

***Appendix A***

***Asset Purchase Agreement for the Acquisition of the Assets of the Wastewater System of Sadsbury Township Municipal Authority and Pennsylvania American Water Company***



**ASSET PURCHASE AGREEMENT**  
**BETWEEN**  
**SADSBURY TOWNSHIP MUNICIPAL AUTHORITY**  
**& SADSBURY TOWNSHIP**  
**AND**  
**PENNSYLVANIA-AMERICAN WATER COMPANY**

**JANUARY 5, 2023**

## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE Agreement (“**Agreement**”), dated as of the 5<sup>th</sup> day of January, 2023 by and between the **Sadsbury Township Municipal Authority**, a municipal authority organized and existing under the laws of the Commonwealth of Pennsylvania, having a mailing address of 7182 White Oak Road, Christiana, PA 17509, Pennsylvania (“**Seller**”), **Pennsylvania-American Water Company**, a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with a business address of 852 Wesley Drive, Mechanicsburg, PA 17055 (“**PAWC**”), and Sadsbury Township, Lancaster County, a body corporate and politic organized and existing under the laws of the Commonwealth of Pennsylvania (the “**Township**”), only for purposes of **Sections 6.1(g), 6.7, 8.1(f) and 8.2(e) and 11.2.**

### RECITALS

A. Seller owns, maintains and operates a wastewater collection system (the “**System**”) located in limited portions of Sadsbury Township, Lancaster County, Pennsylvania (the “**Service Area**”);

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

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

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

### **ARTICLE 1**

#### THE TRANSACTION

1.1 Sale and Purchase of Assets. Subject to the terms, representations and conditions set forth in this Agreement, PAWC shall purchase from Seller, and Seller shall sell, assign, transfer, grant, convey and deliver to PAWC at Closing (hereinafter defined), the Assets. The term “**Assets**” means all of the assets, properties and rights of Seller (whether tangible, intangible, real, personal or mixed) that are held or used in connection with the System. The Assets shall be sold free and clear of all mortgages, liens, pledges, security interests, charges, claims, restrictions, and encumbrances of any and all nature (collectively, the “**Encumbrances**”), except for Permitted Encumbrances.

1.2 Assets Further Defined.

The Assets shall, without limitation to the definition stated above, include the following:

- (a) the Assigned Contracts (as defined in **Section 5.1(c)**);
- (b) all interests in real estate (excepting streets), mains, laterals (from main to edge-of-road or curblines where the main is located within a public right-of-way or to the edge of an easement where the main

is located withing private property), manholes, facilities, meters, wastewater system network and related appurtenances, structures, improvements, fixtures, rights-of-way, rights, uses, franchises, licenses and easements owned by Seller and relating to the System, or in which Seller has an interest, and all hereditaments, tenements and appurtenances belonging, appertaining or relating thereto (collectively the “**Real Property**”);

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

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

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

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

### 1.3 Retained Liabilities and Assumed Liabilities.

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

(b) PAWC shall assume and pay, perform and discharge when due any and all liabilities and obligations of Seller (1) arising under Seller’s Permits (arising from, related to, or based on events or circumstances occurring on or after the Closing Date) and (2) arising out of or relating to the System or the Assets on or after the Closing Date, specifically described as the following:

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

(ii) any litigation initiated against Seller related to the System or the 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 Assets and the Assumed Liabilities attributable to the period beginning on the Closing Date; and

(iv) all other liabilities and obligations arising out of or relating to PAWC’s ownership or operation of the System and the Assets on or after the Closing (all of the aforementioned liabilities in this **Section 1.3(b)** are referred to as the “**Assumed Liabilities**”).

1.4 **Excluded Assets.** Notwithstanding anything to the contrary contained in this Agreement, the Assets shall not include any of the following:

- (a) All contracts, licenses and leases that are not Assigned Contracts;
- (b) the MS4 System;
- (c) Seller's cash on hand on the date of Closing and Capacity Reservation Fees, including but not limited to those fees paid for the properties listed on **Schedule 1.4** and Seller's accounts receivables related to the System for services rendered through the close of business on the Closing Date;
- (d) the seals, organizational documents, minute books, tax returns, books of account or other records having to do with the organization of Seller and all employee-related or employee benefit-related files or records;
- (e) all insurance policies of 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 Seller, whether arising by way of counterclaim or otherwise;
- (g) all assets, properties and rights used by Seller other than those which primarily relate to the operations of the System;
- (h) All rights of Seller under this Agreement and related Bill of Sale and Assignment of Contracts Agreement as it pertains to the transfer and sale herein contemplated; and (i) the specific assets, properties and rights of Seller set forth on **Schedule 1.4**.

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

## ARTICLE 2

### PURCHASE PRICE

2.1 **Escrow Amount.** At Closing, Fifty Thousand Dollars (\$50,000) of the Purchase Price (defined below) shall be deposited in escrow (the "**Escrow Fund**") with the Escrow Agent pursuant to an escrow agreement in the form of **Exhibit A**, by and among the Seller, the Township, PAWC and the Escrow Agent (the "**Closing Escrow Agreement**") to provide for any indemnification claims of PAWC due and payable by the Seller pursuant to **Section 9.1** and any Missing Easements pursuant to **Section 6.2**; *provided, however*, that the Escrow Fund shall be released to the Seller or the Township (in accordance with the Closing Escrow Agreement) on the Escrow Release Date, except for any amount reasonably required to cover any indemnification claim made by PAWC prior to such date or any Missing Easements not resolved by Seller prior to the date specified and as required under the Closing Escrow Agreement.

2.2 **Purchase Price for the Assets.** Subject to the terms and conditions of this Agreement, the purchase price (the "**Purchase Price**") is \$990,000 (Nine Hundred Ninety Thousand Dollars). The Purchase

Price shall be payable directly to Seller on the Closing Date by wire transfer or by corporate check, at the Seller's discretion.

2.3 Purchase Price Adjustments. After funding the Escrow Fund at Closing, PAWC shall pay to the Seller by wire transfer of immediately available funds the balance of the Purchase Price to one or more accounts that Seller designates and provides to PAWC at least three (3) Business Days prior to the Closing Date.

### ARTICLE 3

#### THE CLOSING

3.1 Closing Subject to the terms and conditions of this Agreement, the closing of the sale and purchase of the Assets ("**Closing**") shall take place at the offices of PAWC located at 852 Wesley Drive, Mechanicsburg, Pennsylvania, or such other mutually agreed upon location within thirty (30) days following the date on which all of the conditions set forth in Articles 6 and 7 of this Agreement have been met (or waived). The date of the Closing is referred to herein as the "**Closing Date**".

3.2 Deliveries and Proceedings at Closing.

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

- (i) Bills of Sale and instruments of assignment duly executed by Seller as necessary to transfer all of the Assets to PAWC, including an assignment of contracts agreement covering the assignment and assumption of the Assigned Contracts in substantially the form of Exhibit B ("**Assignment of Contracts Agreement**");
- (ii) A copy of each permit, license, easement, land-right and other necessary authority for the operation of the System and the Assets, in each case validly issued in the name of the Seller, and showing in full force and effect;
- (iii) The consents to transfer all Assigned Contracts, leases, intellectual property, Permits and other Assets requiring such consents to be transferred to PAWC;
- (iv) All required material consents, waivers, authorizations or approvals of any Governmental Authority, or of any other Person and each declaration to or filing or registration with any Governmental Authority required in connection with the execution and delivery of this Agreement by Seller or the performance by Seller of its obligations under this Agreement, set forth on Schedule 4.1(f), including without limitation all required EPA and PaDEP approvals (all such authorizations and permits and Governmental Approvals must be final (and not subject to any appeal and any applicable appeal period having expired));
- (iv) Evidence satisfactory to PAWC of the transfer of all utilities with respect to the System from Seller to PAWC in accordance with **Section 6.1(b)(iii)** below;

- (v) One or more General Warranty Deeds of conveyance of the real estate and easements to PAWC, duly executed and acknowledged by Seller and in recordable form, each sufficient to convey the title and rights of access to the Assets;
  - (vi) Such other deeds, bills of sale, assignments, certificates of title, documents and other instruments of transfer and conveyance as may reasonably be requested by PAWC, each in form and substance reasonably satisfactory to PAWC;
  - (vii) Certified copies of all resolutions (“**Resolutions**”) duly adopted by the Seller authorizing the execution, delivery and performance of this Agreement and all related agreements and the transactions contemplated hereby and thereby;
  - (viii) As applicable, a payoff letter from each lender (whether institutional or otherwise) from which Seller has incurred indebtedness or borrowed money that is outstanding, and a release of all Encumbrances relating to the Assets (along with Form UCC3 Financing Statements effectuating a termination of all outstanding financing statements covering the Assets) executed, filed and/or recorded by the holder of or parties to each such Encumbrance, if any, in each case in substance and form reasonably satisfactory to PAWC and its counsel;
  - (ix) The certificates and other documents required to be delivered by Seller under this Agreement as set forth in **Section 8.1** hereof;
  - (x) A duly executed counterpart to the Closing Escrow Agreement.
  - (xi) All such other agreements, documents and instruments of conveyance required by this Agreement or as shall, in the reasonable opinion of PAWC and its counsel, be necessary to transfer the Assets to PAWC in accordance with this Agreement, and where necessary, in recordable form.
- (b) Subject to the terms and conditions of this Agreement, at the Closing, PAWC shall deliver or cause to be delivered to Seller:
- (i) The Purchase Price;
  - (ii) Certified copies of the resolutions duly adopted by PAWC’s Board of Directors authorizing the execution, delivery and performance of this Agreement;
  - (iii) The certificates and other documents required to be delivered by PAWC under this Agreement as set forth in **Section 8.2** hereof;
  - (iv) A duly executed counterpart to the Closing Escrow Agreement; and
  - (v) All such other agreements, documents and instruments of conveyance required by this Agreement or as shall, in the reasonable opinion of Seller and its counsel, be necessary to transfer the Assets to PAWC in accordance with this Agreement, and where necessary, in recordable form.



## ARTICLE 4

### REPRESENTATIONS AND WARRANTIES OF SELLER

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

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

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

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

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

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

(f) Consents and Approvals. Schedule 4.1(f) sets forth a list of each consent, waiver, authorization or approval of any Governmental Authority, or of any other Person, and each declaration to or filing or registration with any Governmental Authority required in connection with the execution and delivery of this Agreement by Seller or the performance by Seller of its obligations under this Agreement.

(g) **No Violations.** Except as set forth on **Schedule 4.1(g)**, to Seller's Knowledge, this Agreement does not violate any law, ordinance, or regulation, does not conflict with any order or decree, and does not conflict with or result in a breach of any instrument, contract, lease, Permit or certificate to which Seller is a party or is otherwise bound or affected, or by which the Assets may be bound or affected. The execution and delivery of this Agreement and all related documents and agreements, and the consummation of the transactions contemplated hereby and thereby, do not violate, conflict with or result in the breach of any term, condition or provision of Seller's articles of incorporation, bylaws or other governing documents.

(h) **Accounts Receivable.** All accounts receivable being retained by Seller under **Section 1.5** (whether billed or unbilled) (collectively, the "**Retained Accounts Receivable**"), are valid, genuine and existing and arose (or will have arisen on or prior to Closing) from bona fide sales of products or services actually made in the ordinary course of business on or prior to the Closing Date. All products and services with regard to the Retained Accounts Receivable have been provided by Seller (and no further obligations exist), and no offset, agreement for deduction, free goods, discount or deferred price or quantity adjustment has been made with respect to any Retained Accounts Receivable.

(i) **Free Service; Customer List; Prepayments.** Seller has not entered into any agreements or other understandings for the provision of free or otherwise subsidized or discounted services to any parties. The data contained in the customer records provided to PAWC under **Section 6.1(j)** is true and accurate in all material respects. Other than Capacity Reservation Fees paid prior to the Closing Date, which will be an Excluded Asset retained by Seller pursuant to Section 1.4, Seller has not received payments made in advance by any third party (including Seller's wastewater customers) for future service (including service after the Closing) with regard to the System or the Assets.

(j) **Undisclosed Liabilities.** Except as set forth in **Schedule 4.1(j)**, there are no material liabilities or obligations of Seller, either accrued, absolute, liquidated or unliquidated, contingent or otherwise, relating to the Assets that would be required to be set forth on a balance sheet as applicable to municipal authorities and in accordance with Seller's past practices, other than liabilities incurred in the ordinary course. To Seller's Knowledge, there is no basis for any claim against Seller, the System or any of the Assets for any such liability or obligation, and there is no basis for any such liability or obligation to become the liability or obligation of PAWC from and after the Closing.

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

(l) **Contracts.** **Schedule 4.1(l)(i)** contains a true, complete, and accurate list of all agreements (including all verbal agreements and intermunicipal agreements), contracts, leases (including any leasehold interests constituting part of the Assets as described in **Section 4.1(b)**), licenses, commitments, arrangements and instruments related to the Assets to which Seller is a party or the Assets are otherwise subject or bound, along with all amendments and addenda related thereto (collectively, the "**Contracts**"). **Schedule 4.1(l)** also identifies with an asterisk any Contract which requires consent to, or prohibits, assignment of the Contract. All Contracts are in full force and effect and are valid and enforceable in accordance with their terms, and the parties thereto are in material compliance with the provisions thereof, and there exists no event or condition which with the giving of notice or lapse of time, or both, would constitute a default thereunder. Seller has received, or will receive prior to the Closing, the written consent of each party to the Assigned Contracts

designated on **Schedule 4.1(l)** as requiring consent to the assignment, or otherwise complied with Seller's obligations under **Section 6.1(b)(ii)** hereof. Seller has delivered to PAWC correct and complete copies of those Contracts requested by PAWC, as well as copies of the requisite assignments for each of the Assigned Contracts which effectuates the transfer of the Assigned Contracts to PAWC as of the Closing Date.

(m) Adequacy of Property Rights: Real Property and Easements.

- (i) Seller possesses all property rights necessary to operate the Assets, and, except as set forth on **Schedule 4.1(m)(i)**, Seller owns and has good and marketable title to the Real Property, free and clear of all options, leases, covenants, conditions, easements, agreements, claims, and other encumbrances of every kind, and there exists no restriction on the use or transfer of such property. As it relates to the Assets, **Schedule 4.1(m)(i)** contains a complete and accurate list of the Real Property owned by Seller and a complete and accurate list of each lease of Real Property to which Seller is a party (as the lessor, lessee or otherwise). To Seller's Knowledge, Seller's current use and occupancy of the Real Property and its operation of the System thereon does not violate any easement, covenant, condition, restriction or similar provision in any instrument of record or other unrecorded agreement affecting such Real Property. All leases, licenses, rights of way, and easements related in any manner to the assets and properties comprising the Assets and all other instruments, documents and agreements pursuant to which Seller has obtained the right to use any Real Property in connection with the Assets are in good standing, valid and effective in accordance with their respective terms, and with respect thereto, there is no existing material default or event that could constitute a material default. The Real Property is properly classified under applicable zoning laws, ordinances, and regulations for the current and continued operation of the System on the Real Property. No proceeding that could adversely affect the zoning classification of the Real Property is pending or to Seller's Knowledge, threatened. At and after the Closing, PAWC shall have the right to maintain and use the Real Property, including the space, facilities and appurtenances outside of building lines, whether on, over or under the ground, and to conduct such activities thereon as maintained, used or conducted by Seller on the date hereof, and such right is not subject to revocation. Seller has made available to PAWC copies of all title reports, surveys, title policies and appraisals relating to the Real Property.
- (ii) Set forth on **Schedule 4.1(m)(ii)** hereto is a true, correct and complete list of all easements and rights of way relating to the Real Property and the Assets. All of such easements and rights of way are valid and will be transferred to PAWC and remain in full force as of the Closing and thereafter. Seller has not received any notice of violation of any easements, covenants, restrictions or similar instruments and there is no basis for the issuance of any such notice or the taking of any action for such violation. At and after the Closing, PAWC shall have all rights, easements and agreements necessary for the use and maintenance of water, sewer or other utility pipelines, poles, wires, conduits or other like facilities, and appurtenances thereto, over, across and under the Real Property.
- (iii) There are no outstanding options, rights of first refusal or rights of first offer to purchase any of the Real Property or any portion thereof or interest therein, except as otherwise set forth on **Schedule 4.1(m)(iii)**.

- (iv) All improvements located on, and the use presently being made of, the Real Property comply with all applicable zoning and building codes, ordinances and regulations and, to Seller's Knowledge, all applicable fire, environmental, occupational safety and health standards and similar standards established by applicable law, and, to Seller's Knowledge, the same use thereof by PAWC following Closing will not result in any violation of any such code, ordinance, regulation or standard. No improvements encroach on any land that is not included in the Real Property or on any easements affecting such Real Property, or violate any building lines or set-back lines, and there are no encroachments onto the Real Property, or any portion thereof, that would interfere with the use or occupancy of such Real Property or the continued operation of the System as currently conducted.
- (v) There is no unpaid tax, levy or assessment against the Real Property (except for encumbrances relating to assessments not yet due and payable), nor is there pending or, to Seller's Knowledge, threatened any condemnation proceeding against the Real Property or any portion thereof. **Schedule 4.1(m)(v)** contains a list of all impending taxes, levies and assessments that are due and owing on or after the Closing Date.
- (vi) Except as set forth in **Schedule 4.1(m)(vi)**, there is no condition affecting the Real Property or the improvements located thereon that requires repair or correction to restore the same to reasonable operating condition.

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

(o) **Tax Matters.**

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

- (ii) Seller has withheld and paid all taxes required to have been withheld and paid in connection with any amounts paid or owing to any employee, independent contractor, supplier, vendor, creditor, or other third party. Forms W-2 and 1099 required with respect thereto have been properly completed and timely filed.
- (iii) There are no audits or examinations of any tax returns pending or, to Seller's Knowledge, threatened that relate to Seller's operation of the System or the Assets. Seller is not a party to any action or proceeding by any Governmental Authority for the assessment or collection of taxes relating to the operation of the System, nor has such event been asserted or, to Seller's Knowledge, threatened. There is no waiver or tolling of any statute of limitations in effect with respect to any tax returns relating to Seller's operation of the System or the Assets.

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

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

(r) Adequacy of Permits. Set forth in Schedule 4.1(r) is a complete and correct list of all permits, licenses, registrations, approvals and other authorizations (collectively, the "Permits") used by Seller in the continuing operation of the System and for the Assets. Such Permits constitute all those necessary for the continuing operation of the System and for the Assets, and are all valid and subsisting and in full force and effect. To Seller's Knowledge, no fact or circumstance exists that is reasonably likely to cause any such Permit to be revoked or materially altered subsequent to the execution of this Agreement and the Closing Date, and neither the execution of this Agreement, nor the Closing do or will constitute or result in a material default under or violation of any such Permit. Seller likewise has obtained and continues to possess all Permits that, to Seller's Knowledge, are required under, by or pursuant to Environmental Laws (defined below), has filed such timely and complete renewal applications as may be required prior to the Closing Date, and also has complied with all reporting and record keeping requirements under Environmental Laws (defined below).

Such Permits shall be issued prior to Closing in a form and with terms and conditions that are reasonably satisfactory to PAWC.

(s) Environmental Matters.

- (i) To Seller's Knowledge, there are no past or present events, conditions, circumstances, activities, practices, incidents, actions or plans pertaining or relating to the Assets or the System that may materially impede or prevent compliance with Environmental Laws, and Seller is, and at all times has been, in full compliance with and has not been, and is not in violation of or liable under any applicable Environmental Law. Seller has no basis to expect, nor has it received any actual or threatened order, notice or other communication from any Governmental Authority or other person of any actual or potential violation or failure to comply with any Environmental Law or of any actual or threatened obligation to undertake or bear the cost of any environmental, health and safety liabilities with respect to Real Property or any other properties or assets (whether real, personal or mixed) in which Seller has or has had an interest or with respect to the Real Property or any other Real Property at or to which hazardous materials were generated, manufactured, refined, transferred, imported, used or processed by Seller or any other person for whose conduct it is or may be held responsible, or from which hazardous materials have been transported, treated, stored, handled, transferred, disposed, recycled or received.
- (ii) There are no pending or to Seller's Knowledge, threatened claims, encumbrances or other restrictions of any nature, resulting from any environmental, health and safety liabilities or arising under or pursuant to any Environmental Law with respect to or affecting the Seller's Real Property. Seller does not have any material environmental, health and safety liabilities with respect to the Seller's Real Property .
- (iii) There are no hazardous materials, except those used in connection with the ordinary course operation of the System in accordance with all Environmental Laws, present on or in the environment at the Real Property, including any hazardous materials contained in barrels, above or underground storage tanks, landfills, land deposits, dumps, equipment (whether moveable or fixed) or other containers, either temporary or permanent and deposited or located in land, water, sumps or any other part of the Real Property or incorporated into any structure therein or thereon. Seller has not permitted or conducted, or is aware of, any hazardous activity conducted with respect to the Real Property except in material compliance with all applicable Environmental Laws. There has been no release, of any hazardous materials at or from the Real Property by Seller.
- (iv) Except as set forth in Schedule 4.1(s)(iv), none of the following exists at the System or on the Real Property that is part of the Assets: (1) underground storage tanks; (2) asbestos-containing material in any form; (3) materials or equipment containing polychlorinated biphenyl; (4) groundwater monitoring wells; or (5) landfills, surface impoundments, or disposal areas.
- (v) Seller has delivered to PAWC true and complete copies and results of any reports, studies, analyses, tests or monitoring possessed or initiated by Seller or its predecessors

pertaining to hazardous materials or hazardous activities in, on or under the Real Property, or concerning compliance by Seller, its predecessors, or any other person for whose conduct Seller is or may be held to be responsible, with Environmental Laws, said reports, studies, analyses, tests and monitoring to include without limitation, any and all Phase I environmental reports now or hereafter in the possession or control of Seller.

- (vi) Compliance with Decrees. Seller has been and is in compliance with all orders, decrees, judgments and notices issued against the Seller under or in connection with all Environmental Laws.
- (vii) As used in this Agreement, the term “**Environmental Laws**” shall include all federal, state, and local environmental laws and regulations, including the Clean Water Act (“**CWA**”), also known as the Federal Water Pollution Control Act (“**FWPCA**”), 33 U.S.C. § 1251 et seq., the Toxic Substances Control Act (“**TSCA**”), 15 U.S.C. § 2601 et seq., the Federal Insecticide, Fungicide and Rodenticide Act (“**FIFRA**”), 7 U.S.C. §§ 136 et seq., the Safe Drinking Water Act (“**SDWA**”), 42 U.S.C. §§ 300 (f) et seq., the Surface Mining Control and Reclamation Act (“**SMCRA**”), 30 U.S.C. §§ 1201 et seq., the Comprehensive Environmental Response, Compensation and Liability Act (“**CERCLA**”), 42 U.S.C. § 9601 et seq., the Superfund Amendment and Reauthorization Act of 1986 (“**SARA**”), Public Law 99-499, 100 Stat., 1613, the Resource Conservation and Recovery Act (“**RCRA**”), 42 U.S.C. 6901, the Atomic Energy Act (“**AEA**”), Act of August 30, 1954, Ch. 1073,68 Stat. 919 (codified as amended in scattered sections of 5 U.S.C. and 42 U.S.C.). Any reference to a legislative act or regulation shall be deemed to include all amendments thereto and all regulations, orders, decrees, judgments, opinions directives or notices issued thereunder.

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

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

(v) Seller does not own and will not transfer to PAWC any customer laterals; all of which originate from the edge-of-road or curblin where the Seller’s main is located within a public right-of-way or to the edge of an easement where the Seller’s main is located withing private property to and through the customer’s property; all of which is owned by customers of Seller (“Customer Laterals”);

(w) Seller does not own and will not transfer to PAWC any customer related sanitary sewer facilities; all of which consists of piping and/or fixtures internal to each individual customer’s structure

(whether residential, commercial, industrial or other types) as these facilities are too owned by customers of Seller ("Sanitary Sewer Facilities").

## ARTICLE 5

### REPRESENTATIONS AND WARRANTIES OF PAWC

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

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

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

(c) Assigned Contracts. PAWC has disclosed on Schedule 5.1(c) those Contracts which PAWC has agreed to assume ("Assigned Contracts"), subject to receiving all necessary consents to assignment in accordance with the terms of Section 8.1(g). PAWC may update Schedule 5.1(c) between the date hereof and up to twenty (20) days before Closing to include any of the Contracts.

(d) Consents and Approvals. Schedule 5.1(d) sets forth a list of each consent, waiver, authorization or approval of any Governmental Authority, or of any other Person, and each declaration to or filing or registration with any Governmental Authority required in connection with the execution and delivery of this Agreement by PAWC or the performance by PAWC of its obligations under this Agreement.

(e) No Violations. Except as set forth on Schedule 5.1(e), to PAWC's Knowledge, does not violate any law, ordinance or regulation, does not conflict with any order or decree, and does not conflict with or result in a breach of any instrument, contract, lease, or certificate to which PAWC is a party or is otherwise bound or affected. The execution and delivery of this Agreement and all related documents and agreements, and the consummation of the transactions contemplated hereby and thereby, do not violate, conflict with or result in the breach of any term, condition or provision of PAWC's articles of incorporation, bylaws or other governing documents.

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

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

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



(i) Independent Decision. Except as expressly set forth in this Agreement, or any of the related agreements, PAWC 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 PAWC, and (b) neither Seller nor any other person shall have or be subject to any liability to PAWC or any other person resulting from the distribution to PAWC, or PAWC's use of, any information regarding the System or Assets that has been furnished or made available to PAWC and its Representatives. PAWC acknowledges that other than as expressly set forth in this Agreement or any related agreement, Seller expressly disclaims any warranty of physical condition, value, income potential, operating expenses, costs of operation, or uses or fitness for a particular purpose of any Assets or the System.

(j) Scheduled Matters. PAWC 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 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.

(k) Independent Investigation. PAWC acknowledges that it has conducted an independent investigation of the financial condition, assets, liabilities, properties and projected capital needs and operations of the System in making its determination as to the propriety of the transaction contemplated by this Agreement and, in entering into this Agreement and related agreements, has relied solely on the results of its investigation and on the representations and warranties of Seller expressly contained in Article 4 of this Agreement.

## ARTICLE 6

### COVENANTS

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

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

(b) Contracts and Commitments. Except normal and usual commitments for the purchase of materials and supplies consistent with past practice, no contract or commitment shall be entered into by or on behalf of Seller relating to the System or the Assets that would place an Encumbrance thereon or materially affect the operation of the System, the business or the Assets after Closing, except for those commitments

approved or ratified in writing by PAWC. Seller shall use reasonable commercial efforts to obtain, prior to Closing, the written consent of each party to the Assigned Contracts designated on **Schedule 4.1(l)** as requiring consent to the assignment. Notwithstanding any other provision of this Agreement, to the extent that any consent necessary for the assignment from Seller to PAWC of the Assigned Contracts is not obtained, or cannot be obtained, prior to the Closing Date, Seller shall use its commercially reasonable efforts to secure an arrangement reasonably satisfactory to PAWC intended to provide for PAWC following the Closing all of the material benefits of Seller under such Assigned Contracts; provided, that nothing in this **Section 6.1(b)** shall constitute a waiver of the condition set forth in **Section 8.1(g)**; and provided, further, that PAWC shall not be obligated to assume, and shall not be liable under, any Assigned Contract for which Seller has not obtained all necessary consents, or otherwise secured an alternative arrangement satisfactory to PAWC (in its sole discretion) as provided above. Seller shall transfer all of the utilities used or necessary for the System from Seller to PAWC effective as of the Closing Date, and Seller shall be responsible to pay all bills and fees for these utilities for the period prior to and including the Closing Date. PAWC shall provide any necessary information reasonably required by Seller to effectuate this transfer.

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

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

(e) **Supplemental Information.**

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

(ii) Seller shall notify PAWC within fifteen (15) days of the receipt of any notice of violation.

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