

ASSET PURCHASE AGREEMENT

By and Between

Township of Cheltenham, Montgomery County

As Seller

and

[_____]

As Buyer

Dated as of _____, [2018]

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¹ Discuss due diligence and disclosure schedules.

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT ("Agreement"), dated as of _____, [2018] (the "Effective Date"), is made and entered into by and between TOWNSHIP OF CHELTENHAM, Montgomery County, a body corporate and politic, duly organized and existing under the laws of the Commonwealth of Pennsylvania (the "Seller"), and [_____] (the "Buyer"), a _____ [organized and existing under the laws of the Commonwealth of Pennsylvania].

WITNESSETH:

WHEREAS, Seller, acting by and through the Board of Commissioners of the Township of Cheltenham, Montgomery County (the "Township Board") owns and operates a sanitary wastewater collection system (the "System") that provides sanitary wastewater service to various customers in the Township of Cheltenham, Pennsylvania, and wastewater conveyance service to the Township of Abington, Montgomery County, Pennsylvania, and the Borough of Jenkintown, Montgomery County, Pennsylvania (the "Service Area") and directs such wastewater to the Philadelphia Water Department; and

WHEREAS, Buyer is a [regulated public utility]/[municipal authority] that furnishes wastewater service to the public in _____, Pennsylvania; and

WHEREAS, Buyer, in reliance upon the representations, warranties and covenants of Seller herein, desires to purchase and acquire from Seller, and Seller, in reliance upon the representations, warranties and covenants of Buyer herein, desires to sell, transfer and convey to Buyer all of the assets of the System (other than the Excluded Assets), and in connection therewith, Buyer has agreed to assume certain ongoing obligations and liabilities of Seller related to 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 hereby, 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 herein), shall have the meanings set forth in this Article I:

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

"**Affiliate**" means, when used to indicate a relationship with a specified Person, a Person that, directly or indirectly, through one or more intermediaries, has a 10% or more voting or economic interest in such specified Person or controls, is controlled by or is under common control with (which 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 Seller that primarily relate directly or indirectly to the operation of the System, including those described in Schedule 4.12.

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

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

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

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

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

"**Closing**" means the consummation of the sale and purchase of the Acquired Assets and assumption of the Assumed Liabilities, the release/waiver of liabilities and the other transactions contemplated 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.

"**Corrective Action Plan**" means the Corrective Action Plan (Inflow and Infiltration Remediation) dated February 2017 submitted by the Township together with the approval letter from PaDEP dated April 17, 2017.

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

"**EDU**" means equivalent dwelling unit.

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

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

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

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

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

other Person (including any employee or former employee of such Person); (e) any injury to, destruction of, or loss of natural resources, or costs of any natural resource damage assessments; (f) exposure of any Person to any Hazardous Materials; and (g) the presence or Release of any Hazardous Materials.

"Environmental Requirements" mean all present Laws (including common law), regulations, legally binding or otherwise enforceable requirements and Authorizations and Permits relating to human health, pollution, or protection of the Environment (including ambient air, surface water, ground water, land surface or surface strata), including (i) those relating to emissions, discharges, Releases, or threatened Releases of Hazardous Materials, and (ii) those relating to the identification, generation, manufacture, processing, distribution, use, treatment, storage, disposal, release, recovery, transport or other handling of Hazardous Materials. Without limiting the 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, specifically including the Pennsylvania Storage Tank and Spill Prevention Act of 1989 (35 Pa. C.S.A. § 6021.101 *et. seq.*).

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

"Equipment and Machinery" means (i) all the equipment, tangible personal property, machinery, office furniture and equipment, fixtures, tooling, spare maintenance or replacement parts, environmental testing equipment, and vehicles owned or leased by Seller (including all leases of such property), which are primarily used in the operation of the System, (ii) any rights of Seller to warranties applicable to the foregoing (to the extent assignable), and licenses received from manufacturers and Seller of any such item, and (iii) any related claims, credits, and rights of recovery with respect thereto, as listed in Schedule 4.10. Notwithstanding the foregoing, "Equipment and Machinery" shall not include any Excluded Assets.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

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

"Excluded Liability" or **"Excluded Liabilities"** means, notwithstanding any provision in this Agreement to the contrary, those obligations or liabilities related to any of the Excluded Assets.

"Files and Records" means all files and records of 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 or reconsideration of the action is pending and the time for filing any such petition has passed, (c) such Governmental Authority does not have action under consideration on its own motion and (d) no appeal to a court or administrative tribunal or a request for stay by a court or administrative tribunal of the Government Authority's action is pending or in effect and the deadline for filing any such appeal or request for stay has passed. If (i) the only appeals, petitions for review, and petitions for reconsideration pending were filed by a third party or parties not acting at the direction of Buyer or Seller, (ii) the appeals or petitions do not challenge the PaPUC's approval of the transaction as being in the public interest and no preliminary injunction has been issued, a Governmental Approval shall be deemed to be a Final Order for the purposes of this Agreement.

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

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

"Hazardous Materials" means any solid, liquid, gas, odor, heat, sound, vibration, radiation or other substance or emission which is a contaminant, pollutant, dangerous substance, toxic substance, hazardous waste, residual waste, solid waste, hazardous material or hazardous substance which is or becomes regulated by applicable Environmental 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.

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

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

Effective Date; (v) any action, omission, change, effect, circumstance or condition contemplated by this Agreement or attributable to the execution, performance or announcement of this Agreement or the transactions contemplated hereby; and (vi) negligence, intentional misconduct or bad faith of Buyer or its Representatives.

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

"MS4 System" or **"Municipal Separate Storm Sewer 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 Seller and used for the purpose of capturing, conveying and discharging stormwater separate from the System.

"Outside Date" means [____, 20__]²/[____, 20__]³.

"Outstanding Indebtedness" means the outstanding indebtedness of Seller set forth on Schedule 7.07.

"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.]⁴

"Party" means Buyer or Seller and the term "Parties" means collectively Buyer and Seller.

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

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

"Permitted Liens" means (a) the Liens, security interests, encumbrances and pledges of revenues on the Outstanding Indebtedness assumed by Buyer at Closing pursuant to Sections 3.02(a)(ii) and 7.07; (b) Liens for Taxes not yet due and payable or being contested in good faith by appropriate procedures; (c) easements, rights of way, zoning ordinances and other similar

² If winning bidder is a governmental entity, PUC approval is not required. Outside Date shall be 6 months post-closing for Outside Date.

³ If winning bidder is a public utility, PUC approval is required. Outside Date shall be 365 days after the filing of the application for approval with the PaPUC.

⁴ Bracketed because definition will only be required for some winning bidders.

encumbrances affecting Real Property as disclosed on Schedule 4.09; (d) other than with respect to Real Property owned by Seller, Liens arising under original purchase price conditional sales contracts and equipment leases with third parties entered into in the ordinary course of business; and (e) other imperfections of title or Liens, if any, that have not had, and would not have, a Material Adverse Effect.

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

"Personnel" means the employees of Seller.

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

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

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

"Representative" means, with respect to any Person, any director, 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: [_____], each issued by PaDEP to Seller with respect to the System, including any revisions or amendments thereto. This definition shall not include any NPDES permit issued and related to the Stormwater System Assets.

"**Seller's Benefit Obligations**" have the meaning specified in Section 4.11.

"**Seller's Plans**" have the meaning specified in Section 4.11.

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

"**Stormwater System Assets**" means all assets owned by 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; (iii) interest in real estate directly associated with (i) and (ii); and (iv) 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.

"Township Board" the meaning specified in the Preamble of this Agreement.

"Township Senior Staff" means the Township Manager, Assistant Township Manager, Director of Fiscal Affairs, Director of Human Resources, Superintendent of Public Works, Sewer Superintendent, and the Township Engineer.

"UCC Search" has the meaning specified in Section 6.04.

"Unscheduled Real Property" has the meaning specified in Section 6.06.

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

ARTICLE II.

TERMS OF PURCHASE AND ASSUMPTION OF LIABILITIES

Section 2.01. **Purchase and Sale of Acquired Assets.** Subject to the terms and conditions set forth in this Agreement, at Closing, Buyer shall purchase from Seller and Seller shall sell, transfer, assign and deliver to Buyer, free and clear of all Liens except for Permitted Liens, all of Seller's right, title and interest in and to all assets, facilities, business, goodwill, properties and rights of Seller of every kind and description, whether tangible or intangible, real, personal or mixed, wherever situated, in each case used in, held for use in, or acquired or developed for use in, the System, or otherwise related to, or arising out of the operation or conduct of the System (whether or not any such assets have any value for accounting purposes or are carried or reflected on the books or financial records of Seller), including any of the foregoing in which Seller is entitled to acquire rights in the future pursuant to Pending Development Plans (other than the rights of Seller pursuant to Section 2.02(d)) or development plans approved pursuant to this Agreement, but in all cases other than the Excluded Assets (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 Seller including the Real Property, leases or licenses or other arrangements by or between Seller and third Persons of the Real Property or other Acquired Assets and fixtures;

(b) all sanitary wastewater related pumping and conveyance facilities, including but not limited to all pipes, pumping stations, hoists, generators, manholes and pipelines and any billing and collections related assets necessary to run the System;

(c) all contracts, licenses, and leases to which Seller is a party, including without limitation, all construction contracts, surety bonds, operation and maintenance agreements, management agreements, reserved capacity agreements, architect agreements and consultant agreements, and agreements relating to vehicles and other items of personal property as set forth on Schedule 4.15 (the "Assigned Contracts");

(d) all Supplies;

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

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

(g) all Files and Records;

(h) all Authorizations and Permits of or held by Seller (to the extent transferrable to Buyer under applicable Law), including all Authorizations and Permits which are environmental permits, Seller's NPDES Permits other than those NPDES permits that relate to the Stormwater

System Assets, other operating permits and those items listed or described on Schedule 4.12 hereto; and

- (i) all goodwill of the System.

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, SELLER MAKES NO EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, INCLUDING ANY REPRESENTATION AS TO THE PHYSICAL CONDITION OR VALUE OF ANY OF THE ACQUIRED ASSETS OR THE SYSTEM, OR THE FUTURE PROFITABILITY OR FUTURE EARNINGS PERFORMANCE OF THE ACQUIRED ASSETS OR THE SYSTEM OR ANY FUTURE RATEMAKING THAT MAY BE ALLOWED BY THE PAPUC FOR ANY OF THE ACQUIRED ASSETS. ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY EXCLUDED. NOTWITHSTANDING THE FOREGOING, 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;
- (d) cash and cash equivalents, including (i) accounts receivable and amounts earned by Seller but not yet billed attributable to services rendered by Seller as of or prior to the Closing Date and (ii) EDU fees owed to Seller at or prior to the Closing Date for any Pending Development Plan but not yet paid to Seller;
- (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 Seller to Buyer, as herein provided, shall be on the Closing Date, free and clear of all Liens other than Permitted Liens and the revenues of the System shall be free and clear of any lien of a trustee for the benefit of the holders of any of the Outstanding Indebtedness except for any Outstanding Indebtedness assumed by Buyer. 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 Seller (1) arising under Seller's NPDES Permits (arising from, related to, or based on events or circumstances occurring on or after the Closing Date), and (2) arising out of or relating to the System or the Acquired Assets on or after the Closing, including, without limitation, the following:

- (i) all liabilities and obligations under the Corrective Action Plan;
- (ii) all liabilities and obligations under the other Assigned Contracts and Authorizations and Permits resulting from events that occur or conditions that exist on or after the Closing;
- (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;
- (v) to the extent assumed by Buyer pursuant to Section 3.01(a), all of the obligations related to the Outstanding Indebtedness; and
- (vi) all other liabilities and obligations arising out of or relating to Buyer's ownership or operation of the System and the Acquired Assets on or after the Closing (all of the aforementioned liabilities in this Section 2.04(a) are referred to as the "Assumed Liabilities").

(b) At the Closing, to the extent Seller is not released therefrom, 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, Seller shall, upon the request of Buyer, and Buyer shall, upon the request of Seller, at the cost of requesting Party, promptly execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such other instruments of conveyance and transfer and other documents, and perform or cause to be performed such further acts, as may be reasonably required to evidence or effectuate, or more fully evidence or effectuate, (a) the sale, conveyance, transfer, assignment and delivery hereunder of the Acquired Assets to Buyer, (b) the assumption by Buyer of any of the Assumed Liabilities, (c) performance by the Parties of any of their other respective obligations under this Agreement, (d) the vesting in Buyer of all right, title and interest in the Acquired Assets and the System as provided herein, and (e) any other matters reasonably requested by a Party to carry out the provisions, purposes and intent of this Agreement.

Section 2.06. Certain Transfers; Assignment of Contracts.

(a) Notwithstanding anything to the contrary in this Agreement, and subject to the provisions of this Section 2.06(a) and Section 2.06(b), to the extent that the sale, transfer, assignment, conveyance and delivery, or attempted sale, transfer, assignment, conveyance and delivery, to Buyer of any Assigned Contract or other Acquired Asset would result in a violation of 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, 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, Seller shall sell, transfer, assign, convey and deliver to Buyer the relevant Acquired Asset to which such consent, authorization, approval, waiver, release, substitution or amendment relates for no additional consideration. Any applicable sales, transfer and other similar Taxes in connection with such sale, transfer, assignment, conveyance and delivery shall be paid fifty percent (50%) by Buyer and fifty percent (50%) by Seller.

(b) Until such time as a Nonassignable Asset is transferred to Buyer pursuant to this Article II, Buyer and Seller shall cooperate in any commercially reasonable and economically feasible arrangements (such as subleasing, sublicensing or subcontracting) to provide to the Parties the economic and, to the extent permitted under applicable Law, operational equivalent of the transfer of such Nonassignable Asset to Buyer at the Closing and the performance by Buyer of its

obligations with respect thereto, and so long as Seller transfers and turns over all economic and beneficial rights with respect to each such Nonassignable Asset, Buyer shall, to the extent permitted under applicable Law and the terms of any applicable contract that constitutes a Nonassignable Asset, as agent or subcontractor for Seller, pay, perform and discharge the liabilities and obligations of Seller thereunder from and after the Closing Date, but only to the extent that such liabilities and obligations would constitute Assumed Liabilities if the applicable consent or approval had been obtained on or prior to the Closing Date and such Nonassignable Asset had been assigned to Buyer at Closing. To the extent permitted under applicable Law, Seller 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 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 Seller is a party which is not set forth on Schedule 4.15 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 Seller and Seller shall, promptly following receipt of such notice, deliver to Buyer an updated Schedule 4.15 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 Seller was a party as of the Closing and which (i) was not set forth on Schedule 4.15 (as may be updated pursuant to (c)) and (ii) Buyer reasonably believes is necessary or useful to the operation of the System, Seller shall, promptly following Buyer's written request therefor, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such other instruments of conveyance and transfer and other documents, and perform or cause to be performed such further acts, as may be reasonably required to evidence or effectuate, or more fully evidence or effectuate the assignment of such contract to Buyer for no additional consideration, and upon such assignment, such contract shall be deemed an Assigned Contract for all purposes hereunder.

(e) From the date of this Agreement until the Closing Date, 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

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

(a) Buyer shall (i) provide for payment in full of the total amount of Outstanding Indebtedness (less any amounts of Outstanding Indebtedness actually assumed by Buyer pursuant to clause (ii) below) and/or (ii) subject to the provisions of Section 7.07, assume any of Seller's obligations related to the Outstanding Indebtedness and obtain a release of Seller from all obligations thereunder in such form and terms reasonably acceptable to Seller and/or provide written evidence of such payment in full to Seller in such form reasonably acceptable to Seller, at Buyer's discretion;

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

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

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 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 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 Seller a draft of the Allocation Schedule setting forth Buyer's proposed allocation for Seller's review. Seller shall have the right to review and reasonably comment upon Buyer's proposed Allocation Schedule, *provided*, that (a) such proposed Allocation Schedule shall be deemed approved by Seller and shall be final and binding upon the Parties unless Seller provides written notice of Seller's comments to one or more items reflected in the proposed Allocation Schedule within twenty (20) Business Days after delivery of the proposed Allocation Schedule to Seller, and (b) upon receipt of any such written comments from Seller with respect to the proposed Allocation Schedule, Buyer may make such adjustments or revisions to the proposed Allocation Schedule based on Seller's comments as Buyer determines in good faith to be necessary and appropriate, *provided further*, that Buyer shall have no obligation to make any such adjustments or revisions absent manifest error. The Parties shall adhere to the Allocation Schedule (as finally determined pursuant to this Section 3.03) for all purposes relevant

to the calculation of federal or state Taxes, and will report the transactions contemplated herein in a manner consistent with such Allocation Schedule. Except as required by applicable Law, Buyer and Seller shall not take any position on their respective Tax Returns that is inconsistent with the Allocation Schedule.

Section 3.04. **Transfer Taxes**. Any and all deed stamps or transfer Taxes which may be due the Commonwealth of Pennsylvania or any political subdivision in connection with the sale, transfer, assignment, conveyance and delivery hereunder of the Acquired Assets to Buyer (collectively, "**Transfer Taxes**"), shall be borne by Buyer. The terms hereof shall survive Closing.]⁵

ARTICLE IV.

REPRESENTATIONS AND WARRANTIES OF SELLER

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

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

Section 4.01. **Organization**. Seller is a body corporate and politic, duly organized and existing under the First Class Township Code of the Commonwealth of Pennsylvania (53 P.S. §55101, *et. seq.*) and its Home Rule Charter approved November 1, 1976.

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

Section 4.03. **Enforceability**. This Agreement has been duly authorized, executed and delivered by Seller and constitutes a valid and legally binding obligation of Seller, enforceable against Seller in accordance with the terms hereof, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity.

Section 4.04. **No Conflict or Violation**. The execution and delivery of this Agreement by Seller, the consummation of the transactions contemplated hereby and the performance by

⁵ Only applicable for some bidding entities.

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

Section 4.05. **Consents and Approvals.** Schedule 4.05 sets forth a list of each consent, waiver, authorization or approval of any Governmental Authority, or of any other Person, and each declaration to or filing or registration with any Governmental Authority required in connection with the execution and delivery of this Agreement by Seller or the performance by Seller of its obligations hereunder.

Section 4.06. **Undisclosed Liabilities** Except as set forth in Schedule 4.06, there are no liabilities or obligations of Seller, either accrued, absolute, contingent or otherwise, relating to the Assets, other than liabilities incurred in the ordinary course, that could not reasonably be expected to have a Material Adverse Effect on Buyer.

Section 4.07. **Absence of Certain Changes or Events.** Except as set forth on Schedule 4.07, since December 31, 2015, 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 ordinary course.

Section 4.08. **Tax Matters.** Except as set forth in Schedule 4.08 or as would not have a Material Adverse Effect, Seller represents that Seller has timely paid all Taxes that may have been or may be due and payable by Seller on or before the Closing Date, arising from the ownership or operation of the Acquired Assets or the System on or before the Closing Date.

Section 4.09. **Real Property.** All real property Seller owns and uses in the operation of the System (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 has Seller actually received any written threats of any condemnation proceedings and, to the Knowledge of Seller, no such proceedings are threatened. 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, 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. **Employee Benefit Plans.**

(a) Except as set forth in Schedule 4.11(a), Seller represents that it has not entered into any severance or similar arrangement with respect to any present or former Personnel that will result in any obligation (absolute or contingent) of Buyer to make any payment to any present or former Personnel following termination of employment, including the termination of employment effected by the transactions contemplated by this Agreement. The consummation of the transactions contemplated by this Agreement will not trigger any severance or other obligation of Seller for which Buyer shall have any liability.

Section 4.12. Seller's Personnel.

(a) Except as set forth on Schedule 4.12(a), Seller shall timely pay, or cause to be timely paid, to the Personnel as required under its policies and/or by applicable Law for accrued but unused and unpaid vacation, sick leave and other benefits accrued as of the Closing Date.

(b) Seller has not, in the past five (5) years, effectuated:

(i) a "plant closing" (as defined in the Worker Adjustment and Retraining Notification Act ("WARN Act")) affecting any site of employment or one or more facilities or operating units within any site of employment or facility of the System; or

(ii) a "mass layoff" (as defined in the WARN Act) affecting any site of employment or facility of the System; nor has the System been affected by any transaction or engaged in layoffs or employment terminations sufficient in number to trigger application of any similar state or local Law.

(c) None of the Personnel has suffered an "employment loss" (as defined in the WARN Act) during the previous six months.

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

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

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

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

(d) Hazardous Materials are not present at or on the System or Acquired Assets, there has been no Release of Hazardous Materials at, on or from any part of the System or the

Acquired Assets, in each case in a manner that violates any Environmental Requirements or has resulted in, or could reasonably be anticipated to give rise to, Environmental Liabilities.

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

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

(g) 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 byphenyls or has been removed and properly disposed of, in compliance with applicable Environmental Requirements, and any remaining PCB Equipment is labeled to the extent required under applicable Environmental Requirements and being managed in compliance with applicable Environmental Requirements.

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

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

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

Section 4.15. **System Contracts.**

(a) Schedule 4.15 contains a complete and accurate list of all the Assigned Contracts.

(b) 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 4.15 are in full force and effect. Seller has not, nor to the Knowledge of Seller has any other party thereto, breached any material provision of or defaulted under the material terms of, nor does any condition exist which, with notice or lapse of time, or both, would cause Seller, or to the Knowledge of Seller, any other party, to be in default under any Assigned Contract.

Section 4.16. Compliance with Law; Litigation.

(a) To the Knowledge of Seller, Seller has operated and is operating the System in compliance, in all material respects, with all applicable Laws, Authorizations and Permits and is not in breach of any applicable Law, Authorization or Permit that would have a Material Adverse Effect on the operations of the System or on Buyer. There are no Authorizations or Permits from any Governmental Authority necessary for the operation of the System as currently being operated except for those Authorizations and Permits listed in Schedule 4.14.

(b) Except at set forth on Schedule 4.16, there are no facts, circumstances, conditions or occurrences regarding the System that could reasonably be expected to give rise to any environmental claims or governmental enforcement actions that could reasonably be expected to have a Material Adverse Effect, and there are no past, pending or threatened environmental claims or governmental enforcement actions against Seller that individually or in the aggregate could reasonably be expected to have a Material Adverse Effect.

(c) Except at set forth on Schedule 4.16, there is no action, suit or proceeding, at law or in equity, or before or by any Governmental Authority, pending nor, to the Knowledge of Seller, threatened against Seller prior to or at the time of Closing, 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 Seller, threatened against Seller which could materially affect the validity or enforceability of this Agreement.

Section 4.17. 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 4.18. Title to the Acquired Assets; Sufficiency.

(a) Except as set forth on Schedule 4.18(a), Seller has good and marketable title to, all Real Property, and valid leasehold interest in or valid licenses or Easements to use and access, all of the Acquired Assets, free and clear of all Liens, other than Permitted Liens and Liens which

will be fully and unconditionally released at or 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 4.18(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 4.18(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 4.19. **Pending Development Plans.** Schedule 4.19 sets forth a full and complete list of all Pending Development Plans as of the Effective Date. Each Pending Development Plan, if consummated could result in the expansion of the Service Area. Seller provides no assurances whatsoever that any development or expansion of the Service Area associated with any Pending Development Plan will actually be undertaken or completed.

Section 4.20. **Land Development Agreements / Financial Security Agreements.** Schedule 4.20 sets forth a list of all Land Development / Financial Security Agreements existing as of the date hereof between Seller and any third party.

ARTICLE V.

REPRESENTATIONS AND WARRANTIES OF BUYER

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

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

Section 5.01. **Organization.** Buyer is duly organized, validly existing and in good standing under the laws of the state of its organization.

Section 5.02. **Authorization and Validity of Agreement.** Buyer has the power and authority to enter into this Agreement and to do all acts and things and execute and deliver all other documents as are required hereunder to be done, observed or performed by it in accordance with the terms hereof. This Agreement has been duly authorized, executed and delivered by Buyer and constitutes a valid and legally binding obligation of Buyer, enforceable against it in accordance

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

Section 5.03. **No Conflict or Violation.** The execution and delivery of this Agreement by Buyer, the consummation of the transactions contemplated hereby and the performance by Buyer of the terms, conditions and provisions hereof has not and will not contravene or violate or result in a material breach of (with or without the giving of notice or lapse of time, or both) or acceleration of any material obligations of Buyer under (i) any applicable Law, (ii) any material agreement, instrument or document to which Buyer is a party or by which it is bound or (iii) the articles, bylaws or governing documents of Buyer.

Section 5.04. **Consents and Approvals.** Schedule 5.04, sets forth a list of each consent, waiver, authorization or approval of any Governmental Authority, or of any other Person, and each declaration to or filing or registration with any Governmental Authority required in connection with the execution and delivery of this Agreement by Buyer or the performance by Buyer of its obligations hereunder.

Section 5.05. **Broker's and Finder's Fees.** 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 [as a certificated public utility system regulated by the PaPUC/municipal authority]⁶, authorized, among things, to provide wastewater 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 service equal to or better than such customers would have received without the transactions contemplated by this Agreement and at all times consistent with [the provisions of the Pennsylvania Public Utility Code, 66 Pa. C. S. § 101 *et seq.*, and]⁷ 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

⁶ Bracketed because provision only applies to certain Bidders.

⁷ Bracketed because provision only applies to certain Bidders.

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 Seller expressly contained in Article IV of this Agreement.

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

ARTICLE VI.

TITLE TO REAL PROPERTY; 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 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 Buyer or any requirements, conditions or obligations of Buyer, (c) are matters of record and set forth in the Title Commitment and adversely restrict or prevent the use of the Real Property in the operation of the System and (d) 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 Seller with an Objection Notice, 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, 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 Seller's obligations pursuant to Section 6.02(a) above, prior to or as of the Closing, 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 Buyer or any mortgagee of 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 Montgomery 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 Seller to Buyer on or prior to the Closing Date.

Section 6.05. Easements.

(a) Prior to the Closing, Seller shall, at its sole cost and expense, cause an abstractor selected by Seller and reasonably acceptable to Buyer and the Title Company (the "**Abstractor**"), to perform a search of the public land records of Montgomery County, based on Seller's records and plans of the System (and such other sources of information as are reasonably related thereto), by means of searching the grantee index in the names of Seller and such other searches as the Abstractor may reasonably make, to (i) identify and provide Buyer with title information on any and all recorded Easements, and (ii) together with 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), Seller will promptly provide the same to Buyer for its

review, and, without limiting the foregoing, Seller shall, or shall cause the Abstractor to, provide Buyer with periodic updates (which shall occur no less frequently than bi-weekly) on the status of the activities set forth in the previous sentence.

(b) In the event that during the process of Abstractor's review and investigation of the Montgomery County land records, Seller determines, based on the Abstractor's investigation, that there is a Missing Easement, Seller shall take any and all actions (including the use of its power of condemnation) to obtain any 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 Seller. In the event Seller has not obtained all Missing Easements by the date that is sixty (60) 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 after the Abstract Completion Date (but in any event no later than thirty (30) days prior to the Closing), Seller shall commence and file in the Court of Common Pleas, Montgomery County, a condemnation or eminent domain proceeding to obtain any and all such Missing Easements. For the purposes of clarity, upon obtaining each Missing Easement (including upon the final resolution of a condemnation proceeding), each Missing Easement that has been acquired or obtained by Seller shall be considered an Easement.

Section 6.06. **Unscheduled Property.** The Parties acknowledge that Seller may own interests in or have the legal right to use or occupy the Real Property 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, Seller shall pay any and all Taxes, if any, arising out of the ownership of the Acquired Assets and out of the operation of the System before the Closing.

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

Section 7.03. **Personnel Matters.**

(a) Subject to Buyer's existing standard hiring policies and procedures applicable to new employees, Buyer shall offer job interviews to all Personnel with such interviews taking place prior to the Closing Date. Buyer, in its sole discretion, shall determine whether to offer employment to any Personnel on or after the Closing Date.

Section 7.04. Rates.

(a) Rates. Buyer shall implement rates that are no higher than Seller's sanitary wastewater rates then in effect at Closing, as reflected on Schedule 7.04(a) and inclusive of any PaPUC permitted or required surcharges or pass-through costs (the "Base Rate") as Buyer's effective sanitary wastewater rates, provided that the rates reflected on Schedule 7.04(a) (at Closing) shall not be lower than those in effect on the date this Agreement is executed. [Buyer intends to bill customers on a monthly basis instead of annual billing, which Buyer will prorate accordingly.]

(b) PaPUC Approval. [The rate provisions of Sections 7.04(a) shall be part of Buyer's requested PaPUC Governmental Approval.]⁸

Section 7.05. [Buyer Taxpayer. From and after the Closing Date, Buyer acknowledges that, upon conveyance of the Acquired Assets to Buyer, Buyer will be subject to, among other Taxes, real estate Taxes, which shall be paid by Buyer.]

Section 7.06. [PaPUC Approval.

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

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

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

(d) To the extent requested by Buyer, Seller agrees to participate in any proceedings before the PaPUC as an intervenor and active party, provided that Seller shall bear the fees and expenses directly related to such intervention, including legal expenses, that are reasonably incurred up to a cap of \$[20,000], above which any such costs reasonably incurred shall be borne

⁸ Bracketed because provision only applies to certain Bidders.

entirely by Buyer. Seller shall have the right to be represented by the counsel of their choice in any such proceedings.

(e) Buyer, in Buyer's first base rate proceeding with respect to the System following the Closing, shall propose the use of statutory and regulatory mechanisms available to benefit the Buyer's acquired customers for ratemaking purposes.]⁹

Section 7.07. **Outstanding Indebtedness.** Buyer has the option, upon reasonable advance written notice to Seller, in lieu of paying in full the total amount of Outstanding Indebtedness, to assume any of Seller's obligations under other Outstanding Indebtedness which may be assumed. Buyer shall also obtain a release of all of Seller's obligations under the assumed Outstanding Indebtedness on or before Closing.

Section 7.08. **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 following closing, 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.]¹⁰

Section 7.09. **Operation and Maintenance of the MS4 System.** Subject to applicable Law, Seller, shall at all times maintain ownership of its MS4 System and Stormwater System Assets. Seller will maintain any NPDES permits related to the Stormwater System Assets.

Section 7.10. **Utility Valuation Experts.** Buyer and Seller agree that each will be responsible for the costs associated with their respective Utility Valuation Expert for the preparation and completion of their respective Utility Valuation Expert's appraisal report and any additional work by their Seller's Utility Valuation Expert necessary to assist in the processing and prosecution of the application to the PaPUC in regard to this transaction under Section 1329.

Section 7.11. **Restoration of Property.** Buyer shall at all times act in accordance with all requirements imposed by the PaPUC and with the terms of any permits or approvals issued by Seller with regard to restoration of property on which construction or repair and replacement work is undertaken.

Section 7.12. **Restriction Against Construction of Plants and Equalization Tanks.** Buyer shall not construct within the Township of Cheltenham any sewage treatment plant, equalization tank, or other facility of similar size and nature except in compliance with Seller's ordinances, including those with respect to zoning and land use, and the Seller's Act 537 and the Township's Comprehensive Plans.

Section 7.13. **EDU Allocations.** Seller retains its rights to allocate EDUs in connection with any new development within the Township of Cheltenham; provided, however,

⁹ Bracketed because provision only applies to certain Bidders.

¹⁰ Bracketed because provision only applies to certain Bidders.

that Seller agrees to consult with Buyer with regard to any technical issues or concerns that Buyer may have in connection with such new development.

ARTICLE VIII.

INDEMNIFICATION

Section 8.01. **Survival.** All representations and warranties contained in this Agreement shall survive until twelve (12) months following the Closing Date, except that (a) the representations and warranties of Seller set forth in Section 4.01 (Organization), Section 4.02 (Power and Authority), Section 4.03 (Enforceability) and Section 4.15 (Brokers' and Finders' Fees) (collectively, the "Seller Fundamental Representations") shall survive the Closing indefinitely or until the latest date permitted by 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 Seller.** To the maximum extent permitted by applicable Law and subject to the terms and conditions of this Article VIII, 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 misrepresentation as to, or any material inaccuracy in, any of the representations and warranties of Seller contained in this Agreement or in any exhibit, schedule, certificate or other instrument or document furnished or to be furnished by Seller 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 Seller contained in this Agreement or in any exhibit, schedule, certificate or other instrument or document furnished or to be furnished by 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 Seller and its successors and Affiliates and each of their respective employees, officers, directors and agents (the "Seller Indemnified Persons") from and against any and all claims for Losses arising from or relating to: (a) any material misrepresentation as to, or any material inaccuracy in, any of the representations and warranties of Buyer contained in this Agreement or in any exhibit, schedule, certificate or other instrument or document furnished or to be furnished by Buyer pursuant to this Agreement; (b) any material breach of any of the covenants or agreements of Buyer contained in this Agreement or in any exhibit, schedule certificate or other instrument or document furnished or to be furnished by Buyer pursuant to this Agreement; (c) any Assumed Liability as and when payment and performance is due, including without limitation any liability related to any claims by any Governmental Authority; (d) Buyer's actions involving Environmental Laws, Hazardous Materials or environmental claims from and after the Closing Date; or (e) the ownership, operation or control of the Acquired Assets or the System from and after the Closing Date.

Section 8.04. Indemnification Procedure.

(a) Third Party Claims. If any Indemnified Party receives notice of the assertion or commencement of any action, suit, claim or other legal proceeding made or brought by any Person who is not a party to this Agreement or an Affiliate of a party to this Agreement or a representative of the foregoing (a "Third Party Claim") against such Indemnified Party with respect to which the Indemnifying Party may be obligated to provide indemnification under this Agreement, the Indemnified Party shall 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. 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 1% of Purchase Price 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 aggregate amount of 5% of Purchase Price (the "Liability Cap"), which shall represent the sole and exclusive remedy of Buyer and the other Buyer Indemnified Parties for any such claims under Section 8.02(a) (other than claims with respect to breaches of any of the Seller Fundamental Representations or in the case of fraud, intentional misrepresentation or willful misconduct which shall not be subject to the Liability Cap, but shall be capped at the Purchase Price).

(d) Payments by an Indemnifying Party pursuant to Section 8.02 or Section 8.03 in respect of any Loss shall be limited to the amount of any liability or damage that remains after deducting therefrom any insurance proceeds 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, 7.06, 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.** Neither Party shall be liable for any Losses based upon or arising out of any inaccuracy in or breach of any representations or warranties of such Party contained in this Agreement if the Party claiming such Losses had Knowledge of such inaccuracy or breach prior to the Closing.

ARTICLE IX.

PRE-CLOSING COVENANTS OF SELLER

Section 9.01. **Operation of the System.** Except as otherwise expressly permitted by this Agreement, as required by applicable Law or with the prior written consent of Buyer (which consent shall not be unreasonably withheld, delayed or conditioned), from the Effective Date until the Closing, Seller shall (i) operate and manage the System only in the ordinary course of business in accordance with past practices and procedures, (ii) comply in all material respects with all applicable Laws and Authorizations and Permits, and (iii) use commercially reasonable efforts to maintain and preserve intact the business and assets of the System and preserve the rights, franchises, goodwill and relationships of Seller and the System and their customers, lenders, suppliers, regulators and others having business relationships with 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.** Seller shall promptly deliver to Buyer any supplemental information updating the information set forth in the representations and warranties set forth in Article IV of this Agreement so that such representations and warranties as supplemented by such information will be true and correct as of the Closing Date (or such other date as provided in such representations and warranties) as if then made. Following the Effective Date, Seller shall promptly advise Buyer of any facts which would 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, except as otherwise expressly provided herein, Seller shall file all applications and reports that are required to be filed by Seller with any Governmental Authority as provided on Schedule 4.05 to Buyer. Seller shall also promptly provide all information that any Governmental Authority may require in connection with any such application or report. 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 Seller prior to Closing and shall be final and non-appealable. In the event a party to the PaPUC proceeding appeals PaPUC authorization of the transaction, Buyer and Seller may still mutually agree to proceed to consummate the transaction.

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

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

Section 10.04. **Supplements and Updates.** Buyer shall promptly deliver to Seller any supplemental information updating the information set forth in the representations and warranties set forth in Article V of this Agreement so that such representations and warranties as supplemented by such information will be true and correct as of the Closing Date (or such other date as provided in such representations and warranties) as if then made. At least three (3) Business Days prior to the Closing Date, Buyer shall advise Seller of any facts which would constitute a breach of a representation or warranty as of the date made or a default in a covenant contained herein.

ARTICLE XI.

CONDITIONS PRECEDENT TO OBLIGATIONS OF SELLER

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

Section 11.01. **Consents and Approvals.**

(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 4.05; 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 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 Seller shall have received a certificate to the effect of the foregoing from a duly authorized officer of Buyer dated as of the Closing Date.

Section 11.03. **[PaPUC Approval.** PaPUC shall have issued a Final Order approving the acquisition of the System under terms and conditions that are reasonably acceptable to Seller and Buyer. In the event a party to the PaPUC proceeding appeals or files a petition for reconsideration of PaPUC authorization of the transaction, Buyer and Seller may still mutually agree to proceed to consummate the transaction.]¹¹

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

Section 11.05. **Performance of the Obligations of Buyer.** Buyer shall have performed in all material respects all obligations required under this Agreement to be performed by Buyer on or before the Closing Date, and Seller shall have received a certificate to that effect from Buyer dated the Closing Date.

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

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

¹¹ Bracketed because provision only applies to certain Bidders.

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 5.04; 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 12.02. **Representations and Warranties of Seller.** The representations and warranties made by Seller in Article IV this Agreement (disregarding all “materiality” and “Material Adverse Effect” or similar qualifications contained therein) 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 Buyer shall have received a certificate to that effect from 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 Seller and Buyer. In the event a party to the PaPUC proceeding appeals PaPUC authorization of the transaction, Buyer and Seller may still mutually agree to proceed to consummate the transaction.]¹²

Section 12.04. **No Injunctions.** Neither 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 12.05. **No Material Adverse Effect.** There shall not have occurred any event or condition which gives rise to a Material Adverse Effect with respect to the Acquired Assets or the System.

¹² Bracketed because provision only applies to certain Bidders.

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

Section 12.07. **Performance of the Obligations of Seller.** Seller 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 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., Cheltenham, PA time, on the Closing Date (the "Closing Effective Time").

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

- (a) A Bill of Sale transferring all of the Acquired Assets comprising personal property, in the form attached hereto as Exhibit A;
- (b) Possession of the Acquired Assets, including without limitation, the Real Property, the Easements and an interest in the Missing Easements (including a license from Seller to Buyer);
- (c) A duly executed counterpart to an Assignment and Assumption Agreement with respect to the Assumed Liabilities (the "Assignment and Assumption Agreement"), in the form attached hereto as Exhibit B;
- (d) The consents to transfer all of the Assigned Contracts and Authorizations and Permits (including environmental Authorizations and Permits), to the extent required hereunder;
- (e) One or more special warranty or other deeds in recordable form reasonably acceptable to Buyer transferring fee simple title of Real Property;
- (f) Copies or originals of all Files and Records, materials, documents and records in possession of Seller relating to the Real Property or the Assigned Contracts;
- (g) Certificate of Seller pursuant to Section 12.02 of this Agreement;
- (h) Certificate of Seller pursuant to Section 12.07 of this Agreement;

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

(j) 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 Seller the following agreements, documents and other items:

- (a) Payment in full of the Purchase Price;
- (b) A duly executed counterpart to the Assignment and Assumption Agreement;
- (c) Certificate of Buyer pursuant to Section 11.02 of this Agreement;
- (d) Certificate of Buyer pursuant to Section 11.05 of this Agreement;
- (e) Evidence of PaPUC approval as provided in Section 12.03; and

(f) All such other instruments of assumption as shall, in the reasonable opinion of Seller and its counsel, be necessary for Buyer to assume the Assumed Liabilities in accordance with this Agreement.

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 Seller and Buyer;
- (b) By either Seller or Buyer if:
 - (i) the Closing shall not have occurred on or prior to the Outside Date; 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 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 Buyer pursuant to the terms of this Agreement or of any representation or warranty of Buyer contained in this Agreement, which breach (i) has continued without cure for a period of sixty (60) days following written notice thereof by Seller to Buyer or if such breach cannot be cured and (ii) would result in a condition to Closing set forth in Article XI of this Agreement not being satisfied (which condition has not been waived by Seller in writing); or

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

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

Section 14.02. **Effect of Termination.** If this Agreement is terminated by Seller or 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.

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

ARTICLE XV.

MISCELLANEOUS

Section 15.01. **Confidentiality.** Except as and to the extent required by 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 related to the sale of the System by one Party shall be provided to the other Party at least three (3) days prior to issuance.

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

in the case of Seller:

Township of Cheltenham
8230 Old York Road
Elkins Park, PA 19027
Attention: Township Manager

with a copy to:

Township of Cheltenham
8230 Old York Road
Elkins Park, PA 19027
Attention: Township Solicitor

in the case of Buyer:

[_____]
[_____]
Attention: [_____]

with a copy to:

[_____]
[_____]
Attention: [_____]

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 or 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.¹³

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 Montgomery 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

¹³ Discuss one Bidder's request that we agree in advance to renegotiate Purchase Price.

Pleas of Montgomery 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 if the other Party has performed in accordance with the terms hereof.

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 CHELTENHAM,
MONTGOMERY COUNTY

[_____]

By: _____

By: _____

Printed: _____

Printed:

Its: _____

Its:

ATTEST:

ATTEST:

By: _____

By: _____

Printed: _____

Printed: _____

Title: _____

Title: _____

ASSET PURCHASE AGREEMENT

By and Between

Township of Cheltenham, Montgomery County

As Seller

and

[_____]

As Buyer

SCHEDULES AND EXHIBITS

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

Schedule 2.02(h)

Excluded Assets

Schedule 3.03

Allocation Schedule

[To be provided by Buyer]

Asset	Percentage of Purchase Price
	%

Schedule 4.05

Required Governmental Consents

1. [Pennsylvania Public Utility Commission (“PaPUC”) Approval of Transaction]
2. [PaPUC Approval of Consent to Assignment and Amendment to Wastewater Service Agreements]
3. Pennsylvania Department of Environmental Protection Approval of Act 537 Official Sewage Facilities Plan recognizing transfer of wastewater collection system from Seller to Buyer
4. City of Philadelphia, acting through its Water Department, consent to assign Wastewater Service Agreement
5. Springfield Township consent to assign Wastewater Service Agreement

Schedule 4.06

Seller Liabilities

[None.]

Schedule 4.07

Events Having a Material Adverse Effect

[None.]

Schedule 4.08

Tax Matters

[None.]

Schedule 4.09

Real Property and Easements; Liens

Seller is endeavoring, with the assistance of its legal counsel, to prepare a schedule of real property related to operation of the sanitary sewer system which property would be conveyed to Buyer in the event of a sale. Seller has individual paper records for many of the properties which it is currently reviewing and recording in a schedule to be attached to an agreement of sale.

Easements and Rights of Way:

Licenses and Rights-of-Way

Address	Owner/Grantor	Temporary Easement Area No.
240 Brookdale Avenue	John J. Culp and Patricia P. Culp	T141-20
320 Brookdale Avenue	Patrick M. McGlade and Deborah J.R. McGlade	T141-28
324 Brookdale Avenue	Joseph Carter and Christine Slavin	T141-29
328 Brookdale Avenue	Ryan G. Lafferty and Karen V. Lafferty	T141-74
827 E. Glenside Avenue	Ruth E. Heidmann, Barbara K. Heidmann and George V. Strong, as trustees	T147-17-18
815 E. Glenside Avenue	Eric Abraham and Theresa C.K. Abraham	T147-13
817 E. Glenside Avenue	David R. Blurton and Joanne Blurton	T147-14
819 E. Glenside Avenue	James A. Schubert and Laura K. Schubert	T147-15
821 E. Glenside Avenue	Howard Smith	T147-16
826 E. Glenside Avenue	Mark A. Hawkins and Jean Clause Contassot	TE149-01
824 E. Glenside Avenue	James P. Mooney and Karen L. Mooney	TE149-02
? ¹	James P. Mooney and Karen L. Mooney/ John J. Bell and Helen S. Bell	TE149-03
Southeast corner intersection of Glenside Avenue and Rices Mill Road	Ruth E. Heidmann, Barbara K. Heidmann and George V. Strong, as trustees	TE149-86
1 North Avenue	Carken, L.L.C.	T147-9
1016 Arboretum Road	Lanorde P. Wheeler and Beverly P. Wheeler	Not included
1018 Arboretum Road	Yong Bum Park, Boon Sang Park and Young Ae Kim	Not included
Not included	Township of Cheltenham	T149-87
5 North Avenue	Vincent McGonagle and Rose Marie R. McGonagle	T147-8
Not included	Standard Pressed Steel Company	T304-2
Not included	Standard Pressed Steel Company	T304-3

Permanent Easements

¹ Two copies of TE149-03 with different names and no Exhibit A or address.

Address	Owner/Grantor	Permanent Easement No.
827 E. Glenside Avenue	Ruth E. Heidmann, Barbara K. Heidmann and George V. Strong, as trustees	PE147-17
572 General Patterson Drive	PNC Bank, NA Trustee of the Kyarra Almore Special Needs Trust, dated February 7, 2017 T.M.P. No. 31-00-11032-00-7	Not included

Grant of Perpetual Easement and Right-of-Way

<u>Address</u>	<u>Owner/Grantor</u>	<u>Permanent Easement Area No.</u>
827 E. Glenside Avenue	Ruth E. Heidmann, Barbara K. Heidmann and George V. Strong, as trustees	SP147-17
827 E. Glenside Avenue	Ruth E. Heidmann, Barbara K. Heidmann and George V. Strong, as trustees	SP147-17ACC
5 North Avenue	Rose Marie R. McGonagle	SP147-8
1 North Avenue	Carlen, L.L.C.	SP147-9
725 Paxson Avenue	Warren S. Marley and Patricia Marley	SP148-65
725 Paxson Avenue	Warren S. Marley and Patricia Marley	SP148-65ACC
? ²	Township of Cheltenham	SP149-87
1 North Avenue	Carlen, L.L.C.	SP149-9ACC
? ³	Township of Cheltenham	SPGLEN 022703
? ³	Township of Cheltenham	SPGLEN 022703-092206

² Two copies of SP149-87 with no Exhibit A or address.

³ Two copies of SPGLEN 022703 with no Exhibit A or address.

Schedule 4.10

Equipment and Machinery

The following pieces of machinery and equipment:

Camera sewer truck

Schedule 4.11(a)

Severance Agreements

[None.]

Schedule 4.12(a)

Exceptions to Personnel Payments

[None.]

Schedule 4.13

Environmental Compliance

Cheltenham Township Corrective Action Plan (Inflow and Infiltration Remediation) dated February 2017 and approved by the Pennsylvania Department of Environmental Protection via Letter dated April 17, 2017

Noncompliance issues:

Sanitary Sewer Overflows for which the Township was responsible from 2009 to present (reported to Department of Environmental Protection but not necessarily resulting in a fine):

<u>Date</u>	<u>Location</u>	<u>Notes</u>
1/2/2009	105 Hilldale Road	Township Responsibility
1/12/2009	8027 High School Road	Township Responsibility
1/22/2009	1907 W. Cheltenham Avenue	Township Responsibility
1/27/2009	8100 Cobden Road	Township Responsibility
4/4/2009	712 Valley Road	Township Responsibility
4/13/2009	8101 Old York Road	Township Responsibility
6/17/09	609 Ashbourne Road	Township Responsibility
6/17/09	617 Ashbourne Road	Township Responsibility
7/6/2009	8100 Newbold	Township Responsibility
7/12/2009	1660 Willow Grove Avenue	Township Responsibility
7/30/2009	8324 Fenton Road	Township Responsibility
8/2/2009	Harrison Avenue	Township Responsibility
8/2/2009	Brookdale Avenue	Township Responsibility
8/2/2009	Waverly Road	Township Responsibility
8/2/2009	Shoemaker Road Driveway	Township Responsibility
8/2/2009	Cheltenham Hills, train overpass	Township Responsibility
8/2/2009	North Avenue	Township Responsibility
9/6/2009	61 Tookany Creek Pkwy.	Township Responsibility
1/25/2010	Shoemaker Road Driveway	Township Responsibility
3/13/2010	Shoemaker Rd. Driveway	Township Responsibility
3/17/2010	7811 Mill Road	Township Responsibility
3/25/2010	100 W. Laurel Avenue	Township Responsibility
3/29/2010	Shoemaker Road Driveway	Township Responsibility
3/27/2010	Ogontz Field	Township Responsibility
4/4/2010	445 Greenwood Avenue	Township Responsibility
5/3/2010	New Second & Ashbourne (behind homes)	Township Responsibility
6/2/2010	Valley Road at Coventry	Township Responsibility
6/16/2010	7933 Waltham Road	Township Responsibility
7/13/2010	Manhole on Harrison Ave.	Township Responsibility
7/13/2010	Paxson & Keswick Aves.	Township Responsibility
7/13/2010	Brookdale & Rices Mill	Township Responsibility
7/13/2010	North Avenue mh in creek	Township Responsibility
7/13/2010	Mh in SPS parking lot	Township Responsibility
7/13/2010	South Ave. mh-ped. Bridge	Township Responsibility
7/13/2010	Interceptor mh behind 538 Shoemaker Road	Township Responsibility

7/13/2010	Ogontz Field-2 mh's	Township Responsibility
7/13/2010	Interceptor-Fire Trng. Ctr.	Township Responsibility
7/13/2010	8120 Brookside Road	Township Responsibility
10/1/2010	Shoemaker Road Driveway	Township Responsibility
11/3/2010	Township Line by Laurel	Philadelphia Responsibility
1/20/2011	47 Tookany Creek Parkway	Township Responsibility
1/31/2011	445 Greenwood Avenue	Township Responsibility
2/4/2011	Cheltenham & Washington La.	Township Responsibility
2/16/2011	Wall Park	Township Responsibility
2/22/2011	1660 Willow Grove Avenue	Township Responsibility
2/3/2011	Tookany Creek	Township Responsibility
2/2/2011	8101 Old York Road	Township Responsibility
2/10/2011	Fire Training Center	Township Responsibility
3/2/2011	Tookany Creek Pkwy. at Melrose C.C.	Township Responsibility
3/7/2011	7914 Ivy Lane	Township Responsibility
3/11/2011	Cheltenham Ave., Washington Lane	Township Responsibility
3/24/2011	800 Hilton Lane	Township Responsibility
5/9/2011	319 Limekiln Pike	Township Responsibility
6/1/2011	2025 Church Road	Township Responsibility
8/14/2011	407 Bolton Road	Township Responsibility
8/21/2011	7951 Mill Road-bypass pipe	Township Responsibility
8/28-29/2011	Keswick & Paxson Avenues	Hurricane Irene Induced
8/28-29/2011	S.P.S. Parking Lot (Rear Parking Lot)	Hurricane Irene Induced
8/28-29/2011	Ogontz Field	Hurricane Irene Induced
8/28-29/2011	Fire Training Area	Hurricane Irene Induced
8/28-29/2011	Tookany Creek by Jenkintown Road	Hurricane Irene Induced
8/28-29/2011	Tookany Creek – Ped Tunnel –JC Melrose	Hurricane Irene Induced
8/28-29/2011	Intercept. A – M.H. Opp. Woodland	Hurricane Irene Induced
8/28-29/2011	Tookany Creek Pkwy. Opp. Beryl Rd.	Hurricane Irene Induced
8/28-29/2011	Rear S.P.S. –Conn. M.H. to Abington	Hurricane Irene Induced
8/28-29/2011	North and Paxson Avenues	Hurricane Irene Induced
8/28-29/2011	Cheltenham Hills Dr. by Washington Lane	Hurricane Irene Induced
8/28-29/2011	7859 Mill Road Driveway	Hurricane Irene Induced
8/28-29/2011	Fairmount Park	Hurricane Irene Induced
8/28-29/2011	Intercept A – Bet. M.H. A-31 & M.H. A-32	Hurricane Irene Induced
8/28-29/2011	Shoemaker Driveway	Hurricane Irene Induced
8/28-29/2011	Intercept. A – M.H. downstream South Ave.	Hurricane Irene Induced
8/28-29/2011	Intercept. A – M.H.. downstream Central	Hurricane Irene Induced
8/28-29/2011	Intercept. A – Bet. M.H. A-31 & M.H. A-32	Hurricane Irene Induced
8/28-29/2011	215 Harrison Avenue-M.H. in Street	Hurricane Irene Induced
8/28-29/2011	215 Harrison Avenue-M.H. in Rear	Hurricane Irene Induced
8/28-29/2011	Intercept. A @ IBPS Dump Manhole	Hurricane Irene Induced
9/8/2011	215 Harrison Avenue (Rear Yard)	Tropical Storm Lee Induced
9/8/2011	Harrison Avenue (200 Block)	Tropical Storm Lee Induced
9/8/2011	Brookdale Avenue	Tropical Storm Lee Induced
9/8/2011	Bickley Road (200 Block)	Tropical Storm Lee Induced
9/8/2011	Keswick & Paxson Avenues	Tropical Storm Lee Induced
9/8/2011	S.P.S. Parking Lot (Rear Pkg. Lot)	Tropical Storm Lee Induced
9/8/2011	Ogontz Field	Tropical Storm Lee Induced
9/8/2011	High School Road –creek m.h.	Tropical Storm Lee Induced
9/8/2011	Fire Training Area	Tropical Storm Lee Induced

9/8/2011	Tookany Creek-Jenkintown Rd.	Tropical Storm Lee Induced
9/8/2011	Tookany Creek-Melrose CC	Tropical Storm Lee Induced
9/8/2011	Tookany Creek opp.Beryl Rd.	Tropical Storm Lee Induced
9/8/2011	Rear S.P.S. m.h. conn. Abington	Tropical Storm Lee Induced
9/8/2011	Franklin Ave. & Hasbrook Ave.	Tropical Storm Lee Induced
9/8/2011	North & Paxson Avenues	Tropical Storm Lee Induced
9/8/2011	Chelten Hills Dr. by Wash. Lane	Tropical Storm Lee Induced
9/8/2011	7859 Mill Road Driveway	Tropical Storm Lee Induced
9/8/2011	Fairmount Park	Tropical Storm Lee Induced
9/8/2011	Ice Skating Bridge wiped out	Tropical Storm Lee Induced
9/8/2011	Mill Road (by Church Road)	Tropical Storm Lee Induced
9/8/2011	Tookany Creek by Central Ave.	Tropical Storm Lee Induced
9/8/2011	Shoemaker Driveway	Tropical Storm Lee Induced
9/8/2011	Bypass vent blown opp Pub. Wks.	Tropical Storm Lee Induced
9/8/2011	Abnd. Sewer line tying into Int. A	Tropical Storm Lee Induced
9/8/2011	Intercept. A – IBPS Discharge M.H.	Tropical Storm Lee Induced
9/8/2011	Intercept. A – Opp Woodland	Tropical Storm Lee Induced
9/8/2011	Intercept. A – Down. South Ave.	Tropical Storm Lee Induced
9/9/2011	Pumps shut down repl. 4 crimps	Tropical Storm Lee Induced
9/9/2011	Shoemaker – crimp repairs	Tropical Storm Lee Induced
9/16/2011	Pumps shut down-re-fuse sections	Tropical Storm Lee Induced
9/23/2011	Shoemaker-IBPS Pump Failure	Tropical Storm Lee Induced
9/26/2011	Shoemaker Driveway	Township Responsibility
12/17/2011	Tookany Creek Parkway (by Melrose Country Club)	Township Responsibility
2/16/2012	Wessel Way	Township Responsibility
2/22/2012	Melrose Country Club	Township Responsibility
2/23/2012	Melrose Country Club	Township Responsibility
2/24/2012	Melrose Country Club	Township Responsibility
2/25/2012	Melrose Country Club	Township Responsibility
2/28/2012	1706 Beech Avenue	Township Responsibility
2/29/2012	Melrose Country Club	Township Responsibility
3/1/2012	Melrose Country Club	Township Responsibility
3/7/2012	Glenside Train Station	Township Responsibility
4/3/2012	Melrose Golf Course	Township Responsibility
4/11/2012	Cheltenham Avenue & Williams Way	Township Responsibility
5/29/2012	1315 Spruce	Township Responsibility
8/17/2012	7918 Park Avenue	Township Responsibility
11/10/2012	130 Wetherill Road	Township Responsibility
11/10/2012	128 Wetherill Road	Township Responsibility
11/10/2012	126 Wetherill Road	Township Responsibility
11/10/2012	124 Wetherill Road	Township Responsibility
12/8/2012	7846 Cedar Lane	Township Responsibility
1/19/2013	7611 New Second Street	Township Responsibility
3/20/2013	8230 Old York Road (Police Station)	Township Responsibility
4/1/2013	219 Hewett Road	Township Responsibility
4/9/2013	326 Hewett Road	Township Responsibility
4/19/2013	654 Meetinghouse Road	Township Responsibility
4/22/2013	Heacock Ln. & Glenside	Township Responsibility
8/12/2013	4 Windsor Avenue	Township Responsibility
8/13/2013	Chelten Hills Dr. by Washington La.	Township Responsibility

8/13/2013	Shoemaker Driveway	Township Responsibility
8/17/2013	28 Latham Parkway	Township Responsibility
9/23/2013	508 Spring Avenue	Township Responsibility
11/8/2013	508 Spring Avenue	Township Responsibility
11/11/2013	801 Cheltenham Hills Drive	Township Responsibility
11/13/2013	7918 Park Avenue	Township Responsibility
11/18/2013	Tookany Creek Parkway	Township Responsibility
12/11/2013	835 Glenside Avenue	Township Responsibility
1/2/2014	120 Yew Road	Township Responsibility
1/5/2014	805 Elkins Avenue	Township Responsibility
1/8/2014	Ashbourne Country Club	Township Responsibility
1/9/2014	Tookany Creek Pkwy. by Pond	Township Responsibility
1/28/2014	Woodland Avenue	Phila. Responsibility
1/29/2014	104 Yew Road	Township Responsibility
2/20/2014	508 Spring Avenue	Township Responsibility
3/19/2014	Cheltenham Police Station	Township Responsibility
3/19/2014	Old York Road & Church Road	Township Responsibility
3/30/2014	Tookany Creek Pkwy. from Melrose Country Club to Johns Road	Township Responsibility
5/19/2014	7819 New Second Street	Township Responsibility
7/1/2014	Woodland Avenue	Philadelphia Sewer
8/8/2014	Old York Road & Spring Avenue	Township Responsibility
9/1/2014	139 Carroll Ave	Township Responsibility
9/27/2014	7943 Park Avenue	Township Responsibility
12/9/2014	8326 Thompson Road	Township Responsibility
1/12/15	Harrison Avenue & Twickenham	Township Responsibility
2/1/2015	43 Hilldale Road	Township Responsibility
2/9/2015	7913 Jenkintown Road	Township Responsibility
2/15/2015	Shoemaker Road	Township Responsibility
2/16/2015	Cheltenham Ave. by Wash. Lane	Township Responsibility
3/15/2015	7619 Massey Way	Township Responsibility
4/1/2015	Ashbourne Country Club	Township Responsibility
4/20/2015	Woodland Avenue	Philadelphia Responsibility
5/14/2015	Easton & Glenside Avenue	Township Responsibility
6/5/2015	600 Woodland Avenue	Philadelphia Responsibility
6/9/2015	2017 Church Road	Township Responsibility
6/16/2015	Church & Jenkintown Roads	Township Responsibility
7/1/2015	Glenside & Maple	Township Responsibility
7/22/2015	28 Latham Parkway	Township Responsibility
8/16/2015	706 Beecher Road	Township Responsibility
8/31/2015	7847 Spring Avenue	Township Responsibility
8/31/2015	E.M.S. Building	Township Responsibility
11/19/2015	2141 John Russell Circle	Township Responsibility
12/23/15	7819 New Second Street	Township Responsibility
1/19/2016	Tookany Creek Parkway	Township Responsibility
2/6/2016	Cheltenham Avenue by Massey Way	Township Responsibility
3/14/2016	534 Church Road	Township Responsibility
3/18/2016	421 Central Avenue	Township Responsibility
4/1/2016	103 Church Road	Township Responsibility
4/14/2016	7731 Lycoming	Township Responsibility
4/19/2016	665 Lindley Ave.	Township Responsibility

4/21/2016	Cheltenham/Washington	See Below ⁴
5/3/2016	109 Andrea Road	Township Responsibility
5/14/2016	1422 Hopeland Road.	Township Responsibility
5/25/2016	930 Tookany Creek Parkway	Township Responsibility
6/15/2016	4 Ashbourne Rd. at Oak Lane Road	Township Responsibility
10/13/2016	Old York Rd & Church Rd	Township Responsibility
10/18/2016	7708 Chapel Rd	Township Responsibility
10/18/2016	7841 Spring Ave	Township Responsibility
11/25/2016	1750 Ashbourne Rd	Township Responsibility
12/22/2016	1706 Beech Avenue	Township Responsibility
1/15/2017	736 Argyle Road	Township Responsibility
1/17/2017	8211 Manor Road	Township Responsibility
1/19/2017	8201 Aspen Way	Township Responsibility
2/2/2017	148 Hilltop Lane	Township Responsibility
2/22/2017	35 & 37 Church Road	Township Responsibility
3/21/2017	8305 Hammond Road	Township Responsibility
4/5/2017	8200 Ogontz Avenue (KFC)	KFC & Township Responsibility
6/9/2017	525 Spring Avenue	Township Responsibility
6/23/2017	112 Boncouer Road	Township Responsibility
7/10/2017	Tookany at Beryl Road	Township Responsibility
7/23/2017	Tookany at Wessel Way	Township Responsibility
8/21/2017	2141 John Russell Circle	Township Responsibility
9/15/2017	Valley & Coventry Roads	Township Responsibility
9/16/2017	7967 Oak Lane Road	Township Responsibility

⁴ The sewer call on 4/21/16 Cheltenham Ave. and Washington Lane was a sanitary sewer overflow. After the sewer was opened and the area cleaned up, Township sewer crews flushed our sewer up to Mall tie in. We removed approximately 35 gallon drum full of chunks of grease. We then checked the grease traps in the Mall area and found Chili's was having problems with their grease trap overflowing. We also found a pipe missing in the grease trap that was allowing the grease flow into the Township sewer and causing the sanitary sewer overflow. Chili's will be billed for any fines the Township receives and the cost of the cleanup.

Schedule 4.14

Authorizations, Licenses and Permits

1. Commonwealth of Pennsylvania Department of Environmental Resources Water Quality Management Permit for Sanitary Sewer Collection System, No. _____, issued _____.
2. Commonwealth of Pennsylvania Department of Environmental Protection NPDES Permit No. PAG-02 004614089 relating to the Interceptor “A” Sanitary Sewer Replacement, Tookany Creek Pkwy & Central Ave (A-31), Cheltenham, PA, dated February 1, 2016 and expiring February 25, 2021
3. Pennsylvania Department of Environmental Protection approval of Act 537 Official Sewage Facilities Plan
4. [Montgomery County Health Department – Post closing notice]
5. [PaPUC
 - a. Approval of transaction
 - b. Approval of consent to assignment and amendments to Wastewater Service Agreements]

Schedule 4.15

Assigned Contracts

Agreements			
Name of Contract	Parties to Contract	Date of Contract	Subject
Wastewater Service Agreement, as amended	Cheltenham Township and Springfield Township	December 10, 2014	Sale of wastewater conveyance services from the Township to Springfield Township
Wastewater Service Agreement, as amended	Cheltenham Township and Jenkintown Borough	Amended as of June 18, 2014	Sale of wastewater conveyance services from the Township to Jenkintown Borough
Wastewater Service Agreement	Cheltenham Township and Abington Township	September 11, 2014	Sale of wastewater conveyance services from the Township to Abington Township
Wastewater Service Agreement, as amended by Amendment Number One)	Cheltenham Township and the City of Philadelphia, acting through its Water Department	Amended as of March 19, 2014	Sale of wastewater treatment services from City of Philadelphia to the Township

Schedule 4.16

Litigation

[None.]

Schedule 4.18(a)

Exception to Title to Acquired Assets

None.

Schedule 4.18(b)

Sufficiency

[None.]

[Schedule 4.19

Pending Development Plans]

Residential Pending or Approved Land Development Plans	DEP Code	EDUs Available	COMMENTS
James and Bella Victor	1-46003-099-X	1	
925 Gilbert Rd	1-46003-090-3J	1	
1519 W. Cheltenham Ave		1	
Lublin Walsh SLD New 2nd St	1-46003-102-3J	2	
545 Jefferson 12 condos	1-46003-087-3J	10.3	
7700 Montgomery Ave (Duplex)		1.43	
118 Central Ave		2	
8000 Old York Road	1-46003-167-X	0.63	vacant land, no plans or payments submitted
635 Lindley Rd		1.14	no permits or EDU payment
1900 Ashbourne (145 1 and 2 bdrm Apts) (1)		140	
Federation Housing (60 units)		51.4	
Melrose Court Apts (20 1-bdrm and efficiencies)		18	Lichtman's 10/23/17 letter says there are 13 units, not 20
Kerlin Ph. 1 (1 efficiency, 4 1-bdrm, 23 2-bdrm, 3 3-bdrm, accessory)		42	
Kerlin Ph. 2 (12 1-bdrm and 12 2-bdrm)		24	
Kerlin Ph. 3 (12 1-bdrm and 12 2-bdrm)		24	
1012 Greenwood Ave.		3	
Ashbourne Meadows (fir Ashbourne Country Club)		166	
Commercial Pending or Approved Land Development Plans			
Cedarbrook Plaza Laundromat	1-46003-112-3J	43.39	never opened, 52.7 EDUs allocated, 9.31 EDUs used for other businesses
1347 Cheltenham Ave (Restaurant)	1-46003-150-3J	13	
Elkins Estate (former Dominican Retreat House)		68	
Temple Health Care (Hope Lodge property)		15	
Curtis Hall		40	
Wyncote Commons (827 Glenside Ave)	1-46003-161-X	4.18	15 EDUs were allocated, only 10.82 were needed
Keswick Hardware/Restaurant (129 S. Easton Rd (Glenside Hardware))	1-46003-181-X	10.9	12 allocated , needed 1.1
Cheltenham Mall (Greenleaf at Cheltenham)		20	
Ogontz Shopping Center		11	
More Shopping Center		2	
Hair Salon 101 Central Ave		2	
Quadruplex 404 Central Ave		2	
Arcadia University 6 Royal Ave		2	
510 Township Line Rd	1-46003-175-X	1.23	still vacant
1829 Cheltenham Ave	1-46003-176-X	0.93	submitted LD plans, need EDU payment
17 Limekiln Pike		1.36	former restaurant closed, unoccupied
Dunkin Donuts 1403 Cheltenham Ave	1-46003-182-X	1.21	need LD approval, no EDU payment made
8031 Old York Road	1-46003-184- X	0.48	unoccupied, no payments made
7827 Old York Road	1-46003-188-X	1.48	
1333 Cheltenham Ave (Sangkee)		5.73	
11 S. Easton Rd (Wolfstone Brewing)		9.32	
Westminster Seminary		20	
140 S. Easton Rd		8	
7827 Old York Rd.		7	
Temple Tyler		150	
Elkins Estate		132	
1333 Cheltenham Ave. (2nd Floor)		15	
TOTAL EDUs		1076.11	

[Schedule 4.20

Land Development and Financial Security Agreements]

None [to be updated as needed].

Agreement	Required Public Improvements	Amount of Financial Security	Technical Specifications	Required EDUs

Schedule 5.04

Buyer Consents and Approvals

Pennsylvania Department of Environmental Protection.
[PaPUC]

Schedule 5.11

Buyer Litigation

[None.]

Schedule 7.04(a)

Rates

As of the date of this Agreement, Seller's rates are as follows:

Usage Charges:

Annual Sewer Service Charge:	\$250.68 per EDU (defined below)
Usage charge:	\$3.91 per each 1,000 gallons

Tapping Fee – Per EDU (defined below):

Capacity Part:	\$1,486.69
<u>Collection Part:</u>	<u>\$2,496.85</u>
Total:	\$3,983.54

“EDU” means equivalent dwelling unit. Each residential unit is considered one (1) EDU. Non-residential EDUs are calculated using 219.6 gallons per day/EDU from the actual or projected annual water usage.

Schedule 7.07

Outstanding Indebtedness

[To be revised]

	2004B	2005A	2008	2009	2011	2012	2013A	2013B	2014A	2014B	2015	2016	Total
Bonds to Be Called	\$1,000,000	\$325,000	\$5,375,000	\$1,015,000	\$410,000	\$3,520,000	\$325,000	\$6,445,000	\$840,000	\$2,270,000	\$7,215,000	\$0	\$28,740,000
Accrued Interest	\$7,085	\$327,167	\$34,678	\$7,190	\$2,902	\$322,197	\$42,656	\$1,292,163	\$21,600	\$114,919	\$496,031	\$0	\$2,668,587
Escrow Earnings	\$0	\$0	\$0	\$0	\$0	\$185,300	\$28,198	\$575,399	\$12,234	\$40,434	\$243,380	\$0	\$1,084,945
Net Escrow Cost	\$1,007,085	\$652,167	\$5,409,678	\$1,022,190	\$412,902	\$3,656,897	\$339,459	\$7,161,763	\$849,366	\$2,344,485	\$7,467,651	\$0	\$30,323,642
Allocation	100%	100%	100%	72%	100%	51%	35%	68%	41%	35%	73%	0%	53.27%

Schedule 11.01(a)

Other Consents and Approvals

Exhibit A

Bill of Sale

Exhibit B

Assignment and Assumption Agreement