

**Application of Pennsylvania-American Water Company for Acquisition of Substantially  
All of the Assets, Properties and Rights Related to the Wastewater System Owned and  
Operated by the City of Pittston**

**66 Pa. C.S. §1329**

**Application Filing Checklist – Water/Wastewater**

**Docket No. A-2025-3056419**

**APPENDIX J**

Appendix J.a - Ordinance No. 2 of 2025– Approving Sale of Pittston’s  
Wastewater System Assets to PAWC

Appendix J.b - Resolution Number 13087 – City of Pittston accepting PAWC as  
preferred Bidder

**FILE OF COUNCIL  
NO. 2 {2025}**

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**Mayor Michael A. Lombardo, In Place**

**May 21, 2025**

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**AN ORDINANCE AUTHORIZING THE EXECUTION BY THE CITY OF PITTSTON OF AN ASSET PURCHASE AGREEMENT WITH THE PURCHASER FOR THE SALE OF THE CITY'S WASTEWATER SYSTEM; AUTHORIZING THE ASSIGNMENT OF THE CITY'S RIGHTS AND OBLIGATIONS IN ALL RELATED AGREEMENTS TO THE PURCHASER; AUTHORIZING AND APPROVING THE CONVEYANCE INSTRUMENTS TO THE PURCHASER; AUTHORIZING COMMUNICATION OF INFORMATION AND COOPERATION WITH THE PURCHASER; AND AUTHORIZING ALL REQUIRED ACTIONS RELATING TO THE EXECUTION AND IMPLEMENTATION OF THE PURCHASE AGREEMENT AND THE ASSIGNMENT OF THE ASSIGNED AGREEMENTS AND ALL ASSOCIATED DOCUMENTS NECESSARY TO EFFECTUATE THE FOREGOING; AUTHORIZING INCIDENTAL ACTION TO BE TAKEN BY SPECIFIED OFFICERS OF THE CITY; AND RECINDING INCONSISTENT ORDINANCES AND RESOLUTIONS.**

**BE IT ENACTED AND ORDAINED BY THE CITY OF PITTSTON and it is hereby enacted and ordained by authority of the same as follows:**

**WHEREAS**, the City of Pittston (the "City"), a City of the Third Class of the Commonwealth of Pennsylvania operating under its Home Rule Charter, currently owns and operates a sanitary wastewater collection and conveyance system, inclusive of certain combined stormwater and wastewater assets (the "System") that provides sanitary wastewater service to various customers in the City (the "Service Area"); and

**WHEREAS**, the City previously decided to pursue the potential sale of all of the assets, properties and rights of the City (whether tangible, real, personal or mixed) which are exclusively held and used by it in connection with the System, through a competitive bidding process (the "Asset Sale"); and

**WHEREAS**, the City has heretofore issued a Request for Qualifications (the "RFQ") and a Request for Bids (the "RFB") to solicit bids from interested and qualified companies and entities to purchase the System; and

**WHEREAS**, the City received responses to the RFQ and, after the opportunity for due diligence, received bids in response to the RFB from two interested entities that were found to be qualified, Pennsylvania American Water Company ("PAWC" or the "Purchaser") and Aqua Pennsylvania; and

**WHEREAS**, the City, by enactment of Resolution No. 13087 selected PAWC as the preferred bidder, authorized the negotiation of an Asset Purchase Agreement (the "Purchase Agreement") with PAWC for the Asset Sale and determined that, in the event the City decides to sell the System, such selection will be in the best interests of the City, as determined by the City Council (the "Council") based on the advice of PFM Financial Advisors, LLC, the City's Financial Advisor; and

**WHEREAS**, pursuant to the Purchase Agreement and subject to the approval by the Pennsylvania Public Utility Commission (“PUC”) of PAWC's application for a certificate of public convenience, the City will transfer to PAWC ownership of the System through the execution and delivery of all associated and required bills of sale; instruments of assignment; consents to transfer; deeds; and other conveyance agreements, documents, and instruments (collectively, “Conveyance Instruments”); and

**WHEREAS**, based on its experience as the owner/operator of the System and its extensive study of the advantages and disadvantages of selling the System at this time, the Council herein determines that the Asset Sale is in the best interests of the City and the customers of the System, and further determines that the Asset Sale will affirmatively promote the service, accommodation, convenience, or safety of the public in a substantial way; and

**WHEREAS**, the Council herein determines to enter into the Purchase Agreement with the Purchaser.

**NOW THEREFORE**, the City Council of the City of Pittston does hereby **ENACT AND ORDAIN** as follows:

**SECTION I. — Authorization of Purchase Agreement**

The Council authorizes the entering into and performance of the Purchase Agreement with Purchaser, substantially in the form attached hereto as Exhibit A. The Mayor and City Administrator are hereby authorized and directed to sign the Purchase Agreement and all associated documents and take all actions necessary to facilitate the Purchase Agreement.

**SECTION II. — Related Agreements Assignment**

The Council authorizes and approves the assignment of the City’s rights and obligations in all related agreements, as required by the Purchase Agreement, to Purchaser. The Mayor and City Administrator are hereby authorized and directed to sign the associated assignment documents, provided the terms and conditions of such documents are satisfactory to the City Solicitor and Special Counsel to the City. The Mayor or the City Administrator is further directed to take all actions necessary to facilitate such assignment.

**SECTION III. — Conveyance Instruments Transfer**

The Council authorizes and approves the execution and delivery by the Mayor and City Administrator of the transfer of the Conveyance Instruments necessary and required to be executed and delivered under the Purchase Agreement, provided that the terms and conditions of such documentation are satisfactory to the City Solicitor and Special Counsel to the City.

**SECTION IV. — Use of Sale Proceeds**

The Council shall determine the application of the Asset Sale proceeds for the benefit of the City in a manner consistent with the Home Rule Charter and with the advice of the City's Financial Advisor,

provided, however, the Asset Sale proceeds shall first be immediately used to extinguish or defease all existing City System debt.

**SECTION V. — Information and Cooperation**

The Council authorizes the City, its agents and employees, to provide needed information to Purchaser relative to the System billing information with all City rights in connection therewith, as well as other information as directed by the Council. The Council further authorizes the City to cooperate with Purchaser in proceedings before the PUC as required under the Purchase Agreement or desirable in the sole discretion of the Mayor and City Administrator to the Purchaser and to cooperate with the Purchaser for the continued operation of the System and the use of Sale Assets.

**SECTION VI. — Reservation**

The Council reserves the right to continue to collect any and all sewer delinquencies incurred prior to the time of closing under the Purchase Agreement, and to pursue collection efforts, at the City's option, of those sewer debts incurred prior to such closing.

**SECTION VII. — General Authorization**

The Council authorizes the City, its agents and employees, as directed by the Council, to take all needed actions required by the Home Rule Charter, other applicable law, or otherwise, to complete the Asset Sale, including, but not limited to, obtaining all necessary signatures and approvals. The Mayor or City Administrator is directed to sign any and all necessary documents to complete the Asset Sale provided the terms and conditions of such documentation are satisfactory to the City Solicitor and Special Counsel to the City.

**SECTION VIII. — Severability**

This Ordinance's provisions are intended to be severable. If any section, sentence, clause, part, or provision of this Ordinance is determined to be illegal, invalid, or unconstitutional by any court of competent jurisdiction, such determination shall not affect or impair this Ordinance's remaining sections, sentences, clauses, parts, or provisions. Furthermore, it is declared to be this Council's express intent that this Ordinance still be adopted even if such an illegal, invalid, or unconstitutional section, sentence, clause, part, or provision had not been included.

**SECTION IX. — Effective Date**

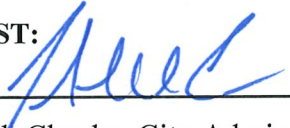
This Ordinance shall take effect and be in full force from and after its enactment as required by Pennsylvania law.

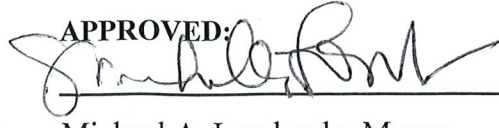
**SECTION X. — Repealer**

All other ordinances and resolutions or parts thereof as they are inconsistent with this Ordinance shall be deemed repealed at the time of closing of the Asset Sale with the Purchaser.

**ORDAINED and ENACTED** by the City Council of the City of Pittston at a Regular meeting held May 21, 2025.

**CITY OF PITTSTON**

**ATTEST:**   
\_\_\_\_\_  
Joseph Chacke, City Administrator

**APPROVED:**   
\_\_\_\_\_  
Michael A. Lombardo, Mayor



# Exhibit A

## ASSET PURCHASE AGREEMENT

By and Between

CITY OF PITTSTON

As Seller

and

PENNSYLVANIA AMERICAN WATER COMPANY

As Buyer

Dated as of May 21, 2025

**TABLE OF CONTENTS**

**Page**

**ARTICLE I.**

DEFINITIONS.....1

**ARTICLE II.**

TERMS OF PURCHASE AND ASSUMPTION OF LIABILITIES .....11

    Section 2.01. Purchase and Sale of Acquired Assets.....11

    Section 2.02. Excluded Assets .....12

    Section 2.03. Sale Free of Liens .....13

    Section 2.04. Assumption of Liabilities.....14

    Section 2.05. Further Assurances.....14

    Section 2.06. Certain Transfers; Assignment of Contracts.....15

**ARTICLE III.**

PURCHASE PRICE .....16

    Section 3.01. Purchase Price .....16

    Section 3.02. Fair Consideration.....17

    Section 3.03. Allocation Schedule .....17

    Section 3.04. Transfer Taxes .....18

**ARTICLE IV.**

REPRESENTATIONS AND WARRANTIES OF THE SELLER .....18

    Section 4.01. Organization.....18

    Section 4.02. Power and Authority .....19

    Section 4.03. Enforceability .....19

    Section 4.04. No Conflict or Violation .....19

    Section 4.05. Consents and Approvals .....19

    Section 4.06. Undisclosed Liabilities.....19

    Section 4.07. Absence of Certain Changes or Events.....20

    Section 4.08. Tax Matters .....20

    Section 4.09. Real Property and Easements.....20

    Section 4.10. Equipment and Machinery .....20

    Section 4.11. Environmental Compliance .....21

    Section 4.12. Authorizations and Permits.....22

    Section 4.13. System Contracts .....22

    Section 4.14. Compliance with Law; Litigation .....22

    Section 4.15. Broker's and Finder's Fees .....23

    Section 4.16. Title to the Acquired Assets; Sufficiency .....23

    Section 4.17. Pending Development Plans .....24

    Section 4.18. Customer Sewer Laterals and Grinder Pumps.....24

**ARTICLE V.**

REPRESENTATIONS AND WARRANTIES OF BUYER .....24

    Section 5.01. Organization.....24

    Section 5.02. Authorization and Validity of Agreement .....24

    Section 5.03. No Conflict or Violation .....25

    Section 5.04. Consents and Approvals .....25

    Section 5.05. Broker’s and Finder’s Fees .....25

    Section 5.06. Financial Wherewithal .....25

    Section 5.07. Sufficient Funds .....25

    Section 5.08. Independent Decision.....25

    Section 5.09. Scheduled Matters.....26

    Section 5.10. Independent Investigation.....26

    Section 5.11. Litigation.....26

**ARTICLE VI.**

TITLE TO REAL ESTATE; EASEMENTS .....27

    Section 6.01. Evidence of Title.....27

    Section 6.02. Objections to Title.....27

    Section 6.03. Title Expenses .....28

    Section 6.04. UCC Search; Releases .....29

    Section 6.05. Easements. ....29

    Section 6.06. Unscheduled Property .....30

**ARTICLE VII.**

OTHER AGREEMENTS .....31

    Section 7.01. Taxes .....31

    Section 7.02. Cooperation on Tax Matters .....31

    Section 7.03. Personnel Matters.....31

    Section 7.04. Initial and Future Rates.....31

    Section 7.05. Buyer Taxpayer.....31

    Section 7.06. PaPUC Approval.....31

    Section 7.07. Remedies for Breach of Article VII Agreements .....32

    Section 7.08. Operation and Maintenance of MS4 and Stormwater Systems .....32

    Section 7.09. System and Combined Sewer System Assets. ....33

    Section 7.10. Insurance. ....33

    Section 7.11. Pending Development Plans .....33

    Section 7.12. Act 537 Plan.....34

    Section 7.13. Utility Valuation Experts .....35

    Section 7.14. Compliance and Operational Reports .....35

    Section 7.15. Implementation and Enforcement of Municipal Code.....35

    Section 7.16. Grants .....36

    Section 7.17. Covenant Survival.....36

**ARTICLE VIII.**

|  |    |
|--|----|
| INDEMNIFICATION.....   | 36 |
| Section 8.01.    Survival.....                                   | 36 |
| Section 8.02.    Indemnification by the Seller.....              | 37 |
| Section 8.03.    Indemnification by Buyer.....                   | 37 |
| Section 8.04.    Indemnification Procedure.....                  | 38 |
| Section 8.05.    Limitations on Indemnification Obligations..... | 40 |
| Section 8.06.    Knowledge of Breach.....                        | 41 |

**ARTICLE IX.**

|   |    |
|---|----|
| PRE-CLOSING COVENANTS OF THE SELLER.....      | 41 |
| Section 9.01.    Operation of the System..... | 41 |
| Section 9.02.    Cooperation.....             | 41 |
| Section 9.03.    Supplements and Updates..... | 42 |
| Section 9.04.    Governmental Approvals.....  | 42 |

**ARTICLE X.**

|   |    |
|---|----|
| PRE-CLOSING COVENANTS OF BUYER.....                   | 42 |
| Section 10.01.   Actions Before the Closing Date..... | 42 |
| Section 10.02.   Governmental Approvals.....          | 43 |
| Section 10.03.   Cooperation.....                     | 43 |
| Section 10.04.   Supplements and Updates.....         | 43 |

**ARTICLE XI.**

|   |    |
|---|----|
| CONDITIONS PRECEDENT TO OBLIGATIONS OF THE SELLER.....        | 43 |
| Section 11.01.   Consents and Approvals.....                  | 43 |
| Section 11.02.   Representations and Warranties of Buyer..... | 44 |
| Section 11.03.   PaPUC Approval.....                          | 44 |
| Section 11.04.   No Injunctions.....                          | 44 |
| Section 11.05.   Performance of the Obligations of Buyer..... | 44 |
| Section 11.06.   Deliveries by Buyer.....                     | 44 |
| Section 11.07.   No Material Adverse Effect.....              | 44 |

**ARTICLE XII.**

|  |    |
|--|----|
| CONDITIONS PRECEDENT TO OBLIGATIONS OF BUYER.....              | 45 |
| Section 12.01.   Consents and Approvals.....                   | 45 |
| Section 12.02.   Representations and Warranties of Seller..... | 45 |
| Section 12.03.   PaPUC Approval.....                           | 46 |
| Section 12.04.   No Injunctions.....                           | 46 |
| Section 12.05.   No Material Adverse Effect.....               | 46 |
| Section 12.06.   Deliveries by Seller.....                     | 46 |
| Section 12.07.   Performance of the Obligations of Seller..... | 46 |

**ARTICLE XIII.**

**CLOSING 46**

|                |                               |    |
|----------------|-------------------------------|----|
| Section 13.01. | Closing Date.....             | 46 |
| Section 13.02. | Deliveries by the Seller..... | 46 |
| Section 13.03. | Deliveries by Buyer .....     | 48 |

**ARTICLE XIV.**

|                  |                            |    |
|------------------|----------------------------|----|
| TERMINATION..... |                            | 48 |
| Section 14.01.   | Events of Termination..... | 48 |
| Section 14.02.   | Effect of Termination..... | 49 |

**ARTICLE XV.**

|                    |   |    |
|--------------------|---|----|
| MISCELLANEOUS..... |   | 49 |
| Section 15.01.     | Confidentiality .....                                   | 49 |
| Section 15.02.     | Public Announcements .....                              | 50 |
| Section 15.03.     | Notices .....   | 50 |
| Section 15.04.     | Headings .....  | 51 |
| Section 15.05.     | Severability .....                                      | 51 |
| Section 15.06.     | Entire Agreement .....                                  | 51 |
| Section 15.07.     | Amendments; Waivers.....                                | 51 |
| Section 15.08.     | Parties in Interest; Third Party Beneficiary .....      | 52 |
| Section 15.09.     | Successors and Assigns.....                             | 52 |
| Section 15.10.     | Governing Law; Jurisdiction.....                        | 52 |
| Section 15.11.     | Specific Performance .....                              | 52 |
| Section 15.12.     | Interpretation.....                                     | 52 |
| Section 15.13.     | Counterparts; Electronic Mail; Facsimile Execution..... | 53 |

Exhibits

|           |                                     |
|-----------|-------------------------------------|
| Exhibit A | Bill of Sale                        |
| Exhibit B | Assignment and Assumption Agreement |
| Exhibit C | Easement Escrow Agreement           |

Schedules

|                  |   |
|------------------|---|
| Schedule 2.01(b) | Acquired Assets                               |
| Schedule 2.02(h) | Excluded Assets                               |
| Schedule 3.03    | Allocation Schedule                           |
| Schedule 4.05    | Required Governmental Consents                |
| Schedule 4.06    | Undisclosed Liabilities                       |
| Schedule 4.07    | Absence of Certain Changes or Events          |
| Schedule 4.08    | Tax Matters                                   |
| Schedule 4.09    | Real Property and Easements; Liens            |
| Schedule 4.10    | Equipment and Machinery                       |
| Schedule 4.11    | Noncompliance with Environmental Requirements |

|                  |  |
|------------------|--|
| Schedule 4.12    | Authorizations, Licenses and Permits         |
| Schedule 4.13    | Assigned Contracts                           |
| Schedule 4.14    | Litigation Involving Seller                  |
| Schedule 4.16(a) | Exceptions to Title to Acquired Assets       |
| Schedule 4.16(b) | Exceptions to Sufficiency of Acquired Assets |
| Schedule 4.17    | Pending Development Plans                    |
| Schedule 5.04    | Buyer Consents and Approvals                 |
| Schedule 5.11    | Buyer Litigation                             |
| Schedule 6.05(e) | Missing Easements                            |
| Schedule 7.04    | Rates  |

## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this “Agreement”), dated as of May \_\_, 2025 (the “Effective Date”), is made and entered into by and between the City of Pittston, Luzerne County, a body corporate and politic, a City of the Third Class under the Constitution and the laws of the Commonwealth of Pennsylvania and the City’s Home Rule Charter, (the “Seller” or the “City”), and Pennsylvania American Water Company, (the “Buyer”), a Pennsylvania corporation.

### WITNESSETH:

**WHEREAS**, Seller, acting by and through the Mayor and City Council of the City (the “Municipal Board”) owns and operates a combined stormwater and sanitary wastewater collection and conveyance system (the “System”) that provides stormwater and sanitary wastewater service to various customers in the City (the “Service Area”); and

**WHEREAS**, Buyer is a regulated public utility that furnishes water and wastewater service to the public in various counties throughout Pennsylvania and has the financial strength, management experience and expertise to operate and maintain water and wastewater systems, including the System; and

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

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

### ARTICLE I.

#### DEFINITIONS

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

“**Abstractor**” has the meaning specified in Section 6.05(a).

“**Accounts Receivables**” means all accounts or notes receivable held by Seller, and any security, claim, remedy or other right related to the foregoing, including the right to receive and collect payment for sanitary wastewater customer services and to receive and hold customer deposits in connection thereof.

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

“**Act 537**” has the meaning specified in Section 7.12.

“**Act 537 Plan**” has the meaning specified in Section 7.12.

“**Affiliate**” means, when used to indicate a relationship with a specified Person, a Person that, directly or indirectly, through one or more intermediaries has a 10% or more voting or economic interest in such specified Person or controls, is controlled by or is under common control with (which include, with respect to a managed fund or trust, the right to direct or cause the direction of the management and policies of such managed fund or trust as manager, advisor, supervisor, sponsor or trustee pursuant to relevant contractual arrangements) such specified Person, and a Person is deemed to be controlled by another Person if controlled in any manner whatsoever that results in control in fact by that other Person (or that other Person and any Person or Persons with whom that other Person is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise (and for purposes of this definition, a managed fund or trust is deemed to be an Affiliate of the Person managing, supervising, sponsoring or advising such fund or trust and a limited partner in a managed fund or trust is deemed to be an Affiliate of such fund or trust and of the Person managing, supervising, sponsoring or advising such fund or trust).

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

“**Allocation Schedule**” has the meaning specified in Section 3.03.

“**Assigned Contracts**” has the meaning specified in Section 4.13 and includes the Municipal Agreements.

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

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

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

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

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

**“Buyer Fundamental Representations”** has the meaning specified in Section 8.01.

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

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

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

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

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

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

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

**“Combined Sewer Overflow”** or **“CSO”** means any discharge from the Seller's Combined Sewer System at a CSO Outfall in the Combined Sewer System from which combined sewage and stormwater are discharged and so designated in the currently applicable WWSA Permits.

**“Combined Sewer System”** means the portion of the System designed to convey municipal sewage, wastewaters (domestic, commercial, and industrial) and stormwater runoff in the same system of pipes to a wastewater treatment plant.

**“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 a wastewater treatment plant or CSO structures, including (i) wastewater collection pipes, pumping stations and other assets used for wastewater collection, (ii) stormwater drains, pipes, collection basins, pumping stations and all other stormwater drainage assets used for stormwater collection, and (iii) 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 WWSA wastewater treatment plant or combined sewer overflow structures, but excluding the Municipal Separate Stormwater System.

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

"**CSO Outfall**" means an outfall in the Combined Sewer System from which combined sewage and stormwater are discharged and so designated in the currently applicable WVSA Permit.

"**Deposit**" has the meaning specified in Section 3.01(a)(i).

"**Easement Escrow Agreement**" has the meaning set forth in Section 3.01(c).

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

"**EDU**" means the equivalent dwelling unit that also equates to 262.5 gallons per day.

"**Effective Date**" has the meaning specified in the preamble.

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

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

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

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

"**Environmental Requirements**" mean all Laws (including common law), regulations, legally binding or otherwise enforceable requirements and Authorizations and Permits relating to human health, pollution, or protection of the Environment (including ambient air, surface water,

ground water, land surface or surface strata), including (i) those relating to emissions, discharges, Releases, or threatened Releases of Hazardous Materials, and (ii) those relating to the identification, generation, manufacture, processing, distribution, use, treatment, storage, disposal, release, recovery, transport or other handling of Hazardous Materials. Without limiting the foregoing, the term “**Environmental Requirements**” includes (1) CERCLA; the Superfund Amendments and Reauthorization Act, Public Law 99-499, 100 Stat. 1613; the Emergency Planning and Community Right to Know Act, 42 U.S.C. Sections 11001-11050; the Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901-6992k (“**RCRA**”); the Safe Drinking Water Act, 42 U.S.C. Sections 300f to 300j-26; the Toxic Substances Control Act, 15 U.S.C. Sections 2601-2692; the Hazardous Materials Transportation Act, 49 U.S.C. Sections 5101-5127; the Federal Water Pollution Control Act, 33 U.S.C. Sections 1251-1387; the Oil Pollution Act of 1990, 33 U.S.C. Sections 2701--2761; the Clean Air Act, 42 U.S.C. Sections 7401-7671q; the Atomic Energy Act of 1954, as amended, 42 U.S.C. Sections 2011 et seq.; the Low Level Radioactive Waste Policy Act, as amended, 42 U.S.C. Section 2022b et seq.; the Occupational Safety and Health Act, 29 U.S.C. Sections 651-678, and the regulations promulgated pursuant to the above-listed federal statutes, and (2) counterpart Laws and regulations promulgated or issued by any state or local Governmental Authority, specifically including the Pennsylvania Storage Tank and Spill Prevention Act of 1989 (35 Pa. C.S.A. § 6021.101 *et. seq.*).

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

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

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

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

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

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

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

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

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

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

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

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

**“Law”** means any applicable law, including but not limited to the City’s Home Rule Charter, statute, regulation, ordinance, rule, order, judicial, administrative and regulatory decree, judgment, adjudication, consent decree, settlement agreement or governmental requirement enacted, promulgated, entered into, agreed or imposed by any Governmental Authority, as may be in effect at the relevant time or times in the context in which the term is used.

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

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

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

**“Material Adverse Effect,”** means any result, occurrence, fact, change, event or effect that has a material adverse effect on the business, financial condition or results of operations of the System; except that no effect arising out of or in connection with or resulting from any of the following will be deemed, either alone or in combination, to constitute or contribute to a Material Adverse Effect: (i) general economic conditions or changes therein; (ii) financial, banking, currency or capital markets fluctuations or conditions (either in the United States or any international market and including changes in interest rates); (iii) conditions affecting the real estate, financial services, construction, water utility or sewer utility industries generally; (iv) any existing event, circumstance, condition or occurrence of which the Buyer has Knowledge on the Effective Date; (v) any action, omission, change, effect, circumstance or condition contemplated by this Agreement or attributable to the execution, performance or announcement of this Agreement or the transactions contemplated by this Agreement; and (vi) negligence, intentional misconduct or bad faith of the Buyer or its Representatives.

**“Missing Easements”** means, as of any particular date, each Easement that either (a) has not been expressly obtained through a duly executed and recorded instrument by the Seller and is for or used in connection with the operation of the System or (b) if such Easement has been obtained by the Seller, such Easement is unrecorded or such Easement is not sufficient to operate the System as currently conducted.

**“Municipal Board”** has the meaning set forth in the recitals to this Agreement.

**“Municipal Code”** has the meaning set forth in Section 7.15.

**“Municipal Separate Storm Sewer System”** or **“MS4 System”** means the current and any future assets and facilities, built, operated or maintained, or real property (**“MS4 System Real Property”**) and Stormwater System Assets owned by the Seller [or WVSA], and used for the purpose of capturing, conveying and discharging stormwater separate from any sewage or

wastewaters. This includes any assets which may be built by the Buyer and contributed to the Seller as the case may be at future date to separate the wastewater and stormwater flows in the Combined Sewer System.

**“Objection Notice”** has the meaning set forth in Section 6.02(a).

**“Outside Date”** means the date that is the later to occur of (i) 365 days after the date the application to the PaPUC is accepted as complete by the PaPUC, (ii) 365 days after the date the statutory 6-month consideration period is initiated pursuant to 66 Pa. C.S. §1329, and (iii) 545 days after the Effective Date provided, that if there is litigation pending on such date in which any Person seeks to prevent the consummation of the transaction described in this Agreement, or to frustrate a material term contained in this Agreement (specifically including, without limitation, litigation involving the proceedings before the PaPUC as contemplated in this Agreement), the Outside Date will be extended to the date that is sixty (60) days following the unappealable resolution of such litigation.

**“Outstanding Indebtedness”** means the following outstanding indebtedness of the Seller: City of Pittston General Obligation Bond Series of 2023.

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

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

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

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

**“Pending Development Plan”** means any project for the development of real property which is the subject of a subdivision or land development plan that has been submitted to the Seller for approval, or for which the Seller already has granted approval, pursuant to the Pennsylvania Municipal Planning Code and the City’s Home Rule Charter, but which has yet to be constructed as of the Effective Date (and as updated before the Closing Date), as provided in Schedule 4.17.

**“Permitted Liens”** means (a) Liens for Taxes not yet due and payable or being contested in good faith by appropriate procedures; (b) easements, rights of way, deed restrictions and other similar encumbrances affecting Real Property and Easements to which Buyer has not raised a Title Objection Item or an Easement Objection Item in Article VI hereof; (c) other than with respect to Real Property owned by Seller, Liens arising under original purchase price conditional sales contracts and equipment leases with third parties entered into in the ordinary course of business; (d) other imperfections of title or Liens, if any, that have not had, and would not have, a Material Adverse Effect; and (e) any encumbrances set forth in the Title Commitment not identified in the Objection Notice in accordance with the procedures and deadlines prescribed in Section 6.02(a).

**“Person”** means any individual (including, the heirs, beneficiaries, executors, legal representatives or administrators thereof), corporation, partnership, joint venture, trust, limited liability company, limited partnership, joint stock company, unincorporated association or other entity or a Governmental Authority.

**“Personnel”** means the employees of the Seller who are primarily employed to operate the System.

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

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

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

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

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

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

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

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

“**Seller DEP Permits**” means the permits listed on Schedule 4.12 issued by PaDEP to Seller with respect to the System, including any revisions or amendments thereto.

“**Seller Fundamental Representations**” has the meaning specified in Section 8.01.

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

“**Senior Staff**” means the City Chief Financial Officer David Hines, City Administrator Joseph Chacke, and City Engineer Don Totino.

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

“**Stormwater System Assets**” means all assets owned by the Seller and used exclusively in the operation or maintenance of the MS4 System, including (i) drains, pipes and collection basins and all other stormwater drainage assets used exclusively for stormwater collection, conveyance and discharge; and (ii) catch basins, inlets, pipes and all other stormwater lateral facilities (the “**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.

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

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

“**System Improvements**” has the meaning specified in Section 7.10(a).

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

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

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

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

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

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

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

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

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

“**WVSA**” means the Wyoming Valley Sanitary Authority.

“**WVSA Agreement**” means the Agreement dated September 8, 1965 between the City and the WVSA, as amended by a Supplemental Service Agreement dated December 1, 1965, for the treatment of the City’s sanitary wastewater.

“**WVSA Permits**” means the permits held by WVSA and utilized in the Combined Sewer System.

## ARTICLE II.

### TERMS OF PURCHASE AND ASSUMPTION OF LIABILITIES

#### Section 2.01. Purchase and Sale of Acquired Assets

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

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

(b) all sanitary wastewater conveyance facilities, including but not limited to the Seller's (i) assets set forth on Schedule 2.01(b), and (ii) all collection system mains (whether gravity or force mains), laterals (from the collection system main to the edge-of-road or curb-line when the main is located within a public right-of-way or the edge of an easement where the main is located within private property), generators, manholes, pump stations and other related appurtenances including all rights under Pending Development Plans to have any of the foregoing assets dedicated to Seller, and any billing and collections related assets necessary to own and operate the System;

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

(d) all Supplies;

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

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

(g) all Files and Records;

(h) Accounts Receivable arising on or after the Closing Date; and

(i) all Authorizations and Permits of or held by the Seller (to the extent transferrable to Buyer under Law), including all Authorizations and Permits which are environmental permits, the Seller DEP Permits as set forth on Schedule 4.12 hereto and other operating permits and those items set forth on Schedule 4.12 hereto;

(j) all Combined Sewer System Assets; and

(k) all goodwill of the System.

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE SELLER MAKES NO EXPRESS OR IMPLIED REPRESENTATION OR WARRANTIES OF ANY KIND WHATSOEVER REGARDING THE VALUE OF ANY OF THE ACQUIRED ASSETS OF THE SYSTEM OR THE FUTURE PROFITABILITY OR FUTURE EARNINGS PERFORMANCE OF THE ACQUIRED ASSETS OR THE SYSTEM OR ANY FUTURE RATEMAKING THAT MAY BE ALLOWED BY THE PAPUC FOR ANY OF THE ACQUIRED ASSETS. NOTWITHSTANDING THE FOREGOING, ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE VALID UNTIL THE TIME OF CLOSING.

#### Section 2.02. Excluded Assets

Notwithstanding Section 2.01 or any other provision of this Agreement to the contrary, the Acquired Assets do not include the following (the "Excluded Assets"):

- (a) the Stormwater System Assets;
- (b) the MS4 System Real Property; and
- (c) all contracts, licenses and leases that are not Assigned Contracts;
- (d) the seals, organizational documents, minute books, Tax returns, books of account or other records having to do with the organization of Seller;
- (e) cash (including any cash whenever received resulting from the payment received by Seller attributable to wastewater service provided to EDU's before the Closing Date) and cash equivalents, including Accounts Receivable accrued before the Closing Date and existing financial security guaranteeing installation of public improvements (including sewer facilities);
- (f) all insurance policies of Seller and all rights to applicable claims and proceeds thereunder;
- (g) other than to the extent relating to any Assumed Liability, all actions, suit or claim of any nature available to or being pursued by Seller, whether arising by way of counterclaim or otherwise;
- (h) all assets, properties and rights used by Seller other than those which primarily relate to the operations of the System;
- (i) the assets, properties and rights specifically set forth on Schedule 2.02(g);
- (j) all individual customer grinder pumps owned by Seller, if any, installed and used by the customer on private property to convey sewage into the sanitary sewer collection system;
- (k) all customer sanitary sewer service laterals located outside of road right-of-way or sewer easement limits on private property and owned by Seller, if any;
- (l) certain interests in real estate to be created and or retained by the City including real property interests that will be subdivided from existing System-related real estate and certain easements with respect to stormwater utility and other City access easements; and
- (m) the rights which accrue or will accrue to Seller under this Agreement and any related agreement, exhibit or schedule.

**Section 2.03. Sale Free of Liens**

After Buyer fulfills its obligations pursuant to Section 3.01(b), on the Closing Date, the Acquired Assets will be free and clear of all Liens other than Permitted Liens. The Seller shall convey such Acquired Assets by appropriate special warranty or other deed (subject to Section 6.02(c)), bills of sale, endorsements, assignments and other instruments of transfer or conveyance described in

the Agreement, or by transfer documents satisfactory in form and substance reasonably acceptable to Buyer and Seller and their counsel in their reasonable discretion. At Closing, Buyer shall cause the Title Company to insure the Real Property, at the Title Company's filed rates, as a good and marketable title, free and clear of all Liens and exceptions to title insurance coverage, except for the Permitted Liens, pursuant to an owner's policy of title insurance on the American Land Title Association's ("ALTA") Owner's Form 2006, subject to the terms of Section 6.02 below (the "Title Policy").

#### Section 2.04. Assumption of Liabilities

(a) On the terms and subject to the conditions set forth in this Agreement and excluding the Excluded Liabilities, Buyer shall assume and agrees to pay, perform and discharge when due any and all liabilities and obligations of the Seller (1) arising under the Seller DEP Permits (arising from, related to, or based on events or circumstances occurring on or after the Closing Date), and (2) arising out of or relating to the System or the Acquired Assets on or after the Closing, including, without limitation, the following:

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

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

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

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

For the avoidance of doubt, the Parties agree that the Assumed Liabilities do not include any liabilities or obligations arising from or relating to events or circumstances occurring prior to Closing except as the Parties may otherwise agree in writing.

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

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

#### Section 2.05. Further Assurances

At any time and from time to time after the Closing Date, the Seller shall, upon the request of Buyer, and Buyer shall, upon the request of the Seller, at the cost of requesting Party, promptly

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

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

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

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

monies received by Seller with respect to such Nonassignable Asset in connection with the arrangements under this Article II.

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

(d) If, during the twenty four (24) month period following the Closing, Buyer identifies any contract to which the Seller was a party as of the Closing and which (i) was not set forth on Schedule 4.13 (as may be updated pursuant to (c)) and (ii) Buyer reasonably believes is necessary to the operation of the System, the Seller shall, promptly following Buyer's written request therefor, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such other instruments of conveyance and transfer and other documents, and perform or cause to be performed such further acts, as may be reasonably required to evidence or effectuate, or more fully evidence or effectuate the assignment of such contract to Buyer for no additional consideration, and upon such assignment, such contract will be deemed an Assigned Contract for all purposes hereunder.

### ARTICLE III.

#### PURCHASE PRICE

##### Section 3.01. Purchase Price

The purchase price for the Acquired Assets is Twenty-Six Million Four Hundred Forty Thousand Dollars (\$26,440,000) (the "Purchase Price") which Buyer shall pay as follows at Closing unless otherwise indicated:

(a) Deposit.

(i) Buyer shall pay Two Hundred Thousand Dollars (\$200,000) to Seller as a deposit on account of the Purchase Price (the "Deposit") upon the fifth (5<sup>th</sup>) Business Day following the execution by the Parties of this Agreement; and

(ii) The Deposit shall be used to pay the costs and expenses incurred by the Seller in connection with the implementation of the provisions of this Agreement;

(iii) Once such costs and expenses are paid, Seller shall be free to use the Deposit as it determines in the Seller's sole discretion; and

(iv) In the event that this Agreement is terminated by Seller, the Deposit shall be refundable to the Buyer within ninety (90) days following the effective date of termination per Section 14.01, provided, however, if the Agreement is terminated by Seller

pursuant to Section 14.01(c), then Seller shall be permitted to offset against Seller's obligation to refund the Deposit any damages recoverable by Seller per the terms of this Agreement.

(v) In the event that this Agreement is terminated by Buyer, the Deposit shall be retained by the Seller, provided, however, if the Agreement is terminated by Buyer pursuant to Section 14.01(d), then Seller shall be obligated to refund the Deposit to Buyer.

(vi) In the event that this Agreement is terminated by Buyer or Seller pursuant to Section 14.01(b)(ii), then Seller shall be required to refund the Deposit to Buyer.

(b) Outstanding Indebtedness. Upon direction of the Seller, Buyer shall pay all or a portion of the Outstanding Indebtedness which payment shall be a credit against the Purchase Price;

(c) Easement Escrow at Closing. Buyer shall cause to be deposited in escrow pursuant to an escrow agreement substantially in the form attached as Exhibit C and entered into by and among the Seller, the Buyer and the escrow agent party thereto (the "Easement Escrow Agreement") an amount calculated in accordance with Section 6.05(e);

(d) Final Payment. Subject to any adjustment in Purchase Price resulting from the proration procedures specified in Section 3.01(e) below, Buyer shall pay to the Seller at Closing by wire transfer of immediately available funds the balance of the Purchase Price remaining after the payment of the Deposit, the repayment of the Outstanding Indebtedness pursuant to Section 3.01(b), and any escrow as set forth in Section 6.05(e), to one or more accounts that Seller designates and provides to Buyer at least three (3) Business Days before the Closing Date; and

(e) Final Billing. The Buyer is entitled to all customer billings with respect to sanitary wastewater customer services for the period on or after the Closing Effective Time, and the Seller is entitled to all such billings before the Closing Effective Time. The Parties shall cooperate to calculate an agreed upon proration of billing amounts and to the extent that a Party collects billings that are attributable to service provided by another Party, the Party holding the other Party's billing collections shall pay such amount to the other Party.

### Section 3.02. Fair Consideration

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

### Section 3.03. Allocation Schedule

The Purchase Price (which for purposes of this Section 3.03 shall include any liabilities required to be treated as part of the Purchase Price for federal income tax purposes), may, at the option of the Buyer, be allocated among the Acquired Assets in accordance with the allocation reflected in

a schedule prepared by Buyer and attached hereto as Schedule 3.03 (the "Allocation Schedule"). In the event Buyer does not opt to prepare a schedule pursuant to the preceding sentence, then within sixty (60) days following the Closing Date, Buyer may deliver to Seller a draft of the Allocation Schedule setting forth Buyer's proposed allocation for Seller's review. Seller shall have the right to review and reasonably comment upon Buyer's proposed Allocation Schedule, provided, that (a) such proposed Allocation Schedule shall be deemed approved by Seller and shall be final and binding upon the Parties unless Seller provides written notice of Seller's comments to one or more items reflected in the proposed Allocation Schedule within twenty (20) Business Days after delivery of the proposed Allocation Schedule to Seller, and (b) upon receipt of any such written comments from Seller with respect to the proposed Allocation Schedule, Buyer may make such adjustments or revisions to the proposed Allocation Schedule based on Seller's comments as Buyer determines in good faith to be necessary and appropriate, provided further, that Buyer shall have no obligation to make any such adjustments or revisions absent manifest error. The Parties shall adhere to the Allocation Schedule (as finally determined pursuant to this Section 3.03) for all purposes relevant to the calculation of federal or state Taxes, and will report the transactions contemplated herein in a manner consistent with such Allocation Schedule. Except as required by applicable Law, Buyer and Seller shall not take any position on their respective Tax Returns that is inconsistent with the Allocation Schedule.

#### Section 3.04. Transfer Taxes

Any and all deed stamps or transfer Taxes which may be due the Commonwealth of Pennsylvania or any political subdivision in connection with the sale, transfer, assignment, conveyance and delivery hereunder of the Acquired Assets to Buyer (collectively, "Transfer Taxes"), will be paid by Buyer. The terms hereof shall survive Closing. Seller and Buyer shall cooperate in good faith to prepare the Pennsylvania Form REV-138 (Realty Transfer Tax Statement of Value) setting forth the amount of the Purchase Price that shall be allocated to the Real Property for purposes of calculating Transfer Taxes.

### ARTICLE IV.

#### REPRESENTATIONS AND WARRANTIES OF THE SELLER

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

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

#### Section 4.01. Organization

Seller is a City of the Third Class of the Commonwealth of Pennsylvania duly organized and operating as a home rule municipality under a Home Rule Charter effective January 2, 2013.

**Section 4.02. Power and Authority**

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

**Section 4.03. Enforceability**

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

**Section 4.04. No Conflict or Violation**

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

**Section 4.05. Consents and Approvals**

Schedule 4.05 sets forth a list of each consent, waiver, authorization or approval of any Governmental Authority, or of any other Person, and each declaration to or filing or registration with any Governmental Authority required in connection with the execution and delivery of this Agreement by the Seller or the performance by the Seller of their respective obligations hereunder. For purposes of this Section, Governmental Authority shall not include Seller.

**Section 4.06. Undisclosed Liabilities**

Except as set forth on Schedule 4.06, there are no liabilities or obligations of Seller, either accrued, absolute, contingent or otherwise, relating to the Acquired Assets, that would be required to be set forth on a balance sheet prepared under generally accepted accounting principles applicable to municipalities, other than liabilities incurred in the ordinary course that could not reasonably be expected to have a Material Adverse Effect. Upon payment of the Purchase Price in accordance with Section 3.01(b), (a) all of the Outstanding Indebtedness shall, without further action, be immediately repaid, extinguished or defeased in full and (b) any security interests granted by Seller to secure its obligations pursuant thereto shall, without further action, be immediately extinguished or terminated at or before the Closing pursuant to the contractual terms applicable to such Outstanding Indebtedness.

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

Except as set forth on Schedule 4.07, since December 31, 2023, there has not been any transaction or occurrence that has resulted or is reasonably likely to result in a Material Adverse Effect and the Seller has operated and maintained the System since December 31, 2023 in the ordinary course.

#### Section 4.08. Tax Matters

Except as set forth on Schedule 4.08 or as would not have a Material Adverse Effect, that (i) the Seller has timely paid all Taxes that may have been or may be due and payable by the Seller on or before the Closing Date, arising from the ownership or operation of the Acquired Assets or the System on or before the Closing Date; (ii) no Taxing authority has asserted any claim against the Seller for the assessment of any additional Tax liability or initiated any action or proceeding which could result in such an assertion; (iii) the Seller has made all withholding of Taxes required to be made under all Laws and regulations, including without limitation, withholding with respect to compensation paid to employees for the System, if any, and the amounts withheld have been properly paid over to the appropriate Taxing authorities; and (iv) the Seller has at all times been exempt from U.S. federal income Tax and from income Taxes imposed by the Commonwealth of Pennsylvania (and its political subdivisions) and by other states (and their respective political subdivisions), and income and revenue produced by or with respect to the System and the Acquired Assets has at all times been excluded from gross income by virtue of the provisions of Section 115(1) of the Code.

#### Section 4.09. Real Property and Easements

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

#### Section 4.10. Equipment and Machinery

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

#### Section 4.11. Environmental Compliance

Except as set forth on Schedule 4.11 or that otherwise could not be expected to have a Material Adverse Effect:

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

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

(c) Except as has been disclosed to Buyer on Schedule 4.11, the Seller has not received notice of any Environmental Claims related to the System that have not been fully and finally resolved, and to the Knowledge of Seller no claims of Environmental Liabilities have been threatened allegedly arising from or relating to the System that have not been fully and finally resolved.

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

(e) No Lien or activity use limitation or institutional control has been recorded affecting any Acquired Assets by any Governmental Authority due to either the presence of any Hazardous Material on or off the Acquired Assets or a violation of any Environmental Requirement except as has been disclosed by the Seller to Buyer on Schedule 4.11.

(f) The Seller has no Knowledge of any underground storage tanks on or at any of the Acquired Assets other than as set forth on Schedule 4.11. To the Seller's Knowledge, any underground storage tanks previously located at the Acquired Assets other than as set forth on Schedule 4.11 have been removed or otherwise closed, plugged and abandoned in compliance with applicable Environmental Requirements in effect at the time of such closure.

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

(h) The Seller has no Knowledge of the existence of any Regulated Asbestos Containing Material in or on the Acquired Assets in an aggregate amount that would reasonably

be expected to result in an Environmental Liability; and any Regulated Asbestos Containing Material is being managed in compliance with all applicable Environmental Requirements.

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

(j) Except as has been disclosed to Buyer on Schedule 4.11, the Seller has not received notice nor does it have Knowledge of any historic environmental conditions that could give rise to any Environmental Claims related to the System, any Acquired Asset, or the underlying Real Property.

#### Section 4.12. Authorizations and Permits

Except as set forth on Schedule 4.12, Seller possesses all Authorizations and Permits required under the Law, including but not limited to Environmental Requirements to own occupy and operate the System. Schedule 4.12 sets forth the Authorizations and Permits of the Seller as applicable. The Seller has made true and complete copies of all Authorizations and Permits available to Buyer and all such Authorizations and Permits are in full force and effect. Except as set forth on Schedule 4.12, the Seller is in compliance in all material respects with all terms, conditions and requirements of all Authorizations and Permits, and no proceeding is pending or, to the Knowledge of the Seller threatened relating to the revocation or limitation of any of the Authorizations or Permits, other than those revocations or limitations which do not individually or in the aggregate have a Material Adverse Effect.

#### Section 4.13. System Contracts

(a) Schedule 4.13 sets forth a complete and accurate list of all the Assigned Contracts and any amendments thereto.

(b) Except as specifically identified on Schedule 4.13, the Seller have made available to Buyer true and complete copies of all the contracts primarily related to the System, including the foregoing Assigned Contracts.

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

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

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

Authorization or Permit that would have a Material Adverse Effect on the operations of the System or on the Buyer. There are no Authorizations or Permits from any Governmental Authority necessary for the operation of the System as currently being operated except for those Authorizations and Permits listed in Schedule 4.12.

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

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

#### Section 4.15. **Broker's and Finder's Fees**

No broker, finder, or Person is entitled to any commission or finder's fee by reason of any agreement or action of Seller in connection with this Agreement or the transactions contemplated by this Agreement. Seller has employed PFM Financial Advisors LLC, as municipal advisor to provide transaction structuring advice and to provide Seller with municipal advice relating to the sale of the System. Seller is solely responsible to pay all fees owed to PFM Financial Advisors LLC in connection with the transactions contemplated by this Agreement.

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

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

(b) Except as set forth on Schedule 4.16(b), the Acquired Assets are sufficient for, and constitute all the assets, properties, business, goodwill and rights of every kind and description, and services required for, the continued conduct and operation of the System by Buyer in substantially the same manner as currently conducted and operated by Seller. Except for the Excluded Assets and except as set forth on Schedule 4.16(b), (i) the Acquired Assets, taken as a whole, comprise all the assets, properties, business, goodwill and rights of every kind and description used or held for use in, or useful or necessary to the operation of the System as currently operated by Seller, and (ii) there are no assets, properties, business, goodwill, rights or services used in the conduct or operation of the System that are owned by any Person other than Seller that will not be licensed or leased to Buyer under valid, current license arrangements or leases pursuant to an Assigned Contract, if applicable. None of the Excluded Assets are material to the System.

**Section 4.17. Pending Development Plans**

Schedule 4.17 sets forth a full and complete list of all Pending Development Plans for which Seller has received notice as of the Effective Date. Each Pending Development Plan, if consummated, could result in additional customers and reduction of available treatment capacity. Seller provides no assurances whatsoever that any development or expansion of the Service Area associated with any Pending Development Plan will actually be undertaken or completed. The Parties expect that Schedule 4.17 will change from time to time between the Effective Date and Closing, and the Seller shall promptly provide updates to Schedule 4.17 upon the occurrence of any significant change, decision or development and shall further deliver such updates pursuant to Section 9.03.

**Section 4.18. Customer Sewer Laterals and Grinder Pumps**

As of the Closing Date, the Seller will not own, or have any responsibility for: (i) any grinder pumps; (ii) connecting facilities located in the area originating from the collection facilities at the edge-of-road or curb-line when the facilities are located within a public right-of-way or the edge of an easement where the collection facilities are located within private property to and throughout the customer's property; or (iii) any and all piping and fixtures internal to each individual customer structure (whether residential, commercial, industrial or other customer classes/types).

**ARTICLE V.**

**REPRESENTATIONS AND WARRANTIES OF BUYER**

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

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

**Section 5.01. Organization**

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

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

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

Section 5.03. **No Conflict or Violation**

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

Section 5.04. **Consents and Approvals**

Schedule 5.04, sets forth a list of each consent, waiver, authorization or approval of any Governmental Authority, or of any other Person, and each declaration to or filing or registration with any Governmental Authority required in connection with the execution and delivery of this Agreement by Buyer or the performance by Buyer of its obligations hereunder. For purposes of this Section, Governmental Authority shall not include Seller.

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

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

Section 5.06. **Financial Wherewithal**

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

Section 5.07. **Sufficient Funds**

Buyer shall have sufficient funds available at Closing to consummate the transactions contemplated by this Agreement, to pay the Purchase Price in accordance with Article III and expenses related to the transactions contemplated by this Agreement, and on and after Closing, to generally provide ownership, operation and capital for the operations and capital needs of the System following the Closing, and assuring that the customers of the System will receive safe, adequate and reliable wastewater service equal to or better than such customers would have received without the transactions contemplated by this Agreement and at all times consistent with the provisions of the Pennsylvania Public Utility Code, 66 Pa. C. S. § 101 *et seq.*, and Law to the extent applicable.

Section 5.08. **Independent Decision**

Except as expressly set forth in this Agreement, or any of the related agreements, Buyer acknowledges that (a) neither Seller nor any other Person has made any representation or warranty, express or implied, as to the accuracy or completeness of the System or information provided to Buyer, and (b) neither Seller nor any other Person shall have or be subject to any liability to Buyer or any other Person resulting from the distribution to Buyer, or Buyer use of, any information regarding the System or Acquired Assets that has been furnished or made available to Buyer and its Representatives. Buyer acknowledges that other than as expressly set forth in this Agreement or any related agreement, Seller expressly disclaims any warranty of future profitability or future earnings performance of any Acquired Assets or the System.

#### Section 5.09. **Scheduled Matters**

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

#### Section 5.10. **Independent Investigation**

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

#### Section 5.11. **Litigation**

The Buyer is not in breach of any applicable Law that could have a Material Adverse Effect on the operations of the System or the Buyer. Neither the Buyer nor any Affiliate of the Buyer is listed on any of the following lists maintained by the Office of Foreign Assets Control of the United States Department of the Treasury, the Bureau of Industry and Security of the United States Department of Commerce or their successors, or on any other list of Persons with which the Seller may not do business under applicable Law: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List and the Debarred List. Except as set forth on Schedule 5.11, there is no action, suit or proceeding, at law or in equity, or before or by any Governmental Authority, pending nor, to the Knowledge of the Buyer, threatened against the Buyer before or at the Closing Effective Time, which will have a Material Adverse Effect on (i) the transactions contemplated by this Agreement or (ii) the validity or enforceability of this Agreement.

## ARTICLE VI.

### TITLE TO REAL ESTATE; EASEMENTS

#### Section 6.01. Evidence of Title

Subject to Section 6.06, with respect to all Real Property, Buyer shall obtain, at its sole cost and expense, a commitment for an owner's policy of title insurance on the American Land Title Association's ("ALTA") Owner's Form 2006 (the "Title Commitment"), issued by a title insurance company selected by Buyer and licensed to insure title to real property by the Commonwealth of Pennsylvania (the "Title Company"), having an effective date after the Effective Date. Promptly following the Effective Date, Buyer shall order the Title Commitment from the Title Company and shall provide Seller evidence of the order. Notwithstanding anything to the contrary in Section 6.02(a) below, Buyer shall not be entitled to send an Objection Notice with respect to any parcel of Real Property and the Title Commitment for the same if, within forty five (45) Business Days after the Effective Date, Buyer has not ordered the Title Commitment from the Title Company for such parcel of Real Property and provided Seller with evidence of the same.

#### Section 6.02. Objections to Title

(a) Notice of Objections. Within forty five (45) days of Buyer's receipt from the Title Company of a Title Commitment for any of the parcels of Real Property, Buyer shall deliver to Seller a true, correct and complete copy of the Title Commitment and true, correct, complete and legible copies of any and all exception documents listed in the Title Commitment, along with Buyer's written notice to Seller of any of the exceptions to title set forth on Schedule B of such Title Commitment to which Buyer objects (the "Title Objection Items") (such written notice of Buyer being referred to as the "Objection Notice"). The Objection Notice shall (a) not contain exceptions that are Permitted Liens, (b) not relate to the Buyer or any requirements, conditions or obligations of the Buyer, (c) not relate to matters of record and set forth in the Title Commitment and unrecorded matters revealed to Buyer in its due diligence or revealed in the survey unless such Title Objection Item materially and adversely in Buyer's commercially reasonable opinion restricts or prevents the use of the Real Property in the current operation of the System, and (d) not contain the standard Title Company exceptions to the extent that such standard Title Company exceptions are commonly removed by the execution and delivery of a standard owner's affidavit by Seller. The Buyer shall include a true, correct and complete copy of the Title Commitment and true, correct, complete and legible copies of any and all exception documents listed in the same in the Objection Notice. If Buyer provides the Seller with an Objection Notice, the Seller shall use commercially reasonable efforts to have all of the Title Objection Items cured, satisfied or released of record, or insured over, by the Title Company (individually, "Cure" and collectively, "Cured") before or as of the Closing. At or before the Closing, the Seller shall deliver written evidence to Buyer, in form and substance reasonably satisfactory to Buyer, evidencing that Seller has Cured all such Title Objection Items. In the event that Seller is unable to Cure any Title Objection Item per this Section 6.02(a), Seller shall indemnify Buyer for such inability per the terms of Article VIII hereof, provided that Seller's indemnification obligation arising under this Section 6.02(a) shall not be subject to the Threshold Amount nor the Liability Cap set forth in Section 8.05. For

avoidance of doubt, Buyer acknowledges that no item listed in clauses (a) through and including (d) above, may be objected to by Buyer as a Title Objection Item.

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

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

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

(e) Insurable Claims. To the extent any Claim for Losses under Article VIII constitutes an Insurable Claim (as defined below), Buyer shall assert the Insurable Claim and use its commercially reasonable efforts to obtain recovery for such Insurable Claim against the Title Company (which shall include commencing litigation and diligently prosecuting such Insurable Claim to judgment) before pursuing a Claim for Losses under Article VIII. If at any time following a non-favorable judgment that substantially denies the relief sought by Buyer from the Title Company in connection with the Insurable Claim (each a "Non-Favorable Judgment"), Buyer may, following such Non-Favorable Judgment, pursue the Seller with a Claim for Losses under Article VIII (any such Claim against the Seller following an attempted Insurable Claim against the Title Company being a "Residual Title Claim"). Notwithstanding anything to the contrary in Article VIII, Buyer may assert a Claim for Losses based upon a Residual Title Claim for a sixty (60) day period after the Non-Favorable Judgment. For purposes of this Section 6.02(d), an "Insurable Claim" means a Claim that: (i) arises out of Buyer's discovery of a title defect or encumbrance with respect to any of the Real Property following the Closing that materially restricts or prevents the use of such Real Property in the operation of the System; and (ii) constitutes a claim against the Title Company under Buyer's Title Policy. Buyer acknowledges that any and all Claims which Buyer could otherwise bring as a breach of a covenant of title under the special warranty deed to the Real Property shall be included within the Claim for Losses under Article VIII and is subject to the terms of this Section 6.02(e).

### Section 6.03. Title Expenses

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

**Section 6.04. UCC Search; Releases**

Not later than one hundred eighty (180) days after the Effective Date, Buyer shall obtain at its sole cost and expense a Uniform Commercial Code search against Seller covering any of the personal property or fixtures included among the Acquired Assets from the Office of the Secretary of the Commonwealth of Pennsylvania and the Recorder of Deeds for any county in Pennsylvania in which Acquired Assets are located (the "UCC Search"). On or before the Closing, Seller shall at its sole cost and expense obtain releases of any and all security interests in any of the Acquired Assets which are not Permitted Liens. The Seller shall provide the form of the releases of such security interests to Buyer on or before the Closing Date.

**Section 6.05. Easements.**

(a) Abstract of Easements. Within sixty (60) days after the Effective Date, the Seller shall, at its sole cost and expense, cause an abstractor selected by the Seller and reasonably acceptable to Buyer and the Title Company (the "Abstractor"), to perform a search of the public land records of any county in which the Acquired Assets are located, based on the Seller's records and plans of the System (and such other sources of information as are reasonably related thereto), by searching the grantee index in the names of the Seller and such other searches as the Abstractor may reasonably make, to (i) identify and provide Buyer with title information on any and all recorded Easements (including information related to any Liens or encumbrances on Seller's title thereto), and (ii) taking into account any applicable information provided by Buyer, identify all Missing Easements. During the process, as the Abstractor provides written search results to the Seller (including updated versions of the abstractor search result chart), the Seller will promptly provide the same to Buyer for its review, and, without limiting the foregoing, the Seller shall, or shall cause the Abstractor to, provide Buyer with periodic updates, oral or written, on the status of the activities set forth in the previous sentence.

(b) Notice of Objections. Within forty-five (45) days of Buyer's receipt from the Seller (or the Abstractor) of the information specified in subsection (a) above, Buyer shall deliver to Seller written notice identifying the encumbrances on the Easements that, in Buyer's commercially reasonable opinion, could materially and adversely restrict or prevent the use of the Easements in the current operation of the System (the "Easement Objection Items") (such written notice of Buyer being referred to as an "Easement Objection Notice"). The Easement Objection Notice shall not include any encumbrances that: (a) are Permitted Liens, (b) pertain to the Buyer or any requirements, conditions or obligations of the Buyer, or (c) are matters of record and set forth in the Abstractor's search results that do not, in Buyer's commercially reasonable opinion, materially and adversely restrict or prevent the use of the Easements in the current operation of the System (specifically including mortgages or other instruments securing indebtedness incurred by the owner of the land burdened by the Easement). If Buyer provides the Seller with an Easement Objection Notice, the Seller shall use commercially reasonable efforts to have the Easement Objection Items Cured, prior to or as of the Closing. At or prior to the Closing, the Seller shall

deliver written evidence to Buyer, in form and substance reasonably satisfactory to Buyer, evidencing Seller has Cured all Easement Objection Items. In the event that Seller is unable to Cure any such Easement Objection Item per this Section 6.05(b), Seller shall indemnify Buyer for such inability per the terms of Article VIII hereof, provided that Seller's indemnification obligation arising under this Section 6.05(b) shall not be subject to the Threshold Amount nor the Liability Cap set forth in Section 8.05.

(c) Missing Easements. If during the process of Abstractor's review and investigation of the county land records, either Party determines, based on the Abstractor's investigation, that there is a Missing Easement, the Seller (at its cost and expense) shall take any and all actions (including the use of its power of condemnation) to obtain any such Missing Easements so that the same may be sold, assigned, transferred and conveyed to Buyer at the Closing pursuant to the terms and conditions of this Agreement. The Seller shall pay for all costs and expenses incurred in connection with obtaining each Missing Easement (including any consideration payable to the landowner in connection with condemnation, in lieu of condemnation or otherwise to obtain Missing Easements). If Seller has not obtained all Missing Easements by the date that is ninety (90) days after the date that Abstractor has completed his review of the County land records and delivered the last results of the same to Seller (the "Abstract Completion Date"), then the Seller (at its cost and expense) shall, as soon as reasonably practicable, commence and file in the Court of Common Pleas, in the county in which the affected property is located, a condemnation or eminent domain proceeding to obtain any and all such Missing Easements. For the purposes of clarity, upon obtaining each Missing Easement (including upon the final resolution of a condemnation proceeding), each Missing Easement that has been acquired or obtained by the Seller is considered an Easement. The Seller shall be responsible for the full cost and expense of all condemnation and eminent domain proceedings in obtaining the Missing Easements. The terms of this Section shall survive Closing.

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

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

#### Section 6.06. Unscheduled Property

The Parties acknowledge that the Seller may own interests in or have the legal right to use or occupy the Real Property and/or Easements that are necessary or essential to the operation of the

System and that are not set forth in Schedule 4.09 (the “Unscheduled Real Property”). If the Parties discover before or after the Closing Date, one or more parcels of Unscheduled Real Property, the discovering Party shall give written notice of such discovery to the non-discovering Party. In addition to its obligations in Section 2.03, Seller shall convey, assign or otherwise transfer any rights to each parcel of Unscheduled Real Property, with no adjustment to the Purchase Price, in such a manner as to provide Buyer with reasonable assurances that Buyer will have the right to use or occupy the Unscheduled Real Property as it was used by Seller as of the Effective Date.

## ARTICLE VII.

### OTHER AGREEMENTS

#### Section 7.01. Taxes

Except as provided in this Agreement, Seller shall pay any and all Taxes, if any, arising out of the ownership of the Acquired Assets and out of the operation of the System before the Closing Date, and such Taxes shall be treated as Excluded Liabilities for purposes of this Agreement.

#### Section 7.02. Cooperation on Tax Matters

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

#### Section 7.03. Personnel Matters

Buyer shall not be required to offer employment effective on the Closing Date to any Personnel.

#### Section 7.04. Initial and Future Rates

(a) Rates. After Closing, Buyer shall implement the Seller’s sanitary wastewater rates then in effect at Closing, as set forth on Schedule 7.04 (“Base Rates”), as Buyer’s effective sanitary wastewater rates, provided that the rates reflected on Schedule 7.04 (at Closing) shall not be lower than those in effect on the date of the Effective Date. Buyer intends to bill on a monthly basis.

(b) PaPUC Approval. The Buyer shall include the rate provisions of Section 7.04(a) in its requested PaPUC Governmental Approval.

#### Section 7.05. Buyer Taxpayer

From and after the Closing Date, Buyer acknowledges that, upon conveyance of the Acquired Assets to Buyer, the Buyer will be subject to, among other Taxes, real estate Taxes, which Buyer shall pay when due but solely to the extent such Taxes are owed for and relating to periods after the Closing.

#### Section 7.06. PaPUC Approval

(a) Buyer shall timely initiate and faithfully prosecute the necessary proceedings to obtain from the PaPUC (i) the issuance of certificates of public convenience to Buyer to provide wastewater services in the Service Area, (ii) the approval of the acquisition of the System by Buyer under terms and conditions that are reasonably acceptable to Seller and Buyer, and (iii) the approval of any inter-municipal agreements, if any, provided however that prior to Buyer commencing such proceedings, Seller shall file with the PaPUC any petition or application necessary to address extraterritorial service, if any. Seller shall cooperate with and assist Buyer in proceedings before the PaPUC.

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

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

(d) To the extent requested by Buyer, Seller shall participate in any proceedings before the PaPUC as an intervenor and active party, provided that the Seller shall bear the fees and expenses directly related to such intervention. Seller may be represented by the counsel of its choice in any such proceedings.

#### Section 7.07. **Remedies for Breach of Article VII Agreements**

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

#### Section 7.08. **Operation and Maintenance of MS4 and Stormwater Systems**

Subject to applicable Law, the Seller shall at all times maintain responsibility for its MS4 System and Stormwater System Assets to the extent such system and assets are not sold pursuant to this Agreement. This provision shall not preclude Seller from transferring its MS4 System and Stormwater System Assets to another governmental entity, municipal authority or other qualified purchaser at a future time. The Buyer and the Seller will cooperate in the future on projects where the Buyer elects to or is mandated by Law to separate the stormwater and wastewater flows on certain segments of the Combined Sewer System, with the Buyer retaining the wastewater assets and contributing to the Seller the stormwater assets. All costs and expenses associated with such separation of the stormwater and wastewater flows on the Combined Sewer System shall be paid by the Buyer. Buyer shall provide Seller with notice five years in advance of beginning any projects involving the separation of the stormwater and wastewater flows of the Combined Sewer System. The City shall review and provide feedback within thirty (30) days of receipt of notice of each project. Each project shall be subject to approval by the Seller within ninety (90) days of receipt of such notice, which approval shall not be unreasonably conditioned, delayed or withheld.

**Section 7.09. System and Combined Sewer System Assets.**

As soon as practicable after the Effective Date, the Seller shall provide Buyer with a current map that depicts all easements of which Seller has Knowledge relating to the System, and a current list of Combined Sewer System Assets, which shall be subject to verification and confirmation by Buyer.

**Section 7.10. Insurance.**

To the extent that the Seller (with respect to the System or any Acquired Assets), the System or any Acquired Assets were insured under any occurrence-based insurance policies of the Seller prior to the Closing Date, following the Closing, at Buyer's written request, the Seller shall make claims under such policies with respect to occurrences, events, conditions, or circumstances to the extent relating to the System or any Acquired Asset that occurred or existed prior to the Closing. The Seller does not represent, warrant or covenant that (i) such insurance policies will provide coverage for any claims reported after the Closing that Buyer may elect to make, (ii) issuers of such policies will not wrongfully refuse to honor any such claims, or (iii) it will maintain any such insurance policies following the Closing Date. The Seller shall provide reasonable assistance to Buyer (at Buyer's sole cost and expense) in connection with the tendering of such claims to the applicable insurers under such insurance policies, including providing Buyer with a copy of the applicable policy following the request of Buyer. The Seller shall remit any recoveries with respect to any claims asserted by Buyer under any such insurance policies in excess of reasonable costs of recovery of the Seller including deductibles and the amount of any increased premiums retroactively applied as a result of the payment by the applicable insurers of such claims, or any increases in premiums for the year following the year in which any such claims were paid by the applicable insurers, in either case to the extent the Seller can demonstrate to Buyer that the amount of any such increased premiums was attributable to such claims. In the event of any dispute regarding the date of any loss or occurrence, the terms of the applicable policies shall govern.

**Section 7.11. Pending Development Plans**

(a) Buyer and the Seller acknowledge that from the time of the Effective Date, the Seller shall continue to administer, and perform its duties and responsibilities with respect to the Pending Development Plans set forth on Schedule 4.17. For the avoidance of doubt, after the Closing Date, the Seller shall not seek to collect any EDU or tapping related fees. Following Closing, and for no additional consideration or adjustment to the Purchase Price, Seller shall convey any sanitary sewer system improvements that are dedicated to Seller after Closing pursuant to land development agreements executed prior to Closing in connection with Pending Development Plans.

(b) For Pending Developments Plans pursuant to which public sanitary sewer improvements have not yet been dedicated to the Seller as of Closing but for which a land development agreement exists between the developer and the Seller including terms and requirements for dedication, the Seller shall complete the dedication process with the developer and in turn convey title to the subject sanitary sewer improvements to Buyer. This term shall survive Closing.

(c) Following the Effective Date, Seller shall not enter into any contract with a third party that contemplates the construction of new sanitary wastewater facilities or upgrades to existing facilities, including, without limitation, pumping stations, force mains, manholes, or pipelines for service to future customers related to Pending Development Plans (collectively, “New System Assets”) without providing a draft of such contracts to Buyer for its review and approval as to the design and specifications before execution by the parties to such contracts. Buyer shall have fifteen (15) Business Days to review and approve such contracts, and Buyer’s failure to object in writing to any terms of such contracts within such fifteen (15) Business Day review period is deemed an approval of the same by Buyer.

Section 7.12. **Act 537 Plan**

(a) Buyer acknowledges that Seller has previously committed to an official plan, commonly known as an Act 537 Plan (the “Act 537 Plan”) under the Pennsylvania Sewage Facilities Act (“Act 537”), which has been made available to Buyer. Buyer understands that the Act 537 Plan contains obligations and commitments, as more fully set forth in the Act 537 Plan to complete certain improvements and upgrades to the System (the “System Improvements”). Buyer shall accept and complete all of the System Improvements as Seller agreed to complete under the existing Act 537 Plan. Prior to agreeing to further obligations pursuant to future amendments to the Act 537 Plan that could reasonably be deemed to affect Buyer, Seller shall provide written notice of such proposed amendment(s), and Buyer and Seller shall negotiate in good faith to resolve any objections Buyer may raise in connection with such proposed amendment(s).

(b) Buyer acknowledges Seller has jurisdiction over sewage facilities planning and sewer service within portions of the System that provide service within the Service Area through the Act 537 Plan and its Act 537 planning program, zoning, subdivision and land development ordinances and comprehensive land use planning policies. Buyer, Seller shall cooperate with respect to current and future sewage facilities planning and sewer service consistent with the provisions of this Section 7.12.

(c) Subject to PaPUC approval of the Service Area as provided in Section 7.06, Buyer shall extend sewer lines and provide sewage collection services to properties within the Service Area in a manner consistent with the Act 537 Plan and the Buyer’s tariff, the Public Utility Code, and the PaPUC’s regulations and orders. Seller will confer with Buyer concerning any amendment to the Act 537 Plan that would affect the provision of sewage collection services within the Service Area. The Seller shall not propose or adopt any amendment to the Act 537 Plan that would reduce the Service Area or divert wastewater flows generated from properties located within the Service Area from being served by the System without the approval of Buyer.

(d) Buyer will not request, pursue, or implement expansions of the System within the Seller beyond the current Service Area (that would trigger an Act 537 Plan amendment) without the prior written approval of Seller (which shall not be unreasonably withheld), the PaDEP and the PaPUC, as applicable. Seller shall promptly notify and confer with Buyer, and consider Buyer’s comments, concerning any proposed Act 537 Plan amendment (including any sewage facilities planning module) that would involve the provision of sewage collection services by the System to area or properties outside of the Service Area. With respect to any such potential Act 537 Plan

amendment, Seller and Buyer shall cooperate in evaluating alternatives for provision of sewage services to such areas consistent with the requirements of 25 Pa. Code Ch. 71, including consideration of the technical feasibility, economic feasibility and cost effectiveness, consistency with the objectives and policies of plans and requirements of 25 Pa. Code Ch. 71.21(a)(5), consistency with municipal land use plans and ordinances, subdivision ordinances and other ordinances and plans for controlling land use and development, technically and administratively able to be implemented, and other factors required under Act 537 or under Buyer's tariff, the Public Utility Code, and the PaPUC's regulations and orders.

(e) If Seller and Buyer each determine that the provision of sewage collection by the System to certain areas or properties outside of the Service Area is technically feasible, economically feasible and cost effective, and meets all of the requirements set forth in Act 537 and 25 Pa. Code Ch. 71, the Seller shall amend the Act 537 Plan to include such identified areas and properties in the Service Area. If Seller amends the Act 537 Plan pursuant to this subsection and such amendment is approved by PaDEP, (i) Buyer shall request that the modified Service Area be approved by PaPUC; and (ii) subject to PaPUC approval of the inclusion of such modified Service Area, Buyer shall extend sewer lines and provide sewage collection services to properties within such Service Area in a manner consistent with the Act 537 Plan and Buyer's tariff, the Public Utility Code, and the Pa PUC's regulations and orders.

#### Section 7.13. Utility Valuation Experts

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

#### Section 7.14. Compliance and Operational Reports

After the Effective Date and through the Closing Date, Seller shall provide Buyer with periodic reports at Buyer's request to the person designated by Buyer, disclosing any and all material compliance or operational deficiencies that occurred during the previous month. During the same period, Seller shall also provide Buyer with copies of all reports filed with PaDEP regarding the System, including any discharge monitoring reports, associated supplemental reports, and WETT reports, when available. Seller shall permit Buyer to complete an inspection of the Acquired Assets within twenty (20) days prior to Closing. In the event that such inspection reveals that the working condition of any of the Acquired Assets has materially deteriorated (other than normal wear and tear provided such Acquired Asset continues to function) between the Effective Date and Closing, Seller shall have the obligation of repairing or replacing such Acquired Asset prior to Closing. If Seller fails to comply with its obligations under this Section 7.14, Buyer shall have a claim for indemnification under Article VIII which shall not be subject to the Threshold Amount in Section 8.05(a).

#### Section 7.15. Implementation and Enforcement of Municipal Code

Following the Effective Date and continuing after Closing Date, Seller shall continue to implement and enforce the relevant provisions of the Municipal Code of the City of Pittston, as amended (the “Municipal Code”), including, without limitation, enforcement of the Seller’s fats, oils, and grease program, lateral inspection program, investigation of illegal connections, and related operations and maintenance programs. Prior to enacting amendments to the Municipal Code that could reasonably be deemed to affect the System or uniquely impact Buyer, Seller shall provide written notice of such proposed amendment(s) and Buyer and Seller shall negotiate in good faith to resolve any objections Buyer may raise in connection with such proposed amendment(s).

Section 7.16. **Grants**

Seller is under no obligation, and shall not come under any obligation caused by entry into this Agreement or consummation of the transaction contemplated by this Agreement, to repay or refund any third party for grant moneys received by Seller related to the System or the Acquired Assets.

Section 7.17. **Covenant Survival**

The covenants in this Article survive Closing.

**ARTICLE VIII.**

**INDEMNIFICATION**

Section 8.01. **Survival**

All representations and warranties contained in this Agreement shall survive until twelve (12) months following the Closing Date, except that (a) the representations and warranties of the Seller specified in Section 4.01 (Organization), Section 4.02 (Power and Authority), Section 4.03 (Enforceability), Section 4.15 (Brokers’ and Finders’ Fees) and Section 4.16 (Title to Acquired Assets) (collectively, the “Seller Fundamental Representations”) shall survive the Closing indefinitely or until the latest date permitted by applicable Law, (b) the representations and warranties of Seller specified in Section 4.11 (Environmental Compliance) shall survive Closing until the expiration of the applicable statute of limitations (giving effect to any waiver, mitigation or extension thereof), and (c) the representations and warranties of Buyer specified in Section 5.01 (Organization), Section 5.02 (Authorization and Validity of Agreement), and Section 5.05 (Brokers’ and Finders’ Fees) (collectively, the “Buyer Fundamental Representations”) shall survive the Closing indefinitely or until the latest date permitted by applicable Law. The covenants and agreements of the Parties contained herein shall survive the Closing indefinitely or for the shorter period explicitly specified therein, except that for such covenants and agreements that survive for such shorter period, breaches thereof shall survive indefinitely or until the latest date permitted by applicable Law. Notwithstanding the preceding sentences, (x) any breach of a representation, warranty, covenant or agreement in respect of which indemnity may be sought under this Agreement shall survive the time at which it would otherwise terminate pursuant to the preceding sentences, if notice of the inaccuracy or breach thereof giving rise to such right of

indemnity shall have been given to the party against whom such indemnity may be sought before such time, and (y) nothing contained in this Section 8.01 shall limit in any way (A) any rights a Party may have to bring claims grounded in fraud, intentional misrepresentation or willful misconduct, which rights shall survive the Closing indefinitely and (B) Buyer's right to seek indemnification for a claim relating to an Excluded Liability or Excluded Asset, which rights shall survive the Closing until the expiration of the applicable statute of limitations (giving effect to any waiver, mitigation or extension thereof).

#### Section 8.02. **Indemnification by the Seller**

To the maximum extent permitted by applicable Law and subject to the terms and conditions of this Article VIII, the Seller shall indemnify, defend and hold harmless: (i) Buyer, (ii) Buyer's successors and Affiliates, and (iii) their respective employees, officers, directors, trustees and agents (collectively, the "Buyer Indemnified Parties"), from and against any and all claims for Losses arising from or relating to: (a) any misrepresentation as to, or any material inaccuracy in, any of the representations and warranties of the Seller contained in this Agreement or in any exhibit, schedule, certificate or other instrument or document furnished or to be furnished by the Seller before the Closing pursuant to this Agreement (without regard to any materiality, Material Adverse Effect or related qualifications in the relevant representation or warranty (except where such provision requires disclosure of lists of items of a material nature or above a specified threshold)); (b) any material breach or material nonfulfillment of any of the covenants or agreements of the Seller contained in this Agreement or in any exhibit, schedule, certificate or other instrument or document furnished or to be furnished by the Seller before the Closing pursuant to this Agreement; or (c) any Excluded Liability or Excluded Asset, or (d) the ownership, use, operation or control of any of the Acquired Assets or the System prior to the Closing or any incident, occurrence, condition or claim arising prior to Closing and relating to the ownership, use, operation or control of the System prior to Closing.

#### Section 8.03. **Indemnification by Buyer**

To the maximum extent permitted by applicable Law and subject to the terms and conditions of this Article VIII, Buyer shall defend, indemnify and hold harmless: (i) the Seller, (ii) the Seller's successors and Affiliates, and (iii) each of their respective employees, officers, directors and agents (collectively, the "Seller Indemnified Parties") from and against any and all claims for Losses arising from or relating to: (a) any misrepresentation as to, or any material inaccuracy in, any of the representations and warranties of Buyer contained in this Agreement or in any exhibit, schedule, certificate or other instrument or document furnished or to be furnished by Buyer pursuant to this Agreement; (b) any material breach of any of the covenants or agreements of Buyer contained in this Agreement or in any exhibit, schedule certificate or other instrument or document furnished or to be furnished by the Buyer pursuant to this Agreement; (c) any Assumed Liability as and when payment and performance is due, including without limitation any liability related to any claims by any Governmental Authority; (d) Buyer's actions involving Environmental Requirements, Hazardous Materials or environmental claims from and after the Closing Date; or (e) the ownership, operation or control of any of the Acquired Assets or the System from and after the Closing Date.

#### Section 8.04. Indemnification Procedure

(a) Third Party Claims. If any Indemnified Party receives notice of the assertion or commencement of any action, suit, claim or other legal proceeding made or brought by any Person who is not a party to this Agreement or an Affiliate of a party to this Agreement or a Representative of the foregoing (a "Third Party Claim") against such Indemnified Party with respect to which the Indemnifying Party may be obligated to provide indemnification under this Agreement, the Indemnified Party shall give the Indemnifying Party prompt written notice thereof. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits material rights or material defenses because of such failure. Such notice by the Indemnified Party shall describe the Third Party Claim in reasonable detail and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party may participate in, or by giving written notice to the Indemnified Party (and subject to the other requirements herein) to assume the defense of any Third Party Claim at the Indemnifying Party's expense and by the Indemnifying Party's own counsel (which counsel is reasonably acceptable to the Indemnified Party), so long as (i) the Indemnifying Party notifies the Indemnified Party, within ten (10) Business Days after the Indemnified Party has given notice of the Third Party Claim to the Indemnifying Party (or by such earlier date as may be necessary under applicable procedural rules in order to file a timely appearance and response) that the Indemnifying Party is assuming the defense of such Third Party Claim, provided, that if the Indemnifying Party assumes control of such defense it must first agree and acknowledge in such notice that the Indemnifying Party is fully responsible (with no reservation of any rights other than the right to be subrogated to the rights of the Indemnified Party) for all Losses relating to such Third Party Claim, (ii) the Indemnifying Party conducts the defense of the Third Party Claim actively and diligently and at its own cost and expense, and (iii) the Third Party Claim (A) does not involve injunctive relief, specific performance or other similar equitable relief, any claim in respect of Taxes, any Governmental Authority, any criminal allegations, or any potential damage to the goodwill, reputation or overriding commercial interests of Buyer or its Affiliates, (B) is not one in which the Indemnifying Party is also a party and joint representation would be inappropriate or there may be legal defenses available to the Indemnified Party which are different from or additional to those available to the Indemnifying Party, or (C) does not involve a claim which, upon petition by the Indemnified Party, the appropriate court rules that the Indemnifying Party failed or is failing to vigorously prosecute or defend. The Indemnified Party shall reasonably cooperate in good faith in such defense. If the Indemnifying Party assumes the defense of any Third Party Claim, subject to Section 8.04(b), it shall have the right to take such action as it deems necessary to avoid, dispute, defend, appeal or make counterclaims pertaining to any such Third Party Claim in the name and on behalf of the Indemnified Party. The Indemnified Party may, at its own cost and expense, participate in the defense of any Third Party Claim with counsel selected by it subject to the Indemnifying Party's right to control the defense thereof. If the Indemnifying Party elects not to compromise or defend such Third Party Claim or fails to promptly notify the Indemnified Party in writing of its election to defend as provided in this Agreement, the Indemnified Party may, subject to Section 8.04(b), pay, compromise, defend such Third Party Claim and seek indemnification for any and all Losses based upon, arising from or relating to such Third Party Claim. The Seller and Buyer shall reasonably and in good faith cooperate with one another in all reasonable respects in connection with the defense of any Third Party Claim, including making available records relating

to such Third Party Claim and furnishing, without expense (other than reimbursement of actual out-of-pocket expenses) to the defending party, management employees of the non-defending party as may be reasonably necessary for the preparation of the defense of such Third Party Claim.

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

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

## Section 8.05. Limitations on Indemnification Obligations

(a) Subject to the other limitations contained in this Section 8.05, neither Buyer nor Buyer Indemnified Parties is entitled to indemnification pursuant to Section 8.02(a) (other than for an intentional breach of any agreement or covenant contained in this Agreement) unless the aggregate amount of Losses incurred by the Buyer Indemnified Parties under this Agreement exceeds two percent (2%) of the Purchase Price in the aggregate (the "Threshold Amount"), in which case Seller shall then be liable for Losses in excess of the Threshold Amount; except that the foregoing limitations contained in this Section 8.05(a) shall not apply to any claims for indemnification (i) based on fraud, intentional misrepresentation or willful misconduct, (ii) based on any inaccuracy in, misrepresentation as to or breach of any of the Seller Fundamental Representations or any of the representations and warranties set forth in Section 4.11 (Environmental Compliance), or (iii) pursuant to Section 8.02(d).

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

(c) Except in the case of fraud, intentional misrepresentation or willful misconduct (for which all applicable legal and equitable remedies will be available to Buyer), the Buyer Indemnified Parties shall only be entitled to assert claims under Section 8.02(a) (other than claims with respect to breaches of any of the Seller Fundamental Representations, which shall not be limited by this Section 8.05(c)) up to the aggregate amount of six percent (6%) of the Purchase Price (the "Liability Cap"), which shall represent the sole and exclusive remedy of Buyer and the other Buyer Indemnified Parties for any such claims under Section 8.02(a) (other than claims with respect to breaches of any of the Seller Fundamental Representations, in the case of fraud, intentional misrepresentation or willful misconduct or pursuant to Section 8.02(c) which shall not be subject to the Liability Cap, but is capped at the Purchase Price).

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

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

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

(g) Subject to the provisions of Sections 3.02, 7.07, 15.11 and any other provisions for equitable relief and/or specific performance, the Parties acknowledge and agree that their sole and exclusive remedy with respect to any and all claims for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement, shall be pursuant to the indemnification provisions set forth in this Article VIII. In furtherance of the foregoing, each Party waives, to the fullest extent permitted under Law, any and all rights, claims and causes of action for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement it may have against the other Party hereto and their Affiliates and each of their respective representatives arising under or based upon any Law, except pursuant to the indemnification provisions set forth in this Article VIII. Nothing in this Section 8.05(g) limits any Parties' right to seek and obtain any equitable relief and/or specific performance to which any Party is entitled pursuant to this Agreement.

#### Section 8.06. **Knowledge of Breach**

Seller will not be liable under this Article VIII for any Losses based upon or arising out of any inaccuracy in or breach of any of the representations or warranties of Seller contained in this Agreement if Buyer had Knowledge of such inaccuracy or breach before the Closing Date. Buyer will not be liable under this Article VIII for any Losses based upon or arising out of any inaccuracy in or breach of any of the representations or warranties of Buyer contained in this Agreement if Seller had Knowledge of such inaccuracy or breach before the Closing Date.

### ARTICLE IX.

#### **PRE-CLOSING COVENANTS OF THE SELLER**

##### Section 9.01. **Operation of the System**

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

##### Section 9.02. **Cooperation**

The Seller shall reasonably cooperate with Buyer and its employees, attorneys, accountants and other agents and, generally, act in reasonably good faith to timely carry out the purposes of this Agreement and the consummation of the transactions contemplated by this Agreement, including without limitation to effect the following at or before the Closing: (i) the repayment of the Outstanding Indebtedness and the unconditional release of any liens related thereto, and (ii) the acquisition by Seller of the right, title and interest, as applicable, to all Acquired Assets.

**Section 9.03. Supplements and Updates**

The Seller shall promptly deliver to Buyer any supplemental information updating the information set forth in the representations and warranties in Article IV of this Agreement so that such representations and warranties as supplemented by such information will be true and correct as of the Closing Date (or such other date as provided in such representations and warranties) as if then made. Following the Effective Date, the Seller shall promptly advise Buyer of any facts of which it has Knowledge which would constitute a breach of a representation or warranty as of the date made or a default in a covenant contained in this Agreement. For the avoidance of doubt, no such supplemental information or facts provided pursuant to this Section 9.03 shall be deemed to alter any Schedules without the prior written consent of Buyer (such consent not to be unreasonably withheld, conditioned or delayed).

**Section 9.04. Governmental Approvals**

Promptly after the execution of this Agreement, or as required by Law, except as provided in Section 7.06 or otherwise expressly provided herein, the Seller shall file all applications and reports that are required to be filed by Seller with any Governmental Authority as provided on Schedule 4.05 to the Buyer. The Seller shall also promptly provide all information that any Governmental Authority may require in connection with any such application or report. The Seller shall use commercially reasonable efforts to obtain all required material consents, waivers, authorizations or approvals of any Governmental Authority, or of any other Person in connection with the transactions contemplated by this Agreement, including as required under any Assigned Contract. All authorizations of any Governmental Authority necessary to consummate the transactions contemplated by this Agreement shall be in form and content reasonably satisfactory to Buyer and the Seller before Closing and must be final and non-appealable. If a party to the PaPUC proceeding appeals PaPUC authorization of the transaction, the Buyer and the Seller may agree to proceed to consummate the transaction.

**ARTICLE X.**

**PRE-CLOSING COVENANTS OF BUYER**

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

Buyer shall not take any action that will cause it to be in breach of any representation, warranty, covenant or agreement contained in this Agreement or cause it to be unable to perform in any material respect its obligations hereunder, and Buyer shall use commercially reasonable efforts (subject to any conditions set forth in this Agreement) to perform and satisfy all conditions to Closing to be performed or satisfied by Buyer under this Agreement, including action necessary

to obtain all consents and approvals of third parties required to be obtained by Buyer to effect the transactions contemplated by this Agreement.

**Section 10.02. Governmental Approvals**

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

**Section 10.03. Cooperation**

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

**Section 10.04. Supplements and Updates**

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

**ARTICLE XI.**

**CONDITIONS PRECEDENT TO OBLIGATIONS OF THE SELLER**

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

**Section 11.01. Consents and Approvals**

Receipt of all required consents, waivers, authorizations or approvals of any Governmental Authority, or of any other Person and any other approvals necessary to consummate the transactions contemplated by this Agreement set forth on Schedule 5.04, including without limitation all required EPA and PaDEP approvals and all such Authorizations and Permits and Governmental Approvals must be final (and not subject to any appeal and any applicable appeal period having expired). Seller shall obtain the consent of any Governmental Authority as required by the PaPUC or applicable Law. Notwithstanding anything herein to the contrary, for purposes

of this Section 11.01 Governmental Approval shall not include any approval required by the City to consummate this Agreement.

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

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

**Section 11.03. PaPUC Approval**

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

**Section 11.04. No Injunctions**

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

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

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

**Section 11.06. Deliveries by Buyer**

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

**Section 11.07. No Material Adverse Effect**

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

## ARTICLE XII.

### CONDITIONS PRECEDENT TO OBLIGATIONS OF BUYER

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

#### Section 12.01. Consents and Approvals

(a) Receipt of all required material, non-governmental third party consents and any other approvals necessary or advisable to consummate the transactions contemplated by this Agreement set forth on Schedule 4.05 and all consents, waivers, authorizations and approvals of any Governmental Authority required pursuant to Section 5.04, including without limitation all required EPA and PaDEP approvals/renewals and all such Authorizations and Permits and Governmental Approvals must be final (and not subject to any appeal and any applicable appeal period having expired); and

(b) Approval by the Seller for: (i)(A) defeasance and redemption of the Outstanding Indebtedness, and (B) discharge of any other outstanding debt issued by the Seller and payable to any current lender which is required to be repaid as a result of the consummation of the transaction contemplated by this Agreement and (ii) application of any related funds held in any construction fund or account under any indenture(s) being held by the Seller or any lender to the Seller on any outstanding debt (it being understood that any debt service funds or debt service reserve funds will be applied to the defeasance, redemption and discharge of outstanding debt).

(c) Delivery of evidence that Seller shall have taken all actions to acquire right, title, and interest, as applicable, to the System which includes the Acquired Assets required to permit Seller to convey the System to Buyer as pursuant to this Agreement; and

(d) Delivery of evidence of the ownership by the City of the laterals from the collection system main to the edge-of-road or curb-line when the main is located within a public right-of-way or the edge of easement where the main is located within private property. Evidence may be established by providing Buyer with a certified copy of an Ordinance adopted by Seller designating ownership.

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

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

**Section 12.03. PaPUC Approval**

PaPUC must have issued a Final Order authorizing the Buyer to operate as a public utility in the Commonwealth of Pennsylvania and Final Order(s) approving the acquisition of the System under terms and conditions that are reasonably acceptable to the Seller and Buyer. If a party to the PaPUC proceeding appeals PaPUC authorization of the transaction, the Buyer and Seller may agree to proceed to consummate the transaction.

**Section 12.04. No Injunctions**

The Seller and the Buyer are not subject to any injunction, preliminary restraining order or other similar decree of a court of competent jurisdiction prohibiting the consummation of the transactions contemplated by this Agreement.

**Section 12.05. No Material Adverse Effect**

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

**Section 12.06. Deliveries by Seller**

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

**Section 12.07. Performance of the Obligations of Seller**

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

**ARTICLE XIII.**

**CLOSING**

**Section 13.01. Closing Date**

The Closing shall take place at a place in Pennsylvania that is mutually agreed upon by the Parties, at 10:00 a.m. eastern standard time no later than twenty (20) Business Days after the date upon which all the conditions precedent to Closing described in this Agreement have been fulfilled or waived and Buyer and the Seller receive the last of the required consents, waivers, authorizations and approvals from the Governmental Authorities, in each case, for the transactions contemplated by this Agreement, or at such other place and time, by such other method, or on such other date, as may be mutually agreed to by the Parties (the "Closing Date"). The Closing will be effective at 12:01 a.m., City of Pittston, PA time, on the day after the Closing Date (the "Closing Effective Time").

**Section 13.02. Deliveries by the Seller**

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

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

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

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

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

(e) One or more special warranty or other deeds in recordable form reasonably acceptable to Buyer transferring fee simple title of Real Property, and one or more assignments in recordable form reasonably acceptable to Buyer with respect to the Easements (exclusive of any Missing Easements);

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

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

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

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

(j) A duly executed counterpart to the Easement Escrow Agreement, in the form attached hereto as Exhibit C;

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

(k) A form W-9 properly completed by the Seller;

(l) If applicable, simultaneously with Closing, evidence of UCC-3 termination statements filed with the Secretary of State of the Commonwealth of Pennsylvania releasing all liens held in the Acquired Assets by or on behalf of any lender;

(m) If applicable, an executed release, if requested by the Buyer in form and substance acceptable to the Buyer, from any lender with a lien(s) which is not a Permitted Lien on any of the

Acquired Assets, confirming the discharge of the Outstanding Indebtedness and release of any and all security interests in such Acquired Asset(s), subject only to the receipt by such lender of the amount to pay off such debt at Closing;

(n) Five Year MS4 and Stormwater System Separation Plan acceptable to the Seller;  
and

(o) Copies of the duly adopted ordinance(s) and resolution(s) of the Seller authorizing the transactions contemplated by this Agreement.

**Section 13.03. Deliveries by Buyer**

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

- (a) Payment of the Purchase Price in accordance with Section 3.01 hereof;
- (b) A duly executed counterpart to the Assignment and Assumption Agreement;
- (c) Certificate of Buyer pursuant to Section 11.02 of this Agreement;
- (d) Certificate of Buyer pursuant to Section 11.05 of this Agreement;
- (e) Evidence of PaPUC approval as provided in Section 12.03;
- (f) A duly executed counterpart to the Easement Escrow Agreement; and
- (g) All such other instruments of assumption as shall, in the reasonable opinion of Seller and its counsel, be necessary for Buyer to assume the Assumed Liabilities in accordance with this Agreement.

**ARTICLE XIV.**

**TERMINATION**

**Section 14.01. Events of Termination**

This Agreement may, by notice given in the manner provided in this Agreement, be terminated and abandoned at any time before completion of the Closing:

- (a) By the consent of both of the Seller and the Buyer;
- (b) By any of the Seller or the Buyer if:
  - (i) the Closing shall not have occurred on or before the Outside Date; except that (a) the Outside Date may be automatically extended as set forth in the definition of Outside Date in Article I hereof, and (b) the Buyer shall also have the one-time right to extend the Outside Date for up to one hundred twenty (120) days if, in the Buyer's sole discretion, any

such amount of time up to one hundred twenty (120) days is necessary to obtain a required Governmental Approval; or

(ii) any Governmental Authority (other than a municipal authority or Seller), shall have issued an order, decree or ruling or taken any other immediately enforceable action, in each case permanently restraining, enjoining or otherwise prohibiting the material transactions contemplated by this Agreement and such order, decree, ruling or other action will have become final and non-appealable, provided however, that the Party seeking termination pursuant to this clause (b) of this Section 14.01 is not in breach in any material respect of any of its representations, warranties, covenants or agreements contained in this Agreement;

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

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

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

#### Section 14.02. **Effect of Termination**

If this Agreement is terminated by the Seller or the Buyer pursuant to Section 14.01, written notice thereof will forthwith be given to the other and all further obligations of the Parties under this Agreement will terminate without further action by any Party and without liability or other obligation of any Party to any other Party hereunder; except that no Party will be released from liability hereunder if this Agreement is terminated and the transactions abandoned because of any willful breach of this Agreement.

### ARTICLE XV.

#### **MISCELLANEOUS**

##### Section 15.01. **Confidentiality**

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

Approvals, no Party hereto shall, directly or indirectly, disclose or use (and no Party shall permit its representatives to disclose or use) any Confidential Information with respect to any other Party furnished, or to be furnished, by such other Party hereto or its shareholders, directors, officers, agents, or representatives to the other Party hereto or its employees, directors, officers, agents or representatives in connection herewith at any time or in any manner other than in connection with the completion of the transactions contemplated by this Agreement and related transactions.

**Section 15.02. Public Announcements**

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

**Section 15.03. Notices**

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

in the case of the Seller:

City of Pittston  
35 Broad Street  
Pittston, PA 18640  
Attention: Mayor

with a copy to:

Attention: City Solicitor

in the case of the Buyer:

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

With respect to issues arising from customers of the System after Closing, Buyer will respond and attempt to deal with the issue presented within 48 hours of receiving notice from the City. The Buyer contact information below is for City use only and not to be given out to customers directly. The contact for the City to provide notice is:

Pennsylvania American Water Company  
2699 Stafford Avenue  
Scranton, PA 18505  
Attention: Manager of External Affairs

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

**Section 15.04. Headings**

The article, section and paragraph headings in this Agreement are for reference purposes only and have no effect on the meaning or interpretation of this Agreement.

**Section 15.05. Severability**

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

**Section 15.06. Entire Agreement**

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

**Section 15.07. Amendments; Waivers**

This Agreement may be amended, changed or supplemented only by a written agreement signed by the Parties. Any waiver of, or consent to depart from, the requirements of any provision of this Agreement will be effective only if it is in writing and signed by the Party giving it, and only in the specific instance and for the specific purpose for which it has been given. No failure on the part of any Party to exercise, and no delay in exercising, any right under this Agreement will

operate as a waiver of such right. No single or partial exercise of any such right precludes any other or further exercise of such right or the exercise of any other right.

**Section 15.08. Parties in Interest; Third Party Beneficiary**

Except as provided in this Agreement, this Agreement is not intended to and shall not be construed to create upon any Person other than the Parties any rights or remedies hereunder.

**Section 15.09. Successors and Assigns**

None of the Parties to this Agreement may assign any right or delegate any performance under this Agreement without the prior written consent of the other Parties, and any purported assignment or purported delegation without prior written consent is void. This Agreement is binding upon, and inures to the benefit of, the Parties and their respective permitted successors and assigns.

**Section 15.10. Governing Law; Jurisdiction**

The laws of the Commonwealth of Pennsylvania (without giving effect to its conflicts of law principles) govern all matters arising and relating to this Agreement, including torts. The Parties irrevocably agree and consent to the jurisdiction of the United States District Court for the Middle District of Pennsylvania and the Court of Common Pleas of Luzerne County, Pennsylvania, for the adjudication of any matters arising under or in connection with this Agreement. Any action initiated in court shall be filed and litigated (including all discovery proceedings) exclusively in the United States District Court for the Middle District of Pennsylvania and/or the Court of Common Pleas of Luzerne County, Pennsylvania, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by mail to such Party's address set forth in this Agreement shall be effective service of process for any suit, action or other proceeding brought in any such court.

**Section 15.11. Specific Performance**

The Parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the Parties are entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity.

**Section 15.12. Interpretation.**

For purposes of this Agreement: (a) the words "include," "includes", and "including" shall be deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; and (c) the words "herein", "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole. The definition given for any defined terms in this Agreement shall apply equally to both the singular and plural forms of the terms defined. The Exhibits and Schedules referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth herein.

**Section 15.13. Counterparts; Electronic Mail; Facsimile Execution**


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

[THIS SPACE INTENTIONALLY LEFT BLANK;

SIGNATURES NEXT PAGE]

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

CITY OF PITTSTON

By:   
Name: Michael A. Lombardo  
Its: MAYOR

ATTEST:

By:   
Name: Joseph Chacko  
Its: City Administrator

PENNSYLVANIA AMERICAN WATER  
COMPANY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**EXHIBIT A**

Bill of Sale

**EXHIBIT B**

Assignment and Assumption Agreement

**EXHIBIT C**

Easement Escrow Agreement

**Application of Pennsylvania-American Water Company for Acquisition of Substantially  
All of the Assets, Properties and Rights Related to the Wastewater System Owned and  
Operated by the City of Pittston**

**66 Pa. C.S. §1329**

**Application Filing Checklist – Water/Wastewater**

**Docket No. A-2025-3056419**

**Appendix J.b - Resolution Number 13087 – City of Pittston accepting  
PAWC as preferred Bidder**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PITTSBURGH, WASHINGTON COUNTY, PENNSYLVANIA, AUTHORIZING THE SELECTION OF PENNSYLVANIA AMERICAN WATER AS PREFERRED BIDDER AND NEGOTIATION OF THE ASSET PURCHASE AGREEMENT FOR THE SALE OF THE WASTEWATER SYSTEM.**

**BE IT RESOLVED**, by the City Council of the City of Pittsburgh, and it is hereby resolved by the authority of the same:

**WHEREAS**, City of Pittsburgh (the “City”) currently owns and operates a sanitary wastewater collection and conveyance system, inclusive of certain combined stormwater and wastewater assets (the “System”) that provides sanitary wastewater service to various customers in the City (the “Service Area”); and

**WHEREAS**, the City previously decided to pursue the potential sale of all of the assets, properties and rights of the City (whether tangible, real, personal or mixed) which are exclusively held and used by it in connection with the System, through a competitive bidding process (the “Assets Sale”); and

**WHEREAS**, the City has heretofore issued a Request for Qualifications (the “RFQ”) and a Request for Bids (the “RFB”) to solicit bids from interested and qualified companies and entities to purchase the System; and

**WHEREAS**, the City received responses to the RFQ and, after the opportunity for due diligence, received bids in response to the RFB from two interested entities; and

**WHEREAS**, the City, by enactment of the within Resolution, selects Pennsylvania-American Water (“PAWC”) as the preferred bidder, authorizes the negotiation of an Asset Purchase Agreement (the “Purchase Agreement”) with PAWC for the Assets Sale and determines that, in the event the City decides to sell the System, such selection will be in the best interests of the City, as determined by the City Council based on the advice of the City Financial Advisor and after the City holds two public input hearings; and

**WHEREAS**, if the City Council determines that the Assets Sale is in the best interests of the City and to enter into the Purchase Agreement with PAWC, such determination is to be evidenced through the execution by the City of the Purchase Agreement which City officials shall finalize and execute pursuant to an Ordinance of the City; and

**NOW THEREFORE**, the City Council of the City of Pittsburgh HEREBY RESOLVES as follows in order to effectuate the award of the bid for the above stated purposes:

1. The City approves PAWC as the preferred bidder for the possible acquisition of the System from the City in accordance with its bid provided to the City in response to the Request for Bids.
2. The City authorizes its agents and employees to prepare the Purchase Agreement with PAWC and present this to City Council with such Purchase Agreement to be considered for approval, such approval, if given, to be by way of an Ordinance authorizing execution of the Purchase Agreement and such other actions as are necessary to effectuate the sale of the System to PAWC.

3. All actions taken by individuals acting on behalf of the City prior to the date of this Resolution in furtherance of the sale of the System and in furtherance of the City business in this regard are hereby ratified and confirmed.

4. This Resolution shall be effective immediately.

**NOW THEREFORE, BE IT RESOLVED** that the City Council of the City of Pittston does hereby **AUTHORIZES THE SELECTION OF PENNSYLVANIA AMERICAN WATER AS PREFERRED BIDDER AND NEGOTIATION OF THE ASSET PURCHASE AGREEMENT FOR THE SALE OF THE WASTEWATER SYSTEM.**

**ADOPTED, ENACTED and ORDAINED** by the City Council of the City of Pittston this 16<sup>th</sup> day of April, 2025.

ATTEST

  
\_\_\_\_\_  
CITY ADMINISTRATOR

APPROVED

  
\_\_\_\_\_  
MAYOR