To: Busch, Jill[jbusch@pa.gov]
Cc: Campbell, Sean[seancampbe@pa.gov]
From: Adams Jr., J. Michael (Mike)[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=542CD1478E8345A5A71351CA61CAA2CD-JEROADAMS]
Sent: Wed 8/5/2020 5:08:49 PM (UTC-04:00)
Subject: FW: [External] Draft Asset Purchase Agreement
Asset Purchase Agreement - City of Chester - Aqua Pennsylvania Inc 2020 07 23.docx

Jill.

[redacted].

Thank you, Mike

Mike Adams | Chief Counsel
Governor's Office of General Counsel
PA Department of Community and Economic Development
Office of Chief Counsel
Commonwealth Keystone Building
400 North Street, 4th Floor | Harrisburg, PA 17120-0225
Phone: 717.720.7328 | Fax: 717.772.3103 | jeroadams@pa.gov
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From: Vilello, Richard
Sent: Wednesday, July 29, 2020 2:44 PM
To: Adams Jr., J. Michael (Mike) <jeroadams@pa.gov>
Cc: Bracey, C Kim <ckbracey@pa.gov>; Doweary, Michael <mdoweary@pa.gov>
Subject: FW: [External] Draft Asset Purchase Agreement

Mike-

Aqua has increased their proposal to acquire the water assets of the City of Chester.
This is the subject of litigation between the City and Chester Water Authority.
Aqua's offer has increased to $420 million with a $12 million upfront payment.

[redacted]

Rick

Richard "Rick" Vilello | Deputy Secretary Community Affairs & Development
Pennsylvania Department of Community and Economic Development
Commonwealth Keystone Building
400 North Street, 4th Floor | Harrisburg, PA 17120-0225
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From: Weaver, Neil

Sent: Wednesday, July 29, 2020 12:46 PM
To: Vilello, Richard <rvilello@pa.gov>
Subject: FW: [External] Draft Asset Purchase Agreement

Rick – as discussed, I will let you take the lead on what I should do with this. [redacted].
Thanks again

Neil R. Weaver | Executive Deputy Secretary
PA Department of Community & Economic Development
Commonwealth Keystone Building
400 North Street, 4th Floor | Harrisburg, PA 17120-0225
Phone: 717-720-1370 | neweaver@pa.gov
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From: Nafis Nichols <nnichols@chestercity.com>
Sent: Wednesday, July 29, 2020 12:38 PM
To: Weaver, Neil <neweaver@pa.gov>
Cc: Thaddeus Kirkland <tkirkland@chestercity.com>
Subject: [External] Draft Asset Purchase Agreement

ATTENTION: *This email message is from an external sender. Do not open links or attachments from unknown sources. To report suspicious email, forward the message as an attachment to CWOPA_SPAM@pa.gov.*

Good Afternoon Deputy Weaver,

As per Mayor Kirkland's request, please see attached draft assets purchase agreement from Aqua Pennsylvania. Thanks!

Nafis J. Nichols,
Chief Financial Officer
City of Chester

One 4th Street
Chester, PA 19013
610-447-7990
nnichols@chestercity.com

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ASSET PURCHASE AGREEMENT

By and Among

The City of Chester, Pennsylvania,

As Seller

and

Aqua Pennsylvania, Inc.,

As Buyer

Dated as of July [ ], 2020

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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "**Agreement**"), dated as of July [ ], 2020 (the "**Effective Date**"), is made and entered into by and among the **CITY OF CHESTER**, a Third Class City of the Commonwealth of Pennsylvania governed pursuant to a Home Rule Charter (the "**Seller**" or the "**City**"), and **AQUA PENNSYLVANIA, INC.**, a corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania (the "**Buyer**").

WITNESSETH:

WHEREAS, the Seller is the sole incorporator of the Chester Water Authority (the "**Authority**"), having incorporated the Authority on July 6, 1939 (then known as the "**Chester Municipal Authority**") pursuant to the Pennsylvania Municipal Authorities Act (the "**MAA**"), and having previously organized a predecessor organization under prior law in 1866; and

WHEREAS, the Seller was the primary backstop, *de jure* or *de facto* at different times, for over 100 years, including when the Authority was, at times, on very inconsistent fiscal ground; and

WHEREAS, on the Effective Date, the Authority owns that certain water treatment and distribution system commonly referred to as the Chester Water Authority system (the "**System**") that provides public water service and wastewater treatment to various customers in parts of Delaware County (including the City of Chester) and Chester County Pennsylvania (the "**Service Area**"); and

WHEREAS, to supply the residents of the Service Area with safe and high-quality water, the Seller and its residents and businesses have long invested in the Authority and have, since incorporating the Authority, been an active partner with the Authority in maintaining the integrity and security of the Authority's water infrastructure; and

WHEREAS, pursuant to Section 5622 of the MAA, the City, as the Authority's sole incorporator, has the power (referred to herein as the City's "**Project Acquisition Rights**") to cause the System to be transferred to the City, and the City intends to exercise its Project Acquisition Rights to acquire the System from the Authority; and

WHEREAS, Buyer is a regulated public utility that furnishes water and wastewater service to the public in various counties throughout Pennsylvania; and

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

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

Article I.

DEFINITIONS

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

"**Accounts Receivable**" means the accounts receivable owed to Seller which it acquired pursuant to Seller's exercise of its Project Acquisition Rights (and excluding any other of Seller's accounts receivable) or, if the Joinder occurs, the accounts receivable owed to the Authority

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

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

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

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

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

"**Authority Assets**" shall mean all assets, facilities, business, goodwill, properties, rights that are owned by the Authority, Easements that are primarily and exclusively for the benefit of the Authority, and leases in which the Authority has a leasehold interest, in each case related to the ownership and operation of the System as of the Effective Date (as such may be adjusted through activity of the Authority after the Effective Date but prior to the exercise of Seller's Project Acquisition Rights).

"**Authorizations and Permits**" mean all licenses, permits, franchises, authorizations, certificates, registrations, consents, orders, adjudications, variances, waivers and approvals currently in effect issued or granted by Governmental Authorities, including without limitation, environmental permits, operating permits and approvals that are held by the Authority (or the Seller by operation of Law, having acquired them from the Authority) that primarily relate directly or indirectly to the operation of the System, including those described in Schedule 4.06(ix).

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

"**Authority's NPDES Permits**" means the National Pollutant Discharge Elimination System permits issued by PaDEP to the Authority with respect to the System, including any revisions or amendments thereto.

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

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

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

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

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

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

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

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

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

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

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

"**Easements**" means all easements, rights of way, licenses, use agreements, occupancy agreements, leases and other agreements and appurtenances for and over the real property of third parties.

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

"**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 Condition**" 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) related to or arising out of any Environmental Condition or violation of any Environmental Requirement; (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 (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 the Seller (including all leases of such property), which are Authority Assets and which are primarily used in the operation of the System, (ii) any rights of the Seller to warranties applicable to the foregoing (to the extent assignable), and licenses received from manufacturers and the Authority of any such item, and (iii) any related claims, credits, and rights of recovery with respect thereto. Notwithstanding the foregoing, "Equipment and Machinery" shall not include any Excluded Assets.

"**Escrow Agent**" means the third party chosen by Buyer and Seller prior to Closing to serve as the escrow agent pursuant to the terms of this Agreement and the Escrow Agreement.

"**Escrow Agreement**" means that certain Escrow Agreement, dated on or about [the Closing Date], in the form attached hereto as Exhibit C.

"**Escrow Amount**" means Twenty Million Dollars ($20,000,000) payable in accordance with Section 3.01(c).

"**Escrow Fund**" means the fund held and managed by the Escrow Agent pursuant to the terms of this Agreement and the Escrow Agreement.

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

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

"**Files and Records**" means all files and records of the Seller which are Authority Assets primarily relating to the System, whether in hard copy or electronic 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, computer software, and records relating to the System, and whether stored on-site or off-site.

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

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

"**Governmental Authority**" or "**Governmental Authorities**" means any court, department, commission, board, bureau, municipality, municipal authority (established pursuant to the MAA), 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 City.

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

"**Indemnified Party**" means any Buyer Indemnified 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**" **or** "**knowledge**" when used to qualify or limit a Party's representations or warranties means the knowledge of such Party's Representatives who are engaged in a material way in performing the functions of such Party with respect to which the representation made, after conducting reasonable investigation and inquiry with respect to the subject matter of the representation.

"**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.

"**Litigation**" has the meaning specified in Section 7.10.

"**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.

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

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

"**Material Bad Faith Action**" shall mean an effort by the Seller that is finally found, after all appeals or an expiration of time to appeal, by a court of competent jurisdiction to have been taken in bad faith by the Seller, to have been material to Buyer, and which caused the Parties not to close the transaction anticipated hereunder.

"**Missing Easements**" means, as of any particular date, each 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 the Authority, and is for or used in connection with the operation of the System or (b) if such Easement has been obtained by the Authority such Easement is unrecorded or such Easement is not sufficient to operate the System as currently conducted.

"**Outside Date**" means the later of (a) 365 days after the date the application to the PaPUC is accepted as complete by the PaPUC and (b) the sixtieth (60^{th}) day following the final resolution of the Litigation.

"**Outstanding Indebtedness**" means the outstanding indebtedness of the Authority as listed on Schedule 4.06(a)(i).

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

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

"**Party**" means the Buyer or the Seller and the term "Parties" means collectively the Buyer and the Seller, and upon the Joinder, the Authority.

"**PCB Equipment**" means PCB Equipment as defined in 40 C.F.R. § 761.3.

"**Pending Litigation**" has the meaning specified in Section 7.10.

"**Permitted Liens**" means (a) Liens for Taxes not yet due and payable or being contested in good faith by appropriate procedures; (b) Easements, rights of way, zoning ordinances and other similar encumbrances affecting Real Property as disclosed on Schedule 4.06(a)(iv); (c) encumbrances associated with the acquisition of equipment where such equipment is an Acquired Asset and where such financing may be assigned, and (d) any encumbrances identified in the Title Commitment not identified in Buyer's Objection Notice in accordance with the procedures and deadlines prescribed in Section 6.02(a).

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

"**Personnel**" means the employees of the Authority.

"**Project Acquisition Rights**" has the meaning specified in the recitals to this Agreement.

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

"**Real Property**" has the meaning specified in Section 4.06(a)(iii).

"**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 Material so it does not migrate or endanger public health or welfare or the indoor or outdoor Environment, or (c) perform pre-remedial studies and investigations and post-remedial monitoring, maintenance and care. The term "**Remedial Action**" includes any action which constitutes (i) a "removal", "remedial action" or "response" as defined by Section 101 of CERCLA, 42 U.S.C. §§ 9601(23), (24), and (25); (ii) a "corrective action" as defined in RCRA, 42 U.S.C. § 6901 et seq.; or (iii) a "response" or "interim response" as defined in the Pennsylvania Hazardous Sites Cleanup Act, 35 P.S. §6020.103.

"**Representative**" means, with respect to any Party, any director (including, in the case of Seller, any member of its Board of Supervisors), 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 reasonably apparent.

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

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

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

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

"**Supplies**" means all lubricants, spare parts, fuel, chemicals, raw materials, and other supplies and inventory, 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.

"**Title Commitment**" has the meaning specified in Section 6.01.

"**Title Company**" has the meaning specified in Section 6.01.

"**Title Policy**" has the meaning specified in Section 2.03.

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

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

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

Article II.

TERMS OF PURCHASE AND ASSUMPTION OF LIABILITIES

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

Subject to the terms and conditions set forth in this Agreement, at Closing, the Buyer shall purchase from the Seller and the Seller shall sell, transfer, assign and deliver to the Buyer, free and clear of all Liens except for Permitted Liens, all of Seller's right, title and interest in and to all Authority Assets of every kind and description, whether tangible or intangible, real, personal or mixed, wherever situated, but in all cases other than the Excluded Assets (the foregoing collectively referred to as the "**Acquired Assets**"), including:

(a) all Authority Assets that are real property and appurtenant interests necessary for the operation of the System, including without limitation (i) good and marketable fees simple title to the Real Property described and identified on Schedule 4.06(a)(iv) hereof, and (ii) all Easements, including without limitation those identified on Schedule 4.06(a)(iv);

(b) all Authority Assets that are water treatment, transportation, and distribution facilities, including but not limited to (i) water treatment plants and related infrastructure, and (ii) all pipes, pumping stations, reservoirs, storage tanks, improvements, fixtures, manholes and pipelines and any software, billing and collections related assets necessary to run the System;

(c) all contracts, licenses and leases identified on Schedule 4.06(a)(x) to which the Authority is a party (and which the Seller has or will become a party by assignment or by operation of law in connection with the System), including without limitation, all construction contracts, surety bonds, operation and maintenance agreements, software licenses, management agreements, reserved capacity agreements, architect agreements and consultant agreements, and agreements relating to vehicles and other items of personal property where such contracts may be assigned by the Authority or Seller, as applicable (the "**Assigned Contracts**");

(d) all Authority Assets which are Supplies and inventories;

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

(f) all Authority Assets that are prepaid expenses and security deposits;

(g) all Authority Assets that are Files and Records;

(h) all Authorizations and Permits of or held by the Authority (or the Seller by operation of law having acquired them from the Authority), solely to the extent transferrable to the Buyer under applicable Law, including all such Authorizations and Permits which are environmental permits, the Authority's NPDES Permits, water allocation permits, other operating permits and those items listed or described on Schedule 4.06(a)(ix) hereto; and

(i) all goodwill of 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) all contracts, licenses and leases that are not Assigned Contracts;

(b) the seals, organizational documents, minute books, Tax returns, books of account or other records having to do with the organization of the Authority;

(c) all Accounts Receivable;

(d) all existing financial security guaranteeing installation of public improvements (including sewer facilities);

(e) all insurance policies of the Authority and/or the Seller and all rights to applicable claims and proceeds thereunder;

(f) all rights to any action, suit or claim of any nature available to or being pursued by the Authority and/or the Seller, whether arising by way of counterclaim or otherwise;

(g) all assets, properties and rights used by the Seller other than those which are Authority Assets and which primarily relate to the operations of the System;

(h) the assets, properties and rights specifically set forth on Schedule 2.02(g);

(i) the rights which accrue or will accrue to the Seller under this Agreement and any related agreement, exhibit or schedule;

(j) any assets of the Seller which are not Authority Assets; and

(k) any assets of the Seller which were acquired from the Authority prior to the Effective Date.

Section 2.03. **Sale Free of Liens**

After Buyer fulfills its obligations pursuant to Section 3.01(a), the Acquired Assets to be sold, conveyed, transferred, assigned and delivered by the Seller to Buyer, as herein provided, shall be on the Closing Date, free and clear of all Liens other than Permitted Liens. Such Acquired Assets shall be conveyed by appropriate special warranty or other deed, bills of sale, endorsements, assignments and other instruments of transfer or conveyance described herein, and if not expressly described herein, then by transfer documents satisfactory in form and substance reasonably acceptable to Buyer and Seller and their counsel in their reasonable, good faith discretion. With respect to the Real Property, at Closing, title to the same shall be insured by the Title Company, at the Title Company's filed rates, as a good and marketable title, free and

clear of all Liens and exceptions to coverage, except for the Permitted Liens, pursuant to an owner's policy of title insurance on the American Land Title Association's ("**ALTA**") Owner's Form 2006, subject to the terms of Section 6.02 below (the "**Title Policy**").

Section 2.04. **Assumption of Liabilities**

(a) On the terms and conditions set forth in this Agreement and excluding the Excluded Liabilities, Buyer shall assume and agrees to pay, perform and discharge when due any and all liabilities and obligations of the Seller (1) arising under the Authority's NPDES Permits (arising from, related to, or based on events or circumstances occurring on or after the Closing Date), (2) arising under Seller's water allocation permits (arising from, related to, or based on events or circumstances occurring on or after the Closing Date), and (3) arising out of or relating to the System or the Acquired Assets on or after the Closing Date, specifically described as the following:

(i) all liabilities and obligations under the Assigned Contracts and Authorizations and Permits;

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

(iii) all liabilities and obligations for Taxes relating to the System, its operation, the Acquired Assets and the Assumed Liabilities attributable to the period beginning on the Closing Date and/or resulting from this Agreement whether levied before or after the Closing Date; and

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

(b) At the Closing, Seller shall be indemnified against its obligations under the Assumed Liabilities in accordance with Section 8.03.

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

Section 2.05. **Further Assurances**

At any time and from time to time after the Closing Date, the Seller shall, upon the request of Buyer, and Buyer shall, upon the request of the Seller, at the cost of the 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. Such obligation shall last for 24 months from the Closing Date.

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 the Buyer of any Assigned Contract or other Acquired Asset would result in a violation of applicable Law, or would require the consent, authorization, approval or waiver of any Person (other than the Parties hereto), including any Governmental Authority, and such consent, authorization, approval or waiver shall not have been obtained prior to the Closing, this Agreement shall not constitute a sale, transfer, assignment, conveyance and delivery, or an attempted sale, transfer, assignment, conveyance and delivery, thereof (any such Acquired Asset, a "**Nonassignable Asset**"). Following the Closing, the Seller and the Buyer shall use commercially reasonable efforts, at the cost and expense of the Buyer, and shall cooperate with each other, to obtain any such required consent, authorization, approval or waiver, or any release, substitution, novation or amendment required to sell, transfer, assign, convey and deliver any such Nonassignable Asset to Buyer; provided, however, that in no event shall Buyer be required to pay any consideration therefor. Once such consent, authorization, approval, waiver, release, substitution or amendment is obtained, the Seller shall sell, transfer, assign, convey and deliver to Buyer the relevant Acquired Asset(s) 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 by the Buyer.

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

(c) If, following the date hereof and prior to the Closing Date, the Buyer identifies any contract to which the Authority is a party and which was an Authority Asset and which is not identified on Schedule 4.06(a)(x) as an Assigned Contract as of the date hereof, and Buyer reasonably determines such contract is necessary to the operation of the System, the Buyer shall give notice of such determination to the Seller and the Seller shall, promptly following receipt of such notice, request that the Authority deliver to Buyer an updated Schedule 4.06(a)(x) identifying 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 Date, the Buyer identifies any contract to which the Authority was a party (including any such contract to which the City succeeded the Authority by virtue of its exercise of its Project Acquisition Rights) as of the Closing Date and which was an Authority Asset and which (i) was not set forth on or properly identified on Schedule 4.06(a)(x) (as may be updated pursuant to Section 2.06(c)) and (ii) the Buyer reasonably believes is necessary to the operation of the System, the Seller shall, promptly following the Buyer's written request therefor, request that the Authority 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 the Buyer for no additional consideration, and upon such assignment, such contract shall be deemed an Assigned Contract for all purposes hereunder.

Article III.

PURCHASE PRICE AND ADDITIONAL CONSIDERATION

Section 3.01. **Purchase Price and Additional Consideration**

(a) The Purchase Price. The purchase price for the Acquired Assets shall be an amount of Four Hundred Ten Million Dollars ($410,000,000) (the "**Purchase Price**") as calculated and adjusted below. Except as set forth below in this Section 3.01, all amounts shall be paid at Closing.

(b) The Deposit.

(i) Within two (2) Business Days following the Effective Date, this Agreement, the Buyer shall deliver to Seller a payment in the amount of Twelve Million Dollars ($12,000,000) (along with additions thereto pursuant to subsection ii below, the "Deposit").

(ii) At Buyer's sole discretion, Buyer may make additional deposits in an amount up to $18,000,000 Buyer and Seller will consult, in good faith, at least annually on the payment of additional deposits.

(iii) The Deposit shall be refunded to Buyer following any of the following occurrences: (A) after termination or cancellation by the Buyer as of right under this Agreement due to a Material Bad Faith Action of the Seller, (B) upon a failure of any condition precedent to the Buyer's obligation to proceed to Closing set forth in this Agreement, specifically including, without limitation, those enumerated in Article XII but only in the event that such failure is due to the Material Bad Faith Action of the Seller, or (C) in the event that this Agreement is terminated for any reason whatsoever, with or without a Material Bad Faith Action of the Seller, if, in connection with or following such termination, the City (i) consummates a sale of any Authority Assets to any Person other than Buyer; (ii) receives a payment from the Authority in connection with: (x) the Authority's sale of any of the Authority's Assets; or (y) the proceeds of a financing by the Authority; or (iii) otherwise receives an extraordinary payment, directly or indirectly, from the Authority. Seller's obligation to refund the Deposit to the Buyer under this Agreement shall be a general obligation of the Seller.

(iv) Upon the Joinder pursuant to Section 9.05 below: (i) the Deposit shall remain a credit to the Purchase Price due to the Authority at Closing; and (ii) the obligation to return the Deposit to Buyer under this Section 3.01(b) above shall be a joint and several obligations of the Authority and the City. Furthermore, the obligation of each of the City and the Authority to return the Deposit per the terms of this Agreement shall be secured by the proceeds of any subsequent sale or other monetization of all or any portion of the System or the Acquired Assets by either the City or the Authority.

(c) At Closing, Buyer shall deliver to the Escrow Agent the Escrow Amount by certified check or wire transfer to an account designated by the Escrow Agent. The Escrow Agent will hold the Escrow Amount in the Escrow Fund in accordance with the Escrow Agreement attached hereto as Exhibit C.

(d) Subject to any adjustment in Purchase Price resulting from the proration procedures set forth in Section 3.01(e), and after funding the Escrow Amount in accordance with Section 3.01(c) above, Buyer shall pay to the Seller at Closing by wire transfer of immediately available funds the balance of the Purchase Price to one or more accounts that Seller designates and provides to Buyer at least three (3) Business Days prior to the Closing Date.

(e) Final Billing. The Parties agree that the Buyer shall be entitled to all customer billings with respect to System customers services for the period on or after the Closing Effective Time, and the Seller shall be entitled to all such billings prior to the Closing Effective Time. The Parties shall cooperate to calculate an agreed upon proration of billing amounts and to credit the Purchase Price for the appropriate Party on the Closing Date.

Section 3.02. **Fair Consideration**

The Parties believe 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 negotiation between the Parties and their respective Representatives.

Section 3.03. **Allocation of the Purchase Price**

At Buyer's request, Seller shall 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), 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 twenty (20) Business Days to review and provide written objections on Buyer's proposed Allocation Schedule or such proposed Allocation Schedule shall be deemed approved by Seller and shall be final and binding upon the Parties. Upon receipt of any such written comments from Seller, Buyer may, but shall not be obligated to, make revisions to the Allocation Schedule as are acceptable to Buyer, in Buyer's sole discretion (the "**Amended Allocation Schedule**"). The Parties shall prepare and submit all federal and state Tax returns which reflect the transactions contemplated by this Agreement in a manner consistent with the Allocation Schedule or, if amended, the Amended Allocation Schedule.

Section 3.04. **Transfer Taxes**

Seller is a tax-exempt Governmental Authority and as such 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 shall be borne by Buyer. The terms of this paragraph shall survive Closing.

Article IV.

REPRESENTATIONS AND WARRANTIES OF THE SELLER

The Seller makes only the specified representations and warranties which are set forth in Section 4.01 through and including Section 4.05. As a material inducement to Buyer to enter into this Agreement and to consummate the transactions contemplated by this Agreement, the Seller represents and warrants, as of the Effective Date (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 Third Class City Code of the Commonwealth of Pennsylvania governed pursuant to a Home Rule Charter.

Section 4.02. **Power and Authority**

The Seller has (i) duly adopted the resolutions (or, if required, an ordinance) authorizing the execution and delivery of this Agreement and the transaction contemplated hereby and (ii) duly authorized and approved the performance by the Seller of its respective obligations contained in this Agreement. The Seller believes that it has all requisite power and authority to own, lease and operate the Authority Assets, including 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, in each case subject to the approval of a favorable final outcome in the Litigation.

Section 4.03. **Enforceability**

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

Section 4.04. **No Conflict or Violation**

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

Section 4.05. **Broker's and Finder's Fees**

No broker, finder, or other Person is entitled to any commission or finder's fee by reason of any agreement or action of the Seller in connection with this Agreement or the transactions contemplated by this Agreement. The Seller agrees to pay when due the fees and expenses of its financial and technical advisors.

Section 4.06. **Conditional Representations of the Authority**

(a) Subject to Section 9.05, in the event that the Authority acts to approve the sale of the System and the Acquired Assets, on the terms and conditions set forth in this Agreement, as they may be amended subject to the consent of the Buyer, the Authority shall affirm the accuracy of each of the following representations and warranties (or propose revisions to such representations and warranties to make them true and correct as of the date of the Joinder) and shall populate, affirm or revise, as applicable, each applicable Schedule to cause such Schedule to be true and correct as of the date of the Joinder (as defined in Section 9.05), within 90 days following the approval by the Authority of the sale of the System and the Acquired Assets. Seller makes no representation or warranty as to the truth or accuracy of the representations and warranties set forth in this Section 4.06 except that Seller has no Knowledge that any representations or warranties are inaccurate in any way.

(i) **Undisclosed Liabilities**. Except as set forth in Schedule 4.06(a)(i), there are no liabilities or obligations of the Authority, either accrued, absolute, contingent or otherwise, relating to the Acquired Assets, other than liabilities incurred in the ordinary course that could not reasonably be expected to have a Material Adverse Effect on Buyer. All of the Outstanding Indebtedness can be repaid or defeased by Seller or the Authority, as applicable, and any security interests granted by Seller or the Authority, as applicable, to secure its obligations pursuant thereto can be extinguished or terminated at or prior to the Closing pursuant to the contractual terms applicable to such Outstanding Indebtedness.

(ii) **Absence of Certain Changes or Events**. Except as set forth on Schedule 4.06(a)(ii), there has not been any transaction or occurrence that has resulted or is reasonably likely to result in a Material Adverse Effect and the Authority has operated and maintained the System in the ordinary course since December 31, 2016.

(iii) **Tax Matters**. Except as set forth in Schedule 4.06(a)(iii) or as would not have a Material Adverse Effect, (i) the Authority has timely paid all Taxes that may have been or may be due and payable by the Authority on or before the Closing Date, arising from the ownership or operation of the Acquired Assets or the System on or before the Closing Date; (ii) no Taxing authority has asserted any claim against the Authority for the assessment of any additional Tax liability or initiated any action or proceeding which could result in such an assertion; and (iii) the Authority has made all withholding of Taxes required to be made under all applicable Laws and regulations, including without limitation, withholding with respect to compensation paid to employees, and the amounts withheld have been properly paid over to the appropriate Taxing authorities. This section does not apply to any Tax matter related to an employee benefit plan or compensation arrangement that is addressed separately in Section 4.06(a)(vi).

(iv) **Real Property and Easements**. Schedule 4.06(a)(iv) identifies all of the Authority's rights in and to real property, including fee interests, Easements, or other interests (collectively, "Real Property") conveyed to Seller as Authority Assets that Seller owns and uses in the operation of the System and separately identifies the Easements. The Authority does not lease (as lessee) any real property that is used in the operation of the System except as set forth on Schedule 4.06(a)(iv). There are no pending condemnation proceedings relating to any of the Real Property or Easements nor has the Authority actually received any written threats of any condemnation proceedings and, to the Knowledge of the Authority, no such proceedings are threatened. The Authority has not received any written notices of any violations of any Law from any Governmental Authority with respect to the Real Property or the Easements which has not been cured in all material respects and, to the Authority's Knowledge, no such violations of Law exist. With respect to the Real Property (i) there are no leases, options, rights of reversions or other rights of use or rights to acquire the Real Property held by third parties, (ii) Seller (solely as successor to the Authority) is in sole possession of the Real Property, and (iii) to the Authority's Knowledge there are no encroachments either way across the boundary of the Real Property, nor any dispute with adjacent property owners over the location of boundaries or potential claims adverse to title.

(v) **Equipment and Machinery**. All Equipment and Machinery included in the Acquired Assets is set forth or otherwise described on Schedule 4.06(a)(v). Except as set forth in Schedule 4.06(a)(v), the Seller (as successor to the Authority) 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. Equipment and Machinery which are leased by Seller or the Authority, as applicable, are identified on Schedule 4.06(a)(v).

(vi) **Employee Benefit Plans**.

(a) Schedule 4.06(a)(vi)-1 contains a true and complete list of all the Authority's Plans and Authority's Benefit Obligations with respect to Personnel, including amounts owed to current or past employees for severance, unpaid and unused vacation pay or sick leave, or similar obligations. All such Authority's Plans and Authority's Benefit Obligations are in full force and effect and are in material compliance both as to form and operation, with the applicable provisions of the Code, and any other applicable Laws, and with any applicable collective bargaining agreement. To Authority's Knowledge, no event has occurred which has resulted or is likely to result in the imposition of any liability on the Authority under the Code or other applicable Law with respect to any Authority's Plans or Authority's Benefit Obligations;

(b) Except as set forth in Schedule 4.06(a)(vi)-2, with respect to the System, the Authority does not sponsor, maintain, contribute to, nor is it required to contribute to, any "multiemployer plan" within the meaning of Section 414(f) of the Code, and has no liability of any nature, whether known or unknown, fixed or contingent, with respect to any such multiemployer plan;

(c) Except as set forth on Schedule 4.06(a)(vi)-3, the Authority does not sponsor, maintain, contribute to, nor is it required to contribute to, any medical, health, life or other welfare plan or benefits for present or future terminated or current or future retired Personnel or their spouses or dependents, other than as required by COBRA, or any comparable state law, and has no liability of any nature, whether known or unknown, fixed or contingent, with respect to any such post-termination welfare benefits;

(d) The Authority is and has been in material compliance with the requirements of COBRA and is not subject to any excise tax under Code Section 4980B for the current or any prior taxable year; and

(e) Except as set forth in Schedule 4.06(a)(vi)-4, the Authority 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 Authority for which Buyer shall have any liability.

(vii) **Authority's Personnel**.

(a) Except as set forth on Schedule 4.06(a)(vii), the Authority 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) The Authority has not, in the past five (5) years, effectuated:

(1) 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

(2) 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.

(viii) **Environmental Compliance**.

Except as set forth in Schedule 4.06(a)(viii) or that otherwise could not be expected to have a Material Adverse Effect, the Authority represents:

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

(b) The Authority 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) The Authority 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 Authority 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, and 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 currently in use on or at any of the Acquired Assets. Any underground storage tanks used in the past at the Acquired Assets have been removed or closed in place in compliance with applicable Environmental Requirements in effect at the time of such closure.

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

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

(ix) **Authorizations and Permits**. Seller represents that (i) Schedule 4.06(a)(ix) lists or describes the Authorizations and Permits of Authority that are currently in full force and effect; (ii) the Authority has made true and complete copies of all Authorizations and Permits available to Buyer; and (iii) except as set forth on Schedule 4.06(a)(ix), the Authority is in compliance in all material respects with all terms, conditions and requirements of all Authorizations and Permits, except in each case where such violation or failure, individually or in the aggregate, would not have a Material Adverse Effect, and no proceeding is pending or, to the knowledge of the

Authority 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.

(x) **System Contracts**. The Authority represents and warrants that:

(a) Schedule 4.06(a)(x) contains a complete and accurate list of all the Assigned Contracts.

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

(c) Authority further represents that all of the Assigned Contracts specified in Schedule 4.06(a)(x) are in full force and effect. Authority has not, nor to the knowledge of the Authority has any other party thereto, breached any material provision of or defaulted under the material terms of, nor does any condition exist which, with notice or lapse of time, or both, would cause the Authority, or to the knowledge of Authority, any other party, to be in default under any Assigned Contract.

(xi) **Compliance with Law; Litigation**. The Authority represents and warrants that:

(a) The Authority has operated and is operating the System in compliance, in all material respects, with all applicable Laws, Authorizations and Permits and is not in breach of any applicable Law, Authorization or Permit that would have a Material Adverse Effect on the operations of the System or on the Buyer. There are no Authorizations or Permits from any Governmental Authority necessary for the operation of the System as currently being operated except for those Authorizations and Permits listed in Schedule 4.06(a)(xi).

(b) Except as disclosed to the Buyer in the Schedules, (as those are updated pursuant to Section 9.03 below), there are no facts, circumstances, conditions or occurrences regarding the System that could reasonably be expected to give rise to any environmental claims or governmental enforcement actions that could reasonably be expected to have a Material Adverse Effect, and there are no past, pending or threatened environmental claims or governmental enforcement actions against the Authority that individually or in the aggregate could reasonably be expected to have a Material Adverse Effect.

(c) There is no action, suit or proceeding, at law or in equity, or before or by any Governmental Authority, pending nor, to the knowledge of the Authority, threatened against the Authority prior to or at the Closing Effective Time, which will have a material adverse effect on the operations of the System. As of the date of this Agreement, there is no action, suit or proceeding, at Law or in equity, or before or by any Governmental Authority, pending nor, to the knowledge of the Authority, threatened against the Authority which could materially affect the validity or enforceability of this Agreement.

Article V.

REPRESENTATIONS AND WARRANTIES OF BUYER

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

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

Section 5.01. **Organization**

The Buyer is duly incorporated, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania.

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

The Buyer has all requisite corporate power, authority and legal right 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. The Buyer warrants that all corporate action on the part of the Buyer, its officers, directors and stockholders necessary for the authorization, execution and delivery of this Agreement and the transactions contemplated herein has been taken or will be taken prior to the Closing Date. This Agreement has been, and the documents contemplated hereby will be, duly authorized, executed and delivered by the Buyer and constitutes a valid and legally binding obligation of the Buyer, enforceable against it in accordance with the terms hereof, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity.

Section 5.03. **No Conflict or Violation**

Except as set forth on Schedule 5.03, the execution and delivery of this Agreement by the Buyer, the consummation of the transactions contemplated hereby and the performance by the Buyer of the terms, conditions and provisions hereof has not and will not contravene or violate or result in a material breach of (with or without the giving of notice or lapse of time, or both) or acceleration of any material obligations of the Buyer under (i) any applicable Law to which the Buyer is subject, (ii) any term, condition or provision of, or require the consent of any other party, to, any indenture, agreement, contract, commitment, lease, plan, license, permit, authorization or other instrument, document or understanding, oral or written, to which the Buyer is a party, by which the Buyer may have rights or by which any of the Acquired Assets may be bound or affected, or give any party with rights thereunder the right to terminate, modify, accelerate or otherwise change the existing rights or obligations of the Buyer thereunder or (iii) the articles, bylaws or governing documents of the Buyer. No authorization, approval or consent, and no registration or filing with any governmental or regulatory official, body or authority is

required in connection with the execution, delivery and performance of this Agreement by the Buyer except in each case for any item which would not have a Material Adverse Effect or is a condition to Closing.

Section 5.04. **Consents and Approvals**

The Buyer shall reasonably cooperate in obtaining any consents necessary or advisable hereunder.

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

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

Section 5.06. **Financial Wherewithal**

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 ability and financial wherewithal 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 and authorized, among things, to provide water and wastewater utility services to retail residential, commercial, public 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 all expenses related to the transactions contemplated by this Agreement, and on and after the Closing Date, to generally provide for the operations and capital needs of the System following the Closing. Buyer additionally represents that customers of the System will receive safe, adequate and reliable water and 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 applicable Law.

Section 5.08. **Independent Decision**

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

Section 5.09. **Scheduled Matters**

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

Section 5.10. **Independent Investigation**

Buyer acknowledges that it has conducted an independent investigation of the financial condition, assets, liabilities, properties and projected capital needs and operations of the System in making its determination as to the propriety of the transaction contemplated by this Agreement and, in entering into this Agreement and related agreements**,** has relied solely on the results of its investigation and on the representations and warranties of the Seller expressly contained in Sections 4.01 through and including Section 4.05 of this Agreement.

Section 5.11. **Litigation**

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

Section 5.12. **Disclosure**

No representation or warranty by the Buyer contained in this Agreement, nor any statement or certificate furnished or to be furnished by the Buyer to the Seller or its Representatives in connection herewith or pursuant hereto, contains or will contain any untrue statement of material fact, or omits to state any material fact required to make the statements herein or therein contained not misleading or necessary in order to provide the Seller with adequate information as to the Buyer and its condition (financial and otherwise), properties, assets, liabilities, and business, and the Buyer has disclosed to the Seller in writing all material adverse facts known to them relating to the same. The representation and warranties contained in this Article V or elsewhere in this Agreement or any document delivered pursuant hereto shall not be affected or

deemed waived by reason of the fact that the Seller and/or its agents or Representatives knew or should have known that any such representation or warranty is or might be inaccurate in any respect.

Section 5.13. **Survival of Representations and Warranties**

All representations, warranties and agreements made by the Buyer in this Agreement or in any certificate, schedule, document or instrument furnished hereunder or in connection with the execution and performance of this Agreement shall survive the Closing Date for a period of one (1) year. If, prior to the expiration of any of the survival periods, the claimant hereunder makes a claim with respect to the matters set forth in this Article V setting forth in reasonable detail facts and circumstances supporting the claim, the survival period with respect to that claim shall be extended until the claim shall have been satisfied or otherwise resolved.

Article VI.

TITLE TO REAL ESTATE; EASEMENTS

Section 6.01. **Evidence of Title**

Subject to Section 6.06, with respect to all Real Property, Buyer shall obtain, at its sole cost and expense, a commitment for an owner's policy of title insurance on the American Land Title Association's ("ALTA") Owner's Form 2006 (the "**Title Commitment**"), issued by a title insurance company selected by Buyer and licensed to insure title to real property by the Commonwealth of Pennsylvania (the "**Title Company**"), having an effective date after the Effective Date. Promptly following the Effective Date, Buyer shall order the Title Commitment from the Title Company and shall provide Seller evidence of the 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 with Seller 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) do not pertain to the Buyer or any requirements, conditions or obligations of the Buyer, and (c) 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 (c) aforesaid, being referred to as the "**Title Objection Items**"). Any Objection Notice shall include

a true, correct and complete copy of the Title Commitment and true, correct, complete and legible copies of any and all exception documents listed in the same. In the event that Buyer provides the Seller with an Objection Notice: (i) if the Authority acts to approve the sale of the System and the Acquired Assets, the Seller shall request that the Authority use reasonable efforts to have the Title Objection Items cured, satisfied or released of record (individually, "**Cure**" and collectively, "**Cured**") prior to or as of the Closing; or (ii) if the Authority does not act to approve the sale of the System and the Acquired Assets, following acquisition of the Acquired Assets from the Authority, the Seller shall use commercially reasonable efforts to have the Title Objection Items Cured at or prior to the Closing, and at or prior to the Closing, the Seller shall deliver written evidence to Buyer, in form and substance reasonably satisfactory to Buyer, evidencing that Seller has Cured any such Title Objection Items. In the event that the Seller is unable to Cure any such Title Objection Item per Section 6.02(a)(ii) that materially restricts or prevents the use of such Real Property in the operation of the System, Seller shall indemnify Buyer for such inability per the terms of Article VIII hereof. For avoidance of doubt, Buyer acknowledges that no item listed in clauses (a) through and including (c) aforesaid, may be objected to by Buyer as a Title Objection Item.

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

(c) Title Endorsements/Survey. Any endorsements required by the Buyer or any mortgagee of the Buyer to Buyer's Title Policy shall be paid for solely by Buyer. In the event any survey is required by Buyer or its mortgagee, either as a condition to any such endorsement or otherwise, the same shall be obtained solely at Buyer's cost and expense.

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 the Authority and 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 Date, 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.

Section 6.05. **Easements**

(a) Promptly after the Effective Date and prior to the Closing, the Buyer will, at its sole cost and expense, cause an abstractor selected by the Buyer (the "**Abstractor**") a search of the public land records of Delaware and Chester Counties, based on the Seller's and/or the Authority's records and plans of the System (and such other sources of information as are reasonably related thereto), by means of searching the grantee index in the names of the Seller and/or the Authority and such other searches as the Abstractor may reasonably make, to (i) identify and provide Buyer with title information on any and all recorded Easements (including information related to any Liens or encumbrances on Seller's or the Authority's title thereto), and (ii) identify all Missing Easements. During such process, Buyer shall cause the Abstractor to provide written search results to Buyer and Seller (including updated versions of the Abstractor Search Result Chart).

(b) Notice of Objections. Within thirty (30) days of Buyer's receipt of the information described in subsection (a) above, Buyer shall deliver to Seller an Objection Notice identifying the encumbrances on the Easements that are unacceptable to Buyer, provided such exceptions are not Permitted Liens (an "Easement Objection Notice"). In the event that Buyer provides the Seller with an Easement Objection Notice: (i) if the Authority acts to approve the sale of the System and the Acquired Assets, the Seller shall request that the Authority use reasonable efforts to have the items identified in the Easement Objection Notice cured, satisfied or released of record (individually, "**Cure**" and collectively, "**Cured**") prior to or as of the Closing; or (ii) if the Authority does not act to approve the sale of the System and the Acquired Assets, following acquisition of the Acquired Assets from the Authority, the Seller shall have all of the items identified in the Easement Objection Notice Cured at or prior to the Closing. At or prior to the Closing, the Seller shall deliver written evidence to Buyer, in form and substance reasonably satisfactory to Buyer, evidencing that Seller has Cured all objections identified in the Easement Objection Notice. In the event that Seller is unable to Cure any such Objection Item per this Section 6.05(b), Seller shall indemnify Buyer for such inability per the terms of Article VIII hereof, provided that Seller's indemnification obligation arising under this Section 6.05(b) shall not be subject to the Liability Cap set forth in Section 8.05.

(c) In the event that during the process of Abstractor's review and investigation of the respective counties' land records, Seller or Buyer determine, based on the Abstractor's investigation, that there is a Missing Easement: (i) if the Authority acts to approve the sale of the System and the Acquired Assets, the Seller shall request the Authority make reasonable efforts 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; or (ii) if the Authority does not act to approve the sale of the System and the Acquired Assets, following acquisition of the Acquired Assets from the Authority, in the event that any real property is owned by Seller but is the subject of a Missing Easement, Seller shall cooperate with Buyer to obtain any such Missing Easements with respect to Seller owned real property so that the Missing Easement may be sold, assigned, transferred and conveyed to Buyer at the Closing pursuant to the terms and conditions of this Agreement. All costs and expenses incurred in connection with obtaining each Missing Easement (including any consideration payable to the landowner in connection with condemnation, in lieu of condemnation or otherwise to obtain Missing Easements) shall be paid by the Seller. In the event the Seller or the Authority, as the case may be, has not obtained all Missing Easements by the date that is ninety (90) days after the date that

Abstractor has completed his review of the County land records and delivered the last results of the same to Seller (the "**Abstract Completion Date**"), then the Seller shall, as soon as reasonably practicable, commence and file in the Court of Common Pleas in the county having jurisdiction, a condemnation or eminent domain proceeding to obtain any and all such Missing Easements. For the purposes of clarity, upon obtaining each Missing Easement (including upon the final resolution of a condemnation proceeding), each Missing Easement that has been acquired or obtained by the Seller shall be considered an Easement.

Section 6.06. **Unscheduled Property**

The Parties acknowledge that the Authority may own, or may come to 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 known by Buyer or Seller and identified in Schedule 4.06(a)(iv) which would have been included as an "Authority Asset" had it been known to the Parties (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, with no adjustment to the Purchase Price, in such a manner as to provide Buyer with reasonable assurances that Buyer shall have the right to use or occupy the Unscheduled Real Property as it was used by Seller as of the Effective Date.

Article VII.

OTHER AGREEMENTS

Section 7.01. **Taxes**

Except as hereinafter provided, the Seller shall pay any and all Taxes, if any, arising out of the ownership of the Acquired Assets and out of the operation of the System before the Closing Date, except that Buyer shall pay all Taxes resulting from this Agreement whether levied before or after the Closing Date.

Section 7.02. **Cooperation on Tax Matters**

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

Section 7.03. **Personnel Matters**

Buyer shall offer employment effective on the Closing Date, to all active Personnel set forth in Schedule 7.03(a) who are employed by Seller or the Authority in operating the System as of the Closing Date, subject to Buyer's existing standard hiring policies and procedures applicable to new employees, including but not limited to, a criminal background check and drug screening of

all Personnel, except with respect to benefits as otherwise provided in Section 7.03(c). The active Personnel who accept such offer of employment and commence employment with Buyer on the Closing Date, shall be referred to in this Agreement as the "**Transferred Personnel**." For purposes of clarity, nothing contained in this Section 7.03 shall be deemed to limit, restrict or prohibit Buyer from interviewing the applicable Personnel for informational purposes only in connection with the transfer of employment of the Personnel to Buyer as provided in this Section 7.03. In addition to the foregoing, Buyer shall have the option of making the required offer of employment at such time to permit Buyer to require such offerees' decision to accept or reject such offers at least three (3) months prior to a projected Closing Date to permit Buyer to ensure the adequate staffing of the System upon Closing. Accordingly, Buyer shall have no obligation to permit offers to remain outstanding beyond the date that is projected to be (3) months prior to Closing.

(a) Subject to applicable Law, Transferred Personnel shall be employees-at-will of Buyer. Buyer shall provide each of the Transferred Personnel compensation and benefits which are at least substantially comparable to, in the aggregate, to Seller's compensation and benefits as of the Effective Date (including paid vacation and sick time benefits). Nothing contained in this Section 7.03(a) shall constitute an amendment of, or an undertaking to amend, any employee benefit plans, programs or arrangements maintained by Buyer or its Affiliates or is intended to prevent Buyer or its Affiliates from amending or terminating any such employee benefit plan, program or arrangement in accordance with the terms thereof.

(b) Subject to the obligations of Seller under applicable Law, Buyer's rights and obligations set forth in Section 7.03, and the Buyer's applicable employee benefit plan documents, with respect to employee benefit plans maintained by Buyer for the benefit of its employees (*i.e.*, paid vacation leave, Buyer's 401k savings plan), effective as of the Closing, Buyer shall recognize the Transferred Personnel's length of service with the Seller as if such service were with Buyer for eligibility and vesting under Buyer's then existing employee benefit plans and programs.

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

(d) This Section 7.03 shall be binding upon and inure solely to the benefit of each of the Parties to this Agreement, and nothing in this Section 7.03, express or implied, shall confer upon any other Person any rights or remedies of any nature whatsoever under or by reason of this

Section 7.03. The Parties acknowledge and agree that the terms set forth in this Section 7.03 shall not create any right in any Transferred Personnel or any other Person to any continued employment with Buyer or any of its Affiliates or compensation or benefits of any nature or kind whatsoever, and shall not be deemed to restrict Buyer in the exercise of its independent business judgment in establishing or modifying any of the terms or conditions of the employment of the Transferred Personnel. Nothing contained in this Section 7.03 shall constitute an amendment of, or an undertaking to amend, any employee benefit plan, program or arrangement maintained by Buyer or its Affiliates or is intended to prevent Buyer or its Affiliates from amending or terminating any such employee benefit plan, program or arrangement in accordance with its terms.

(e) Notwithstanding anything in this Agreement to the contrary, it is expressly understood that Buyer will not acquire any asset, or assume any liability or obligation in connection with the transactions contemplated by this Agreement relating to any of the Authority's Plans or Authority's Benefit Obligations. Seller shall be solely responsible for any liability, funding obligation, claim or expense arising from the Authority's Plans, Authority's Benefit Obligations, both prior to, and after, the Closing Date, except as provided in Section 7.03(c).

(f) Buyer shall consider the locality of potential employees when staffing for the System and shall prioritize hiring residents of the City for staffing and operation of the System.

(g) No later than the Closing Date, Seller shall transfer all records pertaining to the employment of the Transferred Personnel to Buyer including, but not limited to, all personnel and human resources Files and Records.

Section 7.04. **Rates**

(a) Rates. Buyer shall implement the System's rates then in effect at Closing, as reflected on Schedule 7.04(a) and maintain those rates until any modification is approved by the PaPUC. Buyer intends to bill customers on a monthly basis instead of quarterly billing, which Buyer will prorate accordingly.

(b) Buyer agrees not to object to the standing of Seller or Seller's designee to enforce this Section 7.04.

(c) Upon the Joinder, Delaware County and Chester County, on behalf of each of their respective residents who receive service from the System, shall each become a third-party beneficiary of this Section 7.04 and shall have all rights and remedies available to Seller to enforce this Section 7.04.

Section 7.05. **Buyer Taxpayer**

From and after the Closing Date, Buyer acknowledges that in connection with and/or upon conveyance of the Acquired Assets to Buyer, the Buyer will be subject to, among other Taxes, real estate Taxes, which shall be paid by Buyer.

Section 7.06. **PaPUC Approval**

Promptly after the Effective Date, Buyer covenants and agrees to timely initiate and faithfully prosecute the necessary proceedings to obtain from the PaPUC (i) the issuance of certificates of public convenience to Buyer to provide water services in the Service Area and (ii) the approval of the acquisition of the System by Buyer under terms and conditions that are reasonably acceptable to Seller and Buyer. Seller shall cooperate with and assist the Buyer in proceedings before the PaPUC. Buyer and Seller hereby agree that the procedures for determining fair market value of the System and Acquired Assets outlined in Section 1329(a) of Title 66 of the Pennsylvania Consolidated Statutes shall be utilized and filed with the PaPUC as contemplated by Section 1329(c) of Title 66 of the Pennsylvania Consolidated Statutes. Buyer and Seller hereby agree that the fees and expenses related to the mutually agreed upon licensed engineer that will conduct the engineering assessment for the application to the PaPUC shall be borne equally by the Buyer and Seller..

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

In the event of a breach by Buyer of any of the covenants and agreements set forth in this Article VII, in addition to all other rights and remedies available at law or in equity, including specific performance and/or injunctive relief, Seller shall also be entitled to commence proceedings before the PaPUC seeking enforcement of such covenants and agreements.

Section 7.08. **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 respective Utility Valuation Expert necessary to assist in the processing and prosecution of the application to the PaPUC in regard to this transaction under Section 1329 of Title 66 of the Pennsylvania Consolidated Statutes.

Section 7.09. **Accounts Receivable**

Seller shall continue to issue invoices and pursue the collection of Accounts Receivable between the Effective Date and Closing in a manner consistent with past practices.

Section 7.10. **MAA Litigation**

There is currently pending litigation among Seller, Buyer and the Authority about, inter alia, Seller's right to exercise its Project Acquisition Rights (the "**Pending MAA Litigation**").

(a) Seller and Buyer agree to maintain and prosecute the Pending MAA Litigation, as well as any other litigation that may arise after the date hereof affecting the consummation of the transaction described herein (collectively, with the Pending MAA Litigation, the "**Litigation**"), as each deems appropriate, provided that:

(i) neither will discontinue the Litigation before the Outside Date unless (x) it obtains a final, favorable judgment that is not appealed or appealable, (y) it receives an

unfavorable judgment from the Pennsylvania Supreme Court or such court declines to allow an appeal from a dispositive lower court judgment, or (z) Buyer consents to such discontinuance; and

(ii) neither will take any position in connection with such Litigation that undermines the Parties' collective interpretation of §5622 of the MAA that the Seller enjoys the Project Acquisition Rights as defined in this Agreement.

(b) Buyer expressly agrees that discontinuance in the event of an occurrence set forth in (x), (y) or (z) of subsection (i) above shall not constitute Material Bad Faith Action of Seller.

Section 7.11. **Covenant Survival**

The covenants set forth in this Article shall survive Closing.

Article VIII.

INDEMNIFICATION

Section 8.01. **Survival**

All representations and warranties contained in this Agreement shall survive until twelve (12) months following the Closing Date, except that (a) the representations and warranties of the Seller set forth in Section 4.01 (Organization), Section 4.02 (Power and Authority), Section 4.03 (Enforceability) and Section 4.17 (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 Date indefinitely or until the latest date permitted by applicable Law. The covenants and agreements of the Buyer contained herein which by their terms are to be performed (or which prohibit actions) subsequent to the Closing Date 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. The covenants and agreements of the Seller contained herein which by their terms are to be performed (or which prohibit actions) subsequent to the Closing Date shall survive until twelve (12) months following the Closing Date or for the shorter period explicitly specified herein. 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 Date indefinitely.

Section 8.02. **Indemnification by the Seller**

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

Section 8.03. **Indemnification by Buyer**

Subject to the terms and conditions of this Article VIII, Buyer agrees to defend, indemnify and hold harmless the Seller and its successors and Affiliates and each of their respective employees, officers, directors and agents (the "**Seller Indemnified Persons**") from and against any and all claims for Losses arising from or relating to: (a) any material misrepresentation as to, or any material inaccuracy in, any of the representations and warranties of Buyer contained in this Agreement or in any exhibit, schedule, certificate or other instrument or document furnished or to be furnished by Buyer pursuant to this Agreement; (b) any material breach or material nonfulfillment of any of the covenants or agreements of Buyer contained in this Agreement or in any exhibit, schedule certificate or other instrument or document furnished or to be furnished by the Buyer pursuant to this Agreement; (c) any Assumed Liability, including without limitation any liability related to any claims by any Governmental Authority; (d) Buyer's actions involving Environmental Requirements, Hazardous Materials or Environmental Claims from and after the Closing Date; or (e) the ownership, operation or control of 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 and the Escrow Agent prompt written notice thereof. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits material rights or material defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Third Party Claim in reasonable detail

and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have the right to participate in, or by giving written notice to the Indemnified Party (and subject to the other requirements herein) to assume the defense of any Third Party Claim at the Indemnifying Party's expense and by the Indemnifying Party's own counsel (which counsel shall be reasonably acceptable to the Indemnified Party), so long as (i) the Indemnifying Party notifies the Indemnified Party, within ten (10) Business Days after the Indemnified Party has given notice of the Third Party Claim to the Indemnifying Party (or by such earlier date as may be necessary under applicable procedural rules in order to file a timely appearance and response) that the Indemnifying Party is assuming the defense of such Third Party Claim, *provided*, that if the Indemnifying Party assumes control of such defense it must first agree and acknowledge in such notice that the Indemnifying Party is fully responsible (with no reservation of any rights other than the right to be subrogated to the rights of the Indemnified Party) for all Losses relating to such Third Party Claim, (ii) the Indemnifying Party conducts the defense of the Third Party Claim actively and diligently and at its own cost and expense, and (iii) the Third Party Claim (A) does not involve injunctive relief, specific performance or other similar equitable relief, any claim in respect of Taxes, any Governmental Authority, any criminal allegations, or any potential damage to the goodwill, reputation or overriding commercial interests of Buyer or its Affiliates, (B) is not one in which the Indemnifying Party is also a party and joint representation would be inappropriate or there may be legal defenses available to the Indemnified Party which are different from or additional to those available to the Indemnifying Party, or (C) does not involve a claim which, upon petition by the Indemnified Party, the appropriate court rules that the Indemnifying Party failed or is failing to vigorously prosecute or defend. The Indemnified Party shall reasonably cooperate in good faith in such defense. In the event that the Indemnifying Party assumes the defense of any Third Party Claim, subject to Section 8.04(b), it shall have the right to take such action as it deems necessary to avoid, dispute, defend, appeal or make counterclaims pertaining to any such Third Party Claim in the name and on behalf of the Indemnified Party. The Indemnified Party shall have the right, at its own cost and expense, to participate in the defense of any Third Party Claim with counsel selected by it subject to the Indemnifying Party's right to control the defense thereof. If the Indemnifying Party elects not to compromise or defend such Third Party Claim or fails to promptly notify the Indemnified Party in writing of its election to defend as provided in this Agreement, the Indemnified Party may, subject to Section 8.04(b), pay, compromise, defend such Third Party Claim and seek indemnification for any and all Losses based upon, arising from or relating to such Third Party Claim. The Seller and Buyer shall reasonably and in good faith cooperate with each other in all reasonable respects in connection with the defense of any Third Party Claim, including making available records relating to such Third Party Claim and furnishing, without expense (other than reimbursement of actual out-of-pocket expenses) to the defending party, management employees of the non-defending party as may be reasonably necessary for the preparation of the defense of such Third Party Claim.

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

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

(c) Direct Claims. Any claim by an Indemnified Party with respect to any Loss which does not arise or result from a Third Party Claim (a "**Direct Claim**") shall be asserted by the Indemnified Party giving the Indemnifying Party and the Escrow Agent 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.

(d) Post-Closing Indemnity Escrow. Seller's indemnity obligations under Section 8.02 shall be secured by the Escrow Fund pursuant to the terms of the Escrow Agreement. Any Losses incurred by Buyer and recoverable against Seller in connection with Seller's indemnity obligations shall be released by the Escrow Agent to Buyer in accordance with the terms of the Escrow Agreement. Upon the one (1) year anniversary of the Closing Date, all amounts in the Escrow Fund that are not subject to a pending indemnity obligation claim for disbursement shall be released as follows: (i) if the Joinder occurred on or before December 31, 2021, to the County of Delaware and the County of Chester in equal shares; or (ii) if the Joinder has not occurred, to Seller. Notwithstanding the foregoing, the Seller may elect, in its sole discretion, to release all amounts in the Escrow Fund directly to Buyer upon which Buyer shall agree to waive, release

and discharge Seller for, from and against all claims, liabilities and obligations arising out of this Agreement except for Seller's obligations pursuant to Section 2.05.

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

(a) Reserved.

(b) Reserved.

(c) Notwithstanding anything to the contrary herein, the funds in the Escrow Fund 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) (the "**Liability Cap**"), and once such funds have been exhausted and/or released, Seller shall have no direct or indirect liability with respect to, and no obligation to satisfy, any claim for Losses under this Agreement.

(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 (including title insurance) actually received and any indemnity, contribution or other similar payment 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. Notwithstanding the foregoing, neither the determination of an Indemnified Party's right to recover for Losses under applicable insurance policies nor the actual receipt of such insurance proceeds shall be a condition precedent to an Indemnified Party's right to indemnity from the Indemnifying Party hereunder. Rather, if an Indemnified Party recovers, under insurance policies or from other collateral sources, any amount in respect of a matter for which such Indemnified Party was indemnified pursuant to Section 8.02 or 8.03, as applicable, such Indemnified Party shall promptly pay over to the Indemnifying Party the amount so recovered (after deducting therefrom the full amount of the reasonable expenses incurred by such Indemnified Party in obtaining such recovery).

(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(g) 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**

The Seller shall not be liable under this Article VIII for any Losses based upon or arising out of any inaccuracy in or breach of any of the representations or warranties of Seller contained in this Agreement if Buyer had actual knowledge of such inaccuracy or breach prior to the Closing Date.

Article IX.

PRE-CLOSING COVENANTS OF THE SELLER

Section 9.01. **Operation of the System**

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

Section 9.02. **Cooperation**

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

Section 9.03. **Supplements and Updates**

Each of the Seller and, following Joinder by the Authority under Section 9.05, if applicable, the Authority, shall promptly deliver to Buyer any supplemental information updating the information set forth in the Seller's representations and warranties set forth in Sections 4.01 through and including Section 4.05 of this Agreement and the Authority's Conditional Representations and Warranties set forth in Section 4.06 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. Within fifteen (15) Business Days of having Knowledge of the same, the Seller or the Authority, as applicable, shall advise Buyer of any facts which would constitute a breach of a representation or warranty as of the date made or a default in a covenant contained herein.

Section 9.04. **Governmental Approvals; Governmental and Third-Party Consents**

Promptly after the execution of this Agreement, or as required by Law, except as provided in Section 7.06 or otherwise expressly provided herein, the Seller shall file or cause to be filed all applications and reports that are required to be filed by Seller with any Governmental Authority and Seller shall request that, following the execution of this Agreement, the Authority file all applications and reports that are required to be filed by the Authority with any Governmental Authority. The Seller shall provide, and also shall request that the Authority promptly provide, all information that any Governmental Authority may require in connection with any such application or report. The Seller shall use, and shall request that the Authority use, all commercially reasonable efforts to obtain all consents and approvals of any kind from any person in connection with the transactions contemplated hereby. All authorizations of any Governmental Authority necessary to consummate the transactions contemplated by this Agreement shall have been obtained in form and content reasonably satisfactory to Buyer and the Seller prior to Closing and shall be final and non-appealable. In the event a party to the PaPUC proceeding appeals PaPUC authorization of the transaction, the Buyer and the Seller may still mutually agree to proceed to consummate the transaction.

Section 9.05. **Joinder of this Agreement by Seller to the Authority**.

In the event that the Authority acts to approve the sale of the System and the Acquired Assets directly to Buyer, on the terms and conditions set forth in this Agreement, as they may be amended subject to the consent of the Buyer, which Buyer may grant or withhold in its sole discretion, then the Authority shall join in this Agreement (the "**Joinder**"). Notwithstanding the foregoing, the following terms shall apply upon the Joinder:

(a) The Authority shall be required to affirm the accuracy of each representation and warranty made herein by Seller and shall affirm the representations set forth in Section 4.06 (or to propose revisions to any such representations and warranties to make them true and correct as of the date of the Joinder) and shall populate, affirm or revise, as applicable, each Schedule to cause each Schedule to be true and correct as of the date of the Joinder.

(b) Following the Joinder, any remaining Deposits to be made under Section 3.01(b) shall continue to be made to the City, and not the Authority.

(c) The Deposit, regardless of the party to which it has been paid, shall be a credit to the Purchase Price. In addition, following Joinder, the City and the Authority shall be jointly and severally liable for the return of the Deposit to Buyer per Section 3.01(b).

(d) With regard to the obligations contained in this Agreement requiring that the City request certain action by the Authority (specifically including, without limitation, Sections 2.06(c), 2.06(d), 6.02(a), 6.05(b) and 9.04), the Authority shall agree affirmatively in the Joinder to perform such action.

(e) The form of Joinder must be reasonably acceptable to both Buyer and Seller.

Article X.

PRE-CLOSING COVENANTS OF BUYER

Buyer covenants and agrees to comply with the following provisions:

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

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

Section 10.02. **Governmental Approvals**

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

Section 10.03. **Cooperation**

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

Section 10.04. **Supplements and Updates**

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

Article XI.

CONDITIONS PRECEDENT TO OBLIGATIONS OF THE SELLER

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

Section 11.01. **Consents and Approvals**

(a) Receipt of all required material, non-governmental third-party consents and any other approvals necessary for transfer and operation of the System to Buyer and set forth in Schedule 11.01(a) and all consents, waivers, authorizations and approvals of any Governmental Authority required pursuant to Section 4.04; and

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

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

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

Section 11.03. **PaPUC Approval**

PaPUC shall have issued a Final Order approving the acquisition of the System under terms and conditions that are reasonably acceptable to the Seller and Buyer. In the event a party to the

PaPUC proceeding appeals PaPUC authorization of the transaction, the Buyer and Seller may still mutually agree to proceed to consummate the transaction.

Section 11.04. **No Injunctions**

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

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

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

Section 11.06. **Deliveries by Buyer**

Buyer shall have delivered to the Seller the documents and items specified in Section 13.03 herein, and shall deliver to Seller a certificate to that effect from Buyer dated the Closing Date.

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.

Section 11.08. **MAA Litigation Favorable Judgment**

Seller shall have (i) obtained a final, favorable judgment that is not appealed or appealable for the Litigation or (ii) the Parties have agreed to discontinuance of the Litigation.

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. **Acquisition of System and Acquired Assets**.

Unless Joinder has occurred, Seller shall have acquired title to the System and the Authority Assets from the Authority by way of the exercise of the powers granted under Section 5622(a) of the MAA. Whether or not Joinder has occurred, Seller and/or the Authority, depending upon the terms of the Joinder, shall be prepared to transfer the System and the Acquired Assets to Buyer at Closing with the condition of title as required by Section 2.01 and Article VI.

Section 12.02. **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 and all consents, waivers, authorizations and approvals of any Governmental Authority required to consummate the transactions contemplated by this Agreement;

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

(c) 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 12.03. **Representations and Warranties of Seller**

The representations and warranties made by the Seller in Sections 4.01 through and including Section 4.05 of this Agreement and, if Joinder has occurred, the representations and warranties made by the Authority in Section 4.06 of this Agreement (disregarding all "materiality" and "Material Adverse Effect" or similar qualifications contained therein) shall be true and correct on and as of the Closing Date (except for representations and warranties expressly stated to relate to a specific date, in which case each such representation and warranty shall be true and correct as of such earlier date), with only such exceptions as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, and the Buyer shall have received a certificate to that effect from the Seller dated as of the Closing Date.

Section 12.04. **PaPUC Approval**

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

Section 12.05. **No Injunctions**

Neither the Seller 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 12.06. **No Material Adverse Effect**

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

Section 12.07. **Deliveries by Seller**

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

Section 12.08. **Performance of the Obligations of Seller**

Seller and, if Joinder has occurred, the Authority, each shall have performed in all material respects all obligations required under this Agreement to be performed by Seller or the Authority on or before the Closing Date, and Buyer shall have received a certificate to that effect from each of Seller and the Authority, if applicable, dated the Closing Date.

Section 12.09. **MAA Litigation Favorable Judgment**

Seller shall have (i) obtained a final, favorable judgment that is not appealed or appealable for the Litigation or (ii) the Parties have agreed to discontinuance of the Litigation.

Article XIII.

CLOSING

Section 13.01. **Closing Date**

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

Section 13.02. **Deliveries by Seller**

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

(a) A 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 the Seller relating to the Real Property or the Assigned Contracts;

(g) Certificate of the Seller pursuant to Section 12.03 of this Agreement;

(h) Certificate of the Seller pursuant to Section 12.08 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 the 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 11.06 of this Agreement;

(e) Evidence of PaPUC approval as provided in Section 12.04; 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 the Seller and the Buyer;

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

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

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

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

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

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

Section 14.02. **Effect of Termination**

If this Agreement is terminated by the Seller or the Buyer pursuant to Section 14.01, written notice thereof will forthwith be given to the other and all further obligations of the parties hereto under this Agreement will terminate without further action by either party and without liability or other obligation of either party to the other party hereunder; provided, however, that no party will be released from liability hereunder if this Agreement is terminated and the transactions abandoned by reason of any willful breach of this Agreement. Seller's and/or the Authority's obligation to return the Deposit to Buyer per Section 3.01(b) shall survive the termination of the Agreement.

Article XV.

MISCELLANEOUS

Section 15.01. **Confidentiality**

Except as and to the extent required by applicable Law (including but not limited to the Pennsylvania Right-To-Know Act at 65 Pa § 67.101) or pursuant to an order of a court of competent jurisdiction and as required hereunder to obtain any and all required Governmental Approvals, neither Party hereto shall, directly or indirectly, disclose or use (and no party shall permit its representatives to disclose or use) any Confidential Information with respect to the other Party furnished, or to be furnished, by such other Party hereto or its shareholders, directors, officers, agents, or representatives to the other Party hereto or its employees, directors, officers, agents or representatives in connection herewith at any time or in any manner other than in connection with the completion of the transactions contemplated by this Agreement and related transactions, including, without limitation, disclosures to the Authority.

Section 15.02. **Public Announcements**

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

Section 15.03. **Notices**

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

in the case of the Seller:

City of Chester
1 East 4th Street
Chester, PA 19013
Attention: City Solicitor

with a copy to:

Greenberg Traurig, LLP
1717 Arch Street, Suite 400
Philadelphia, PA 19103
Attention: Kevin Greenberg

in the case of the Buyer:

Aqua Pennsylvania, Inc.
762 W. Lancaster Avenue
Bryn Mawr, PA 19010
Attention: President

with a copy to:

Aqua Pennsylvania, Inc.
762 W. Lancaster Avenue
Bryn Mawr, PA 19010
Attention: General Counsel

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

Section 15.04. **Headings**

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

Section 15.05. **Severability**

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

Section 15.06. **Entire Agreement**

This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, negotiations, discussions and understandings, written or oral, between the Parties. There are no representations, warranties, conditions or other agreements, whether direct or collateral, or express or implied, that form part of or affect this

Agreement, or that induced any Party to enter into this Agreement or on which reliance is placed by any Party, except as specifically set forth in this Agreement. The Parties acknowledge and agree that (i) each has substantial business experience and is fully acquainted with the provisions of this Agreement, (ii) the provisions and language of this Agreement have been fully negotiated and (iii) no provision of this Agreement shall be construed in favor of any Party or against any Party by reason of such provision of this Agreement having been drafted on behalf of one Party rather than the other Party.

Section 15.07. **Amendments; Waivers**

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

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

Except as provided in Section 7.04 and as otherwise provided herein, 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**

Except as otherwise provided herein, 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 Delaware County, Pennsylvania, for the adjudication of any matters arising under or in connection with this Agreement. Any action initiated in court shall be filed and litigated (including all discovery proceedings) exclusively in the United States District Court for the Eastern District of Pennsylvania and the Court of Common Pleas of Delaware County, Pennsylvania, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by mail to such Party's address set forth herein shall be effective service of process for any suit, action or other proceeding brought in any such court. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS

AGREEMENT OR THE OTHER TRANSACTION DOCUMENTS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 15.11. **Specific Performance**

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

Section 15.12. **Counterparts; Electronic 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 electronic transmission. Such Party shall be deemed to have executed and delivered this Agreement on the date it sent such electronic transmission. In such event, such Party shall forthwith deliver to the other Party an original counterpart of this Agreement executed by such Party.

[THIS SPACE INTENTIONALLY LEFT BLANK;

SIGNATURES NEXT PAGE]

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

CITY OF CHESTER

By: _____

Printed: Thaddeus Kirkland

Its: Mayor

ATTEST:

By: _____
Name:
Its:

AQUA PENNSYLVANIA, INC.

By: _____

Printed: _____

Its: President

ATTEST:

By: _____
Name:
Its: