

WEST VINCENT TOWNSHIP ORDINANCE

AN ORDINANCE AUTHORIZING THE EXECUTION, DELIVERY, AND PERFORMANCE BY WEST VINCENT TOWNSHIP OF AN ASSET PURCHASE AGREEMENT (THE "PURCHASE AGREEMENT") BETWEEN THE TOWNSHIP AND PURCHASER (THE "PURCHASER"); AUTHORIZING THE ASSIGNMENT OF THE TOWNSHIP'S RIGHTS AND OBLIGATIONS IN ALL RELEVANT AGREEMENTS TO THE PURCHASER; AUTHORIZING AND APPROVING ALL CONVEYANCE INSTRUMENTS AND CONVEYANCE OF REAL ESTATE INTERESTS; AUTHORIZING COMMUNICATIONS OF INFORMATION AND COOPERATION WITH THE PURCHASER; AUTHORIZING ALL ACTIONS RELATING TO THE EXECUTION OF THE PURCHASE AGREEMENT AND THE ASSIGNMENT OF ALL RELEVANT AGREEMENTS; AUTHORIZING INCIDENTAL ACTION TO BE TAKEN BY SPECIFIED OFFICERS OF THE TOWNSHIP; AND RESCINDING INCONSISTENT ORDINANCES AND RESOLUTIONS.

I attest that the attached ordinance, is a true and correct copy of a proposed West Vincent Township Ordinance that is to be considered for enactment on December 18, 2017 and is the subject matter of a public hearing before the West Vincent Township Board of Supervisors.



ROBERT M. SEBIA, ESQUIRE
Office of the Solicitor
West Vincent Township, Chester County

ORDINANCE NO. _____

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WHEREAS, West Vincent Township (the "Township"), County of Chester, Commonwealth of Pennsylvania, currently owns and operates a sanitary wastewater collection and disposal system and a water treatment, pumping, and conveyance system (the "System") that provides wastewater and water service to various customers within the Township, and

WHEREAS, the Township previously decided to pursue the sale of all of the assets, properties and rights of the Township (whether tangible, real, personal or mixed), which are exclusively held and used by it in connection with the System, including, but not limited to, information received by Township as to consumption by customers within the service area of the System to facilitate accurate billing, as set forth in the Purchase Agreement (the "System Assets") through a competitive bidding process (the "Assets Sale"); and

WHEREAS, the Township has heretofore issued a Request for Qualifications dated February 24, 2017 (the "RFQ") to pre-qualify potential bidders ("Bidders"); and

WHEREAS, the Township has received three responses to the RFQ and subsequently pre-qualified potential bidders; and

WHEREAS, after the opportunity for due diligence, the Township has heretofore issued a Request for Bids dated November 30, 2017 (the "RFB") to solicit bids from such qualified companies and entities to purchase the System; and

WHEREAS, the Township has reviewed the bids submitted by the Bidders in response to the RFB, and will award the Purchase Agreement to the Bidder that met the requirements for the highest bid based on the criteria set forth in the RFB and offers the

greatest value to the Township, as determined by the Township Board of Supervisors based on the advice of the Township Financial Advisor and the Special Counsel; and

WHEREAS, the Township has determined that the Assets Sale is in the best interests of the Township, such determination to be evidenced through the execution by the Township of the Purchase Agreement, the Township will sell the System Assets to the Purchaser by entering into the Purchase Agreement with the Purchaser; and

WHEREAS, pursuant to the Purchase Agreement, the Township will assign the Township's rights and obligations under all relevant Agreements to the Purchaser as necessary and appropriate and in accordance with the Purchase Agreement; and

WHEREAS, under the Purchase Agreement, the Township will transfer to the Purchaser the ownership of the System Assets through the execution and delivery of all necessary and required bills of sale, instruments of assignment, consents to transfer, deeds, and other agreements, documents, and instruments of conveyance (collectively, the "Conveyance Instruments"); and

NOW, THEREFORE, BE IT ENACTED AND ORDAINED by the Board of Supervisors of **WEST VINCENT TOWNSHIP** as follows:

1. **Approval of the Purchase Agreement and Selection of Successful Bidder**

The Board of Supervisors hereby awards the Purchase Agreement to Purchaser and authorizes and approves the execution, delivery, and performance of the Purchase Agreement substantially in the form attached hereto as Exhibit A. The Chairman or Vice Chairman of the Board of Supervisors or the Township Manager are hereby authorized and directed on behalf of the Township to execute any and all papers and documents and to do and cause to be done any and all actions and things necessary or proper to execute the Purchase Agreement and the Conveyance Instruments to close the Asset Sale.

2. **Assignment of all Relevant Agreements**

The Board of Supervisors hereby authorizes and approves the assignment of the Township's rights and obligations under all relevant agreements in order to effectuate the sale of the System. The Chairman or Vice Chairman of the Board of Supervisors or the Township Manager are hereby authorized and directed on behalf of the Township to execute any and all papers and document and to do and cause to be done any and all actions and things necessary or proper to effectuate such assignment, provided that the terms and conditions of all such papers and documents are satisfactory to the Township Solicitor and Special Counsel to the Township.

3. **Approval of Deeds, Certificates, and Related Documents**

The Board of Supervisors hereby authorizes the execution and delivery by the Chairman or Vice Chairman of the Board of Supervisors or the Township Manager of the

Conveyance Instruments necessary and required to be executed and delivered under the Purchase Agreement, provided that the terms and conditions of such Conveyance Instruments are satisfactory to the Township Solicitor and Special Counsel to the Township.

4. **Disposition of Proceeds**

The proceeds of the sale shall be utilized at the discretion of the Board of Supervisors in a manner consistent with the Pennsylvania Second Class Township Code, taking into account the advice of its Financial Advisor.

5. **Information and Cooperation**

The Board of Supervisors hereby authorizes the Township, its agents and employees, to communicate the System Billing Information and any and all rights of the Township in connection therewith and other information required or desirable in the sole discretion of the Chairman or Vice Chairman of the Board of Supervisors or Township Manager to the Purchaser and cooperate with the Purchaser for the continued operation of the System and the use of the System Assets.

6. **General Authorization**

The Board of Supervisors hereby further authorizes the Township, its agents and employees, to take any and all necessary actions required by the Pennsylvania Second Class Township Code and other applicable law to complete the sale of the System Assets, including cooperating with Purchaser with regard to Pennsylvania PUC approvals and valuations (if required), such cooperation to continue until all System Assets are conveyed in a proper manner to Purchaser.

7. **Severability**

The provisions of this Ordinance are intended to be severable, and if any section, sentence, clause, part or provision hereof shall be held illegal, invalid or unconstitutional by any court of competent jurisdiction, such decision of the court shall not affect or impair the remaining sections, sentences, clauses, parts or provisions of this Ordinance. It is hereby declared to be the Intent of the Board of Supervisors that this Ordinance would have been adopted even if such illegal, invalid or unconstitutional section, sentence, clause, part or provisions had not been included herein.

8. **Effective Date**

This Ordinance shall take effect and be in force immediately.

9. **Repealer**

All other ordinances and resolutions or parts thereof as they are inconsistent with this Ordinance are hereby repealed.

Enacted and Ordained this ____ day of _____, 2017.

**WEST VINCENT TOWNSHIP
BOARD OF**

Attest:

Erica Batdorf, Secretary/Manager

John Jacobs, Chairman
West Vincent Township
Board of Supervisors

EXHIBIT A
(Purchase Agreement)

ASSET PURCHASE AGREEMENT

By and Between

Township of West Vincent, Chester County

As Seller

and

As Buyer

Dated as of December __, 2017

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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT ("Agreement"), dated as of _____, 2017 (the "Effective Date"), is made and entered into by and between Township of West Vincent, Chester County, a Township of the Second Class and a body corporate and politic, duly organized and existing under the laws of the Commonwealth of Pennsylvania (the "Seller"), and _____ (the "Buyer"), a[municipal authority/a corporation].

WITNESSETH:

WHEREAS, the Seller, acting by and through the Board of Supervisors (defined below), owns and operates sanitary wastewater collection and treatment systems and a water system (together, the "System") that provides sanitary wastewater service and water service to various customers in the Township of West Vincent, Pennsylvania (the "Service Area"); and

WHEREAS, Buyer is a municipal authority/public utility that furnishes wastewater and water service to the public in various counties throughout Pennsylvania; 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 herein contained, the receipt and sufficiency of which hereby are acknowledged, intending to be legally bound, the Parties hereto agree as follows:

ARTICLE I.

DEFINITIONS

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

"**Acquired Assets**" has the meaning specified in Section 2.01.

"**Act 537 Plan**" means the official plan submitted by the Seller to the PaDEP (as defined herein) in accordance with the Pennsylvania Sewage Facilities Act, 35 P.S. § 750.1 *et seq.*

"**Affiliate**" means, when used to indicate a relationship with a specified Person, means a Person that, directly or indirectly, through one or more intermediaries has a 10% or more voting or economic interest in such specified Person or controls, is controlled by or is under common control with (which shall include, with respect to a managed fund or trust, the right to direct or cause the direction of the management and policies of such managed fund or trust as manager,

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

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

"**Allocation Schedule**" has the meaning specified in Section 3.03.

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

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

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

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

"**Base Rate**" has the meaning specified in Section 7.03(a) and (b).

"**Board of Supervisors**" means the Board of Supervisors of the Township of West Vincent, Chester County.

"**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 Persons**" has the meaning specified in Section 8.02.

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

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

"**Closing Date**" has the meaning specified in Section 13.01.

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

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

"**Confidential Information**" means any information about Buyer, Seller or the System related to the transactions contemplated by this Agreement; provided, however, 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, provided 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.

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

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

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

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

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

"**Environmental Liabilities**" means any legal obligation or liability arising under Environmental Requirements or related to or arising out of any Environmental Condition, including those consisting of or relating to any (a) duty imposed by, breach of or noncompliance with any Environmental Requirements; (b) environmental, health or safety matters or conditions (including on-site or off-site contamination, occupational safety and health and regulation of Hazardous Materials); (c) Remedial Action undertaken by any Person; (d) bodily injury (including illness, disability and death, and regardless of when any such bodily injury occurred,

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

"Environmental Requirements" mean all present Laws (including common law), regulations, legally binding or otherwise enforceable requirements and Authorizations and Permits relating to human health, pollution, or protection of the Environment (including ambient air, surface water, ground water, land surface or surface strata), including (i) those relating to emissions, discharges, Releases, or threatened Releases of Hazardous Materials, and (ii) those relating to the identification, generation, manufacture, processing, distribution, use, treatment, storage, disposal, release, recovery, transport or other handling of Hazardous Materials. Without limiting the 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 2021b et seq.; the Occupational Safety and Health Act, 29 U.S.C. Sections 651-678, and the regulations promulgated pursuant to the above-listed federal statutes, and (2) counterpart Laws and regulations promulgated or issued by any state or local Governmental Authority.

"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. Notwithstanding the foregoing, "Equipment and Machinery" shall not include any Excluded Assets.

"Excluded Assets" has the meaning specified in Section 2.02.

"Excluded Liability" or **"Excluded Liabilities"** means, notwithstanding any provision in this Agreement to the contrary, those obligations or liabilities related to any of the Excluded Assets and any liability not expressly assumed by the terms of this Agreement.

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

"Final Order" means a Governmental Approval by a Governmental Authority as to which (a) no request for stay of the action is pending, no such stay is in effect and if any time period is permitted by statute or regulation for filing any request for such stay, such time period has passed, (b) no petition for rehearing 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 Pennsylvania Public Utility Commission, the EPA, PaDEP and the Board of Supervisors.

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

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

"Indemnifying Party" means a Party which is obligated to indemnify the Buyer Indemnified Persons or the Seller Indemnified Persons, as applicable, pursuant to Article VIII.

["Land Development Agreement / Financial Security Agreement" means any agreement between Seller and an applicant for subdivision and/or land development approval pursuant to the Pennsylvania Municipalities Planning Code, pursuant to which applicant is required to construct public improvements and required to post financial security, for the benefit of Seller, to secure applicant's obligations under such agreement.]

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

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

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

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

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

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

"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 and used for the purpose of capturing, conveying and discharging stormwater separate from the System.

"Outside Date" means [June 30, 2018 in the case of a municipal authority and December 31, 2018 in the case of a regulated utility].

"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 collectively Buyer and the Seller.

"PCB Equipment" means PCB equipment as defined in 40 C.F.R. Part 761.

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

"Pending Sewer Plant" has the meaning specified in Section 4.18.

"Permitted Liens" means (a) Liens for Taxes not yet due and payable or being contested in good faith by appropriate procedures; (b) easements, rights of way, zoning ordinances and other similar encumbrances affecting Real Property; (c) other than with respect to Real Property owned by the Seller, Liens arising under original purchase price conditional sales contracts and equipment leases with third parties entered into in the ordinary course of business; and (d) other imperfections of title or Liens, if any, that have not had, and would not have, a Material Adverse Effect.

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

"Personnel" means the employees of the Seller.

"Purchase Price" has the meaning specified in Section 3.01.

"Rate Freeze Period" has the meaning specified in Section 7.03(c).

"Real Property" has the meaning specified in Section 4.09.

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

"Release" means any actual spilling, leaking, pumping, pouring, injecting, emptying, discharging, emitting, escaping, leaching, dumping, disposal, or release or migration of 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, 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 shall be deemed disclosure in reference to all Schedules comprising the Schedules to which such disclosure is clearly applicable.

"Seller" has the meaning specified in the Preamble of this Agreement.

"Seller Fundamental Representations" has the meaning specified in Section 8.01.

"Seller Indemnified Persons" has the meaning specified in Section 8.03.

"Seller NPDES Permits" means the following National Pollutant Discharge Elimination System Permits/Water Quality Management Permits set forth on Schedule 4.12.

"Service Area" has the meaning set forth 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; (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, and (iii) any related NPDES permits.

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

"**System**" has the meaning specified in the recitals to this Agreement and shall include the Acquired Assets and exclude the Excluded Assets.

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

"**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.

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), but in all cases other than the Excluded Assets (the foregoing collectively referred to as the "Acquired Assets"), including:

(a) all real property and appurtenant interests, Easements, rights of way, property rights and privileges owned, licensed or leased by the Seller including the Real Property, leases or licenses or other arrangements by or between the Seller and third Persons of the Real Property or other Acquired Assets and fixtures;

(b) all sanitary wastewater related pumping, conveyance and treatment facilities, including but not limited to the Seller's (i) collection mains, treatment plants/lagoons and septic disposal areas (including spray fields), and (ii) all pipes, pumping stations, hoists, generators, manholes, and pipelines;

(c) all water-related treatment, pumping and conveyance facilities related to the provision of water services by the St. Stephens Greene Plant, including but not limited to the Seller's wells, storage tanks, hydrants, a booster pump station, water distribution and service lines necessary to run the System;

(d) any billing and collections related assets necessary to run the System;

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

(f) pursuant to Sections 2.02(d)(iv), 2.05, 4.18 and 9.05, the Pending Sewer Plants listed in Schedule 4.18;

(g) all Supplies;

(h) all personal property and fixed assets, including all Equipment and Machinery, auxiliary equipment and plant equipment;

- (i) all prepaid expenses and security deposits;
- (j) all Files and Records;
- (k) all Authorizations and Permits of or held by the Seller (to the extent transferrable to Buyer under applicable Law), including all Authorizations and Permits which are environmental permits, the Seller's NPDES Permits, other operating permits and those items listed or described on Schedule 4.12 hereto; and
- (l) all goodwill of the System.

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE SELLER MAKES NO EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY OF ANY KIND WHATSOEVER, INCLUDING ANY REPRESENTATION AS TO THE PHYSICAL CONDITION OR VALUE OF ANY OF THE ACQUIRED ASSETS OR THE SYSTEM, OR THE FUTURE PROFITABILITY OR FUTURE EARNINGS PERFORMANCE OF THE ACQUIRED ASSETS OR THE SYSTEM OR ANY FUTURE RATEMAKING THAT MAY BE [ALLOWED BY THE PAPUC] or [PERMITTED UNDER THE MUNICIPAL AUTHORITIES ACT] FOR ANY OF THE ACQUIRED ASSETS. ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY EXCLUDED. NOTWITHSTANDING THE FOREGOING, THE SELLER IS NOT AWARE OF ANY MATERIAL DEFECT IN THE PERFORMANCE OR OPERATION OF THE PHYSICAL ASSETS CONSTITUTING THE SYSTEM.

Section 2.02. Excluded Assets. Notwithstanding anything herein to the contrary, the Acquired Assets shall not include the following (the "Excluded Assets"):

- (a) the Stormwater System Assets, including any related NPDES permits;
- (b) all contracts, licenses and leases that are not Assigned Contracts;
- (c) the seals, organizational documents, minute books, Tax Returns, books of account or other records having to do with the organization of Seller and all employee-related or employee benefit-related assets, files or records regarding any Personnel;
- (d) cash and cash equivalents, including (i) accounts receivable attributable to services rendered by Seller as of or prior to the Closing Date, (ii) all capital reserves associated with the System, (iii) fees per equivalent dwelling unit ("EDU") owed to Seller at or prior to the Closing Date for any Pending Development Plan but not yet paid to the Seller and (iv) all sewer rents related to any Pending Sewer Plant paid or owed on or prior to the date of dedication of any Pending Sewer Plant as contemplated by Section 9.05;
- (e) all insurance policies of Seller and all rights to applicable claims and proceeds thereunder;
- (f) all rights to any outstanding lien related to non-payment by a System customer existing at or prior to the Closing Date and all actions, suits or claims of any nature available to or being pursued by Seller, whether arising by way of counterclaim or otherwise;

- (g) all assets, properties and rights used by Seller other than those which primarily relate to the operations of the System;
- (h) the assets, properties and rights specifically set forth on Schedule 2.02(h);
- (i) the MS4 System Real Property; and
- (j) the rights which accrue or will accrue to Seller under this Agreement and any related agreement, exhibit or schedule.

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

Section 2.04. **Assumption of Liabilities.**

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

- (i) all liabilities and obligations arising under the Seller's NPDES Permits;
- (ii) all liabilities and obligations under the other Assigned Contracts and Authorizations and Permits;
- (iii) any litigation initiated against Seller related to the System or the Acquired Assets resulting from events that occur or conditions that exist on or after the Closing;
- (iv) all liabilities and obligations for Taxes relating to the System, its operation, the Acquired Assets and the Assumed Liabilities attributable to the period after the Closing Date; and
- (v) all other liabilities and obligations arising out of or relating to Buyer's ownership or operation of the System and the Acquired Assets on or after the Closing (all of the aforementioned liabilities in this Section 2.04(a) are referred to as the "Assumed Liabilities").

(b) At the Closing, to the extent the Seller is not released therefrom, Seller shall be indemnified 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, including any acts reasonably required to convey and transfer any Pending Sewer Plant 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 applicable Law, or would require the consent, authorization, approval or waiver of any Person (other than the Parties hereto), including any Governmental Authority, and such consent, authorization, approval or waiver shall not have been obtained prior to the Closing, this Agreement shall not constitute a sale, transfer, assignment, conveyance and delivery, or an attempted sale, transfer, assignment, conveyance and delivery, thereof (any such Acquired Asset, a "Nonassignable Asset"). Following the Closing, the Seller and Buyer shall use commercially reasonable efforts (at the cost and expense of the Party that is responsible for compliance with such Law or obtaining such consent, authorization, approval or waiver), and shall cooperate with each other, to obtain any such required consent, authorization, approval or waiver, or any release, substitution, novation or amendment required to sell, transfer, assign, convey and deliver any such Nonassignable Asset to Buyer; *provided, however*, that in no event shall 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. Any applicable sales, transfer and other similar Taxes in connection with such sale, transfer, assignment, conveyance and delivery shall be paid one-half by Buyer and one-half by Seller.

(b) Until such time as a Nonassignable Asset is transferred to Buyer pursuant to this Article II, Buyer and the Seller shall cooperate in any commercially reasonable and economically feasible arrangements (such as subleasing, sublicensing or subcontracting) to provide to the Parties the economic and, to the extent permitted under applicable Law, operational equivalent of the transfer of such Nonassignable Asset to Buyer at the Closing and the performance by Buyer of its obligations with respect thereto, and so long as 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 applicable 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 prior to the Closing Date and such Nonassignable Asset had been assigned to Buyer at Closing. To the extent permitted under applicable Law, the Seller shall, at Buyer's expense, hold in trust for and pay to Buyer promptly upon receipt thereof, such Nonassignable Asset and all income, proceeds and other monies received by the Seller with respect to such Nonassignable Asset in connection with the arrangements under this Article II.

(c) If, following the date hereof and prior to the Closing, Buyer identifies any contract to which the Seller is a party which is not set forth on Schedule 4.13 as of the date hereof, and Buyer reasonably determines such contract is necessary or useful to the operation of the System, Buyer shall give notice of such determination to the Seller and the 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 shall thereafter constitute and be deemed an "Assigned Contract" for all purposes hereunder.

(d) In the event that, during the twelve (12) month period following the Closing, Buyer identifies any contract to which 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 or useful 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 shall be deemed an Assigned Contract for all purposes hereunder.

(e) From the date of this Agreement until the Closing Date, the Seller shall collect accounts receivable and pay accounts payable in the ordinary course and in a manner consistent with its past practices.

ARTICLE III.

PURCHASE PRICE AND ADDITIONAL CONSIDERATION

Section 3.01. **Purchase Price and Additional Consideration.** The purchase price for the Acquired Assets shall be _____ Million Dollars (\$ _____) (the "Purchase Price") which shall be paid as follows at Closing:

(a) Buyer shall pay, subject to any adjustment pursuant to Section 3.01(b), the Seller by wire transfer of immediately available funds the balance of the Purchase Price to one or more accounts that Seller designates and provides to Buyer at least three (3) Business Days prior to the Closing Date.

(b) **Purchase Price Adjustment and Cooperation:** The Parties agree that the Buyer shall be entitled to all customer billings with respect to sanitary wastewater and water customers and services for the period on or after the Closing Effective Time, and the Seller shall be entitled to all such billings prior to the Closing Effective Time. The Parties shall cooperate to calculate an agreed-upon proration of billing amounts and to credit the Purchase Price for the appropriate Party on the Closing Date.

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 of the Purchase Price.** Buyer and the Seller agree that 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 U.S. federal income Tax purposes), as may be adjusted pursuant to this Section 3.03, shall be allocated among the Acquired Assets in accordance with the allocation reflected in a schedule prepared by Buyer in accordance with this Section 3.03 (the "Allocation Schedule"). Within sixty (60) days following the final determination of the Purchase Price pursuant to Section 3.01, Buyer shall deliver to the Seller a draft of the Allocation Schedule setting forth Buyer's proposed allocation for the Seller's review. The 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 the Seller and shall be final and binding upon the Parties unless the Seller provides written notice of the 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 the Seller, and (b) upon receipt of any such written comments from the Seller with respect to the proposed Allocation Schedule, Buyer may make such adjustments or revisions to the proposed Allocation Schedule based on the 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 the Seller shall not take any position

on their respective Tax Returns that is inconsistent with the Allocation Schedule. Notwithstanding the requirements specified in this Section 3.03, Buyer may waive some or all of such requirements in which case Seller's obligations under this section shall be limited or eliminated accordingly.

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"), shall be borne by Buyer. The terms of this Section 3.04 shall survive Closing.]

ARTICLE IV.

REPRESENTATIONS AND WARRANTIES OF THE SELLER

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

As a material inducement to Buyer to enter into this Agreement and to consummate the transactions contemplated by this Agreement, 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. The Seller is Township of the Second Class and a body corporate and politic, duly organized and existing under the Second Class Township Code of the Commonwealth of Pennsylvania (53 P.S. § 65101, *et. seq.*).

Section 4.02. Power and Authority. The Seller has (i) duly adopted an authorizing ordinance authorizing the transactions contemplated herein, which remains in full force and effect, (ii) duly authorized and approved the execution and delivery of this Agreement and (iii) duly authorized and approved the performance by the Seller of its obligations contained in this Agreement. The Seller has all requisite power and authority to own, lease and operate the Acquired Assets and the System and has the power and authority to enter into this Agreement and to do all acts and things and execute and deliver all other documents as are required hereunder to be done, observed or performed by it in accordance with the terms hereof.

Section 4.03. Enforceability. This Agreement has been duly authorized, executed and delivered by 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 hereby 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 applicable 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 its obligations hereunder.

Section 4.06. **Undisclosed Liabilities** Except as set forth in Schedule 4.06, there are no material liabilities or obligations of Seller, either accrued, absolute, contingent or otherwise, relating to the 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.

Section 4.07. **Absence of Certain Changes or Events.** Except as set forth on Schedule 4.07, since December 31, 2016, there has not been any transaction or occurrence that has resulted or is reasonably likely to result in a Material Adverse Effect and Seller has operated and maintained the System since the date of this Agreement in the normal course.

Section 4.08. **Tax Matters.** Except as set forth in Schedule 4.08 or as would not have a Material Adverse Effect, the Seller represents that 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.

Section 4.09. **Real Property.** All real property the Seller owns and uses in the operation of the System, subject to all restrictive covenants that run with the land, including the form of restrictive covenant attached hereto as Exhibit A (the "Real Property") and all Easements are set forth on Schedule 4.09. There are no pending condemnation proceedings relating to any of the Real Property nor, to the knowledge of Seller, has Seller actually received any written threats of any condemnation proceedings. To Seller's knowledge, Seller has not received any written notices of any violations of any Law from any Governmental Authority with respect to the Real Property which has not been cured in all material respects. Buyer acknowledges and agrees that notwithstanding anything to the contrary in this Agreement, this Section 4.09 contains all of the representations and warranties of Seller to Buyer with respect to the Real Property and no other representation or warranty set forth in this Agreement with respect to the Acquired Assets is intended to apply to the Real Property.

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

Section 4.11. **Environmental Compliance.** Except as set forth in Schedule 4.11 or that otherwise could not be expected to have a Material Adverse Effect, Seller represents, to the best of Seller's knowledge and without conducting independent investigation:

(a) 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) 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.

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

(d) 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.

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

(f) There is no 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 biphenyls 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.

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

(h) The Seller has delivered to Buyer (1) all material environmental site assessments or reasonable and accurate summaries thereof pertaining to the System, (2) all material compliance audits or compliance assurance reviews prepared within the previous five (5) years or reasonable and accurate summaries thereof relating to compliance with Environmental Requirements by the System, and (3) reasonable and accurate summaries of, or all material documents pertaining to, any known and unresolved Environmental Liabilities

incurred in relation to the System, to the extent possessed by or under the reasonable control of the Seller.

Section 4.12. **Authorizations and Permits.** Seller represents that (i) Schedule 4.12 lists or describes the Authorizations and Permits of Seller that are currently in full force and effect; (ii) the Seller has made true and complete copies of all Authorizations and Permits available to Buyer; and (iii) except as set forth on Schedule 4.12, the Seller is in compliance with all material terms, conditions and requirements of all Authorizations and Permits, except in each case where such violation or failure, individually or in the aggregate, would not have a Material Adverse Effect, and no proceeding is pending or, to the knowledge of 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 contains a complete and accurate list of all the Assigned Contracts.

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

(c) Seller further represents that all of the Assigned Contracts specified in 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) To the knowledge of the Seller, the Seller has operated and is operating the System in compliance, in all material respects, with all applicable Laws, Authorizations and Permits and is not in breach of any applicable Law, Authorization or Permit 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 disclosed to the Buyer prior to the Effective Date, there are no facts, circumstances, conditions or occurrences regarding the System that could reasonably be expected to give rise to any environmental claims or 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(c), there is no action, suit or proceeding, at law or in equity, or before or by any Governmental Authority, pending nor, to the knowledge of the Seller, threatened against the Seller prior to or at the Closing Effective Time, which will have a material adverse effect on the operations of the System. As of the date of this Agreement, there is no action, suit or proceeding, at Law or in equity, or before or by any Governmental Authority, pending nor, to the knowledge of 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.** Seller represents that no broker, finder, or Person is entitled to any commission or finder's fee by reason of any agreement or action of Seller in connection with this Agreement or the transactions contemplated by this Agreement. Seller agrees to pay when due the fees and expenses of their financial and technical advisors. Seller has employed Public Financial Management, Inc., as municipal advisor to provide transaction structuring advice and to provide Seller with municipal advice relating to the sale of the System. Seller shall be solely responsible to pay all fees owed to Public Financial Management, Inc. in connection with the transactions contemplated by this Agreement.

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

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

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

Section 4.17. **[Land Development Agreements/Financial Security Agreements.** Schedule 4.17 sets forth a list of all Land Development / Financial Security Agreements existing as of the date hereof between Seller and any third party.]

Section 4.18. **Pending Sewer Plants.** Schedule 4.18 sets forth a full and complete list of all planned additional sewer plants to be connected to the System that have not been placed in service as of the Effective Date (each a "Pending Sewer Plant"). Each Pending Sewer Plant, when dedicated and placed into service shall be an Acquired Asset.

ARTICLE V.

REPRESENTATIONS AND WARRANTIES OF BUYER

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

As a material inducement to the Seller to enter into this Agreement and to consummate the transactions contemplated hereby, Buyer hereby 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.** The 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.** The 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 hereby 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 applicable 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 the Buyer or the performance by the Buyer of its obligations hereunder.

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

Section 5.06. **Financial Wherewithal.** Buyer represents that upon Closing, and after giving effect to the consummation of the transactions contemplated hereby and the incurrence of any indebtedness in connection therewith, Buyer will have the financial ability and will have sufficient working capital for its needs and anticipated needs to operate the System

authorized, among things, to provide wastewater and water utility services to retail residential, commercial and industrial customers in the System.

Section 5.07. **Sufficient Funds.** Buyer represents that Buyer will have sufficient funds available at Closing to consummate the transactions contemplated by this Agreement, to pay the Purchase Price in accordance with Article III and expenses related to the transactions contemplated by this Agreement, and on and after Closing, to generally provide ownership, operation and capital for the operations and capital needs of the System following the Closing, and assuring that the customers of the System will receive safe, adequate and reliable wastewater and water service equal to or better than such customers would have received without the transactions contemplated by this Agreement and at all times consistent with applicable Law.

Section 5.08. **Independent Decision.** Except as expressly set forth in this Agreement, or any of the related agreements, Buyer acknowledges that (a) neither Seller nor any other Person has made any representation or warranty, express or implied, as to the accuracy or completeness of the System or information provided to Buyer, and (b) neither Seller nor any other Person shall have or be subject to any liability to Buyer or any other Person resulting from the distribution to Buyer, or Buyer use of, any information regarding the System or Acquired Assets that has been furnished or made available to Buyer and its Representatives. Buyer acknowledges that other than as expressly set forth in this Agreement or any related agreement, Seller expressly disclaims any warranty of income potential, operating expenses, costs of operation, or uses or fitness for a particular purpose of any Acquired Assets or the System.

Section 5.09. **Scheduled Matters.** Buyer acknowledges that: (a) the inclusion of any matter on any Schedule shall not necessarily be deemed an admission by Seller 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 prior to or at the Closing Effective Time, which will have a material adverse effect on (i) the transactions contemplated by this Agreement or (ii) the validity or enforceability of this Agreement.

ARTICLE VI.

TITLE TO REAL ESTATE; UCC STATEMENTS

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 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 same. Notwithstanding anything to the contrary in Section 6.02(a) below, Buyer shall not be entitled to send an Objection Notice (defined below) with respect to any parcel of Real Property and the Title Commitment for the same in the event, within twenty (20) 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 thirty (30) 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 same, 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 (such written notice of Buyer being referred to as the "Objection Notice") provided such exceptions (a) are not Permitted Liens, (b) pertain to the Buyer or any requirements, conditions or obligations of the Buyer, (c) are matters of record and set forth in the Title Commitment and materially and adversely restrict or prevent the use of the Real Property in the operation of the System and (d) are not standard Title Company exceptions (such as the "survey" exception) (such exceptions objected to in the Objection Notice, provided the same are not as described in (a) through and including (d) aforesaid, being referred to as the "Title Objection Items"). Any Objection Notice which does not include a true, correct and complete copy of the Title Commitment and true, correct, complete and legible copies of any and all exception documents listed in the same shall not be effective for any purpose. In the event that 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") 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 that Seller has Cured all such Title Objection Items. For avoidance of doubt, Buyer acknowledges that no item listed in clauses (a) through and including (d) aforesaid, 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, prior to or as of the Closing, the Seller shall be obligated, at its sole cost and expense, to Cure any Lien encumbering the Real Property which can be Cured by the payment of money (other than Permitted Liens).

(c) Title Endorsements/Survey. Any endorsements required by the Buyer or any mortgagee of the Buyer to Buyer's title policy shall be paid for solely by Buyer. In the event any survey is required by Buyer or its mortgagee, either as a condition to any such endorsement or otherwise, the same shall be obtained solely at Buyer's cost and expense. In the event 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 shall not be obligated to include the same in the deed to buyer unless the survey is certified to Seller and such description is included in the deed on a "quitclaim" basis only and without warranty of title.

(d) License at Closing. Seller shall provide Buyer with a license agreement granting Buyer a license in all of Seller's rights to access 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 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 herein), Buyer agrees to assert and pursue with reasonable diligence such Insurable Claim against the Title Company (which shall include commencing litigation and diligently prosecuting such Insurable Claim to judgment) prior to 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 shall be permitted, following such Non-Favorable Judgment, to pursue Seller with a Claim for Losses under Article VIII (any such Claim against Seller following an attempted Insurable Claim against the Title Company being a "Residual Title Claim"). Notwithstanding anything to the contrary in Article VIII, Buyer shall have the right to 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(e), an "Insurable Claim" shall mean 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) of first pursuing the same as an Insurable Claim.

Section 6.03. Title Expenses. Irrespective of whether the transactions described by this Agreement are consummated and Closing occurs, all costs and expenses of obtaining the Title Commitment, Title Policy and any survey shall be paid by Buyer.

Section 6.04. **UCC Search; Releases.** Not later than sixty (60) 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 Chester County, Pennsylvania (the "**UCC Search**"). On or prior to 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 form of the releases of such security interests shall be provided by the Seller to Buyer on or prior to the Closing Date.

Section 6.05. **Easements.**

(a) Prior to the Closing, the Seller will, 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 Chester County, based on the Seller's records and plans of the System (and such other sources of information as are reasonably related thereto), by means of searching the grantee index in the names of 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, and (ii) together with the Seller, identify all Missing Easements. During such process, as the Abstractor provides written search results to 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 on the status of the activities set forth in the previous sentence.

(b) In the event that during the process of Abstractor's review and investigation of the Chester County land records, Seller determines, based on the Abstractor's investigation, that there is a Missing Easement, the Seller 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. 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) shall be paid by the Seller. In the event 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, no later than thirty (30) days prior to the Closing, the Seller shall commence and file in the Court of Common Pleas, Chester County, a condemnation or eminent domain proceeding to obtain any and all such Missing Easements. For the purposes of clarity, upon obtaining each Missing Easement (including upon the final resolution of a condemnation proceeding), each Missing Easement that has been acquired or obtained by the Seller shall be considered an Easement.

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 that is necessary or essential to the operation of the System and that is not specifically identified in **Schedule 4.09** (the "**Unscheduled Real Property**"). If the Parties discover prior to 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 in such a manner as to provide Buyer with reasonable assurances that Buyer shall have the right to use or occupy the Unscheduled Real Property as it was used by Seller as of the Effective Date.

ARTICLE VII.

OTHER AGREEMENTS

Section 7.01. **Taxes.** Except as hereinafter provided, the 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. Notwithstanding the prior sentence, any special assessments on the Real Property incurred prior to the Closing Date, whether or not currently due and payable, shall be paid by the Buyer in accordance with their terms.

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

Section 7.03. **Rates.**

(a) **Wastewater Rates.** Buyer shall implement Seller's sanitary wastewater rates then in effect at Closing (the "Wastewater Base Rate"), as reflected on Schedule 7.03(a)-1 and inclusive of any permitted or required surcharges or pass-through costs as Buyer's effective sanitary wastewater rates. Buyer intends to bill customers on a monthly basis instead of quarterly billing, which Buyer will prorate accordingly.

(b) **Water Rates.** Buyer shall implement Seller's water rates then in effect at Closing (the "Water Base Rate" and, together with the Wastewater Base Rate, the "Base Rate"), as reflected on Schedule 7.03(a)-2 and inclusive of any permitted or required surcharges or pass-through costs as Buyer's effective water rates. Buyer intends to bill customers on a monthly basis instead of quarterly billing, which Buyer will prorate accordingly.

(c) **Rate Freeze.** After Closing, Buyer shall begin charging rates at the Base Rate within the Service Area, which Base Rate the Parties agree may not be increased until after the fifth anniversary of the Closing Date (the "Rate Freeze Period"). Following the Rate Freeze Period, the rates shall be set at the greater of the (then current) System rates, the Buyer's (then current) rates, [or the tariff then authorized by the PaPUC].

(d) [The rate provisions of Sections 7.03(a) and (b) shall be part of the Buyer's requested PaPUC Governmental Approval and shall be expressly incorporated into a final PaPUC approval.]

Section 7.04. **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 shall be paid by Buyer.]

Section 7.05. **PaPUC Approval.** Promptly after the Effective Date, Buyer covenants and agrees to timely initiate and faithfully prosecute the necessary proceedings to obtain from the PaPUC (i) the issuance of certificates of public convenience to Buyer to provide water and wastewater services in the Service Area and (ii) the approval of the acquisition of the System by Buyer under terms and conditions that are reasonably acceptable to Seller and Buyer. Seller shall cooperate with and assist the Buyer in proceedings before the PaPUC. Buyer and Seller hereby agree that the procedures for determining fair market value of the System and Acquired Assets outlined in Section 1329(a) of Title 66 of the Pennsylvania Consolidated Statutes shall be utilized and filed with the PaPUC as contemplated by Section 1329(c) of Title 66 of the Pennsylvania Consolidated Statutes and the Parties agree that the fees and expenses related to engaging the licensed engineer for such determination shall be borne fifty percent (50%) by Buyer and fifty percent (50%) by Seller.]

Section 7.06. **Operation and Maintenance of the MS4 System.** Subject to applicable Law, the Seller shall at all times maintain ownership of its MS4 System and Stormwater System Assets. The Seller will maintain any NPDES permits related to the Stormwater System Assets.

Section 7.07. **Remedies for Breach of Article VII Agreements.** [In the event of a breach by Buyer of 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 shall also be entitled to commence proceedings before the PaPUC seeking enforcement of such covenants and agreements.]

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 set forth in Section 4.01 (Organization), Section 4.02 (Power and Authority), Section 4.03 (Enforceability), and Section 4.15 (Brokers' and Finders' Fees) (collectively, the "**Seller Fundamental Representations**") shall survive the Closing indefinitely or until the latest date permitted by applicable Law, and (b) the representations and warranties of Buyer set forth in Section 5.01 (Organization), Section 5.02 (Authorization and Validity of Agreement), and Section 5.05 (Brokers' and Finders' Fees) (collectively, the "**Buyer Fundamental Representations**") shall survive the Closing indefinitely or until the latest date permitted by 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 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 prior to such time, and (y) nothing contained in this Section 8.01 shall limit in any way any rights a Party may have to bring claims grounded in

fraud, intentional misrepresentation or willful misconduct, which rights shall survive the Closing indefinitely.

Section 8.02. **Indemnification by the Seller.** To the maximum extent permitted by applicable Law and subject to the terms and conditions of this Article VIII, the Seller agrees to indemnify, defend and hold harmless, Buyer and its successors and Affiliates and their respective employees, officers, directors, trustees and agents (the "**Buyer Indemnified Persons**"), from and against any and all claims for Losses arising from or relating to: (a) any material misrepresentation as to, or any material inaccuracy in, any of the representations and warranties of 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 prior to 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 prior to the Closing pursuant to this Agreement; or (c) any Excluded Liability or Excluded Asset.

Section 8.03. **Indemnification by Buyer.** To the maximum extent permitted by applicable Law and subject to the terms and conditions of this Article VIII, Buyer agrees to defend, indemnify and hold harmless the Seller and its successors and Affiliates and each of their respective employees, officers, directors and agents (the "**Seller Indemnified Persons**") from and against any and all claims for Losses arising from or relating to: (a) any material misrepresentation as to, or any material inaccuracy in, any of the representations and warranties of Buyer contained in this Agreement or in any exhibit, schedule, certificate or other instrument or document furnished or to be furnished by Buyer pursuant to this Agreement; (b) any material breach of any of the covenants or agreements of Buyer contained in this Agreement or in any exhibit, schedule certificate or other instrument or document furnished or to be furnished by 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 any claims by any Governmental Authority; (d) Buyer's actions involving Environmental Laws, Hazardous Materials or environmental claims from and after the Closing Date; or (e) the ownership, operation or control of the Acquired Assets or the System from and after the Closing Date.

Section 8.04. **Indemnification Procedure.**

(a) **Third Party Claims.** If any Indemnified Party receives notice of the assertion or commencement of any action, suit, claim or other legal proceeding made or brought by any Person who is not a party to this Agreement or an Affiliate of a party to this Agreement or a representative of the foregoing (a "**Third Party Claim**") against such Indemnified Party with respect to which the Indemnifying Party may be obligated to provide indemnification under this Agreement, the Indemnified Party shall give the Indemnifying Party prompt written notice thereof. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits material rights or material defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Third Party Claim in reasonable detail and

shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have the right to participate in, or by giving written notice to the Indemnified Party (and subject to the other requirements herein) to assume the defense of any Third Party Claim at the Indemnifying Party's expense and by the Indemnifying Party's own counsel (which counsel shall be reasonably acceptable to the Indemnified Party), so long as (i) the Indemnifying Party notifies the Indemnified Party, within ten (10) Business Days after the Indemnified Party has given notice of the Third Party Claim to the Indemnifying Party (or by such earlier date as may be necessary under applicable procedural rules in order to file a timely appearance and response) that the Indemnifying Party is assuming the defense of such Third Party Claim, *provided*, that if the Indemnifying Party assumes control of such defense it must first agree and acknowledge in such notice that the Indemnifying Party is fully responsible (with no reservation of any rights other than the right to be subrogated to the rights of the Indemnified Party) for all Losses relating to such Third Party Claim, (ii) the Indemnifying Party conducts the defense of the Third Party Claim actively and diligently and at its own cost and expense, and (iii) the Third Party Claim (A) does not involve injunctive relief, specific performance or other similar equitable relief, any claim in respect of Taxes, any Governmental Authority, any criminal allegations, or any potential damage to the goodwill, reputation or overriding commercial interests of Buyer or its Affiliates, (B) is not one in which the Indemnifying Party is also a party and joint representation would be inappropriate or there may be legal defenses available to the Indemnified Party which are different from or additional to those available to the Indemnifying Party, or (C) does not involve a claim which, upon petition by the Indemnified Party, the appropriate court rules that the Indemnifying Party failed or is failing to vigorously prosecute or defend. The Indemnified Party shall reasonably cooperate in good faith in such defense. In the event that the Indemnifying Party assumes the defense of any Third Party Claim, subject to Section 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 shall have the right, at its own cost and expense, to participate in the defense of any Third Party Claim with counsel selected by it subject to the Indemnifying Party's right to control the defense thereof. If the Indemnifying Party elects not to compromise or defend such Third Party Claim or fails to promptly notify the Indemnified Party in writing of its election to defend as provided in this Agreement, the Indemnified Party may, subject to Section 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 each other in all reasonable respects in connection with the defense of any Third Party Claim, including making available records relating to such Third Party Claim and furnishing, without expense (other than reimbursement of actual out-of-pocket expenses) to the defending party, management employees of the non-defending party as may be reasonably necessary for the preparation of the defense of such Third Party Claim.

(b) Settlement of Third Party Claims. Notwithstanding any other provision of this Agreement, the Indemnifying Party shall not enter into settlement of any Third Party Claim without the prior written consent of the Indemnified Party (which consent shall not be unreasonably withheld or delayed), except as provided in this Section 8.04(b). If a firm offer is made to settle a Third Party Claim without leading to liability or the creation of a financial or

other obligation on the part of the Indemnified Party and provides, in customary form, for the unconditional release of each Indemnified Party from all liabilities and obligations in connection with such Third Party Claim and the Indemnifying Party desires to accept and agree to such offer, the Indemnifying Party shall 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 by reason of such failure. Such notice by the Indemnified Party shall describe the Direct Claim in reasonable detail and shall indicate the estimated amount, if reasonably practicable, of the Losses that have been or may be sustained by the Indemnified Party. The Indemnifying Party shall have thirty (30) days after its receipt of such notice to respond in writing to such Direct Claim. During such thirty (30) day period, the Indemnified Party shall reasonably cooperate and assist the Indemnifying Party in determining the validity and amount of such Direct Claim. If the Indemnifying Party does not so respond within such thirty (30) day period, by delivery of written notice disputing the basis or amount of the Direct Claim, the Indemnifying Party shall be deemed to have rejected such claim, in which case the Indemnified Party shall be free to pursue such remedies as may be available to the Indemnified Party on the terms and subject to the provisions of this Agreement. If the Indemnifying Party has timely disputed its indemnity obligation for any Losses with respect to such Direct Claim, the Parties shall proceed in good faith to negotiate a resolution of such dispute and, if not resolved through negotiations, such dispute shall be resolved by litigation in an appropriate court of jurisdiction determined pursuant to this Agreement.

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

(a) Subject to the other limitations contained in this Section 8.05, neither Buyer nor Buyer Indemnified Persons shall be 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 Buyer and Buyer Indemnified Persons under this Agreement exceeds Two Hundred Thousand Dollars (\$200,000) in the aggregate (the "**Threshold Amount**"), in which case Seller shall then be liable for Losses in excess of the Threshold Amount; *provided, however*, 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.

(b) Subject to the other limitations contained in this Section 8.05 neither Seller nor the Seller Indemnified Persons shall be 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 Seller and Seller Indemnified Persons under this Agreement exceeds the Threshold Amount, in which case Buyer shall then be liable for Losses in excess of the Threshold Amount; *provided, however*, that the foregoing limitations contained in this Section 8.05(a) shall not apply to any claims for indemnification based on fraud, intentional misrepresentation or willful misconduct.

(c) Except in the case of fraud, intentional misrepresentation or willful misconduct (for which all applicable legal and equitable remedies will be available to Buyer), the Buyer Indemnified Parties shall only be entitled to assert claims under Section 8.02(a) (other than claims with respect to breaches of any of the Seller Fundamental Representations, which shall not be limited by this Section 8.05(c)) up to the 10% 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 or in the case of fraud, intentional misrepresentation or willful misconduct which shall not be subject to the Liability Cap, but shall be capped at the Purchase Price).

(d) Payments by an Indemnifying Party pursuant to Section 8.02 or Section 8.03 in respect of any Loss shall be limited to the amount of any liability or damage that remains after deducting therefrom any insurance proceeds 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 prior to seeking indemnification under this Agreement.

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

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

(g) Subject to the provisions of Sections 3.01 and 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 hereby waives, to the fullest extent permitted under Law, any and all rights, claims and causes of action for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement it may have against the other Party hereto and their Affiliates and each of their respective representatives arising under or based upon any

Law, except pursuant to the indemnification provisions set forth in this Article VIII. Nothing in this Section 8.05(h) shall limit any Person's right to seek and obtain any equitable relief and/or specific performance to which any Person shall be entitled pursuant to this Agreement.

Section 8.06. **Knowledge of Breach.** Buyer acknowledges that it has had the opportunity to conduct due diligence and investigation with respect to the System, and Seller shall 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 prior to the Closing.

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 and the System and their customers, lenders, suppliers, regulators and others having business relationships with the Seller and the System.

Section 9.02. **Cooperation.** Seller shall reasonably cooperate with Buyer and its employees, attorneys, accountants and other agents and, generally, act in reasonably good faith to timely effectuate the purposes of this Agreement and the consummation of the transactions contemplated by this Agreement.

Section 9.03. **Supplements and Updates.** The Seller shall promptly deliver to Buyer any supplemental information updating the information set forth in the representations and warranties set forth in Article IV of this Agreement so that such representations and warranties as supplemented by such information will be true and correct as of the Closing Date (or such other date as provided in such representations and warranties) as if then made. At least three (3) Business Days prior to the Closing Date, the Seller shall advise Buyer of any facts which would constitute a breach of a representation or warranty as of the date made or a default in a covenant contained herein.

Section 9.04. **Governmental Approvals.** Promptly after the execution of this Agreement, or as required by Law, 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. 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 all commercially reasonable efforts to obtain all consents and approvals of any kind from any person in connection with the transactions contemplated hereby. All authorizations of any Governmental Authority necessary to

consummate the transactions contemplated by this Agreement shall have been obtained in form and content reasonably satisfactory to Buyer and the Seller prior to Closing and shall be final and non-appealable. [An authorization issued by the PaPUC shall be considered final and non-appealable if no party to the PaPUC proceeding challenged issuance of the requested authorization at the time it was granted by the PaPUC. In the event a party to the PaPUC proceeding appeals PaPUC authorization of the transaction, the Buyer and Seller may still mutually agree to proceed to consummate the transaction.]

Section 9.05. **Pending Sewer Plants.** The Seller shall continue to take all reasonable steps to connect all Pending Sewer Plants set forth in Schedule 4.18 to the System and to undertake commercially reasonable efforts within its control to place such Pending Sewer Plants into service. Upon dedication of any Pending Sewer Plant by the relevant developer to the Seller, Seller shall, within thirty Business Days of such dedication, 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 such dedicated Pending Sewer Plant.

ARTICLE X.

PRE-CLOSING COVENANTS OF BUYER

Buyer covenants and agrees to comply with the following provisions:

Section 10.01. **Actions Before the Closing Date.** Buyer shall not take any action which shall cause it to be in breach of any representation, warranty, covenant or agreement contained in this Agreement or cause it to be unable to perform in any material respect its obligations hereunder, and Buyer shall use commercially reasonable best 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 all commercially reasonable efforts to obtain all required consents and approvals of any kind from any person in connection with the transactions contemplated hereby.

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

Section 10.04. **Supplements and Updates.** Buyer shall promptly deliver to the Seller any supplemental information updating the information set forth in the representations and

warranties set forth in Article V of this Agreement so that such representations and warranties as supplemented by such information will be true and correct as of the Closing Date (or such other date as provided in such representations and warranties) as if then made. At least three (3) Business Days prior to the Closing Date, Buyer shall advise the Seller of any facts which would constitute a breach of a representation or warranty as of the date made or a default in a covenant contained herein.

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.**

(a) Receipt of all required material, non-governmental third party consents and any other approvals necessary to consummate the transactions contemplated by this Agreement set forth in Schedule 11.01(a) and all consents, waivers, authorizations and approvals of any Governmental Authority required pursuant to Section 4.04; and

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

Section 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. **PUC Approval.** PaPUC shall have issued a Final Order approving the acquisition of the System under terms and conditions that are reasonably acceptable to the Seller and Buyer. In the event a party to the PaPUC proceeding appeals PaPUC authorization of the transaction, the Buyer and Seller may still mutually agree to proceed to consummate the transaction.

Section 11.04. **No Injunctions.** Neither the 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 in all material respects all obligations 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 herein.

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

ARTICLE XII.

CONDITIONS PRECEDENT TO OBLIGATIONS OF BUYER

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

Section 12.01. **Consents and Approvals.**

(a) Receipt of all required material, non-governmental third party consents and any other approvals necessary or advisable to consummate the transactions contemplated by this Agreement set forth in Schedule 11.01(a) and all consents, waivers, authorizations and approvals of any Governmental Authority required pursuant to Section 4.05; and

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

Section 12.02. **Representations and Warranties of Seller.** The representations and warranties made by the Seller in Article IV 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 shall have issued a Final Order approving the acquisition of the System under terms and conditions that are reasonably acceptable to the Seller and Buyer. In the event a party to the PaPUC proceeding appeals PaPUC authorization of the transaction, the Buyer and Seller may still mutually agree to proceed to consummate the transaction.]

Section 12.05. **No Injunctions.** Neither the Seller or 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 12.06. **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 12.07. **Deliveries by Seller.** Seller shall have made delivery to Buyer of the documents and items specified in Section 13.02 herein.

Section 12.08. **Performance of the Obligations of Seller.** Seller shall have performed in all material respects all obligations required under this Agreement to be performed by Seller on or before the Closing Date, and Buyer shall have received a certificate to that effect from Seller dated the Closing Date.

ARTICLE XIII.

CLOSING

Section 13.01. **Closing Date.**The Closing shall take place at a place in Pennsylvania that is mutually agreed upon by the Parties, at 10:00 a.m. eastern standard time on the earliest agreed upon date or within five (5) 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 shall be effective at 12:01 a.m., West Vincent, PA time, on the Closing Date (the "Closing Effective Time").

Section 13.02. **Deliveries by Seller.** At the Closing, the Seller shall have delivered or cause to be delivered to Buyer executed copies of the following agreements, documents and other items:

(a) A duly executed counterpart to a Bill of Sale (the "Bill of Sale") transferring all of the Acquired Assets comprising personal property, in the form attached hereto as Exhibit B;

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

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

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

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

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

(h) Evidence of PaDEP approval of the revision to the Act 537 Plan as provided in Section 12.03; and

(i) Certificate of the Seller pursuant to Section 12.08 of this Agreement;

(j) 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; and

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

Section 13.03. Deliveries by Buyer. At the Closing, Buyer shall have delivered or caused to be delivered to the Seller the following agreements, documents and other items:

(a) Payment in full of the Purchase Price;

(b) A duly executed counterpart to the Bill of Sale;

(c) A duly executed counterpart to the Assignment and Assumption Agreement;

(d) Certificate of Buyer pursuant to Section 11.02 of this Agreement;

(e) Certificate of Buyer pursuant to Section 11.05 of this Agreement;

(f) [Evidence of PaPUC approval as provided in Section 12.03;] 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 hereinafter provided, be terminated and abandoned at any time prior to completion of the Closing:

(a) By the mutual consent of the Seller and the Buyer;

(b) By either the Seller or the Buyer if:

(i) the Closing shall not have occurred on or prior to the Outside Date; provided, however, the Buyer shall have the one-time right to extend the Outside Date for up to ninety (90) days if, in the Buyer's sole discretion, any such amount of time up to ninety (90) days is necessary to obtain a required Governmental Approval; or

(ii) any Governmental Authority shall have issued an order, decree or ruling or taken any other action, in each case permanently restraining, enjoining or otherwise prohibiting the material transactions contemplated by this Agreement and such order, decree, ruling or other action will have become final and non-appealable; provided, however, that the party seeking termination pursuant to this clause (b) of this Section 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 hereto under this Agreement will terminate without further action by either party and without liability or other obligation of either party to the other party hereunder; provided, however, that no party will be released from liability hereunder if this Agreement is terminated and the transactions abandoned by reason of any willful breach of this Agreement.

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, neither 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 the 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 herein, the initial public announcement relating to the transactions contemplated herein will be mutually agreed upon and jointly made by the Parties. Subsequent public announcements by one Party shall be subject to review and approval by the other Party prior to issuance, such approval not to be unreasonably withheld, conditioned or delayed.

Section 15.03. **Notices.** All notices, other communications and approvals required or permitted by this Agreement shall be in writing, shall state specifically that they are being given pursuant to this Agreement and shall be addressed as follows:

in the case of the Seller:

West Vincent Township
729 Saint Matthews Road
Chester Springs, PA 19425
Attention: Township Manager

with a copy to:

West Vincent Township
729 Saint Matthews Road
Chester Springs, PA 19425
Attention: Township Solicitor

in the case of the Buyer:

Attention: _____

with a copy to:

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

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

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

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

Section 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 shall be effective only if it is in writing and signed by the Party giving it, and only in the specific instance and for the specific purpose for which it has been given. No failure on the part of any Party to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver of such right. No single or partial exercise of any such right shall preclude any other or further exercise of such right or the exercise of any other right..

Section 15.08. **Parties in Interest; Third Party Beneficiary.** Except as hereinafter provided, this Agreement is not intended to and shall not be construed to create upon any Person other than the Parties any rights or remedies hereunder.

Section 15.09. **Successors and Assigns.** Neither Party hereto shall assign or delegate this Agreement or any rights or obligations hereunder without the prior written consent of the other Parties hereto, and any attempted assignment or delegation without prior written consent shall be void and of no force or effect.

Section 15.10. **Governing Law; Jurisdiction.** This Agreement shall be construed and enforced in accordance with, and governed by, the laws of the Commonwealth of Pennsylvania (without giving effect to the principles of conflicts of laws thereof). The Parties hereto irrevocably agree and consent to the jurisdiction of the United States District Court for the Eastern District of Pennsylvania and the Court of Common Pleas of Chester County, Pennsylvania, for the adjudication of any matters arising under or in connection with this Agreement. Any action initiated in court shall be filed and litigated (including all discovery proceedings) exclusively in the United States District Court for the Eastern District of Pennsylvania and the Court of Common Pleas of Chester County, Pennsylvania, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by mail to such Party's address set forth herein shall be effective service of process for any suit, action or other proceeding brought in any such court. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR THE OTHER TRANSACTION DOCUMENTS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 15.11. **Specific Performance.** The Parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the Parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity.

Section 15.12. **Counterparts; Facsimile Execution.** This Agreement may be executed in any number of counterparts which, taken together, shall constitute one and the same agreement. This Agreement shall be effective when it has been executed by each Party and delivered to both Parties. To evidence the fact that it has executed this Agreement, a Party may send a copy of its executed counterpart to the other Party by facsimile transmission. Such Party

shall be deemed to have executed and delivered this Agreement on the date it sent such facsimile transmission. In such event, such Party shall forthwith deliver to the other 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.

TOWNSHIP OF WEST VINCENT, CHESTER _____
COUNTY

By: _____
Printed: _____
Its: _____

By: _____
Printed: _____
Its: _____

ASSET PURCHASE AGREEMENT

By and Between

Township of West Vincent, Chester County

As Seller

and

[]

As Buyer

Dated as of December __, 2017

SCHEDULES AND EXHIBITS

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

Schedule 2.02(h)Excluded AssetsReal Property

Address	UPI	Note
1340 Pottstown Pike, Chester Springs, PA 19425	25-6-59.1	Only conveying easement for disposal force main (See Schedule 4.09)
1339 Pottstown Pike, Chester Springs, PA 19343	25-6-1	Only conveying easement around valve house and force main (See Schedule 4.09)
1359 Pottstown Pike, Chester Springs, PA 19343	25-2-4.1	Entirely Excluded
3096 Horseshoe Trail, Chester Springs, 19425	24-5-107	Entirely Excluded

Schedule 3.03

Allocation Schedule

[TO BE PROVIDED BY BUYER]

Asset	Percentage of Purchase Price
	%

Schedule 4.05

Required Governmental Consents

[Pennsylvania Public Utility Commission]

[Pennsylvania DEP]

Schedule 4.06

Seller Liabilities

None.

Schedule 4.07

Events Having a Material Adverse Effect since December 31, 2016

None.

Schedule 4.08

Tax Matters

None.

Schedule 4.09Real Property and Easements

Property	Address	UPI	Document Type	Location	Date Recorded
MMWTP and Disposal Fields	2411 Malehorn Rd, Chester Springs, PA 19425	25-7-74	Deed of Dedication	DB7513 P1573	9/10/2008
SCWTP and Disposal Fields	13 Pine Dr, Chester Springs, PA 19425	25-8-63.1	Deed of Dedication of Sanitary Sewer Facilities	DB9162 P1191	8/12/2015
SSG Water Plant Parcel	3 Barrington Ln, Chester Springs, PA 19425	25-7-180	Deed	DB4279 P0251	12/23/1997
SSGWTP and Disposal	2220 Horseshoe Tr, Chester Springs, PA 19425	25-7-259	Deed	DB4279 P0234	12/23/1997
LCWTP and Disposal Fields	20 Nantmeal Rd, Glenmoore, PA 19343	25-6-1.3	Deed of Dedication	DB7144 P0843	4/26/2007
HWTP Disposal Fields (3)	1500 Pottstown Pk, Chester Springs, PA 19425	25-3-20	Deed	DB6393 P0576	1/24/2005
HWTP Disposal Fields (2)	1498 Pottstown Pk, Chester Springs, PA 19425	25-3-86	Deed	DB6393 P0576	1/24/2005

Easements, rights of way, property rights and privileges owned, licensed or leased by the Seller:

Property or Location	Address or UPI	Document/Asset Type	Recorded*
MMWTP Pump Station and Monitoring Well	25-7-94.45	Sanitary Sewer Easement	TBD
WWTP, Lagoon, and Pump Station	25-7-432	Sanitary Sewer Easement	TBD

WWTP, Storage Lagoon, Treatment Lagoon, and Disposal Fields	25-7-20.2	Sanitary Sewer Easement	TBD
WWTP Monitoring Wells	25-7-20	Sanitary Sewer Easement	TBD
SSGWTP Pump Station	25-7-162	Sanitary Sewer Easement	TBD
SSGWTP, Monitoring Well, and Access	25-7-258	Sanitary Sewer Easement	TBD
LCWTP Valve Building and Force Main	25-6-1	Sanitary Sewer Easement	TBD
LCWTP Force Main Easement	25-6-1.2	Sanitary Sewer Easement	TBD
HWTP and Disposal Field (1)	25-7-501.1	Sanitary Sewer Easement	TBD
SCWTP Monitoring Wells	25-8-63	Sanitary Sewer Easement	TBD
HWTP Gravity and Force Main	25-7-4	Sanitary Sewer Easement	TBD
HWTP Gravity and Force Main	25-7-4.1	Sanitary Sewer Easement	TBD
HWTP Gravity and Force Main	25-7-4.2	Sanitary Sewer Easement	TBD
HWTP Disposal Force Main	25-6-59.1	Sanitary Sewer Easement	TBD

* To be determined based on Buyer's operational needs and to be mutually agreed prior to Closing.

Schedule 4.10

Equipment and Machinery

[See Equipment and Machinery contained on Asset List in Data Room; To be finalized]

Schedule 4.11

Environmental Compliance

None.

Schedule 4.12Authorizations, Licenses and Permits

Wastewater System Permits:

Facility	Permit Type	Permit Number
Weatherstone (WWTP)	WQM Permit	#1501426
Matthews Meadows (MMWTP)	WQM Permit	#1594403
Stonecroft (SCWTP)	WQM Permit	#1501403
St. Stephen's Greene (SSGWTP)	WQM Permit	#1592417
Ludwig's Corner (LCWTP)	WQM Permit	#1505420
Bruner (HWTP)	WQM Permit	#1509411 A-1

Water System Permits:

Facility	Permit Type	Permit Number
St. Stephen's Greene Water Plant	Public Water Supply Permit	PWS ID #1150210

Schedule 4.13Assigned Contracts

Facility	Document	Adverse Party	Date	Note
Ludwig's Corner (LCWTP)	Memorandum of Understanding Regarding Dedication of Community Wastewater Collection Treatment and Disposal Facilities	Oxford Rise Operating, LLC	5/2/2014	To be assigned as necessary
Matthews Meadows (MMWTP)	Settlement Agreement	Matthews Meadows Homes, Inc.; Matthews Meadows Homes II, Inc.; Matthews Meadows Homeowners' Association, Inc.	5/2/2008	To be assigned as necessary
Weatherstone (WWTP)	Settlement Agreement	West Vincent Associates, LTD	12/17/2007	To be assigned as necessary

Schedule 4.14(c)**Litigation**

No pending litigation.

Settlement Agreements involving the various plants:

Facility	Document	Adverse Party	Date
Ludwig's Corner (LCWTP)	Memorandum of Understanding Regarding Dedication of Community Wastewater Collection Treatment and Disposal Facilities	Oxford Rise Operating, LLC	5/2/2014
Matthews Meadows (MMWTP)	Settlement Agreement	Matthews Meadows Homes, Inc.; Matthews Meadows Homes II, Inc.; Matthews Meadows Homeowners' Association, Inc.	5/2/2008
Weatherstone (WWTP)	Settlement Agreement	West Vincent Associates, LTD	12/17/2007
Bruner (HWTP) and Weatherstone (WWTP)	Agreement for Construction and Operation of Community Sewage Facilities	Courtyards at Weatherstone, L.P.	5/29/2014
Bruner (HWTP) and Weatherstone (WWTP)	Assignment of Portions of Settlement Agreement and Related Agreements	Courtyards at Weatherstone, L.P.; West Vincent Associates, LTD; Pulte Homes of PA, LP	5/23/2015

Schedule 4.16(a)

Title to Acquired Assets

All Pending Sewer Plants.

Schedule 4.16(b)

Sufficiency

All Pending Sewer Plants.

Schedule 4.18

Pending Sewer Plants

1. The Bruner Sewer Treatment Plant (aka Hankin Wastewater Treatment Plant (HWTP)), which is being constructed and dedicated to the Seller pursuant to those certain agreements, including agreements by and between West Vincent Associates, LTD, Courtyards at Weatherstone, L.P., Pulte Homes of PA, LP,, and Seller, dated 12/17/2007, 5/29/2014, and 5/23/2015, and listed in Schedule 4.14(c) .

[11-29-2017 Draft]

Schedule 5.04

Consents and Approvals

[To be provided by Buyer]

Schedule 5.11

Litigation Involving Buyer

[To be provided by Buyer]

Schedule 7.03(a)Rates

1 In accordance with Section 7.03, Buyer shall implement the following quarterly sanitary Wastewater Base Rates (which may be prorated to monthly at Buyer's discretion), inclusive of any permitted or required surcharges or pass-through costs, at Closing:

Sanitary Wastewater Treatment Plant	Quarterly Rate
Matthews Meadows (MMWTP)	\$255.00
Stonecroft (SCWTP)	\$255.00
St. Stephens Greene (SSGWTP)	\$280.80
Ludwig's Corner (LCWTP)	\$225.00
Weatherstone (WWTP)	\$190.00
Bruner (HWTP)	\$255.00

2 In accordance with Section 7.03, Buyer shall implement the following quarterly Water Base Rates (which may be prorated to monthly at Buyer's discretion), inclusive of any permitted or required surcharges or pass-through costs, at Closing:

Water Treatment Plant	Quarterly Rate
St. Stephens Greene Water Treatment Plant	\$42.51 plus usage

Schedule 12.01(a)

Other Approvals

[None.]