establishment of Escrow. PAWC and Seller acknowledge and agree that, as of Closing, the costs of obtaining the Missing Easements and any Claims or Damages that PAWC may suffer may not yet be known and therefore, at Closing, Seller shall deposit with a reputable banking institution (the "Escrow Agent"), funds as contemplated in subsections 11.5(a), and 11.5(b) below, as follows:

(a) Missing Easement Escrow. Seller shall deposit with Escrow Agent pursuant to an escrow agreement in the form of Exhibit B, as agreed upon by the parties hereto and Escrow Agent prior to the Closing (the "Escrow Agreement"), the sum of Two Thousand Dollars (\$2,000) per Missing Easement listed on attached Schedule 11.4(a) as of the Closing Date (the "Missing Easement Escrow") for the

purpose of covering the costs of preparing, negotiating and finalizing, and recording any Missing Easements (the “**Missing Easement Work**”). Seller shall diligently pursue the Missing Easements after the Closing. Following the completion of the Missing Easement Work, then the funds remaining in the Missing Easement Escrow shall be released promptly (but in no event later than thirty (30) days after the later of the dates set forth above) to Seller; provided, however, that if Seller is unable to complete the Missing Easement Work within two (2) years following the Closing Date, then PAWC shall release the portion of the Missing Easement Escrow to Seller that compensates Seller for the Missing Easements obtained after Closing, and the balance, which should compensate PAWC for the Missing Easements not obtained after Closing, shall be released promptly to PAWC.

(b) Authority General Indemnity Escrow. In light of the fact that Seller plans to dissolve on or shortly after the Closing, Seller shall also deposit with Escrow Agent pursuant to the Escrow Agreement, the sum of One Million One Hundred and Twenty Thousand Dollars (\$1,120,000.00) (the “**Authority Escrow**”) for the purpose of covering any Claims or Damages of any PAWC Indemnified Parties that would be subject to indemnification by Seller under this Agreement for a period of up to two (2) years after the Closing. Following the date that is two (2) year(s) after the Closing, then to the extent of any funds remaining in the Authority Escrow, any such funds remaining in the Authority Escrow shall be released promptly (but in no event later than thirty (30) days after the date set forth above) to Seller. If PAWC suffers any Claims or Damages that would be subject to indemnification from Seller as provided in this Agreement, PAWC shall submit to Escrow Agent and Seller a written request for disbursement, accompanied by reasonable supporting documentation therefore (a “**Request for Disbursement**”). Seller shall have five (5) days in which to review and verify the information submitted in the Request for Disbursement, and unless Seller objects in writing within five (5) days after the Request for Disbursement, the Request for Disbursement shall be deemed approved. If Seller objects, in the time set forth above, to a Request for Disbursement, then any portion of the Request for Disbursement to which Seller does not object shall nonetheless be released to PAWC. To the extent of any disputed portion of a Request for Disbursement, the dispute resolution procedures of the Escrow Agreement shall apply.

11.5 Notice of Claim. If either party seeks indemnification on behalf of an indemnified person, such party seeking indemnification (the “**Indemnified Party**”) shall give reasonably prompt written notice to the party from whom it seeks indemnification (the “**Indemnifying Party**”) specifying the facts constituting the basis for such claim and the amount, to the extent known, of the claim asserted; provided, however, that the right of a person or entity to be indemnified hereunder shall not be adversely affected by a failure to give such notice unless, and then only to the extent that, an Indemnifying Party is actually irrevocably and materially prejudiced thereby. Subject to the terms hereof, the Indemnifying Party shall pay the amount of any valid claim not more than thirty (30) days after the Indemnified Party provides notice to the Indemnifying Party of such amount.

ARTICLE 12

TERMINATION

12.1 Termination. This Agreement may be terminated at any time prior to the Closing only (a) by mutual written consent of Seller and PAWC; (b) by Seller or PAWC upon written notice to the other, if the Closing shall not have occurred on or prior to the Outside Date; provided, however, that the right to terminate this Agreement under this **Section 12.1** shall not be available to any party whose breach under this Agreement has caused or resulted in the failure of the Closing to occur on or before such date; (c) by PAWC, if PAWC is not in material breach of any of its representations, warranties, covenants and agreements under this Agreement

and there has been a breach of a representation, warranty, covenant or agreement contained in this Agreement on the part of Seller and Seller has not cured such breach within five (5) business days after receipt of notice of such breach (provided, however, that, no cure period shall be required for a breach which by its nature cannot be cured); (d) by PAWC, if, at any time before Closing, PAWC is not satisfied (in its sole and absolute discretion) with the results of its due diligence review of the System and the Assets or the prospects of obtaining all regulatory consents and approvals; (e) by Seller, if Seller is not in material breach of any of its representations, warranties, covenants and agreements under this Agreement and there has been a material breach of any representation, warranty, covenant or agreement contained in this Agreement on the part of PAWC and PAWC has not cured such breach within five (5) business days after receipt of notice of such breach (provided, however, that, no cure period shall be required for a breach which by its nature cannot be cured); (f) by Seller or PAWC upon written notice to the other, if any court of competent jurisdiction or other competent governmental entity shall have issued a statute, rule, regulation, order, decree or injunction or taken any other action permanently restraining, enjoining or otherwise prohibiting the contemplated transactions, and such statute, rule, regulation, order, decree or injunction or other action shall have become final and non-appealable; or (h) by PAWC, if any necessary regulatory approval is subject to an appeal in any court of competent jurisdiction that remains pending more than one (1) year after approval by the PUC.

12.2 Effect of Termination. The right of each party to terminate this Agreement under **Section 12.1** is in addition to any other rights such party may have under this Agreement or otherwise, and the exercise of a right of termination will not be an election of remedies. If this Agreement is terminated pursuant to **Section 12.1**, all further obligations of the parties under this Agreement will terminate, except that the obligations set forth in this **Section 12.2** (Effect of Termination) and **ARTICLE 13** (Miscellaneous) will survive; provided, however, that if this Agreement is terminated by a party because of the breach of the Agreement by another party or because one or more of the conditions to the terminating party's obligations under this Agreement is not satisfied as a result of the other party's failure to comply with its obligations under this Agreement, the terminating party's right to pursue all legal remedies will survive such termination unimpaired.

ARTICLE 13

MISCELLANEOUS

13.1 Contents of Agreement. This Agreement sets forth the entire understanding of the parties hereto with respect to the transactions contemplated hereby. It shall not be amended or modified except by written instrument duly executed by each of the parties hereto. Any and all previous agreements and understandings between or among any or all of the parties regarding the subject matter hereof, whether written or oral, are superseded by this Agreement.

13.2 Successors and Assigns.

(a) Except as otherwise set forth herein, neither Seller nor PAWC shall assign this Agreement or any rights and obligations hereunder without the prior written consent of the other party, and any attempted assignment or delegation without such prior written consent shall be void and of no force or effect.

(b) The parties hereto acknowledge and agree that the limitations on assignment contained in **Section 13.2(a)** do not limit the rights of the Creator Municipality, as the municipality that created Seller, under the Municipality Authorities Act. In the event of the termination of Seller in accordance with the

Municipality Authorities Act or transfer of the System to the Creator Municipality pursuant to the Municipality Authorities Act or other Applicable Law:

- (i) The Creator Municipality shall assume and be jointly and severally liable for all of Seller's obligations under this Agreement in each case as if the Creator Municipality were direct parties hereto;
- (ii) The [●] or such other person as may be designated by mutual written agreement of the Creator Municipality (the [●] or such other person referred to as the "**Seller Successor Agent**") is hereby appointed to act as agent for and on behalf of the Creator Municipality in connection with, and to facilitate, any and all transactions arising from, in connection with and incident to this Agreement;
- (iii) A decision, act, consent or instruction of the Seller Successor Agent shall constitute a decision of Seller and shall be final, binding and conclusive upon each of the Creator Municipality, and PAWC and an escrow agent may rely upon any decision, act, consent or instruction of the Seller Successor Agent as being the decision, act, consent or instruction of Seller and Creator Municipality;
- (iv) PAWC and an escrow agent are hereby irrevocably relieved of any liability to any person for any acts done by them in accordance with such decision, act, consent or instruction of the Seller Successor Agent; and
- (v) Seller or the Seller Successor Agent, as the case may be, shall constitute the sole point of contact for purposes of any notices to be given, consents to be obtained, or other communications, by PAWC or PAWC's affiliates pursuant to or in connection with this Agreement or any matters arising out of or relating hereto; and in no event shall PAWC be required or obligated in any way to give notice to, obtain the consent of, or otherwise communicate with any person other than Seller or the Seller Successor Agent.

13.3 **Binding Effect.** All of the terms and provisions of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the legal representatives, and permitted assigns and successor of Seller or PAWC.

13.4 **Waiver.** Any term or provision of this Agreement may be waived at any time by the party or parties entitled to the benefit thereof by a written instrument executed by such party or parties.

13.5 **Transfer Taxes.** Any transfer taxes imposed on the conveyance or transfer of any real property pursuant to this Agreement shall be split equally by PAWC and Seller (i.e., each pay 50% of such taxes).

13.6 **Notices.** Any notice, request, demand, waiver, consent, approval or other communication that is required or permitted hereunder shall be in writing and shall be deemed given only if delivered personally, by facsimile (if followed by overnight courier on the same date) or sent by nationally recognized overnight courier, as follows:

If to PAWC:

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

With a required copy to:

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

If to Seller:

Elizabeth Borough Municipal Authority
1 Locust Street
Elizabeth, PA 15037
Attention: Administrative Assistant

With a required copy to:

Dodaro, Matta & Cambest
1900 Main Street
Suite 207
Canonsburg, Pennsylvania 15317
Attention: Gary Matta, Esq.

or to such other address as the addressee may have specified in a written notice duly given to the sender as provided herein. Such notice, request, demand, waiver, consent, approval or other communication will be deemed to have been given as of the date so delivered.

13.7 **Law to Govern.** This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania without giving effect to any conflicts of law's provisions.

13.8 **No Benefit to Others.** The representations, warranties, covenants and agreements contained in this Agreement are for the sole benefit of the parties hereto, and their legal representatives, successors and assigns, and they shall not be construed as conferring any rights on any other persons.

13.9 **Interpretation.** All section headings contained in this Agreement are for convenience of reference only, do not form a part of this Agreement, and shall not affect in any way the meaning or interpretation of this Agreement. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context requires. Unless otherwise indicated, the words "including", "includes", "included" and "include", when used, are deemed to be followed by the words "without limitation."

13.10 Schedules. All Schedules referred to herein are intended to be and hereby are specifically made a part of this Agreement.

13.11 Severability. Any provision of this Agreement that is invalid or unenforceable in any jurisdiction or under any circumstance shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions hereof, and any such invalidity or unenforceability in any jurisdiction or under any circumstance shall not invalidate or render unenforceable such provision in any other jurisdiction or under any other circumstance, unless, in either event, the involved or unenforceable provision causes this Agreement to fail of its essential purpose.

13.12 Risk of Loss. Seller assumes risk of loss in connection with the Assets prior to Closing, including risk of loss from fire and other casualty. In the event of any loss or damage to any of the Assets, PAWC at its option, prior to or at Closing shall have the right to (i) request that the damaged asset be replaced or restored to substantially the same condition of the asset as of the date of this Agreement; (ii) request an adjustment to the Purchase Price as can be agreed upon by the parties, or (iii) request the insurance proceeds of Seller and/or other moneys to enable PAWC to make a proper restoration of the damaged asset.

13.13 Environmental Assessment. Without limiting the parties rights and obligations under this Agreement, after the date of this Agreement and until the Closing Date, PAWC shall have the reasonable right to enter upon the property and facilities constituting the System, after making reasonable prior arrangement with Seller, for the purposes of conducting an environmental assessment of the System. PAWC shall notify Seller in writing if the environmental assessment reveals the presence of oil or petroleum products or any hazardous or toxic wastes or materials or storage of fuel tanks or any other environmental hazard or contamination. Within fifteen (15) days of the date of such notice, Seller shall advise PAWC in writing as to whether Seller can cure the environmental hazard or contamination and, if so, what remediation actions Seller will take to cure. In connection with such environmental assessment, PAWC shall have the right, in PAWC's sole discretion, to terminate this Agreement upon written notice to Seller.

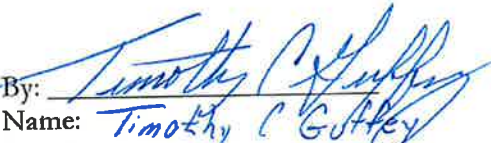
13.14 Specific Performance and Injunctive Relief; Remedies. The parties hereto recognize that if either of them fails to perform, observe or discharge any of their respective obligations under this Agreement, a remedy at law may not provide adequate relief to the other party. Therefore, in addition to any other remedy provided for in this Agreement or under Applicable Law, a party hereto may demand specific performance of this Agreement, and such party shall be entitled to temporary and permanent injunctive relief, in a court of competent jurisdiction at any time if the other party fails to comply with any of the provisions of this Agreement applicable to such party. To the extent permitted by Applicable Law, the parties hereby irrevocably waive any defense based on the adequacy of a remedy at law that might be asserted as a bar to such party's remedy of specific performance or injunctive relief. Except as otherwise provided herein, all rights and remedies of the parties under this Agreement are cumulative and without prejudice to any other rights or remedies under law. Nothing contained herein shall be construed as limiting the parties' rights to redress for fraud.

13.15 Counterparts. This Agreement may be executed by facsimile, electronically or by exchange of documents in PDF format, and in several counterparts, each of which shall be deemed an original instrument and all of which together shall constitute a single agreement. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages.

[SIGNATURES TO FOLLOW]

IN WITNESS WHEREOF, intending to be legally bound, the parties hereto have duly executed this Agreement on the date first written.

**ELIZABETH BOROUGH MUNICIPAL
AUTHORITY**

By: 
Name: Timothy C. Guffey
Its: Chairman

**PENNSYLVANIA-AMERICAN WATER
COMPANY**

By: _____
Name: Justin L. Ladner
Its: President, Pennsylvania American Water

IN WITNESS WHEREOF, intending to be legally bound, the parties hereto have duly executed this Agreement on the date first written.

**ELIZABETH BOROUGH MUNICIPAL
AUTHORITY**

By: _____
Name:
Its:

**PENNSYLVANIA-AMERICAN WATER
COMPANY**

By: 
Name: Justin L. Ladner
Its: President, Pennsylvania American Water

List of Exhibits

- Exhibit A – Assignment of Contracts Agreement
- Exhibit B – Form of Escrow Agreement
- Exhibit C – Form of Opinion of Seller’s Counsel
- Exhibit D – Form of Certification of Financial Information

List of Appendices

- Appendix 1 – Definitions

List of Schedules

- Schedule 1.0 – Service Area Map
- Schedule 1.4 – Excluded Assets
- Schedule 1.4(a) – Retained WWTP Assets
- Schedule 2.4 – Seller Outstanding Indebtedness
- Schedule 3.2(a) – Seller Closing Deliveries
- Schedule 3.2(b) – PAWC Closing Deliveries
- Schedule 4.1(b) – Assets Subject to Leasehold Interest
- Schedule 4.1(i) – Undisclosed Liabilities
- Schedule 4.1(k) – Contracts
- Schedule 4.1(k)(i) – Refund Arrangements
- Schedule 4.1(l)(i) – Real Property and Lease of Real Property
- Schedule 4.1(l)(ii) – Easements and Rights of Way
- Schedule 4.1(l)(iii) – Options and Rights of First Refusal
- Schedule 4.1(l)(v) – Impending Taxes, Levies, and Assessments
- Schedule 4.1(l)(vi) – Necessary Repairs to Real Property
- Schedule 4.1(m) – Litigation
- Schedule 4.1(p) – Notice of Violations of Law

Schedule 4.1(q) – Permits

Schedule 4.1(r) – LTCP and NMCP Compliance

Schedule 4.1(s) – Environmental Matters

Schedule 4.1(u) – Extension Deposit Agreements

Schedule 5.1(c) – Assigned Contracts

Schedule 6.10 – Rates

Schedule 7.1 – Transferred Personnel

Schedule 11.4 (a) – Missing Easements

EXHIBIT A

ASSIGNMENT OF CONTRACTS AGREEMENT

THIS ASSIGNMENT OF CONTRACTS AGREEMENT (this “Assignment”) is entered into effective as of this ___ day of _____, 2023, by and between the **ELIZABETH BOROUGH MUNICIPAL AUTHORITY**, a municipal authority organized and existing under the laws of the Commonwealth of Pennsylvania (“Assignor”), and **PENNSYLVANIA-AMERICAN WATER COMPANY**, a corporation organized and existing under the laws of the Commonwealth of Pennsylvania (the “Assignee,” and, together with Assignor, each a “Party” and collectively, the “Parties”).

A. Assignor, as Seller, and Assignee, as Buyer, are parties to that certain Asset Purchase Agreement dated as of January 24, 2023 (collectively, the “Agreement”), pursuant to which Assignor, for the specific purposes set forth in the Agreement, has agreed, among other things, to sell, transfer and convey to Assignee and Assignee has agreed to purchase from Assignor the Acquired Assets.

B. Sections 4.1(k), 6.1(b), and 9.1(a) of the Agreement contemplate that at Closing, Assignor will assign to Assignee and Assignee will accept and assume, all of Assignor’s rights, 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 Agreement shall have the meanings ascribed to them in the 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. Assignor hereby sells, assigns, transfers, grants, 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 fully pay, protect, defend, indemnify and hold harmless Assignee and PAWC Indemnified Parties from, of and against any and all losses arising out of or relating to the breach by Assignor of any of the obligations, terms or covenants of Assignor, under or pursuant to the Assigned Business Deliverables that accrued prior to the date hereof subject to Assignor’s indemnification obligations under Section 11.1 of the Agreement.

3. Indemnification by Assignee. Assignee hereby agrees to indemnify, defend and hold harmless Assignor and its affiliates and their respective officers, directors and agents from, of and against any and all losses arising out of or relating to the breach by Assignee of any of the obligations, terms or covenants of Assignee, under or pursuant to the Assigned Business Deliverables that accrue on or after the date hereof subject to Assignee’s indemnification obligations under Section 11.2 of the Agreement.

4. Counterparts; Facsimile Signatures. This Assignment may be executed in any number of counterparts which, taken together, is one and the same agreement. This Assignment becomes effective when it has been executed by each Party and delivered to both Parties. To evidence the fact that it has executed this Assignment, 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 Assignment 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 Assignment executed by such Party.

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

6. 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 Assignment, 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 Assignment. Any action initiated in court shall be filed and litigated (including all discovery proceedings) exclusively in the United States District Court for the Middle District of Pennsylvania and the Court of Common Pleas of York County, Pennsylvania, and each Party irrevocably 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 ASSIGNMENT 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 ASSIGNMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY TO THIS ASSIGNMENT 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 ASSIGNMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

7. Further Assurances. Each Party hereto covenants and agrees, at its own expense, to take such further action and execute and deliver such further instruments of conveyance and transfer and of assumption as may be reasonably requested by the other Party to carry out the provisions and purpose of this Assignment.

8. Assignment. It is the intention of Assignor to transfer Assignor's title of the Assigned Business Deliverables to Assignee, its permitted successors and assigns, free of any redemption by Assignor or their 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.

**ELIZABETH BOROUGH MUNICIPAL
AUTHORITY**

**PENNSYLVANIA-AMERICAN WATER
COMPANY**

By: _____

By: _____

Printed: _____

Printed: _____

Its: _____

Its: _____

ATTEST:

ATTEST:

By: _____

By: _____

Printed: _____

Printed: _____

Title: _____

Title: _____

EXHIBIT B

Exhibit B-1

Indemnity Escrow Agreement

ESCROW AGREEMENT

THIS INDEMNITY ESCROW AGREEMENT (the “Agreement”) is entered into on _____, 2023 by **Pennsylvania-American Water Company** (“Buyer”), the **Elizabeth Borough Municipal Authority** (“Seller”) and [_____], as escrow agent (the “Escrow Agent”).

BACKGROUND:

Buyer and Seller have entered into a certain Asset Purchase Agreement dated January 24, 2023 (the “Asset Purchase Agreement”). Upon Closing of the transaction contemplated by the Asset Purchase Agreement, Buyer is required to deposit the amount of \$[_____] of the Purchase Price into escrow (the “Indemnity Escrow Fund” hereinafter referred to as the “Escrow Fund”) in order to secure Seller’s obligations related to post-Closing obligations pursuant to Article 11 of the Asset Purchase Agreement. Buyer and Seller are entering into this Agreement to establish the terms of the funding, management and distribution of the Escrow Fund as required by the Asset Purchase Agreement. This Agreement is referred to in the Asset Purchase Agreement as the “Authority Escrow.”

Capitalized terms used in this Agreement but not defined herein have the meanings ascribed to them in the Asset Purchase Agreement.

NOW THEREFORE, in consideration of the premises and of the mutual covenants contained herein and in the Asset Purchase Agreement, the parties hereto agree as follows:

1. Acceptance by Escrow Agent. The Escrow Agent accepts the appointment as escrow agent pursuant to this Agreement and shall act on the terms and conditions set forth in this Agreement. Escrow Agent shall be paid from the Escrow Fund in accordance with the provisions of Exhibit I.
2. Investment of Escrow Fund. Upon receipt by the Escrow Agent of the Escrow Fund at Closing, the Escrow Agent shall, subject to the terms hereof, retain the Escrow Fund and is empowered and directed to invest the Escrow Fund in an interest-bearing account, as described more fully in Exhibit II. The Escrow Agent shall not be obligated to earn any particular yield or rate of return on the Escrow Fund. All interest and other earnings on the Escrow Funds shall be retained by the Escrow Agent until disbursed in accordance with the terms hereof. The Escrow Agent shall have no liability for any investment losses.
3. Rights and Responsibilities of Escrow Agent. The acceptance by the Escrow Agent of its duties hereunder is subject to the following terms and conditions, which shall govern and control with respect to the Escrow Agent’s rights, duties, liabilities and immunities:
 - a. The Escrow Agent shall act hereunder as a depository only, and it shall not be responsible or liable in any manner whatsoever for the sufficiency, correctness, genuineness or validity of any document furnished to the Escrow Agent or any asset deposited with it.
 - b. The Escrow Agent shall have no duties except those specifically set forth in this Agreement.

c. The Escrow Agent shall have the right any time it deems appropriate to seek an adjudication in a court of competent jurisdiction as to the respective rights of the parties hereto and shall not be held liable by any party hereto for the delay or the consequences of any delay occasioned by such resort to court.

d. The Escrow Agent: (i) shall not be responsible for any of the agreements referred to or described herein, or for determining or compelling compliance therewith, and shall not otherwise be bound thereby; (ii) shall be obligated only for the performance of such duties as are expressly and specifically set forth in this Agreement on its part to be performed, each of which is ministerial (and shall not be construed to be fiduciary) in nature, and no implied duties or obligations of any kind shall be read into this Agreement against or on the part of the Escrow Agent; (iii) shall not be obligated to take any legal or other action hereunder which might in its judgment involve or cause it to incur any expense or liability unless it shall have been furnished with acceptable indemnification; (iv) may rely on and shall be protected in acting or refraining from acting upon any written notice, instruction (including, without limitation, wire transfer instructions, whether incorporated herein or provided in a separate written instruction), instrument, statement, certificate, request or other document furnished to it hereunder and believed by it to be genuine and to have been signed or presented by the proper person, and shall have no responsibility or duty to make inquiry as to or to determine the genuineness, accuracy or validity thereof (or any signature appearing thereon), or of the authority of the person signing or presenting the same, and (v) may consult counsel satisfactory to it, including in-house counsel, and the opinion or advice of such counsel in any instance shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in accordance with the opinion or advice of such counsel. In the event of any conflict between the terms and provision of this Agreement, those of the Asset Purchase Agreement, any schedule or exhibit attached to the Agreement, or any other Agreement among the parties, the terms and conditions of this Agreement shall control.

e. The Escrow Agent shall not be liable to anyone for any action taken or omitted to be taken by it hereunder except in the case of the Escrow Agent's gross negligence or willful misconduct as determined by a court of competent jurisdiction as being the primary cause of any loss to either the Seller or Buyer. The Escrow Agent may execute any of its powers and perform any of its duties hereunder directly or through affiliates or agents. The Escrow Agent may consult with accountants and other skilled persons to be selected and retained by it. The Escrow Agent shall not be liable for any action taken, suffered or omitted to be taken by it in accordance with, or in reliance upon, the advice or opinion of any such accountants or other skilled persons. In the event that the Escrow Agent shall receive instructions, claims or demands from any party hereto which, in its opinion, conflict with any of the provisions of this Agreement, it shall be entitled to refrain from taking any action and its sole obligation shall be to keep safely all property held in escrow until it shall be given a direction in writing by the parties which eliminates such conflict or by a final and non-appealable court order. In no event shall the Escrow Agent be liable for indirect, punitive, special or consequential damage or loss (including but not limited to lost profits) whatsoever, even if the Escrow Agent has been informed of the likelihood of such loss or damage and regardless of the form of action.

f. The Escrow Agent is hereby authorized, in making or disposing of any investment permitted by this Agreement, to deal with itself (in its individual capacity) or with any one or more

of its affiliates, whether it or such affiliate is acting as a subagent of the Escrow Agent or for any third person or dealing as principal for its own account.

g. Notwithstanding any term appearing in this Agreement to the contrary, in no instance shall the Escrow Agent be required or obligated to distribute any portion of the Escrow Fund (or take other action that may be called for hereunder to be taken by the Escrow Agent) sooner than two (2) business days after (i) it has received the applicable documents required under this Agreement in an acceptable form; or (ii) passage of the applicable time period (or both, as applicable under the terms of this Agreement), as the case may be.

h. Unless and except to the extent otherwise expressly set forth herein, all deposits and payments hereunder, or pursuant to the terms hereof shall be in U.S. dollars.

i. The Escrow Agent shall have the right at any time to resign for any reason and be discharged of its duties as Escrow Agent hereunder by giving written notice of its resignation to the parties hereto at least thirty (30) business days prior to the date specified for such resignation to take effect. All obligations of the Escrow Agent in this Agreement shall cease and terminate on the effective date of its resignation, provided that, prior to the effective date of resignation:

(i) if a successor escrow agent shall have been appointed and written notice thereof shall have been given to the resigning Escrow Agent by Buyer, Seller and the successor escrow agent, then the resigning Escrow Agent shall deliver the Escrow Fund to the successor escrow agent; or

(ii) if a successor escrow agent shall not have been appointed by Buyer and Seller, for any reason whatsoever, the resigning Escrow Agent shall deliver the Escrow Fund to a court of competent jurisdiction and give written notice of the same to the Buyer and Seller.

The resigning Escrow Agent shall be reimbursed from the Escrow Fund for any expenses incurred in connection with its resignation and transfer of the Escrow Fund pursuant to and in accordance with the provisions of this Section.

j. The Seller and Buyer each covenants and agrees, jointly and severally, to indemnify the Escrow Agent (and its directors, officers and employees) and hold it (and such directors, officers and employees) harmless from and against any loss, liability, damage, cost and expense of any nature (including, without limitation, the fees and expenses of outside counsel and experts and their staffs and all expense of document location, duplication and shipment) incurred by the Escrow Agent arising out of or in connection with this Agreement or with the administration of its duties hereunder, including, but not limited to, reasonable attorneys' fees and other costs and expenses of defending or preparing to defend against any claim of liability unless and except to the extent such loss, liability, damage, cost and expense shall be finally adjudicated by a court of competent jurisdiction to have been primarily caused by the Escrow Agent's gross negligence or willful misconduct. The foregoing indemnification and agreement to hold harmless shall survive the resignation of the Escrow Agent or the termination of this Agreement.

k. Each of the Seller and Buyer agrees, jointly and severally, (i) to assume any and all obligations imposed now or hereafter by any applicable tax law with respect to any payment or

distribution of the Escrow Fund or performance of other activities under this Agreement, (ii) to instruct the Escrow Agent in writing with respect to the Escrow Agent's responsibility for withholding and other taxes, assessments or other governmental charges, and to instruct the Escrow Agent with respect to any certifications and governmental reporting that may be required under any laws or regulations that may be applicable in connection with its acting as Escrow Agent under this Agreement, and (iii) to indemnify and hold the Escrow Agent harmless from any liability or obligation on account of taxes, assessments, additions for late payment, interest, penalties, expenses and other governmental charges that may be assessed or asserted against the Escrow Agent in connection with, on account of or relating to the Escrow Fund, the management established hereby, any payment or distribution of or from the Escrow Fund pursuant to the terms hereof or other activities performed under the terms of this Agreement, including without limitation any liability for the withholding or deduction of (or the failure to withhold or deduct) the same, and any liability for failure to obtain proper certifications or to report properly to governmental authorities in connection with this Agreement, including costs and expenses (including reasonable attorneys' fees and expenses), interest and penalties. The foregoing indemnification and agreement to hold harmless shall survive the resignation of the Escrow Agent or the termination of this Agreement.

4. Statements. During the term of this Agreement, the Escrow Agent shall provide Seller and Buyer with monthly statements containing the beginning balance in the escrow account as well as all principal and income transactions for the statement period. The Escrow Agent shall be forever released and discharged from all liability with respect to the accuracy of such statements, except with respect to any such act or transaction as to which Seller or Buyer shall, within ninety (90) days after the furnishing of the statement, file written objections with the Escrow Agent.

5. Obligations of Seller Secured. Subject to Sections 7 through 9 below, the Escrow Agent shall retain the Escrow Fund for a period of two (2) years following Closing Date (the "Term") to fund Seller's responsibilities under Article 11 of the Asset Purchase Agreement.

6. Distribution Procedures. Except as specifically provided in this Agreement, no distribution from the Escrow Fund shall be made except as follows:

- a. upon written notice executed jointly (or in counterparts) by Seller and Buyer (a "Joint Instruction"); or
- b. as may be necessary to comply with any final and unappealable judgment, decree or order of a court of competent jurisdiction.

7. Final Distribution. Within ten (10) days following the earlier to occur of: (1) the Escrow Agent's receipt of written notice from one of the parties advising the Escrow Agent that the Term has expired; and (2) the parties' Joint Instruction to terminate the Escrow Fund because all of Seller's obligations under Article 11 of the Asset Purchase Agreement secured by this Agreement have been discharged, the Escrow Agent shall release the balance of the Escrow Fund to Seller or as the Seller may otherwise direct in writing.

8. Disbursement Instructions. In the event of any doubt or uncertainty by Escrow Agent as to the propriety of making periodic or final disbursements of the Escrow Fund, the Escrow Agent may retain the Escrow Fund, without penalty or liability, until the parties provide joint written instructions for

the disbursement of the Escrow Fund or until a final adjudication is made as to its proper disposition. In this regard, Escrow Agent shall be entitled to rely absolutely on the advice of its counsel.

9. Tax Reporting. The Seller and Buyer hereby represent to the Escrow Agent that (a) there is no sale or transfer of a "United States Real Property Interest" as defined under Section 897(c) of the Internal Revenue Code, as the same may be amended from time to time (the "IRC") in the underlying transaction giving rise to this Agreement, and (b) such underlying transaction does not constitute an installment sale requiring tax reporting or withholding of imputed interest or original issue discount to the Internal Revenue Service ("IRS") or other taxing authority. The Seller and Buyer each agree that, for tax reporting purposes, all interest or other income earned from the investment of the Escrow Fund shall be reported by the Escrow Agent as allocated to the Seller, and reported, as and to the extent required by law, by the Escrow Agent to the IRS, or any other taxing authority on IRS Form 1099 or 1042S (or other appropriate form) as income earned from the Escrow Fund by the Seller whether or not said income has been distributed during such year.

10. Certification of Taxpayer Identification Number. Each of the Seller and Buyer agree to provide the Escrow Agent with a certified tax identification number by signing and returning a Form W-9 to the Escrow Agent upon the execution and delivery of this Agreement. Each of the Seller and Buyer understand that, in the event their tax identification numbers are not certified to the Escrow Agent, the IRC, may require withholding of a portion of any interest or other income earned on the investment of the Escrow Fund.

11. Amendment; Waiver. 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 parties 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 shall preclude any other or further exercise of such right or the exercise of any other right.

12. Discharge. The Escrow Agent may be discharged from its duties as Escrow Agent under this Agreement upon thirty (30) days written notice from Buyer and Seller jointly and upon payment of any and all fees and indemnity amounts due to Escrow Agent. In such event, the Escrow Agent shall be entitled to rely on instructions from Buyer and Seller jointly as to the disposition and delivery of the Escrow Fund.

13. 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 all parties, provided, however, that this Agreement shall be effective as between Buyer and Seller when it has been executed by Buyer and Seller and delivered to each of Buyer and Seller. To evidence the fact that it has executed this Agreement, a party may send a copy of its executed counterpart to the other parties by facsimile transmission. Such party is deemed to have executed and delivered this Agreement on the date it sent such facsimile transmission. In such event, such party shall forthwith deliver to the other parties an original counterpart of this Agreement executed by such party.

14. 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 in no way be affected, impaired or invalidated.

15. Entire Agreement. This Agreement is the entire agreement among the parties pertaining to the subject matter hereof and supersedes all prior agreements, negotiations, discussions and understandings, written or oral, among 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 parties.

16. 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.

17. Parties in Interest; Third Party Beneficiaries. 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.

18. Successors and Assigns. No party to this Agreement may assign any right or delegate any performance under this Agreement without the prior written consent of the other parties. A purported assignment or purported delegation without prior written consent is void.

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

20. Headings. The headings in this Agreement are for convenience of reference only and shall neither be considered as part of this Agreement, nor limit or otherwise affect the meaning hereof.

21. Notices. All notices, requests, demands and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given, made and received only when delivered (personally, by courier service such as Federal Express, or by other messenger) to the address set forth below:

in the case of the Seller:

Elizabeth Borough Municipal Authority
1 Locust Street
Elizabeth, PA 15037
Attention: []

With a required copy to:

Dodaro, Matta & Cambest
1900 Main Street
Suite 207
Canonsburg, Pennsylvania 15317
Attention: Gary Matta, Esq.

in the case of the Buyer:

Pennsylvania American Water
852 Wesley Drive
Mechanicsburg, PA 17055
Attention: Justin L Ladner, President

with a copy to:

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

Any party may alter the address to which communications or copies are to be sent by giving notice of such change of address in conformity with the provisions of this paragraph for the giving of notice.

Signature page follows.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first above written.

**ELIZABETH BOROUGH MUNICIPAL
AUTHORITY**

**PENNSYLVANIA-AMERICAN WATER
COMPANY**

By: _____

By: _____

Printed: _____

Printed: _____

Its:

Its: President

ATTEST:

ATTEST:

By: _____

By: _____

Name:

Name:

Its:

Its:

ESCROW AGENT:

[_____]

By: _____

Printed: _____

Title: _____

EXHIBIT I

Fee Schedule

EXHIBIT II

Terms of Escrow Account

The Escrow Fund shall be continuously invested in an interest-bearing account.

Exhibit B-2

Easement Escrow Agreement

EASEMENT ESCROW AGREEMENT

THIS ESCROW AGREEMENT (the "Agreement") is entered into on _____, 2023 by **Pennsylvania-American Water Company** ("Buyer"), the **Elizabeth Borough Municipal Authority** ("Seller") and [_____], as escrow agent (the "Escrow Agent").

BACKGROUND:

Buyer and Seller have entered into a certain Asset Purchase Agreement dated _____, 2022 (the "Asset Purchase Agreement"). Upon Closing of the transaction contemplated by the Asset Purchase Agreement, Buyer is required to deposit the amount of \$[_____] of the Purchase Price into escrow (the "Easement Escrow Fund" hereinafter referred to as the "Escrow Fund") in order to secure Seller's obligations related to all Missing Easements that have not been obtained as of Closing pursuant to Section 11.14(a) of the Asset Purchase Agreement. Buyer and Seller are entering into this Agreement to establish the terms of the funding, management and distribution of the Easement Escrow Fund as required by the Asset Purchase Agreement. This Agreement is referred to in the Asset Purchase Agreement as the "Missing Easement Escrow."

Capitalized terms used in this Agreement but not defined herein have the meanings ascribed to them in the Asset Purchase Agreement.

NOW THEREFORE, in consideration of the premises and of the mutual covenants contained herein and in the Asset Purchase Agreement, the parties hereto agree as follows:

1. Acceptance by Escrow Agent. The Escrow Agent accepts the appointment as escrow agent pursuant to this Agreement and shall act on the terms and conditions set forth in this Agreement. Escrow Agent shall be paid from the Escrow Fund in accordance with the provisions of Exhibit I.

2. Investment of Escrow Fund. Upon receipt by the Escrow Agent of the Escrow Fund at Closing, the Escrow Agent shall, subject to the terms hereof, retain the Escrow Fund and is empowered and directed to invest the Escrow Fund in an interest-bearing account, as described more fully in Exhibit II. The Escrow Agent shall not be obligated to earn any particular yield or rate of return on the Escrow Fund. All interest and other earnings on the Escrow Funds shall be retained by the Escrow Agent until disbursed in accordance with the terms hereof. The Escrow Agent shall have no liability for any investment losses.

3. Rights and Responsibilities of Escrow Agent. The acceptance by the Escrow Agent of its duties hereunder is subject to the following terms and conditions, which shall govern and control with respect to the Escrow Agent's rights, duties, liabilities and immunities:

a. The Escrow Agent shall act hereunder as a depository only, and it shall not be responsible or liable in any manner whatsoever for the sufficiency, correctness, genuineness or validity of any document furnished to the Escrow Agent or any asset deposited with it.

b. The Escrow Agent shall have no duties except those specifically set forth in this Agreement.

c. The Escrow Agent shall have the right any time it deems appropriate to seek an adjudication in a court of competent jurisdiction as to the respective rights of the parties hereto and shall not be held liable by any party hereto for the delay or the consequences of any delay occasioned by such resort to court.

d. The Escrow Agent: (i) shall not be responsible for any of the agreements referred to or described herein, or for determining or compelling compliance therewith, and shall not otherwise be bound thereby; (ii) shall be obligated only for the performance of such duties as are expressly and specifically set forth in this Agreement on its part to be performed, each of which is ministerial (and shall not be construed to be fiduciary) in nature, and no implied duties or obligations of any kind shall be read into this Agreement against or on the part of the Escrow Agent; (iii) shall not be obligated to take any legal or other action hereunder which might in its judgment involve or cause it to incur any expense or liability unless it shall have been furnished with acceptable indemnification; (iv) may rely on and shall be protected in acting or refraining from acting upon any written notice, instruction (including, without limitation, wire transfer instructions, whether incorporated herein or provided in a separate written instruction), instrument, statement, certificate, request or other document furnished to it hereunder and believed by it to be genuine and to have been signed or presented by the proper person, and shall have no responsibility or duty to make inquiry as to or to determine the genuineness, accuracy or validity thereof (or any signature appearing thereon), or of the authority of the person signing or presenting the same, and (v) may consult counsel satisfactory to it, including in-house counsel, and the opinion or advice of such counsel in any instance shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in accordance with the opinion or advice of such counsel. In the event of any conflict between the terms and provision of this Agreement, those of the Asset Purchase Agreement, any schedule or exhibit attached to the Agreement, or any other Agreement among the parties, the terms and conditions of this Agreement shall control.

e. The Escrow Agent shall not be liable to anyone for any action taken or omitted to be taken by it hereunder except in the case of the Escrow Agent's gross negligence or willful misconduct as determined by a court of competent jurisdiction as being the primary cause of any loss to either the Seller or Buyer. The Escrow Agent may execute any of its powers and perform any of its duties hereunder directly or through affiliates or agents. The Escrow Agent may consult with accountants and other skilled persons to be selected and retained by it. The Escrow Agent shall not be liable for any action taken, suffered or omitted to be taken by it in accordance with, or in reliance upon, the advice or opinion of any such accountants or other skilled persons. In the event that the Escrow Agent shall receive instructions, claims or demands from any party hereto which, in its opinion, conflict with any of the provisions of this Agreement, it shall be entitled to refrain from taking any action and its sole obligation shall be to keep safely all property held in escrow until it shall be given a direction in writing by the parties which eliminates such conflict or by a final and non-appealable court order. In no event shall the Escrow Agent be liable for indirect, punitive, special or consequential damage or loss (including but not limited to lost profits) whatsoever, even if the Escrow Agent has been informed of the likelihood of such loss or damage and regardless of the form of action.

f. The Escrow Agent is hereby authorized, in making or disposing of any investment permitted by this Agreement, to deal with itself (in its individual capacity) or with any one or more of its affiliates, whether it or such affiliate is acting as a subagent of the Escrow Agent or for any third person or dealing as principal for its own account.

g. Notwithstanding any term appearing in this Agreement to the contrary, in no instance shall the Escrow Agent be required or obligated to distribute any portion of the Escrow Fund (or take other action that may be called for hereunder to be taken by the Escrow Agent) sooner than two (2) business days after (i) it has received the applicable documents required under this Agreement in an acceptable form; or (ii) passage of the applicable time period (or both, as applicable under the terms of this Agreement), as the case may be.

h. Unless and except to the extent otherwise expressly set forth herein, all deposits and payments hereunder, or pursuant to the terms hereof shall be in U.S. dollars.

i. The Escrow Agent shall have the right at any time to resign for any reason and be discharged of its duties as Escrow Agent hereunder by giving written notice of its resignation to the parties hereto at least thirty (30) business days prior to the date specified for such resignation to take effect. All obligations of the Escrow Agent in this Agreement shall cease and terminate on the effective date of its resignation, provided that, prior to the effective date of resignation:

(i) if a successor escrow agent shall have been appointed and written notice thereof shall have been given to the resigning Escrow Agent by Buyer, Seller and the successor escrow agent, then the resigning Escrow Agent shall deliver the Escrow Fund to the successor escrow agent; or

(ii) if a successor escrow agent shall not have been appointed by Buyer and Seller, for any reason whatsoever, the resigning Escrow Agent shall deliver the Escrow Fund to a court of competent jurisdiction and give written notice of the same to the Buyer and Seller.

The resigning Escrow Agent shall be reimbursed from the Escrow Fund for any expenses incurred in connection with its resignation and transfer of the Escrow Fund pursuant to and in accordance with the provisions of this Section.

j. The Seller and Buyer each covenants and agrees, jointly and severally, to indemnify the Escrow Agent (and its directors, officers and employees) and hold it (and such directors, officers and employees) harmless from and against any loss, liability, damage, cost and expense of any nature (including, without limitation, the fees and expenses of outside counsel and experts and their staffs and all expense of document location, duplication and shipment) incurred by the Escrow Agent arising out of or in connection with this Agreement or with the administration of its duties hereunder, including, but not limited to, reasonable attorneys' fees and other costs and expenses of defending or preparing to defend against any claim of liability unless and except to the extent such loss, liability, damage, cost and expense shall be finally adjudicated by a court of competent jurisdiction to have been primarily caused by the Escrow Agent's gross negligence or willful misconduct. The foregoing indemnification and agreement to hold harmless shall survive the resignation of the Escrow Agent or the termination of this Agreement.

k. Each of the Seller and Buyer agrees, jointly and severally, (i) to assume any and all obligations imposed now or hereafter by any applicable tax law with respect to any payment or distribution of the Escrow Fund or performance of other activities under this Agreement, (ii) to instruct the Escrow Agent in writing with respect to the Escrow Agent's responsibility for withholding and other taxes, assessments or other governmental charges, and to instruct the Escrow Agent with respect to any certifications and governmental reporting that may be required under any laws or regulations that may be applicable in connection with its acting as Escrow Agent under this Agreement, and (iii) to indemnify and hold the Escrow Agent harmless from any liability or obligation on account of taxes, assessments, additions for late payment, interest, penalties, expenses and other governmental charges that may be assessed or asserted against the Escrow Agent in connection with, on account of or relating to the Escrow Fund, the management established hereby, any payment or distribution of or from the Escrow Fund pursuant to the terms hereof or other activities performed under the terms of this Agreement, including without limitation any liability for the withholding or deduction of (or the failure to withhold or deduct) the same, and any liability for failure to obtain proper certifications or to report properly to governmental authorities in connection with this Agreement, including costs and expenses (including reasonable attorneys' fees and expenses), interest and penalties. The foregoing indemnification and agreement to hold harmless shall survive the resignation of the Escrow Agent or the termination of this Agreement.

4. Statements. During the term of this Agreement, the Escrow Agent shall provide Seller and Buyer with monthly statements containing the beginning balance in the escrow account as well as all principal and income transactions for the statement period. The Escrow Agent shall be forever released and discharged from all liability with respect to the accuracy of such statements, except with respect to any such act or transaction as to which Seller or Buyer shall, within ninety (90) days after the furnishing of the statement, file written objections with the Escrow Agent.

5. Preparation of List of Missing Easements. At or before Closing, a written list containing all Missing Easements as of Closing, shall be appended to this Agreement as Schedule A.

6. Obligations of Seller Secured. Subject to Sections 7 through 9 below, the Escrow Agent shall retain the Escrow Fund for a period of two (2) years following Closing Date (the "Term") to fund Buyer's assumption of the responsibilities under Section 11.14(a) of the Asset Purchase Agreement.

7. Distribution Procedures. Except as specifically provided in this Agreement, no distribution from the Escrow Fund shall be made except as follows:

- a. upon written notice executed jointly (or in counterparts) by Seller and Buyer (a "Joint Instruction"); or
- b. as may be necessary to comply with any final and unappealable judgment, decree or order of a court of competent jurisdiction.

8. Periodic Distributions to Buyer. During the Term, Buyer and Seller shall, on a quarterly basis, issue a Joint Instruction to the Escrow Agent to make a distribution to Buyer for Buyer's unreimbursed Covered Expenses. For purposes of this Section 8, the following terms shall have the following meanings:

“Conveyance Instrument” means a written instrument signed by all parties required to effectuate its terms, in form and substance acceptable to Buyer in its reasonable discretion and in form acceptable for recording with the Allegheny County Recorder of Deeds, which memorializes Buyer’s property interest required to maintain the Acquired Asset in the location in which it is situated.

“Covered Expenses” means any and all expenses paid or payable by Buyer to third-parties in securing a Conveyance Instrument, including, without limitation, consideration paid to any counterparty to such Conveyance Instrument to acquire the interest granted therein, payments to engineers, attorneys and other vendors reasonably required to secure such Conveyance Instrument, and all costs of litigation, condemnation and any fees related to the foregoing.

9. **Final Distribution.** Within ten (10) days following the earlier to occur of: (1) the Escrow Agent’s receipt of written notice from one of the parties advising the Escrow Agent that the Term has expired; and (2) the parties’ Joint Instruction to terminate the Escrow Fund because all of Seller’s obligations under Section 11.14(a) of the Asset Purchase Agreement secured by this Agreement have been discharged, the Escrow Agent shall release the balance of the Escrow Fund to Seller or as the Seller may otherwise direct in writing.

10. **Disbursement Instructions.** In the event of any doubt or uncertainty by Escrow Agent as to the propriety of making periodic or final disbursements of the Escrow Fund, the Escrow Agent may retain the Escrow Fund, without penalty or liability, until the parties provide joint written instructions for the disbursement of the Escrow Fund or until a final adjudication is made as to its proper disposition. In this regard, Escrow Agent shall be entitled to rely absolutely on the advice of its counsel.

11. **Tax Reporting.** The Seller and Buyer hereby represent to the Escrow Agent that (a) there is no sale or transfer of a “United States Real Property Interest” as defined under Section 897(c) of the Internal Revenue Code, as the same may be amended from time to time (the “IRC”) in the underlying transaction giving rise to this Agreement, and (b) such underlying transaction does not constitute an installment sale requiring tax reporting or withholding of imputed interest or original issue discount to the Internal Revenue Service (“IRS”) or other taxing authority. The Seller and Buyer each agree that, for tax reporting purposes, all interest or other income earned from the investment of the Escrow Fund shall be reported by the Escrow Agent as allocated to the Seller, and reported, as and to the extent required by law, by the Escrow Agent to the IRS, or any other taxing authority on IRS Form 1099 or 1042S (or other appropriate form) as income earned from the Escrow Fund by the Seller whether or not said income has been distributed during such year.

12. **Certification of Taxpayer Identification Number.** Each of the Seller and Buyer agree to provide the Escrow Agent with a certified tax identification number by signing and returning a Form W-9 to the Escrow Agent upon the execution and delivery of this Agreement. Each of the Seller and Buyer understand that, in the event their tax identification numbers are not certified to the Escrow Agent, the IRC, may require withholding of a portion of any interest or other income earned on the investment of the Escrow Fund.

13. **Amendment; Waiver.** 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 parties 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 shall preclude any other or further exercise of such right or the exercise of any other right.

14. Discharge. The Escrow Agent may be discharged from its duties as Escrow Agent under this Agreement upon thirty (30) days written notice from Buyer and Seller jointly and upon payment of any and all fees and indemnity amounts due to Escrow Agent. In such event, the Escrow Agent shall be entitled to rely on instructions from Buyer and Seller jointly as to the disposition and delivery of the Escrow Fund.

15. 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 all parties, provided, however, that this Agreement shall be effective as between Buyer and Seller when it has been executed by Buyer and Seller and delivered to each of Buyer and Seller. To evidence the fact that it has executed this Agreement, a party may send a copy of its executed counterpart to the other parties by facsimile transmission. Such party is deemed to have executed and delivered this Agreement on the date it sent such facsimile transmission. In such event, such party shall forthwith deliver to the other parties an original counterpart of this Agreement executed by such party.

16. 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 in no way be affected, impaired or invalidated.

17. Entire Agreement. This Agreement is the entire agreement among the parties pertaining to the subject matter hereof and supersedes all prior agreements, negotiations, discussions and understandings, written or oral, among 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 parties.

18. 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.

19. Parties in Interest; Third Party Beneficiaries. 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.

20. Successors and Assigns. No party to this Agreement may assign any right or delegate any performance under this Agreement without the prior written consent of the other parties. A purported assignment or purported delegation without prior written consent is void.

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

22. Headings. The headings in this Agreement are for convenience of reference only and shall neither be considered as part of this Agreement, nor limit or otherwise affect the meaning hereof.

23. Notices. All notices, requests, demands and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given, made and received only when delivered (personally, by courier service such as Federal Express, or by other messenger) to the address set forth below:

in the case of the Seller:

Elizabeth Borough Municipal Authority
1 Locust Street
Elizabeth, PA 15037
Attention: []

With a required copy to:

Dodaro, Matta & Cambest
1900 Main Street
Suite 207
Canonsburg, Pennsylvania 15317
Attention: Gary Matta, Esq.

in the case of the Buyer:

Pennsylvania American Water
852 Wesley Drive
Mechanicsburg, PA 17055
Attention: Justin L Ladner, President

with a copy to:

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

Any party may alter the address to which communications or copies are to be sent by giving notice of such change of address in conformity with the provisions of this paragraph for the giving of notice.

Signature page follows.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first above written.

**ELIZABETH BOROUGH MUNICIPAL
AUTHORITY**

**PENNSYLVANIA-AMERICAN WATER
COMPANY**

By: _____

By: _____

Printed: _____

Printed: _____

Its:

Its: President

ATTEST:

ATTEST:

By: _____

By: _____

Name:

Name:

Its:

Its:

ESCROW AGENT:

[_____]

By: _____

Printed: _____

Title: _____

SCHEDULE A*

I. Missing Easements

*to be populated on or before Closing as Buyer proceeds through title review / abstracting process.

EXHIBIT I

Fee Schedule

EXHIBIT II

Terms of Escrow Account

The Escrow Fund shall be continuously invested in an interest-bearing account.

EXHIBIT C

Exhibit C

Opinion of Seller's Counsel

[COUNSEL LETTERHEAD]

[DATE]

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

Ladies and Gentlemen:

I have acted as counsel for Elizabeth Borough Municipal Authority, a municipal authority organized and existing under the laws of the Commonwealth of Pennsylvania (the "**Seller**"), in connection with the execution and delivery by the Seller of the Asset Purchase Agreement dated January 24, 2023 between the Seller and Pennsylvania-American Water Company ("**Buyer**"), a Pennsylvania corporation (the "**Purchase Agreement**"). This opinion is delivered to you pursuant to Paragraphs 3.2(a)(xi) and 11(f) of the Purchase Agreement. All capitalized terms used herein without definition shall have the respective meanings ascribed to them in the Purchase Agreement unless otherwise noted.

In connection with the opinions expressed below, I have made such examination of law and have examined originals, or copies certified or otherwise identified to my satisfaction, of the Purchase Agreement and all other agreements and instruments related to the Purchase Agreement to which the Seller is a party (the "**Transaction Documents**"), and such documents and records of the Seller, certificates of public officials and of officers of the Seller, and such other documents as I have deemed necessary or appropriate.

Based upon and subject to the foregoing, it is my opinion that as of the date hereof:

1. The Seller is a duly organized municipal authority of the Commonwealth of Pennsylvania, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania, and the Seller has the full power and lawful authority to operate the System and the Assets as now operated and to transfer to Buyer the rights, title and interest in and to the Assets.

2. The Seller has the full power and lawful authority to enter into the Purchase Agreement and the Transaction Documents and to consummate and perform the transactions contemplated by the Purchase Agreement and the Transaction Documents. The Seller has duly and validly authorized the execution, delivery and performance of the Purchase Agreement and the Transaction Documents by all necessary proceedings, and the Purchase Agreement and each of the Transaction Documents constitute the valid and binding obligations of the Seller enforceable against it in accordance with their respective terms. The Purchase Agreement and each of the Transaction Documents have been duly and validly executed and delivered.

3. No filings or registrations with, notifications to, or authorizations, consents, orders or approvals of, a governmental authority or third party are required to be obtained or made by the Seller in connection with the execution, delivery or performance by the Seller of the Purchase Agreement or any of the Transaction Documents, or the consummation by the Seller of the transactions contemplated thereby, except those which have been obtained on or prior to the date hereto. Neither the contemplated transactions, nor this Agreement or any of the Transaction Documents will result in the creation of any Encumbrance against any of the Assets.

4. The execution, delivery and performance of, and compliance with, the Purchase Agreement and the Transaction Documents do not violate any law, ordinance or regulation, do not conflict with, to my knowledge, any judgment, order or decree, and do not conflict with or result in a breach of or default under any contract, lease or Permit to which the Seller is a party or is otherwise bound or affected, or by which the Assets may be bound or affected. The execution and delivery of the Purchase Agreement and the Transaction Documents, and the consummation of the transactions contemplated thereby, do not violate, conflict with or result in the breach of, or constitute a default under, any term, condition or provision of the Seller's articles of incorporation, bylaws or other governing documents, or any instrument, contract, lease, agreement, permit, certificate or other document to which the Seller is a party or is otherwise bound or affected, or by which the Assets may be bound or affected.

5. To my knowledge, the Seller is not party to, or subject to the provision of, any material judgment, order, writ, injunction, notice or decree of any court or of any governmental official, agency or instrumentality relating to the System or the Assets.

6. Except as disclosed in the Purchase Agreement, there is no action, suit, claim or litigation, arbitration, proceeding, judgment, injunction, audit or legal, administrative or governmental investigation pending (including any citations, notices, summons or orders), and to my knowledge none are threatened against, pertaining to or affecting the System or any of the Assets (including any such actions, litigation and other claims against the Seller) before any court, arbitrator or governmental authority (including any governmental agency board or instrumentality), nor is there any order, writ, injunction or decree of any court, arbitrator or governmental authority, in existence against, pertaining to or affecting the Seller (including its commissioners, directors or officers), the System or any of the Assets, or which would reasonably be expected to prevent or materially interfere with or delay the Seller's ability to perform its obligations under the Purchase Agreement or any of the Transaction Documents.

Sincerely,

EXHIBIT D

ELIZABETH BOROUGH MUNICIPAL AUTHORITY

CERTIFICATION OF FINANCIAL INFORMATION

CERTIFICATE AS TO DEBT, CONTRIBUTIONS
AND ADDITIONS AND RETIREMENTS

The undersigned officers of Elizabeth Borough Municipal Authority (the “Authority”), with regard to the Asset Purchase Agreement dated January 24, 2023 (the “Agreement”), made and entered into by and between Elizabeth Borough Municipal Authority, a municipal authority 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”) for the sale of the public wastewater collection and treatment service to various customers in Elizabeth Borough and portions of Elizabeth Township, Forward Township and Liberty Borough (the “System”), owned by the Seller to Buyer. Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Agreement.

The undersigned hereby certifies that they are authorized signatories of Seller, and further, on behalf of Seller, hereby certifies with respect to the Seller as follows:

1. The amount of Seller’s net outstanding long-term debt or notes related to the System and Assets as Encumbrances, as such term is defined in the Agreement, is \$ _____. At Closing, the outstanding long-term debt or notes related to the System have been defeased,
2. The amount of all unexpired customer advances for construction is \$ _____ and contributions in aid of construction is \$ _____.
3. The additions or retirements to the System during the period November __, 2022, through the date of this Certificate, together with the cost thereof, are: \$ _____.

All of the foregoing statements are true and correct as of the _____ day of _____, 202_.

Elizabeth Borough Municipal Authority

By: _____

Name: _____

Title: _____

APPENDIX 1 **DEFINITIONS**

“**Act 537 Plan**” means the official sewage facilities plan adopted by a municipality pursuant to the Pennsylvania Sewage Facilities Act, 35 P.S. §§ 750.1-750.20(a).

“**Agreement**” has the meaning provided in the Introduction.

“**Applicable Law**” means (1) any federal, state or local law, code or regulation; (2) any formally adopted and generally applicable rule, requirement, determination, standard, policy, or implementation schedule of any Governmental Authority having jurisdiction; (3) any established interpretation of law or regulation utilized by a Governmental Authority if such interpretation is documented by such Governmental Authority and generally applicable; (4) any Permit; and (5) any order; in each case having the force of law and applicable to the design, improvement, operation, maintenance, repair or performance of the System and the management of residuals.

“**Assets**” means all of the assets, properties and rights of Seller (whether tangible, intangible, real, personal or mixed) that are held or used in connection with the System, but excluding the Excluded Assets.

“**Assigned Contracts**” has the meaning provided in **Section 5.1(c)**.

“**Assignment of Contracts Agreement**” has the meaning provided in **Section 3.2(a)(i)**.

“**Authority Escrow**” has the meaning provided in **Section 11.4(b)**.

“**Base Rate**” has the meaning provided in **Section 6.10**.

“**Claims or Damages**” means any loss, demand, claim, suit, action, assessment, damage, liability, cost, expense, fine, penalty, judgment, award or settlement, whether or not involving a Governmental Authority or third party claim, including related fees and costs, interest, and any amounts paid in investigation, defense or settlement of any of the foregoing. Except as specifically provided in this Agreement, “Claims or Damages” does not include, and neither party will be liable for, any loss of profit and any other incidental, consequential, exemplary, or punitive damages, including, without limitation, lost profits, lost productions or lost revenues, except to the extent such damages are awarded and actually paid to a third party.

“**Closing**” has the meaning provided **Section 3.1**.

“**Closing Date**” has the meaning provided **Section 3.1**.

“**COA**” has the meaning provided in **Section 6.6(b)**.

“**Code**” means the Internal Revenue Code, 26 U.S.C. § 1 et seq.

“**Combined Sewer System**” means a sewer system that collects rainwater runoff, domestic sewage, and commercial and industrial wastewater into one pipe.

“**Contract**” has the meaning provided in **Section 4.1(k)**.

“**Creator Municipality**” means Elizabeth Borough.

“**CSO Control Measures**” means the construction, control measures, actions and other activities set forth in Long Term Control Plan as approved by DEP, and as may be amended from time to time in accordance with the terms of the NPDES Permit and CSO Policy.

“**CSO Policy**” means the USEPA Combined Sewer Overflow (CSO) Control Policy, 59 Fed. Reg. 18688 (April 19, 1994)

“**Customer Sewer Laterals**” has the meaning provided in **Section 1.4(a)**.

“**DEP**” means the Pennsylvania Department of Environmental Protection or any successor agency thereto.

“**Domestic Sewage Exclusion Confirmations**” has the meaning provided in **Section 6.5**.

“**Effective Date**” has the meaning provided in the Introduction.

“**Encumbrances**” has the meaning provided in **Section 1.1**.

“**Environmental Laws**” means all federal, state, and local laws and regulations relating to protection of the environment or natural resources, including the Clean Water Act, also known as the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq. (“**CWA**”), the Federal Clean Air Act, 42 U.S.C. § 7401 et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136 et seq., the Safe Drinking Water Act, 42 U.S.C. §§ 300(f) et seq., the Surface Mining Control and Reclamation Act, 30 U.S.C. §§ 1201 et. seq., the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et. seq., the Superfund Amendment and Reauthorization Act of 1986, Public Law 99-499, 100 Stat. 1613, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 (“**RCRA**”), the Atomic Energy Act of August 30, 1954, Ch. 1073, 68 Stat. 919 (codified as amended in scattered sections of 5 U.S.C. and 42 U.S.C.), counterpart state laws, and the regulations adopted pursuant thereto. Any reference to a legislative act or regulation shall be deemed to include all amendments thereto and all regulations, orders, decrees, judgments, opinions directives or notices issued thereunder.

“**Escrow Agent**” has the meaning provided in **Section 11.4**.

“**Escrow Agreement**” has the meaning provided in **Section 11.4(a)**.

“**Excluded Assets**” has the meaning provided in **Section 1.4**.

“**Extension Deposit Agreement**” has the meaning provided in **Section 4.1(u)**.

“**GAAP**” means generally accepted accounting principles consistently applied.

“**Governmental Authority**” means as any federal, state, county, municipal, or regional legislative, executive, judicial or other governmental board, agency, authority, commission, administration, court or other body, or any official thereof, having jurisdiction.

“**Hazardous Waste**” means any hazardous waste as defined under the federal Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*, and 40 C.F.R. Part 261.

“**TWDP**” has the meaning provided in **Section 6.7(b)(ii)**.

“**IWDP User**” has the meaning provided in **Section 6.7(b)(ii)**.

“**Indemnified Party**” has the meaning provided in **Section 11.5**.

“**Indemnifying Party**” has the meaning provided in **Section 11.5**.

“**Industrial Pretreatment Program**” or “**IPP**” has the meaning provided in **Section 6.7(b)**.

“**Long Term Control Plan**” or “**LTCP**” means the Long Term Control Plan for the System developed pursuant to the USEPA CSO Policy and NPDES Permit, and approved by DEP on July 12, 2018.

“**Missing Easement**” has the meaning provided in **Section 4.1(l)(vii)**.

“**Missing Easement Escrow**” has the meaning provided in **Section 11.4(a)**.

“**Missing Easement Work**” has the meaning provided in **Section 11.4(a)**.

“**New Rates**” has the meaning provided in **Section 6.10**.

“**Nine Minimum Controls Plan**” or “**NMCP**” means the plan for the System developed and implemented pursuant to NPDES Permit as approved by DEP on [●].

“**NPDES**” means the National Pollutant Discharge Elimination System.

“**NPDES Permit**” has the meaning provided in the Recitals.

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

“**Outstanding Indebtedness**” has the meaning provided in **Section 2.4**.

“**PAWC**” has the meaning provided in the Introduction.

“**PAWC Indemnified Parties**” has the meaning provided in **Section 11.1**.

“**Permits**” has the meaning provided in **Section 4.1(q)**.

“**Personnel**” means those individuals listed in **Schedule 7.1**.

“**POTW Status Confirmations**” has the meaning provided in **Section 6.5**.

“**Prudent Industry Practices**” means those methods, techniques, standards and practices which, at the time they are employed and in light of the circumstances known or believed to exist at the time, are generally accepted as reasonably prudent in the wastewater treatment and collection or drinking water distribution industry or recycled water delivery industry as practiced in the eastern United States for facilities of a similar nature and in a similar location as the Wastewater System. Prudent Industry Practices is not necessarily defined as the optimal methods, techniques, standards or practices to the exclusion of others, but rather to refer to a range of methods, techniques, standards and practices that are reasonable under the circumstances.

“**PUC**” means the Pennsylvania Public Utility Commission or any successor agency thereto.

“**Purchase Price**” has the meaning provided in **Section 2.1**.

“**Regulated Industrial Users**” has the meaning provided in **Section 6.7(a)**.

“**Request for Disbursement**” has the meaning provided in **Section 11.4(b)**.

“**Resolutions**” has the meaning provided in **Sections 3.2(viii) and 10(f)**.

“**Retained Accounts Receivable**” has the meaning provided in **Section 4.1(g)**.

“**Retained WWTP Assets**” has the meaning provided in **Section 1.4(a)**.

“**Sanitary Sewer System**” means a sewer system that collects only domestic sewage and commercial and industrial wastewater (but not stormwater, except for infiltration and inflow from groundwater or stormwater that is not excessive).

“**Seller**” has the meaning provided in the Introduction.

“**Seller Successor Agent**” has the meaning provided in **Section 13.2(b)(ii)**.

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

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

“**Significant Industrial User or ‘SIU’**” means (except as provided in paragraphs (3) and (4) of this definition):

(1) An Industrial User that is subject to categorical pretreatment standard; or

(2) An Industrial User that: (a) discharges an average of 25,000 GPD or more of process wastewater to the Wastewater System (excluding sanitary, noncontact cooling water and boiler blowdown wastewater); (b) contributes a process waste stream which makes up five percent or more of the average dry weather hydraulic or organic capacity of the Wastewater System; or (c) is designated as such by PAWC on the basis that it has a reasonable potential for adversely affecting the System’s operation or for violating any pretreatment standard or requirement.

(3) PAWC may determine that an Industrial User that would be subject to categorical pretreatment standards is not an SIU as provided in paragraph (1) of this definition, provided that PAWC finds that the Industrial User never discharges more than 100 GPD of total categorical wastewater (excluding sanitary, noncontact cooling and boiler blowdown wastewater, unless specifically included in the pretreatment standard) and the following conditions are met: (a) the Industrial User, prior to PAWC's finding, has consistently complied with all applicable pretreatment standards and requirements; (b) the Industrial User annually submits a certification statement required in the Tariff and IPP, together with any additional information necessary to support the certification statement; and (c) the Industrial User never discharges any untreated concentrated wastewater.

(4) PAWC, on its own initiative or in response to a request from the Industrial User, may determine that an Industrial User meeting the criteria of paragraph (2) of this definition should not be considered an SIU, provided that PAWC finds that the Industrial User has no reasonable potential to adversely affect the operation of the System or to violate any pretreatment standard or requirement.

“System” has the meaning provided in the Recitals.

“Tariff” has the meaning provided in the Recitals.

“Transferred Personnel” means the personnel who accept PAWC's offer of employment and commence employment on the Closing Date.

“WWTP” means the Elizabeth Borough Municipal Authority Wastewater Treatment Plant.

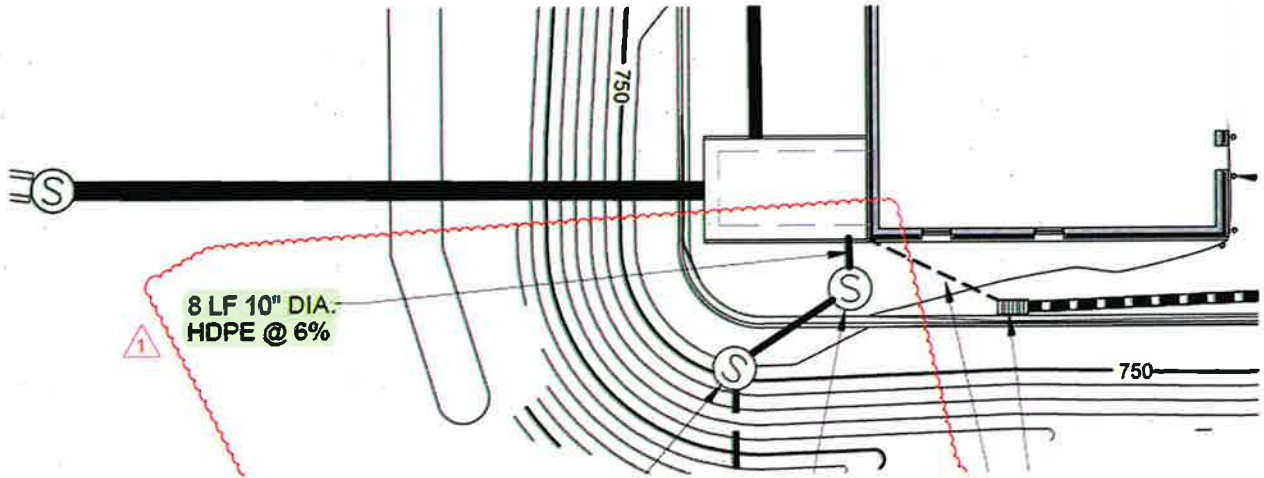
Schedule 1.0 - Service Area Map

Schedule 1.4 – Excluded Assets

1. S. 2nd Avenue
Parcel ID: 1133-R-368
2. Accounts Receivable through closing date.

Schedule 1.4(a) Retained WWTP Assets

Eight (8') Linear Feet of 10" HDPE pipe located at the headwords and pump station from the wastewater collection line serving (or receiving sewage) from Forward Township, PA as shown in the following sketch prepared by Senate Engineering, Pump Station Replacement dated February 13, 2019, Drawing No. C05, Sheet 10 of 119



Schedule 2.4 – Seller Outstanding Indebtedness

1. Sewer Revenue Bonds, Series of 2019 - \$6,046,117.01
2. PennVest Loan - \$8,000,000.00

Schedule 3.2(a) - Seller Closing Deliveries

1. Pennsylvania Public Utility Commission (“PaPUC”) Approval of Transaction
2. DEP Approval of Permit Transfers
3. DEP Act 537 Plan Special Study Approval
4. Consents to assign certain Assigned Contracts

Schedule 3.2(b) – PAWC Closing Deliveries

1. Pennsylvania Public Utility Commission (“PaPUC”) Approval of Transaction
2. DEP Approval of Permit Transfers
3. DEP Act 537 Plan Special Study Approval

Schedule 4.1(b) - Assets Subject to Leasehold Interest

1. Ricoh MPC3504EX Branding Set Copy Machine
60 month term beginning May 2018

Schedule 4.1(i) – Undisclosed Liabilities

1. Sewer Revenue Bonds, Series of 2019 - \$6,046,117.01
2. PennVest Loan - \$8,800,000.00

Schedule 4.1(k) – Contracts

1. Service Agreement dated January 25, 2000 by and the Borough of Elizabeth, Sanitary Authority of Elizabeth Township.
2. Fallen Timber Run Watershed Area Interceptor updated and unsigned between the Borough of Elizabeth, Elizabeth Borough Municipal Authority, Township of Forward, Township of Elizabeth, and the Sanitary Authority of Elizabeth Township.
3. Service Agreement dated December 15, 1987, by and between the Borough of Elizabeth, the Elizabeth Borough Municipal Authority and Borough of Lincoln.
4. Service Agreement dated November 26, 1957, by and between the Borough of Elizabeth, Elizabeth Borough Municipal Authority, Township of Elizabeth and Sanitary Authority of Elizabeth Township.
5. Agreement by and between the Elizabeth Borough Municipal Authority and CME Operations dated January 9, 2019 for the provision of licensed personnel utilized for the operation of the Sewage Treatment Plant.
6. Agreement dated September 28, 2018 by and between Elizabeth Borough Municipal Authority and Diversified Technology for the provision of sewage service billing.
7. Agreement dated November 25, 2020 by and between Elizabeth Borough Municipal Authority and Hapchuck, Inc. for the provision of sludge hauling services.
8. Lease Agreement by and between Elizabeth Borough Municipal Authority and Ricoh USA, Inc. dated May 23, 2018.

Schedule 4.1 (k)(i) – Refund Arrangements

NONE

Schedule 4.1(l)(i) – Real Property and Lease of Real Property

1. 1 Locust Street
Elizabeth, PA 15038
Parcel ID: 1132-A-206
Note: The Borough of Elizabeth has access to a garage for its Public Works Equipment.

2. 50 Church Street
Elizabeth, PA 15037
Parcel ID: 1133-D-50

Schedule 4.1(l)(ii) – Easements and Rights of Way

Easements Acquired by EBMA

3. 1036 3rd Avenue
Parcel ID: 1272-B-317
DBV: 18490/487

4. S. 1st Avenue
Parcel ID: 1133-L-280

DBV: 8401/5

5. 315 N. 1st Avenue
Parcel ID: 1133-H-349

DBV: 17935/182, 10764/518

6. 508 S. 1st Avenue
Parcel ID: 1133-L-293
DBV: 10764/554

7. Water Street
Parcel ID: 1133-G-335
DBV: 10764/533

8. 516 S. 1st Avenue
1133-L-284
DBV: 10764/538

9. 504 S. 1st Avenue
Parcel ID: 1133-L-299
DBV: 10764/528

10. 700 Upper Mill Street
Parcel ID: 1133-P-149
DBV: 10764/498

11. Water Street
Parcel ID: 1133-P-159
DBV: 10764/503

12. 2 Church Street
Parcel ID: 1133-D-40
DBV: 10764/508
13. 515 S. 1st Street
Parcel ID: 1133-L-289
DBV: 10764/513
14. 502 1st Avenue
Parcel ID: 1133-L-298
DBV: 10764/523
15. Polk Street
Parcel ID: 1133-M-163

DBV: 09939/473
16. Polk Street
Parcel ID: 1133-S-106
DBV: 09939/473
17. 600 Hayden Boulevard
Parcel ID: 1133-S-188
DBV: 09925/633
18. Polk Street
Parcel ID: 1133-M-189
DBV: 09925/623
19. 128 Polk Street
Parcel ID: 1133-M-169
DBV: 09925/638
20. 151 Polk Street
Parcel ID: 1133-M-195
DBV: 09925/628
21. 2 Church Street
Parcel ID: 1133-D-40
DBV: 00923/513
22. Polk Street
Parcel ID: 1133-S-108
DBV: 09923/503

- 23. Cemetery Street
Parcel ID: 1133-H-98
DBV: 09919/517

- 24. 136 Cemetery Street
Parcel ID: 1133-M-117
DBV: 09916/223

- 25. McKeesport Road
Parcel ID: 1133-H-95
DBV: 09916/213

- 26. 155 McKeesport Road
Parcel ID: 1133-H-220
DBV: 009910/93

- 27. Sheriff Street
Parcel ID: 1133-M-167

DBV: 09910/135

Schedule 4.1 (I)(iii) - Options and Rights of First Refusal

1. Declaration of Restrictions and Covenants filed in the Allegheny County Real Estate Department at Deed Book Volume 19136, Page 462 on the 1st date of December, 2022.

Schedule 4.1 (l)(v) - Impending Taxes, Levies, and Assessments

NONE

Schedule 4.1 (l)(vi) - Necessary Repairs to Real Property

NONE

Schedule 4.1(m) – Litigation

- 1. GD-22-003824- Jason Grimes v. Elizabeth Borough Municipal Authority** – Plaintiff initiated this matter by filing Praecipie for Writ of Summons in a Civil Action on April 6, 2022. There has been no complaint filed to date. However, the Authority was placed on notice that potential claims exist relating to Plaintiff's allegations that a storm sewer grate collapsed while he was walking along S. 2nd Avenue within the Borough on April 6, 2022.

Schedule 4.1(p) - Notice of Violations of Law

1. **NPDES Permit #PA0028436 Inspection and Deficiencies December 6, 2022.** The Allegheny Health Department (“AHD”) performed an NPDES Compliance Inspection on September 22, 2021 and completed a report detailing its findings of noncompliance.

Schedule 4.1(q) - Permits

1. NPDES Permit PA0028436
2. Sewerage Permit 9138-S (issued 10/20/1958)
3. Sewerage Permit 8204-S (issued 1/3/1952)
4. Water Quality Management Part II Permit 8204-S-A1
5. WQM Permit Sewage – Permit No. 0270416
6. WQM Permit Sewage – Permit No. 0270416 A-1
7. WQM Permit Sewage – Permit No. 0270416 A-2
8. WQM Permit Sewage – Permit No. 0270416 A-3
9. WQM Permit Sewage – Permit No. 0270416 A-4
10. NPDES Permit for Stormwater Discharges Associated with Construction Activities Permit No. PAC020174

Schedule 4.1(r) – LTCP and NMCP Compliance

The Seller is not in compliance with its Long-Term Control Plan and EPA Combined Sewer Overflows Guidance for Nine Minimum Controls as set forth in the following documents:

1. Long Term Control Plan – July 2017, updated December 17, 2020:
2. EPA Combined Sewer Overflows Guidance for Nine Minimum Controls EPA 832-B-95-003 May 1995. Please see schedule 4.1(p) with regard to NMCP Compliance.

Schedule 4.1(s) – Environmental Matters

1. See Schedules 4.1(q) and 4.1(r).

Schedule 4.1(u) – Extension Deposit Agreements

NONE

Schedule 5.1(c) –Assigned Contracts

1. Service Agreement dated January 25, 2000 by and the Borough of Elizabeth, Sanitary Authority of Elizabeth Township.
2. Fallen Timber Run Watershed Area Interceptor updated and unsigned between the Borough of Elizabeth, Elizabeth Borough Municipal Authority, Township of Forward, Township of Elizabeth, and the Sanitary Authority of Elizabeth Township.
3. Service Agreement dated December 15, 1987, by and between the Borough of Elizabeth, the Elizabeth Borough Municipal Authority and Borough of Lincoln.
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7. Agreement dated November 25, 2020 by and between Elizabeth Borough Municipal Authority and Hapchuck, Inc. for the provision of sludge hauling services.
8. Lease Agreement by and between Elizabeth Borough Municipal Authority and Ricoh USA, Inc. dated May 23, 2018

Schedule 6.10 – Rates

1. Effective date: January 1, 2022
Base Rate: \$35.00 per month
Usage included in Base Rate: 0 gallons per month
Overage Rate: \$8.00 per 1,000 gallons.

Schedule 7.1 – Transferred Personnel

1. Sarah Jiles – Administrative Assistant
Experience: 3 years, 9 months of service
Pay Rate: \$22.00/hour
Part-Time ~ 25 hours per week
10 PTO days per year, 30 PTO day maximum
Pension Plan member.

2. Thomas J. Dawson – Laborer/Operator in Training
Experience: 1 year, 5 months of service
Pay Rate: \$26.25/hour
Full-Time
2 Weeks' Vacation per year.
5 Sick Days per year, 60 Sick Days maximum
Pension Plan member.

3. Charles A. Householder – Operator in Training
Experience: 2 years, 8 months of service
Pay Rate: \$26.25/hour
Full-Time
5 Weeks' Vacation per year
5 Sick Days per year, 60 Sick Days maximum

Schedule 11.4 (a) – Missing Easements

The following represents the list of known easements to be acquired prior to the Closing Date. The parties will supplement if other needed easements are discovered.

1. 332 Center Avenue
Parcel ID: 1272-F-302
2. 1133 4th Avenue
Parcel ID: 1272-F-306
3. 1039 3rd Avenue
Parcel ID: 1272-B-263
4. 3rd Avenue
Parcel ID: 1272-B-328
5. 1026 3rd Avenue
Parcel ID: 1727-B-304
6. 1016 3rd Avenue
Parcel ID: 1272-B-293
7. 1004 3rd Avenue
Parcel ID: 1272-B-287
8. 161 Center Avenue
Parcel ID: 1133-R-250
9. Ferry Street
Parcel ID: 1133-R-188
10. 800 Bayard Street
Parcel ID: 1133-S-325
11. 804 Bayard Street
Parcel ID: 1133-R-188
12. 810 Bayard Street
Parcel ID: 1133-S-322
13. 220 Center Avenue
Parcel ID: 1272-B-032
14. 303 N. 2nd Avenue
Parcel ID: 1133-H-265

15. 520 9th Avenue
Parcel ID: 1133-R-017
16. 160 Center Avenue
Parcel ID: 1133-R-284
17. 727 3rd Avenue
Parcel ID: 1133-R-334
18. 227 Water Street
Parcel ID: 1133-H-366
19. Polk Street
Parcel ID: 1133-M-203
20. 153 Polk Street
Parcel ID: 1133-M-199
21. Polk Street
Parcel ID: 1133-M-173
22. Polk Street
Parcel ID: 1133-M-161
23. Plumer Road
Parcel ID: 1133-M-139
24. Locust Street
Parcel ID: 1133-M-131
25. McKeesport Road
Parcel ID: 1133-H-195
26. 141 McKeesport Road
Parcel ID: 1133-H-199
27. S 2nd Avenue
Parcel ID: 1133-D-20
28. Cemetery Lane
Parcel ID: 1132-J-363
29. Cemetery Lane
Parcel ID: 1132-J-365

30. Patterson Street
Parcel ID: 1132-J-375
31. Cemetery Street
Parcel ID: 1133-J-108
32. 1000 Church Street
Parcel ID: 1132-E-386
33. 300 Monongahela Avenue
Parcel ID: 1132-E-332
34. 619 Church Street
Parcel ID: 1132-E-329
35. 164 McKeesport Road
Parcel ID: 1132-E-240
36. 156 McKeesport Road
Parcel ID: 1133-H-24
37. 138 McKeesport Road
Parcel ID: 1133-H-28
38. McKeesport Road
Parcel ID: 1133-H-31
39. 142 McKeesport Road
Parcel ID: 1133-H-32
40. McKeesport Road
Parcel ID: 1133-H-37
41. Polk Street
Parcel ID: 1133-S-112
42. Irwin Street
Parcel ID: 1133

FIRST AMENDMENT TO ASSET PURCHASE AGREEMENT

DATED JULY 5, 2023

THIS FIRST AMENDMENT TO ASSET PURCHASE AGREEMENT (“First Amendment”) is made as of the 5TH day of July, 2023, by and between, Elizabeth Borough Municipal Authority, a municipal authority 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 January 24, 2023 (the “Agreement”); and

WHEREAS, Seller and Buyer desire to amend certain provisions 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. Section 1.2 (b) is deleted and replaced with the following:

(b) all interests in real estate (excepting streets), mains, pipes, pipelines, manholes, facilities, meters, tanks, storage facilities, valves, wastewater system network and related appurtenances, the Combined Sewer System Assets, structures, improvements, fixtures, rights-of-way, rights, uses, franchises, licenses and easements owned by Seller and related to the System, or in which Seller has an interest, and all hereditaments, tenements and appurtenances belonging, appertaining or relating thereto;

2. Section 1.4(c) is deleted and replaced with the following:

(c) The Stormwater System Assets; provided that this exclusion does not exclude facilities for the collection and discharge of stormwater runoff generated and located on the property containing the WWTP;

3. Section 6.3 is deleted and replaced with the following:

6.3 **Storm Water Facilities.** Seller shall retain ownership of any and all Stormwater System Assets that are located within the public right-of-way or otherwise dedicated to Seller by offer and acceptance, plan or other action. Seller shall cause all other municipalities with stormwater collection systems that discharge into the System to adopt, maintain and enforce ordinances that prohibit storm water facilities from being connected to or from causing stormwater infiltration into the System. Such ordinances shall be no less restrictive with regard to stormwater discharges into or infiltrating the System after Closing than they were prior to Closing, to the extent permitted by law.

4. Appendix 1 – Definitions – shall be amended to add the following:

“Combined Sewer System Assets” means the assets of the System designed and constructed to collect and convey municipal sewage (i.e., domestic, commercial and industrial) and stormwater through a single-pipe system to the WWTP or CSO outfall, including (i) wastewater collection pipes, pumping stations and other assets used for wastewater collection, (ii) stormwater drains, collection basins, pumping stations, catch basins, inlets, pipes and all other stormwater lateral facilities, in each case that connect wastewater and surface stormwater drains to the combined sewer mains that discharge to the WWTP or CSO Outfalls, and (iii) all CSO outfalls and CSO regulators, but in all instances specifically excluding the Stormwater System Assets.

“Stormwater System Assets” means all assets owned by the Seller and used exclusively in the operation or maintenance of the municipal separate stormwater system, including (i) drains, pipes and collection basins and all other stormwater drainage assets used exclusively for stormwater collection, conveyance and discharge; (ii) catch basins, inlets, pipes and all other stormwater lateral facilities that connect surface stormwater drains to storm conveyances which discharge to surface waters. Stormwater System Assets shall not include the Combined Sewer System Assets or any other property that is jointly used for (a) the collection, transportation and treatment of stormwater or otherwise in the operation of the stormwater system and (b) the operation of the System, including the stormwater lateral facilities that connect surface stormwater drains to Combined Sewer System Assets mains.

5. Appendix 1 – Definitions – the definition of **“Combined Sewer System”** shall be deleted and replaced with the following:

“Combined Sewer System” means the portions of the System comprised of the Combined Sewer System Assets.

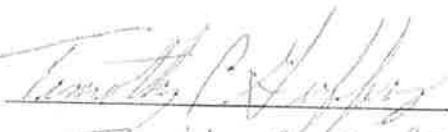
6. Schedule 1.4(a) Retained WWTP Assets shall be deleted and replaced with the attached Schedule 1.4(a).
7. Schedule 4.1(k) – Contracts shall be deleted and replaced with the attached Schedule 4.1(k).


8. Schedule 5.1(c) – Assigned Contracts shall be deleted and replaced with the attached Schedule 5.1(c).
9. All other provisions, terms, and conditions of the Agreement not specifically amended by this First Amendment remain in full force and effect. Seller and Buyer reaffirm the Agreement as amended by this First Amendment.
10. 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.
11. 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.
12. 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 electronic transmission. Such Party is deemed to have executed and delivered this First Amendment on the date it sent such electronic transmission. In such event, such Party shall forthwith deliver to the other Party an original counterpart of this First Amendment executed by such Party.

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

ELIZABETH BOROUGH MUNICIPAL
AUTHORITY

PENNSYLVANIA-AMERICAN WATER
COMPANY

By: 
Printed: Timothy C. Goffey
Its: Chairman

By: 
Printed: Justin L. Ladner
Its: President

Schedule 1.4(a) Retained WWTP Assets

The Retained WWTP assets specifically encompass the non-moving structural portion of the DUPERON® FLEXRAKE® FPFS Full Penetration Fine Screen unit consisting of the base, vertical supports, and back/side plates.

Schedule 4.1(k) – List of Contracts

1. Service Agreement dated January 25, 2000 by and the Borough of Elizabeth, Sanitary Authority of Elizabeth Township.
2. Fallen Timber Run Watershed Area Interceptor updated and unsigned between the Borough of Elizabeth, Elizabeth Borough Municipal Authority, Township of Forward, Township of Elizabeth, and the Sanitary Authority of Elizabeth Township.
3. Service Agreement dated December 15, 1987, by and between the Borough of Elizabeth, the Elizabeth Borough Municipal Authority and Borough of Lincoln.
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7. Agreement dated November 25, 2020 by and between Elizabeth Borough Municipal Authority and Hapchuck, Inc. for the provision of sludge hauling services.
8. Lease Agreement by and between Elizabeth Borough Municipal Authority and Ricoh USA, Inc. dated May 23, 2018.
9. Service Agreement dated January 23, 1958, by and between Borough of Elizabeth, Elizabeth Borough Municipal Authority, and Township of Forward.

Schedule 5.1(c) –Assigned Contracts

1. Service Agreement dated January 25, 2000 by and the Borough of Elizabeth, Sanitary Authority of Elizabeth Township.
2. Fallen Timber Run Watershed Area Interceptor updated and unsigned between the Borough of Elizabeth, Elizabeth Borough Municipal Authority, Township of Forward, Township of Elizabeth, and the Sanitary Authority of Elizabeth Township.
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