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Title	compareDocs Comparison Results
Date & Time	6/22/2020 3:40:37 PM
Comparison Time	9.71 seconds
compareDocs version	v4.3.300.65

Sources	
Original Document	Asset Purchase Agreement (A7310832-22).DOCX
Modified Document	Asset Purchase Agreement (A7310832-23).DOCX

Comparison Statistics	
Insertions	32
Deletions	29
Changes	38
Moves	0
Font Changes	0
Paragraph Style Changes	0
Character Style Changes	0
TOTAL CHANGES	99

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Deletions	
<u>Moves / Moves</u>	
Font Changes	
Paragraph Style Changes	
Character Style Changes	
Inserted cells	
Deleted cells	
Merged cells	
Changed lines	Mark left border.
Comments color	By Author.
Balloons	False

compareDocs Settings Used	Category	Option Selected
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Include Footnotes / Endnotes	Word	True
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Show Reviewing Pane	Word	True
Update Automatic Links at Open	Word	[Yes / No]
Summary Report	Word	End
Include Change Detail Report	Word	Separate
Document View	Word	Print
Remove Personal Information	Word	False
Flatten Field Codes	Word	True

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this “**Agreement**”), dated as of [June 23 _____], 2020 (the “**Effective Date**”), is by and between The City of Johnstown, a political subdivision of the Commonwealth of Pennsylvania operating as a Third Class City under a Home Rule Charter (the “**Seller**”), and the Greater Johnstown Water Authority, a body corporate and politic organized under the Pennsylvania Municipality Authorities Act (the “**Buyer**” and together with Seller, the “**Parties**”).

Background

WHEREAS, Seller owns that certain the sanitary sewer collection system, which are the pipes that convey wastewater within The City of Johnstown (the “**Service Area**”), comprising approximately 425,000 linear feet of sanitary sewer pipes ranging in size from 6 to 18 inches in diameter, the Prospect Pump Station, approximately 160,695 linear feet of lateral pipes, approximately 3,108 sanitary utility holes accessing such pipes, related mainline taps, of which there are approximately 8,156, and related viewport castings, of which there are approximately 7,004, serving residential, commercial and industrial customers (the “**Sanitary Sewer Collection Assets**”);

WHEREAS, previously in 2004, Seller sold to The Redevelopment Authority of The City of Johnstown, an agency incorporated under the Urban Redevelopment Law of the Commonwealth of Pennsylvania (the “**JRA**”), the Dornick Point Sewage Treatment Plant (the “**Dornick Plant**”) and the interceptor sewer system owned by the JRA, comprising approximately 256,000 linear feet of interceptor sanitary sewer pipe ranging in size from 10 to 63 inches in diameter and approximately 770 interceptor utility holes accessing such pipes, all as owned by the JRA (the “**JRA Interceptor System**”), pursuant to 2004 Dornick Plant and Interceptor Sale Agreements (as defined in Exhibit A hereto);

WHEREAS, Sanitary Sewer Collection Assets to be sold pursuant to this Agreement do not include the JRA Interceptor System, the Dornick Plant or the separate municipal stormwater system, comprising approximately 379,000 linear feet of separate stormwater pipe ranging in size from 6 to 60 inches in diameter, approximately 40,000 linear feet of flood protection channels, approximately 3,000 catch basins and approximately 1,098 stormwater utility holes accessing such pipes and such flood protection channels, all within the Service Area (such separate municipal stormwater system, “**MS4 System**”); and

WHEREAS, after the Closing, as Buyer implements compliance with the Assigned DEP Consent Order, it will incrementally convert portions of the Sanitary Sewer System into assets integrated and connected into the MS4 System and will reconvey them incrementally back to the Seller, and the Parties herein provide for such reconveyances.

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

Agreement

ARTICLE I PURCHASE AND SALE; CLOSING; PURCHASE PRICE

1.1 Definitions. Capitalized terms have the respective meanings given to them by definition in this Agreement or in Exhibit A attached hereto.

1.2 Purchase and Sale. Subject to the terms and conditions of this Agreement, at the Closing:

(a) Assets. Seller shall sell, transfer, assign and deliver to Buyer, and Buyer shall purchase and assume from Seller, all of Seller's right, title and interest in, to and under the following assets, properties and rights of or related to the Sanitary Sewer Collection Assets (the following collectively, other than the Excluded Assets, the "**Assets**");

(i) the Sanitary Sewer Collection Assets, and all improvements and fixtures of any and every kind whatsoever forming a part of the Sanitary Sewer Collection Assets, and all rights of way, easements and covenants appurtenant to the foregoing, such as they exist (and excluding the Excluded Assets, but including the Assumed Liabilities, the "**Sanitary Sewer System**");

(ii) construction contracts related to the PennVest projects set forth on Schedule 1.2(a)(1) hereto (such projects, the "**PennVest Projects**"), and all construction work in progress related to the Sanitary Sewer System thereunder;

(iii) all contractor bonds and contractor insurance obligations for the PennVest Projects, to the extent transferable to Buyer (the "**Contractor Bonds and Insurance Obligations**");

(iv) the Agreement, dated as of April 12, 2018, between RDM-Johnstown, LLC (Resource Development and Management, Inc., a limited liability corporation organized and existing under the laws of the Commonwealth of Pennsylvania) and Seller relating, *inter alia*, to billing and collection of sewer fees;

(v) the other agreements set forth on Schedule 1.2(a)(2) hereto (the "**Additional Contracts**" and together with the agreements described in (ii), (iii) and (iv), the "**Assigned Contracts**");

(vi) all permits and authorizations listed on Schedule 1.2(a)(3) hereto (the "**Assigned Permits**");

(vii) the Consent Order and Agreement entered into by Seller and the Commonwealth of Pennsylvania (by the PADEP), dated July 14, 2010, and all amendments thereto, including the First Amendment to the Consent Order and Agreement, dated July 23, 2014, related to the Sanitary Sewer System, sanitary sewer overflows, and compliance with the Clean Streams Law (35 P.S. §§ 691.1 *et seq.*) (the "**Assigned DEP Consent Order**");

(viii) the PennVest Funding Agreements and Debt Obligations related to the PennVest projects set forth on Schedule 1.2(a)(1) hereto (which may be updated prior to Closing pursuant to Section 8.17 (Disclosure Schedules; Updates)) (the “**PennVest Loan Documents**”) and the related PennVest loan amounts set forth on Schedule 1.2(a)(4) hereto (which may be updated prior to Closing pursuant to Section 8.17 (Disclosure Schedules; Updates)) (in the aggregate, the “**Assumed PennVest Debt Amount**”), which outstanding principal amount under such Assumed PennVest Debt Amount shall not exceed \$65,000,000 plus an amount equal to the Central Business District loan amount if borrowed prior to the Closing hereunder plus an amount equal to other PennVest borrowed amounts for change orders;

(ix) all trade and other accounts receivable of Seller, whether billed or unbilled (the “**Accounts Receivable**”) related to the Sanitary Sewer System for any goods or services rendered by Seller or rendered in connection with the Sanitary Sewer System prior to or on the Closing Date (“**Pre-Closing Accounts Receivable**”); and

(x) all Accounts Receivable related to the Sanitary Sewer System for any goods or services rendered by Buyer in connection with the Sanitary Sewer System after the Closing Date (“**Post-Closing Accounts Receivable**”).

(b) Excluded Assets. Notwithstanding anything to the contrary set forth herein and for the avoidance of doubt, the Assets shall not include the following assets (collectively, the “**Excluded Assets**”), which the Parties acknowledge are not being sold, transferred, assigned or delivered by Seller and are not being purchased or assumed by Buyer pursuant hereto:

(i) with respect to the Sanitary Sewer System, (A) all oil, gas, mineral, water and air rights, and (B) Seller’s rights to create and maintain the public way;

(ii) the JRA Interceptor System and the Dornick Plant, which are not owned by Seller;

(iii) the MS4 System, including any future additions to the MS4 System;

(iv) any rights in or responsibility for the clean fill disposal site (Tax Parcel Number 90-038. -400.00) (the “**Clean Fill Disposal Site**”);

(v) the Agreement between Owner and Engineer for Professional Services Task Order Edition, effective as of April 10, 2012, between Seller and The EADS Group, Inc. (“**EADS**”), along with all Task Orders that are active at the time of the conveyance and listed in the City Task Order and Expiration Dates Table (together, the “**EADS Contract**”);

(vi) that specific Change Order No. 4 with respect to Contract 2017-08 (which such contract is an Asset listed as agreement No. 7 on Schedule 1.2(a)(2) hereto), dated September 12, 2019, among Seller, Snyder Environmental Services, Inc., as contractor, EADS, as engineer, including the attachment dated September 4, 2019 (the “**Clean Fill Disposal Site Maintenance Change Order**”), which such Clean Fill Disposal Site Maintenance Change Order will either be terminated or retained by the Seller, in Seller’s discretion, prior to or effective as of the Closing;

(vii) those specific rights and obligations of the City as owner of the Clean Fill Disposal Site and the payment obligations to the City as owner of the Clean Fill Disposal Site under each of those Assigned Contract sections of the specification books attached hereto as Schedule 1.2(b)(1) (such payment obligations, the “**Clean Fill Disposal Site Payment Obligations**”);

(viii) all vehicles and construction vehicles, including the 2010 vacuum and jet truck and bulldozer owned by Seller;

(ix) cash and cash equivalents, including existing financial security guaranteeing installation of public improvements;

(x) all insurance policies of Seller and all rights to applicable claims and proceeds thereunder;

(xi) all vehicles, trailers, equipment and other personal property used by Seller in maintaining and operating the Sanitary Sewer System other than the Assets;

(xii) all employees of Seller, whether or not they operated or maintained any part of the Sanitary Sewer System or the Assets; and

(xiii) the rights that accrue or will accrue to Seller under this Agreement and other Transaction Document.

(c) Retained Liabilities. Seller shall retain (and pay and satisfy, or cause to be paid and satisfied, in due course), and Buyer will not assume or be responsible or liable for or with respect to those specific duties, liabilities or obligations set forth below (collectively, the “**Retained Liabilities**”):

(i) that are arising under any Benefit Plan providing benefits to any present or former employee of Seller;

(ii) that are otherwise owing to any present or former employee of Seller, including those employees of Seller who were performing services on the Sanitary Sewer System prior to Closing and including duties, liabilities or obligations related to any union with respect to Seller to which any such employees belong, if any;

(iii) except as otherwise set forth herein, that constitute debt, loans or credit facilities to banking institutions; and

(iv) all trade accounts payable to third parties (the “**Accounts Payable**”) of Seller for goods or services rendered by third parties with respect to the Sanitary Sewer System that were rendered prior to the Closing Date (“**Pre-Closing Accounts Payable**”), which are subject also to Section 5.7 (*Accounts Payable*) below.

(d) Assumed Liabilities. Seller shall transfer, assign and deliver to Buyer, and Buyer shall assume from Seller, all duties, liabilities and obligations whenever arising related to the Assets (collectively, other than the Retained Liabilities, the “**Assumed Liabilities**”), including:

- (i) to operate the Sanitary Sewer System as of and after the Closing;
- (ii) the billing and collection and related servicing of the Accounts Receivable;
- (iii) all Accounts Payable of any Party for good or services rendered by third parties with respect to the Sanitary Sewer System that were rendered on or after the Closing Date (“**Post-Closing Accounts Payable**”), which are subject also to Section 5.7 (*Accounts Payable*) below; and
- (iv) the Assigned Contracts, the Assigned Permits, the Assigned DEP Consent Order, the PennVest Projects, the Contractor Bonds and Insurance Obligations, the PennVest Loan Documents and the Assumed PennVest Debt Amount.

Additionally, all amounts payable to EADS relating to preliminary and design work for the Central Business District, including under the EADS Contract, shall be an “Assumed Liability”

1.3 Closing. The closing (the “**Closing**”) of the transactions contemplated by this Agreement (collectively, the “**Transaction**”) shall take place remotely via the electronic exchange of documents on the date that all of the conditions set forth in Article II are satisfied or waived or as otherwise agreed in writing by the Parties. The day on which the Closing takes place is referred to as the “**Closing Date**” and the Closing shall be effective for all intents and purposes as of 12:01 am local time on the Closing Date. The Closing shall be deemed to have taken place at City Hall, 401 Main Street, Johnstown, Pennsylvania 15901. The Parties shall use their respective commercially reasonable efforts to consummate the Closing no later than ~~August 24, 2020~~ ~~← THIS TARGET DATE IS CURRENTLY JUST AN ESTIMATE AND IS AN OPEN ITEM; THE AGREED TARGET DATE STILL TO BE DETERMINED PRIOR TO THE SIGNING, AS WORLD AND LOCAL EVENTS DEVELOP~~ (the “**Target Closing Date**”). Buyer shall use its commercially reasonable efforts to consummate the closing condition in Section 2.2(g) (*with respect to its delivery of the Consent Order Assumption Agreement*) no later than ~~July 10, 2020~~ ~~← Target Closing date minus 45~~, and Seller shall use its commercially reasonable efforts to consummate the closing condition in Section 2.2(h) (*with respect to its delivery of the Southwest Regional Office Notice*) no later than ~~July 25, 2020~~ ~~← Target Closing date minus 30~~.

1.4 Purchase Price; Annual Installment Payment. The purchase price payable for the Assets shall, in addition to the assumption of the Assumed Liabilities by Buyer at Closing, be:

- (a) an earnest money payment by Buyer to Seller in the amount of \$2,000,000, payable prior to or simultaneous with the execution and delivery of this Agreement by Seller (the “**Earnest Money**”), which shall be non-refundable except upon a valid termination by Buyer pursuant to either Section 2.3(b)(i) or Section 2.3(b)(ii) only; and
- (b) an additional amount, payable by Buyer to Seller at the Closing, equal to \$21,500,000 (the “**Closing Price**”); and

(c) an additional amount, payable by Buyer to Seller at the Closing, equal to \$500,000 (the “**Accounts Receivable Payment**”) (the Closing Price *plus* the Accounts Receivable Payment shall be referred to as the “**Closing Date Price**”); and

(d) the Annual Installment Payment payable by Buyer to Seller for each of the 20 Reporting Years following the Closing (collectively and together with the Earnest Money and the Closing Date Price, the “**Purchase Price**”). The Annual Installment Payment shall be made by Buyer to Seller no later than October 1 of each calendar year immediately following each Reporting Year beginning with the 2021 Reporting Year, which shall be made by wire transfer of immediately available funds to an account of Seller, as notified by Seller to Buyer at least 7 Business Days prior to such wire, to Buyer in writing and confirmed between Buyer and Seller by telephone conversation thereafter. As an example, the Annual Installment Payment for the 2021 Reporting Year, shall be made by Buyer to Seller no later than October 1, 2022.

1.5 Closing Statement; Closing Payments. Four Business Days prior to Closing, Seller shall deliver to Buyer a closing statement (the “**Closing Statement**”) indicating the amounts, payees and wire transfer instructions for (i) the Seller Transaction Expenses and (ii) the Closing Date Price *less* such Seller Transaction Expenses (the “**Closing Date Cash Payment**”). At Closing, Buyer shall pay:

(a) amount(s) equal to the Seller Transaction Expenses as set forth on the Closing Statement, by wire transfer of immediately available funds, to each payee of the Seller Transaction Expenses set forth on the Closing Statement; and

(b) the Closing Date Cash Payment, by wire transfer of immediately available funds to the account of Seller set forth on the Closing Statement.

1.6 Fair Consideration. The Parties acknowledge and agree that the Purchase Price represents fair consideration and reasonable equivalent value for the sale and transfer of the Assets and the Transaction, which consideration was agreed upon as the result of arm’s-length good faith negotiations between the Parties and their respective Representatives.

ARTICLE II

CLOSING CONDITIONS; CLOSING DELIVERABLES; CONTINGENT TERMINATION

2.1 Conditions Precedent to Obligations of Buyer. The obligation of Buyer to consummate and close the Transaction is subject to the fulfillment, on or prior to the Closing, of each of the following conditions (any or all of which may be waived by Buyer in whole or in part):

(a) The representations and warranties of Seller contained in this Agreement shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality) or in all material respects (in the case of any representation or warranty not qualified by materiality) on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of the Closing Date (except those representations and warranties that address matters only as of a specified date or period, the accuracy of which shall be determined as of that specified date or for that period in all respects).

(b) Seller shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement to be performed or complied with by it prior to or on the Closing; *provided* that, with respect to agreements, covenants and conditions that are qualified by materiality, Buyer shall have performed such agreements, covenants and conditions, as so qualified, in all respects.

(c) No Action shall have been commenced against any Party that would prevent the Closing. No injunction or restraining order shall have been issued by any Third Party Governmental Body, and be in effect, which restrains or prohibits the Transaction contemplated hereby.

(d) Buyer shall have issued the Acquisition Bonds.

(e) Seller shall have provided evidence to Buyer that, at least 30 days prior to the Closing, Seller has delivered to the PADEP, at its Southwest Regional Office, a notice of Seller's intent, subject to this Agreement, to transfer the Sanitary Sewer System to Buyer (the "**Southwest Regional Office Notice**").

(f) Seller shall have delivered to Buyer the following:

(i) the Closing Statement, duly executed by Seller;

(ii) a certificate, dated as of the Closing Date and duly executed by Seller, that each of the conditions set forth in Section 2.1(a) and Section 2.1(b) have been satisfied, and, to Seller's Knowledge, the conditions set forth in Section 2.1(c) has been satisfied (the "**Seller Bring-Down Certificate**");

(iii) a Funding Documents Assignment, Assumption and Modification Agreement substantially in the form attached hereto as Exhibit B, including such exhibit-deliverables thereto, all in the final form as are required by PennVest, for each PennVest Project Loan (together, the "**PennVest Loan Assignment Documents**"), each duly executed by Seller (as Assignor thereunder);

(iv) the PennVest Loan Assignment Documents, each duly executed by PennVest (or other consent by PennVest to the assignment and assumption of all the PennVest Project Loans);

(v) a bill of sale and assignment and assumption agreement transferring the Assets to Buyer and providing the assumption of the Assumed Liabilities by Buyer, including the Assigned Contracts, in the form attached hereto as Exhibit C (the "**Bill of Sale and Assignment and Assumption Agreement**"), duly executed by Seller;

(vi) a special warranty deed for the Prospect Pump Station in the form attached hereto as Exhibit D (the "**Prospect Pump Station Deed**"), duly executed by Seller; and

(vii) a quitclaim deed in the form attached hereto as Exhibit E (the "**Quitclaim Deed**"), duly executed by Seller.

2.2 Conditions Precedent to Obligations of Seller. The obligation of Seller to consummate and close the Transaction is subject to the fulfillment, on or prior to the Closing, of each of the following conditions (any or all of which may be waived by Seller in whole or in part):

(a) The representations and warranties of Buyer contained in this Agreement shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality) or in all material respects (in the case of any representation or warranty not qualified by materiality) on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of the Closing Date (except those representations and warranties that address matters only as of a specified date or period, the accuracy of which shall be determined as of that specified date or for that period in all respects).

(b) Buyer shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement to be performed or complied with by it prior to or on the Closing; *provided* that, with respect to agreements, covenants and conditions that are qualified by materiality, Seller shall have performed such agreements, covenants and conditions, as so qualified, in all respects.

(c) No Action shall have been commenced against any Party that would prevent the Closing. No injunction or restraining order shall have been issued by any Third Party Governmental Body, and be in effect, which restrains or prohibits the Transaction contemplated hereby.

(d) Buyer shall have delivered by wire transfer of immediately available funds (i) amount(s) equal to the Seller Transaction Expenses, by wire transfer of immediately available funds, to each payee of the Seller Transaction Expenses as set forth on the Closing Statement; and (ii) an amount equal to the Closing Date Cash Payment, by wire transfer of immediately available funds, to Seller as set forth on the Closing Statement.

(e) At least 45 days prior to the Closing, Buyer shall have delivered to Seller an assumption agreement with respect to the Assigned DEP Consent Order, which shall be contingent and effective upon the Closing, in a form acceptable to Seller (“**Consent Order Assumption Agreement**”), duly executed by Seller, which may be delivered by Seller to the PADEP with or in connection with the Southwest Regional Office Notice.

(f) At least 30 days prior to the Closing, Seller shall have delivered to the PADEP the Southwest Regional Office Notice.

(g) EADS shall have executed and delivered a certificate and general release agreement, in form(s) acceptable to Seller, that all amounts payable by Seller to EADS under the EADS Contract or otherwise have been reimbursed or otherwise paid to EADS and all other liabilities and obligations have been fulfilled or waived and released, except for the amounts payable that relate to preliminary and design work for the Central Business District (which is an Assumed Liability under Section 1.2(d)).

(h) Buyer shall have delivered to Seller the following:

(i) a certificate, dated as of the Closing Date and duly executed by Buyer, that each of the conditions set forth in Section 2.2(a) and Section 2.2(b) have been satisfied, and, to Buyer's Knowledge, the conditions set forth in Section 2.2(c) has been satisfied (the "**Buyer Bring-Down Certificate**");

(ii) the PennVest Loan Assignment Documents, each duly executed by Buyer (as Assignee thereunder) (and the required opinions of counsel of Buyer to PennVest as are required by the PennVest Loan Assignment Documents);

(iii) the PennVest Loan Assignment Documents, each duly executed by PennVest (or other consent by PennVest to the assignment and assumption of all the PennVest Project Loans);

(iv) the Bill of Sale and Assignment and Assumption Agreement, duly executed by Buyer;

(v) the Prospect Pump Station Deed, duly executed by Seller; and

(vi) the Quitclaim Deed, duly executed by Seller.

2.3 Contingent Termination. This Agreement may be terminated at any time prior to the Closing:

(a) by the mutual written consent of Seller and Buyer; or

(b) by Buyer by written notice to the Seller if:

(i) Buyer is not then in material breach of any provision of this Agreement and there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement (taking into account all the provisions of this Agreement) made by Seller pursuant to this Agreement that would give rise to the failure of any of the conditions specified in Section 2.1 and such breach, inaccuracy or failure has not been cured by Seller within 90 days of the Seller's receipt of written notice of such breach from Buyer; or

(ii) any of the conditions set forth in Section 2.1 shall not have been, or if it becomes apparent that any of such conditions will not be, fulfilled by March 31, 2021 (the "**Outside Date**"), which date may be extended by the mutual consent of the Parties, unless such failure shall be due to the failure of Buyer to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing; or

(c) by Seller by written notice to Buyer if:

(i) Seller is not then in material breach of any provision of this Agreement and there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement (taking into account all the provisions of this Agreement) made by Buyer pursuant to this Agreement that would give rise to the failure of any of the conditions specified in Section 2.2 and such breach, inaccuracy or failure has not been cured by Buyer within 90 days of the Seller's receipt of written notice of such breach from Seller; or

(ii) any of the conditions set forth in Section 2.2 shall not have been, or if it becomes apparent that any of such conditions will not be, fulfilled by the Outside Date, which date may be extended by the mutual consent of the Parties, unless such failure shall be due to the failure of Seller to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing; or

(d) by Buyer or Seller in the event that (i) after taking into account Section 8.9 (Severability), there shall be any Law that makes consummation of the Transaction illegal or otherwise legally prohibited or (ii) any Governmental Body shall have issued an order restraining or enjoining the transactions contemplated by this Agreement, and such order shall have become final and non-appealable.

2.4 Effect of Termination. In the event of the termination of this Agreement in accordance with Section 2.3, this Agreement shall become void and there shall be no liability or obligation hereunder on the part of any Party except:

(a) the covenants and agreements set forth in Section 1.4(a) (relating to the Earnest Money) (the “**Post-Termination Provisions**”) shall survive such termination indefinitely;

(b) those definitions in the Agreement or Exhibit A and those provisions in Article VI and Article VIII applicable to the interpretation, limitation, enforcement or procedure of, for or related to the Post-Termination Provisions (the “**Ancillary Post-Termination Provisions**”) shall also survive such termination indefinitely; and

(c) that nothing in Section 2.3 or this Section 2.4 shall relieve any Party from liability for any willful breach of any provision hereof prior to such termination.

ARTICLE III REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants to Buyer as of the Effective Date as follows (except as set forth in a Schedule attached to this Agreement):

3.1 Organization. Seller is a duly organized and validly existing political subdivision of the Commonwealth of Pennsylvania under a Home Rule Charter pursuant to the Optional Third Class City Charter Law, at 53 P.S. 41101 et seq. (the “**City Charter Law**”) and under the Third Class City Code, at 11 Pa. C.S. 10101 et seq. (the “**City Code**”).

3.2 Power and Authority. Seller has (i) duly adopted the Authorizing Ordinance, which remains in full force and effect, (ii) duly authorized and approved the execution and delivery of this Agreement and (iii) duly authorized and approved the performance by Seller of its obligations contained in this Agreement. Seller has the power and authority to enter into this Agreement and to take all action and execute and deliver all other documents as are required hereunder to be taken, executed or delivered by it in accordance with the terms hereof.

3.3 Enforceability. This Agreement has been duly authorized, executed and delivered by Seller and constitutes a valid and legally binding obligation of 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.

3.4 No Brokers. Except as will be set forth on the Closing Statement, whose fees will be paid by Seller from the Closing Date Price, there is no investment banker, broker, finder or other intermediary that is not a law firm or accounting firm that has been retained by or is authorized to act on behalf of Seller who is entitled to any fee or commission from Seller in connection with the Transaction.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to Seller as of the Effective Date as follows (except as set forth in a Schedule attached to this Agreement):

4.1 Organization. Buyer is a body corporate and politic, duly organized and existing under the Pennsylvania Municipality Authorities Act.

4.2 Power and Authority. Buyer has (i) duly adopted ~~the~~ Authorizing ~~Resolution~~ Resolutions, which remains in full force and effect, (ii) duly authorized and approved the execution and delivery of this Agreement and (iii) duly authorized and approved the performance by Buyer of its obligations contained in this Agreement. Buyer has the power and authority to enter into this Agreement and to take all action and execute and deliver all other documents as are required hereunder to be taken, executed or delivered by it in accordance with the terms hereof.

4.3 Enforceability. This Agreement has been duly authorized, executed and delivered by Buyer and constitutes a valid and legally binding obligation of Buyer, enforceable against the Buyer, 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.

4.4 No Brokers. There is no investment banker, broker, finder or other intermediary that is not a law firm or accounting firm that has been retained by or is authorized to act on behalf of Buyer who is entitled to any fee or commission from Buyer in connection with the Transaction.

ARTICLE V COVENANTS

5.1 Closing Conditions; Notification of Certain Matters. From the Effective Date until the Closing, to the extent not prohibited by applicable Law, each Party shall use its commercially reasonable efforts to take such actions as are necessary to satisfy the closing conditions (i) prior to the Target Closing Date or (ii) if after the Target Closing Date, as soon as possible and prior to the Outside Date, and otherwise to satisfy the closing conditions expeditiously; *provided* that such obligation shall not limit the Parties' respective rights under Section 2.3 (*Contingent Termination*) and Section 2.4 (*Effects of Termination*). At any time from the Effective Date through and including the Closing Date, to the extent not prohibited by applicable Law, each Party shall give prompt written notice to the other Party of (a) the occurrence of any failure of such Party to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it under this

Agreement in any material respect, or (b) the occurrence of any event that is reasonably likely to make the satisfaction of any such covenant, condition or agreement impossible or unlikely, including the satisfaction of any closing condition hereunder prior to the Target Closing Date or, after the Target Closing Date, the satisfaction of any closing condition hereunder prior to the Outside Date.

5.2 Limitation of Rate, Surcharges and Fee Adjustments.

(a) On and after the Closing Date, Buyer agrees that it will not (i) increase the Monthly Rental (as defined below), (ii) decrease the minimum allowance of 6,000 gallons per month or increase the volumetric charges or (iii) impose multiple minimum Monthly Rental charges on multi-family units for Sanitary Sewer System service until a date that is at least three years after the Closing Date; *provided* that Buyer may increase the Monthly Rental and may impose multiple minimums Monthly Rental charges in such three-year period if and only to the extent required to achieve the minimum required amount under the GJWA Trust Indenture's Rate Covenant⁺ for the applicable period.

(b) Notwithstanding the limitation on Monthly Rental rate increases above, in such three-year period, Buyer may increase surcharges or fees only in the following situations and subject to the following limitations: (i) Buyer may impose or increase a surcharge on any customer of the System, after a 12-month notice, if that customer fails in such time period to either 1) obtain a Certificate of Compliance that evidences compliance with the pressure testing ordinance of the City or 2) produce an executed contract between said customer and a contractor for service lateral work which will result in a Certificate of Compliance no later than 2 months after the expiration of such 12-month period; and (ii) Buyer may charge or increase late payment fees, reconnection fees, tapping fees and non-sufficient funds fees. The fees described in subsection (ii) above may be charged and increased to recover solely the costs incurred by the Buyer as a result of the action or inaction of the customer

(c) For the avoidance of doubt, Buyer's obligations in this Section are subject to Section 8.21 (*Specific Performance*).

(d) For purposes of this Agreement, "**Monthly Rental**" means the sum of the Monthly Minimum charge and the charge per 1,000 gallons of water used as enacted in Bill No. 5 of 2020, Chapter 1048.03, that are in effect on the Closing Date.

(e) In addition to the above, each Party acknowledges and agrees that all rates and rules of Buyer with respect to the Sanitary Sewer System are subject to the review and determination by Action before the Pennsylvania Court of Common Pleas pursuant to 53 Pa.C.S. section 5607(d)(9). Buyer hereby agrees and stipulates, and agrees to stipulate before such court and all other relevant Governmental Bodies that, Seller is a proper party to bring any such Action and has standing to bring such Action. Additionally, Buyer shall not, and shall cause its Representatives not to, oppose the granting of such stipulation or relief. For the avoidance of doubt, this Section is subject to Section 8.2 (*Further Assurances*). If Seller prevails in altering the rates or rules in such Action, Buyer shall reimburse Seller's attorneys' and consultants' fees and costs, including any cost

~~⁺MWN NTD: It will be necessary, prior signing this APA, to review any changes to the GJWA Trust Indenture draft after the 5/6/20 draft received by MWN.~~

of service study, within 20 days of the later of such determination by the court or the written notice of such costs and fees, with reasonable evidence thereof, by Seller to Buyer.

5.3 Operation of Sanitary Sewer System. Except as otherwise expressly permitted by this Agreement, as required by applicable Law or with the prior written consent of Seller, Buyer shall (i) operate and manage the Sanitary Sewer System in accordance with Prudent Industry Practices, (ii) operate and manage the Sanitary Sewer System in accordance with applicable Laws and applicable authorizations and permits, and (iii) use commercially reasonable efforts to maintain and preserve intact the operations and assets of the Sanitary Sewer System and, for the benefit of Seller, preserve the rights, franchises, goodwill and relationships of Seller and its citizens, residents, customers, suppliers, regulators and others having relationships with Seller or using the Sanitary Sewer System. For the avoidance of doubt, Buyer's obligations in this Section are subject to Section 8.21 (Specific Performance).

5.4 Compliance with Consent Order. After the Closing, Buyer, and neither the Seller nor its Affiliates or their respective Representatives, shall be responsible for compliance with the Assigned DEP Consent Order and other requirements of the PADEP or applicable Law, and Buyer acknowledges and agrees that the currently existing City ordinances constitute sufficient action on the part of Seller for Buyer's obligations in this Section.

5.5 Transfer Process for Assigned Permits. The Parties acknowledge that, due to the COVID-19 outbreak and Laws and orders issued by Governmental Bodies related to the COVID-19 outbreak, the PADEP may not be operating consistent with its past practice or may be operating with delays or other limitations. Each Party will use its commercially reasonable efforts (i) to complete and deliver the applicable transfer documents for the Assigned Permits set forth on Schedule 1.2(a)(3) hereto such that the Assigned Permits are, to the extent reasonably practicable, transferred as of the Closing Date or (ii) if or to the extent that any such Assigned Permits were not transferred as of the Closing Date, to transfer such Assigned Permits as soon as reasonably practicable after the Closing Date (with an effective time of the Closing Date, if possible). In view of the foregoing, the transfer of the Assigned Permits shall not be a condition (or conditions) to Closing hereunder.

5.6 Act 537 Plan Amendment. Promptly after the Closing, each of Buyer and Seller will cooperate in Buyer's amendment of the applicable Act 537 Plan.

5.7 Accounts Payable.

(a) Prior to the Closing, Seller shall pay all Pre-Closing Accounts Payable for which Seller has received an invoice and is reasonably able to submit payment prior to the Closing. On and after the Closing, (i) subject to Section 5.7(d) below, Seller shall pay all Pre-Closing Accounts Payable, which it was not so able to pay prior to Closing, and (ii) Buyer shall pay all Post-Closing Accounts Payable when due.

(b) On and after the Closing, Buyer and Seller shall cooperate to cause Seller to receive any and all invoices for Pre-Closing Accounts Payable promptly, and Buyer to receive any and all invoices for Post-Closing Accounts Payable promptly, and otherwise to facilitate each of Buyer and Seller complying with its respective obligations under Section 5.7(a) directly above.

(c) Upon the request of Seller, Buyer shall provide to Seller (and its legal, accounting and financial Representatives) such financial and other information to allow Seller to verify Buyer's compliance with this Section 5.7.

(d) In addition to and not in limitation of Section 5.11 (*Paving for Transferred PennVest Projects*) and prior to Seller's payment obligations pursuant to Section 5.7(a) above, with respect to the PennVest Projects, including under any Assigned Contract, transferred to Buyer pursuant to this Agreement, Buyer shall use its commercial reasonable efforts, in good faith, to seek reimbursement from PennVest for all Pre-Closing Accounts Payable under such PennVest Projects, including under any such Assigned Contract. If and after PennVest determines not to reimburse all or any portion of such Pre-Closing Accounts Payable, Buyer shall notify Seller in writing, and Seller shall be obligated to make the payment(s) required under Section 5.7(a) above.

5.8 Information Rights related to Annual Installment Payments. Upon the request of Seller, Buyer shall provide to Seller (and its legal, accounting and financial Representatives) such financial and other information to allow Seller to determine if Buyer is in compliance with the calculation and payment of any of the Annual Installment Payments.

5.9 Litigation Support. To the extent permitted by applicable Law, in the event and for so long as any Party actively is contesting or defending against any Action in connection with (i) any transaction contemplated under this Agreement or the other Transaction Documents, or (ii) any fact, situation, circumstance, status, condition, activity, practice, plan, occurrence, event, incident, action, failure to act, or transaction on or prior to the Closing Date involving the Sanitary Sewer System, Assets or Assumed Liabilities, each other Party will cooperate with such Party and such Party's counsel in the contest or defense, make available their personnel, and provide such testimony and reasonable access to their books and records as shall be necessary in connection with the contest or defense, all at the sole cost and expense of the contesting or defending Party (unless the contesting or defending Party is an Indemnified Party under Article VI below, in which event Article VI shall apply).

5.10 Consents or Notices. Between the Effective Date and the Closing Date, with respect to the consummation of the Transaction, the Parties shall cooperate to identify and seek the consent of or provide notice to any applicable third party as required under the Assigned Contracts. Such notices or consents shall not be conditions to Closing hereunder (other than the PennVest deliverables identified in Section 2.1(f)(vi) and Section 2.1(g)(iv)). Without limiting the foregoing, to the extent such consent is not sought or obtained or such notice is not given prior to the Closing, such Assigned Contracts shall nonetheless be assigned by Seller and assumed, including all obligations and other liabilities as of the Closing Date or thereafter, by Buyer at the Closing pursuant to the Bill of Sale and Assignment and Assumption Agreement (or such other document as agreed between Seller and Buyer).

5.11 Paving for Transferred PennVest Projects.

(a) With respect to the PennVest Projects, including under any Assigned Contract, transferred to Buyer pursuant to this Agreement where the paving is provided for under such PennVest Project, including under any Assigned Contract, but has not yet been completed or paid, Buyer shall assume, *inter alia*, such obligations to pave, including payment for such paving (the "**Existing Paving Obligations**"). With respect to the PennVest Projects, including under any

Assigned Contract, transferred to Buyer pursuant to this Agreement where the paving has not been provided for under such PennVest Project prior to the Closing, including under any Assigned Contract, Buyer shall bid out such paving work for curb-to-curb paving. Once accepted, with the reasonable input of Seller on such acceptance, such paving obligations, including payment for such paving curb-to-curb, shall be referred to herein as the “**Bid-Out Paving Obligations**”.

(b) For any Buyer bid seeks for such Bid-Out Paving Obligations, it shall seek a bid for paving that is eligible under the PennVest Project Loans and, as an alternative bid, curb-to-curb and shall ensure that such alternative is not integral or a necessary part of the overall bid or contract sought. For each such Bid-Out Paving Obligations, the Seller, in its discretion, shall then have the option to elect not to pursue the curb-to-curb paving over and above the curb-to-midpoint, which is the Buyer’s obligation.

(c) With respect to both the Existing Paving Obligations and the Bid-Out Paving Obligations (together, the “**Paving Obligations**”), Buyer shall use its commercial reasonable efforts, in good faith, to seek reimbursement from PennVest for all such Paving Obligations. If and after PennVest determines not to reimburse all or any portion of such Paving Obligations (the “**Uncovered Paving Amounts**”), Buyer shall notify Seller in writing, and Seller shall be obligated to reimburse Buyer the Uncovered Paving Amounts.

(d) Prior or reasonably promptly after the Closing, Seller shall seek estimates from The EADS Group, Inc., or other engineer responsible for the PennVest Projects transferred to Buyer at Closing, of the likely Uncovered Paving Amounts (the “**Engineer Estimates**”). Thereafter, Seller shall maintain an amount not less than the Engineering Estimates in a Seller sewer revenue general fund bank account or similar bank account for possible reimbursement to Buyer under subsection (c) above, which, as Paving Obligations reduce over time (whether paid by Buyer, reimbursed to Buyer by PennVest, reimbursed to Buyer by Seller, bids are reduced or amended or Seller determines not to pursue optional Paving Obligations of Seller under any bid, or Buyer determines or does not pursue any optional Paving Obligations of Buyer), may be disbursed by Seller to Seller out of such account for any other use determined by Seller. Seller shall not be required to maintain such amount in such bank account beyond the date of the substantial completion of the paving work under the Paving Obligations.

(e) For any paving obligations other than the Paving Obligations, the Buyer shall be responsible for paving curb-to-midpoint as set forth in the City’s ordinances in effect from time to time.

5.12 Reconveyances for the MS4 System; Insurance.

(a) After the Closing, as the GJWA implements compliance with the Assigned DEP Consent Order or otherwise connects sanitary sewer laterals to different system pipes, it will convert, integrate and connect approximately 200,000 linear feet of the Sanitary Sewer System, which shall be free of all wastewater and is to become solely stormwater pipe, into the MS4 System, according to accepted industry standards, in compliance with applicable Law and fit for use as solely stormwater assets (the “**Stormwater Conversions**”). The Parties acknowledge that the Stormwater Conversions will be done on an area-by-area basis, section-by-section basis or street-by-street basis, as appropriate (each, an “**Individual Stormwater Conversion**”). Prior to each such Individual

Stormwater Conversion, the GJWA shall provide 48-hour prior written notice to the City of its intention to undertake an Individual Stormwater Conversion.

(b) At the time of each Individual Stormwater Conversion, the GJWA shall sell, transfer, assign and deliver to the City, and the City shall assume from the GJWA, all of the GJWA's right, title and interest in and to the assets, properties and rights comprising the Individual Stormwater Conversion, including all improvements and fixtures of any and every kind whatsoever forming a part such assets, properties and rights, and all rights of way, easements and covenants appurtenant to the foregoing, such as they exist (each, an "**Individual Stormwater Transfer**"). The City shall have the right to inspect each Individual Stormwater Conversion, and related supporting documents and plans, prior to each Individual Stormwater Transfer to the City. Each such Individual Stormwater Transfer shall be accomplished by a bill of sale for such personal property assets, properties and rights and a quitclaim deed for such real property assets, properties and rights, which documents shall also state that the City assumes only the liabilities arising from acts or omissions of the City after the consummation of such Individual Stormwater Transfer (and not, *e.g.*, for the Stormwater Conversions work conducted by the GJWA), which such other liabilities shall remain the responsibility of the GJWA. The Stormwater Conversions and all the Individual Stormwater Transfers shall be without charge or cost to, or any additional consideration whatsoever from, the City.

(c) The assets comprising each Individual Stormwater Transfer shall include utility holes (if any) accessing such pipes, related mainline taps, related viewport castings and related lateral pipes.

(d) The GJWA shall cause all contractors or subcontractors working directly or indirectly for the GJWA on any of the Stormwater Conversions (the "**Conversion Contractors**") to carry the following minimum insurances and submit to the City prior to work-begin certificates of insurance in accordance with the following requirements and subject to the approval and acceptance by the City. Each Conversion Contractor shall name the City as an "additional insured" on a primary, non-contributory basis on such policies and on such certificates.

(i) Compensation Insurance. Each Conversion Contractor shall take out and maintain, during the life of the Stormwater Conversions work, Workmen's Compensation Insurance for all employees employed on this project, and in case any work is sublet, each Conversion Contractor shall require each of its subcontractors similarly to provide Workmen's Compensation Insurance or all of such subcontractor's employees, unless such employees are covered by the same insurance protection afforded by the Conversion Contractor above such subcontractor. All such Workmen's Compensation Insurance policies shall have a waiver of subrogation in favor of the City.

(ii) Public Liability and Property Damage Insurance. Each Conversion Contractor shall take out and maintain during the life the Stormwater Conversions work such Public Liability and Property Damage Insurance as shall protect such Conversion Contractor, and any of its subcontractor performing work on the Stormwater Conversions, from claims for personal injury, including accidental death, as well as claims or property damage which may arise from the Stormwater Conversions work, whether such work be by such Conversion Contractor or by any of its subcontractors, or by anyone directly or indirectly employed by any of them, and the amounts of such insurance shall be as follows:

(A) Public Liability Insurance in an amount of not less than \$1,000,000 for injuries, including accidental death, to any one person and, subject to the same limit for each person, in an amount of not less than \$1,000,000 on account of one accident; and Property Damage Insurance in an amount not less than \$1,000,000 to any one person and subject to the same limit for each person, in amount of not less than \$1,000,000 on account of one accident. The policies shall include an endorsement for contractual liability.

(iii) *Insurance Covering Special Hazards.* Hazards relative to the use of boats or other means of water travel going to or other means of water travel going to or coming from the site, relative to the use of automobiles or trucks on the site or going to or coming from the site, to explosion, collapse, and underground utilities, and to blasting shall be covered in the same amounts by rider or riders to the Public Liability and/or Property Damage Insurance Policy or Policies herein elsewhere required to be furnished by the Conversion Contractor or by separate policies of insurance.

(iv) *Claims Made; Repair Shortfall.* For a period of one year after the completion of any Individual Stormwater Conversion, each Conversion Contractor shall maintain, subject to the approval and acceptance by the City, either (i) a performance bond or (ii) claims-made or continuation insurance policies, in either case covering the potential claims that otherwise would have been covered by such original insurance policies if claims had been made under such policies prior to the completion of the work. Additionally, if there is damage to the Stormwater Conversions or the MS4 System by the GJWA or the Conversion Contractors and the above insurance does not provide proceeds to the City sufficient to cover the repair, the GJWA shall either pay the costs of repair of such damage to the City or repair such accidental damage to the City's satisfaction.

5.13 Clean Fill Disposal Site Payment Obligations. If the Buyer receives any of the payments that are Clean Fill Disposal Site Payment Obligations identified in Section 1.2(b) and in Schedule 1.2(b)(1) hereto, Buyer shall remit such payments immediately, and in any event within five Business Days, and without offset, counterclaim or withholding to Seller. If and as requested by Seller, Buyer shall enforce the terms of the Assigned Contracts with respect to the Clean Fill Disposal Site, including to receive the Clean Fill Disposal Site Payment Obligations.

5.14 Annual Installment Payment Calculation.

(a) In addition to owning and operating the Johnstown Sanitary Sewer System, Buyer may, in the future, own and operate other sanitary sewer collection systems. In the event that such multiple systems are owned or operated, Buyer agrees to maintain separate accounts related to expenditures for each system, to the extent possible. Expenditures which are not specifically allocable to either the Johnstown Sanitary Sewer System or another owned or operated system must be divided in proportion to the equivalent dwelling units billed within each such system and then included in Administrative and Operating Expenses for the purposes of calculating each of the Annual Installment Payments. No Administrative and Operating Expenses of the Buyer related to overhead (that is, related to multiple systems) shall be allocated to the Johnstown Sanitary Sewer System Administrative and Operating Expenses, unless they are also allocated to any other sanitary sewer collection systems owned by Buyer in accordance with the immediately preceding sentence. No Administrative and Operating Expenses of the Buyer's water operations shall be allocable to its Johnstown Sanitary Sewer System operations except on a reasonable basis and in accordance with generally accepted accounting principles that are applicable to the Buyer.

(b) On an annual basis on each October 1, beginning on October 1, 2022, the Buyer shall provide the Director of Finance of the City with a certificate in form and substance as set forth as Exhibit F hereto.

(c) The Annual Installment Payment is defined in and shall be calculated, for each Reporting Year, according to Exhibit F and shall be subject to Section 8.18 (*Certificate Review Process*).

ARTICLE VI SURVIVAL OF REPRESENTATIONS AND WARRANTIES; INDEMNIFICATION

6.1 Survival. The representations and warranties of each of Seller and Buyer contained in this Agreement shall survive until a date that is six months following the Closing Date. The covenants, agreements and other obligations of each of Seller and Buyer contained in this Agreement shall survive the Closing for 20 years (subject to the next sentence), except for such covenants, agreements or other obligations herein that explicitly state that they survive for a shorter period and except for any covenants, agreements and other obligations herein related to any environmental liability, which shall survive indefinitely. Additionally, notwithstanding anything to the contrary herein, once the survival period or periods described above have ended, the applicable representation, warranty, covenant, agreement or obligation shall terminate and be of no further force or effect; *provided* that breaches thereof within such period shall survive until the latest date permitted by applicable Law or, if not so provided, indefinitely; *provided* additionally that all indemnification covenants, agreements, rights and obligations hereunder shall survive an additional 6 years for any breach of this Agreement that occurred within such survival period or periods and indemnification claims by a Buyer based on any such breach may be pursued until finally resolved. No Party shall permit its respective Affiliates or Representatives, and shall additionally cause its respective Affiliates and Representatives not to, make or bring any such Action with respect to any such breach of a representation, warranty, covenant, agreement or obligation that may not otherwise be made directly by such Party hereunder.

6.2 Indemnification by Seller. Subject to the terms and conditions of this Article VI, the Seller agrees to indemnify, defend and hold harmless, Buyer and its successors and Affiliates and their respective Representatives (the “**Buyer Indemnified Parties**”), from and against any and all Losses arising from or relating to: (a) any material misrepresentation as to, or any material inaccuracy in, any of the representations and warranties of Seller contained in this Agreement; (b) any material breach or material nonfulfillment of any of the covenants, agreements or other obligations of Seller contained in this Agreement; or (c) any Retained Liability or Excluded Asset.

6.3 Indemnification by Buyer. Subject to the terms and conditions of this Article VI, the Buyer agrees to indemnify, defend and hold harmless, Seller and its successors and Affiliates and their respective Representatives (the “**Seller Indemnified Parties**”), from and against any and all 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; (b) any material breach or material nonfulfillment of any of the covenants, agreements or other obligations of Buyer contained in this Agreement; (c) any Asset or Assumed Liability; or (d) for the avoidance of doubt, (i) any breach or nonfulfillment by Buyer of Section 5.4 (*Compliance with Consent Order*) or (ii) any failure in meeting the requirements or any other liability or obligation under the Assigned DEP Consent Order, whenever arising.

6.4 Indemnification Procedure.

(a) *Third-Party Claims.* If any Indemnified Party receives notice of the assertion or commencement of any Action made or brought by any Person who is not (i) a party to this Agreement, (ii) an Affiliate of a party to this Agreement or (iii) a Representative of the foregoing subclause (i) or (ii) (a “**Third-Party Claim**”) against such Indemnified Party with respect to which the Indemnifying Party may be obligated to provide indemnification under this Agreement, the Indemnified Party shall give the Indemnifying Party prompt written notice thereof. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations hereunder, 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 available, calculable or estimable by the Indemnified Party, of the Loss that has been or may reasonably 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 choice of legal counsel shall be reasonably acceptable to the indemnified Party), so long as (i) the indemnifying Party notifies the Indemnified Party, within 16 Business Days after the Indemnified Party has given written 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, (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 that, 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 6.4(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 notify the Indemnified Party in writing of its election to defend as provided above, the Indemnified Party may, subject to Section 6.4(b), pay, compromise, defend such Third-Party Claim and seek indemnification under Section 6.2 or Section 6.3, as applicable, for any and all Losses based upon, arising from or relating to such Third-Party Claim. Seller and Buyer shall reasonably and in good faith cooperate with each other in all reasonable respects in connection with the defense of any Third-Party Claim, including making available records relating to such Third-Party Claim and furnishing, without expense (other than reimbursement of actual out-of-pocket expenses) to the defending party, executive- or management-

level 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, conditioned or delayed), except as provided in this Section 6.4(b). If a firm offer is made to settle a 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 16 Business 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 6.4(a), it shall not agree to any settlement without the written consent of the Indemnifying Party (which consent shall not be unreasonably withheld, conditioned or delayed).

(c) *Direct Claims.* Any claim by an Indemnified Party with respect to any Loss that does not arise or result from a Third-Party Claim (a “**Direct Claim**”) shall be asserted by the Indemnified Party giving the Indemnifying Party prompt written notice thereof. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits material rights or material defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Direct Claim in reasonable detail and shall indicate the estimated amount, if reasonably practicable, of the Losses that have been or may be sustained by the Indemnified Party. The Indemnifying Party shall have 32 days after its receipt of such notice to respond in writing to such Direct Claim. During such 32-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 32-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 by submitting a written notice to the Indemnified Party of its specific disputed items, 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.

6.5 Limitations on Indemnification Obligations.

(a) Except in the case of fraud (for which all applicable legal and equitable remedies will be available to Buyer), Buyer and the Buyer Indemnified Parties shall only be entitled to assert claims under Section 6.2 up to the aggregate amount of 5% of the Closing Date Cash Payment (the “**Liability Cap**”), which shall represent the sole and exclusive remedy of Buyer and the other Buyer Indemnified Parties for any such claims under Section 6.2.

(b) Payments by an Indemnifying Party pursuant to Section 6.2 or Section 6.3 in respect of any Loss shall be limited to the amount of any liability or damage that remains after deducting therefrom any insurance proceeds, indemnity, contribution or other similar payment actually received from or committed to by a third party insurer or other third party prior to the payment due date hereunder for such Loss. The Indemnified Party shall use its commercially reasonable efforts to recover under insurance policies or indemnity, contribution or other similar agreements for any Loss in the time period prior to such payment due date hereunder for such Loss. The failure to achieve such recovery shall not, however, relieve the Indemnifying Party of its indemnification obligations hereunder.

(c) Each Indemnified Party shall take, and cause its Affiliates and Representatives to take, all commercially reasonable steps to mitigate any Loss for which indemnification may be sought under this Agreement.

(d) Seller shall not be liable to Buyer, including under this Article VI, for any Losses based upon or arising out of any facts, circumstances or events if such fact, circumstance or event was made available to Buyer prior to Closing or if Buyer or any of the contractors or subcontractors of Buyer had knowledge of such fact, circumstance or event, in each case prior to the Closing.

(e) Buyer has conducted, or has had the opportunity to conduct, real estate title searches with respect to the Sanitary Sewer System to its satisfaction, and Seller shall not be liable to Buyer, including under this Article VI, for any Losses based upon or arising out of any facts, circumstances or events related to the title, including lack thereof, imperfections in title, or liens or encumbrances of any kind, to the real estate included in the Sanitary Sewer System or the other Assets.

(f) Subject to Section 8.21 (*Specific Performance*) and any other provisions for 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, unless such claims are based on fraud, shall be pursuant to the indemnification provisions set forth in this Article VI. 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 VI or unless such rights, claims or causes of action allege fraud. Nothing in this Section 6.5(f) shall limit any Person's right to seek and obtain specific performance to which such Person shall be entitled pursuant to this Agreement.

ARTICLE VII RESTRICTIONS ON NON-GOVERNMENTAL SYSTEM TRANSFER

7.1 Notice. For a period of 20 years after the Closing Date (“**Restrictive Period**”), in the event of a potential Non-Governmental System Transfer, Buyer shall give written notice (each, a “**Non-Governmental System Transfer Notice**”) to Seller, with reference to this Article VII, of any potential Non-Governmental System Transfer from time to time under this Article VII, including the

identity and ultimate beneficial ownership of the potential transferee(s) and material terms of the transfer (a) within 10 days following the date on which Buyer first determined, resolved or adopted resolution(s) to seek indications of interest or requests for qualifications or proposals for a Non-Governmental System Transfer and, additionally, (b) within 10 days following the date on which Buyer first entered into any agreement or understanding, whether binding or non-binding, including a term sheet, memorandum of understanding or letter of intent, with respect to any planned or potential Non-Governmental System Transfer and, additionally, (c) within two Business Days after Buyer has executed and delivered to any other Person any purchase, sale, merger, consolidation, amalgamation, combination or any similar agreement for a Non-Governmental System Transfer and, additionally, (d) within three Business Days prior to the consummation or closing of any Non-Governmental System Transfer (a “**Non-Governmental System Transfer Closing**”). Buyer shall provide such other information to Seller with respect to any potential Non-Governmental System Transfer as requested by Seller, in Seller’s discretion, and Buyer shall additionally provide written notice to Seller if any potential Non-Governmental System Transfer about which Seller received a Non-Governmental System Transfer Notice has terminated prior to the Non-Governmental System Transfer Closing.

7.2 Non-Governmental System Transfer Liquidated Damages. Simultaneous with the Non-Governmental System Transfer Closing during the Restrictive Period, Buyer shall pay, or cause to be paid, an amount equal to the Non-Governmental System Transfer Liquidated Damages to Seller by wire transfer of immediately available funds to an account of Seller as such account information shall be requested by Buyer and provided by Seller prior to such Non-Governmental System Transfer Closing.

7.3 Termination. After the payment of the Non-Governmental System Transfer Liquidated Damages at the time of a Non-Governmental System Transfer Closing, the provisions of this Article VII shall not apply to any other Non-Governmental System Transfers thereafter, and this Article VII shall terminate in its entirety, and there shall be no liability or obligation hereunder on the part of any Party or Buyer, except such termination shall not relieve any Person from liability for any breach of any provision of this Article VII prior to such termination. Additionally, upon any Non-Governmental System Transfer Closing, Buyer may assign its obligations under this Agreement in accordance with the provisions of Section 8.14 (Successors and Assigns) and shall require any such transferee to become jointly and severally liable with Buyer for Buyer’s obligations under this Agreement and the other Transaction Documents.

7.4 Acknowledgement upon a Non-Governmental System Transfer Closing. Seller agrees to deliver an acknowledgement agreement simultaneous with the Non-Governmental System Transfer Closing, conditioned upon the payment of the Non-Governmental System Transfer Liquidated Damages with respect to the applicable Non-Governmental System Transfer, whereby Seller will agree and acknowledge to Buyer (and no other Person) that, to its Knowledge, the provisions of this Article VII have been complied with by all parties and that, if complied with by all parties other than Seller and if the Non-Governmental System Transfer Liquidated Damages are paid in full in accordance with this Article VII, Article VII shall terminate in accordance with Section 7.3. Other than such acknowledgement agreement, Seller shall not be required to execute or deliver any other agreements or acknowledgements in connection with the Non-Governmental System Transfer or the receipt of the Non-Governmental System Transfer Liquidated Damages.

7.5 Acknowledgement upon a Governmental System Transfer Closing. In the event of a Governmental System Transfer, from time to time, simultaneous with the consummation or closing of any Governmental System Transfer, from time to time (a “**Governmental System Transfer Closing**”), Buyer shall cause the Resulting Governmental Entity or the Receiving Governmental Entity with respect to such closing, to execute and deliver to Seller, as a condition to such closing, the acknowledgement and agreement attached hereto as Exhibit G (the “**Acknowledgement and Agreement regarding any Future Non-Governmental System Transfer**”). After any Governmental System Transfer Closing from time to time, the provisions of this Article VII shall apply again, anew and from the beginning, *mutatis mutandis*, with respect to the Resulting Governmental Entity or the Receiving Governmental Entity, as the case may be, in the place of Buyer.

ARTICLE VIII MISCELLANOUS PROVISIONS

8.1 Costs. Except as otherwise specifically provided in this Agreement, each Party shall be responsible for its own costs and expenses incurred in connection with its entrance into and performing and observing its agreements, obligations and covenants under this Agreement.

8.2 Further Assurances. The Parties shall do or cause to be done all such further acts and things as may be reasonably necessary or customarily or reasonably advisable to give full effect to this Agreement and the other Transaction Documents. Without limiting the foregoing, each Party will, at any time and from time to time, execute and deliver, or cause to be executed and delivered, such further instruments and take such further actions as may be reasonably requested by the other Parties in order to carry out the provisions of, or to cure any defect in the execution or delivery of, this Agreement or any other agreement and instrument required to be delivered pursuant to this Agreement, including the other Transaction Documents. Without limiting the foregoing, each Party will use its commercially reasonable efforts to do, or cause to be done, such further action (including the execution and delivery of such further instruments) as is reasonably necessary or customarily or reasonably advisable, if requested by the other Party, (i) to obtain any regulatory approvals, consents or waivers from relevant Governmental Bodies or any third party or (ii) if or to the extent that such were not properly identified, transferred or assumed at the Closing (including by oversight or mistake of any Party), to transfer any asset that the Parties agree should have been an “Asset” or to assume any liability that the parties agree should have been an “Assumed Liability,” and in each case no Party shall unreasonably withhold, condition or delay its agreement, and its further action related, thereto.

8.3 City Code; City Charter Law; City; Johnstown City Council. Notwithstanding anything to the contrary in this Agreement or any other Transaction Document, no provision of this Agreement or any other Transaction Document (i) shall impose any obligation or duty that is prohibited by applicable Law on the City or the Johnstown City Council, (ii) including Section 5.1, shall require the City or the Johnstown City Council to pass or refrain from passing any Law or ordinance (nor shall the failure of the City or the Johnstown City Council to pass or refrain from passing any Law or ordinance be the basis for a termination of this Agreement by Buyer under Section 2.3(b)(i)), (iii) shall limit the exercise by the City of police and regulatory powers and the regulation of the use of the public way or (iv) including Article VI, waive, remove or limit any limitations on the liability, of whatever kind, of or available to the City or the Johnstown City Council. Additionally, notwithstanding anything to the contrary in this Agreement or any other

Transaction Document, in accordance with Section 12402.1 of the City Code, including subsection (e) thereof, and other applicable Law, if applicable, Buyer agrees that any real property constituting a part of the Assets that is no longer used for the purpose of the conveyance shall be reverted to the City. To the extent permitted by applicable Law, it is the intention of the City not to adjust the currently existing Mandatory Tap Ordinance, Pressure Testing Ordinance or applicable Street Opening Ordinance such that and to the extent that any such future adjustment would result in a material adverse effect on Assets as purchased by Buyer hereunder; *provided* that this sentence shall survive only for 20 years after the Closing, at which point this sentence shall automatically terminate.

8.4 Buyer Attestation. This Agreement and the other Transaction Documents are subject to the City Charter Law, the City Code and the Laws of the Commonwealth of Pennsylvania regarding the appropriation of public funds. Buyer attests, after inquiry of its Representatives and subject to the penalties for perjury, that neither Buyer nor any Representative of Buyer, directly or indirectly, entered into or offered to enter into any combination, conspiracy, collusion or agreement to receive or pay any sum of money or other consideration for the execution of this Agreement or in any other Transaction Document other than that which is expressly set forth in this Agreement or such other Transaction Document.

8.5 No Other Representations. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, (A) THE ASSETS AND ASSUMED LIABILITIES SOLD, TRANSFERRED, ASSIGNED, ASSUMED AND/OR DELIVERED TO BUYER ARE DONE SO AS IS, WHERE IS, AND WITH ALL FAULTS, AND (B) SELLER MAKES NO EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY OF ANY KIND WHATSOEVER, INCLUDING ANY REPRESENTATION OR WARRANTY (I) AS TO THE PHYSICAL CONDITION OR VALUE OF ANY OF THE ASSETS, ASSUMED LIABILITIES AND/OR THE SYSTEM, (II) THE FUTURE PROFITABILITY OR FUTURE EARNINGS PERFORMANCE OF THE ASSETS, ASSUMED LIABILITIES AND/OR THE SYSTEM, (III) ANY FUTURE RATEMAKING THAT MAY BE PERMITTED FOR ANY OF THE ASSETS, ASSUMED LIABILITIES AND/OR THE SYSTEM, OR (IV) THAT IS AN IMPLIED WARRANTY OR REPRESENTATION OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND THE PARTIES AGREE THAT SELLER HEREBY DISCLAIMS AND RENOUNCES ANY AND ALL OF SUCH WARRANTIES AND REPRESENTATIONS DESCRIBED IN THIS SUBSECTION (B).

8.6 Notices. All notices, other communications and approvals required or permitted by this Agreement or in any other Transaction Document (unless otherwise specified in such other Transaction Document) shall be in writing, shall state specifically that they are being given pursuant to this Agreement (and such other Transaction Document, if applicable) and shall be addressed as follows:

in the case of Seller:

to:

The City of Johnstown
City Hall
401 Main Street,
Johnstown, PA 15901

with a copy to:

The City of Johnstown
City Hall
401 Main Street,
Johnstown, PA 15901

with a copy to:

The City of Johnstown
City Hall
401 Main Street,
Johnstown, PA 15901

Attention: Mayor of The City of
Johnstown

Attention: City of
Johnstown Manager

Attention: City of
Johnstown Solicitor

with a copy to:

McNees Wallace & Nurick LLC
570 Lausch Lane
Lancaster, PA 17603
Attn: David Unkovic, Esq. and
Benjamin A. Haverstick, Esq.
Email: dunkovic@mcneeslaw.com
and bhaverstick@mcneeslaw.com

with a copy to:

McNees Wallace &
Nurick LLC
100 Pine Street
Harrisburg, PA 17101
Attn: Kathy Pape, Esq.
Email:
kpape@mcneeslaw.com

in the case of Buyer:

to:

Greater Johnstown Water Authority
640 Franklin Street
Johnstown, PA 15907
Attention: Greater Johnstown Water
Authority Chairman

with a copy to:

William Gleason Barbin, Esq., as
Solicitor for the Greater Johnstown
Water Authority
206 Main Street
Johnstown, PA 15901

Any Party may send any notice, request, demand, claim or other communication hereunder to the intended recipient at the address set forth above using personal delivery, expedited courier, messenger service, fax, electronic mail, certified mail return receipt requested, but no such notice, request, demand, claim or other communication shall be deemed to have been duly given or delivered unless (a) if given by personal delivery or messenger service, upon actual delivery, (b) if given by expedited courier such as FedEx or UPS, upon actual delivery, (c) if by electronic mail, upon actual delivery following confirmation of delivery, and (d) if by certified mail, upon actual delivery. Any Party may change the address to which notices, requests, demands, claims and other communications hereunder are to be delivered by giving the other Parties notice in the manner herein set forth.

8.7 Force Majeure. With respect to the covenant obligations of either Party in this Agreement or in any other Transaction Document, the Party required primarily required perform each such obligation will bear the risk of any *force majeure* event, which such event shall not be an excuse or waiver of performance or compliance.

8.8 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.

8.9 Severability. If any term, provision, covenant or restriction contained in this Agreement or in any other Transaction Document, as the case may be, 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 or in any other Transaction Document, as the case may be, shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

8.10 Entire Agreement. This Agreement and the other agreements and instruments required to be delivered pursuant to this Agreement, including the other Transaction Documents, 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.²

8.11 Construction. As used in this Agreement, (a) the gender of any word includes the masculine, feminine and neuter, (b) the number of any word includes the singular and plural, (c) the word “including” is exemplary, and not exclusive or limiting, and means “including, without limitation”, (d) the word “or” is not exclusive, (e) the words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to this Agreement, (f) the word “will” will be construed to have the same meaning as the word “shall”, (g) the word “extent” in the phrase “to the extent” shall mean the degree to which a subject or other thing extends, and such phrase does not mean simply “if”, (h) the specific phrase “in a form acceptable to” a Party means “in a form acceptable to such Party, in such Party’s sole discretion”, (i) the specific phrase “in its discretion” of a Party means “in such Party’s sole and absolute discretion”, (j) “third party” means a Person who is not an Affiliate of any of the Parties and a Person who is not working at the direction of or otherwise on behalf of any Party or the Affiliate of any Party hereto, (k) all references to Articles and Sections refer to articles and sections of this Agreement, and all references to Schedules or Exhibits are to schedules or exhibits attached hereto, each of which is made a part of this Agreement for all purposes, and (l) all references to a statute or Law means such statute or Law as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. 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.

8.12 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.

8.13 No Third Party Beneficiaries. Except with respect to the Indemnified Parties and permitted successors and permitted assigns hereunder, this Agreement is not intended to and shall not be construed to provide to any Person other than the Parties any rights or remedies hereunder.

8.14 Successors and Assigns. This Agreement and the other Transaction Documents shall be binding upon and inure to the benefit of the Parties named herein and their respective successors and permitted assigns; *provided* that neither Party hereto shall assign or delegate this Agreement or the other Transaction Documents or any rights or obligations hereunder or thereunder without the prior written consent of the other Party, and any attempted assignment or delegation without such prior written consent shall be void and of no force or effect; *provided* further that (i) Buyer may

²NTD: ~~To be confirmed there is nothing additional constituting the ‘entire agreement’.~~

assign this Agreement and the other Transaction Documents in their entirety, to extent permitted by Law, to any successor to or assign of all or substantially all of the Assets and Assumed Liabilities, including if such transfer of all or substantially all of the Assets and Assumed Liabilities is accomplished directly or indirectly or by merger, consolidation, amalgamation or combination, subject in all cases to the limiting and other additional provisions of Article VII, and provided in all cases that Buyer shall remain jointly and severally liable with any such assignee or successor for Buyer's obligations under this Agreement and the other Transaction Documents (unless released by the written consent by Seller, in its discretion) and (ii) Seller may assign this Agreement and the other Transaction Documents in their entirety, to extent permitted by Law, to any successor of Seller, including by merger, consolidation, amalgamation or combination. In the event of any such permitted assignment by Buyer from time to time, the provisions of this Section shall apply again, anew and from the beginning, *mutatis mutandis*, with respect to any such permitted successor or permitted assign in the place of Buyer. In the event of any such permitted assignment by Seller from time to time, the provisions of this Section shall apply again, anew and from the beginning, *mutatis mutandis*, with respect to any such permitted successor or permitted assign in the place of Seller.

8.15 Non-Liability of Public Officials, Etc. Notwithstanding anything to the contrary in this Agreement or in any other Transaction Document, no Party and no Indemnified Party may charge any official, officer, employee, advisor or other Representative of the other Party personally with any liability or expenses or hold any official, officer, employee, advisor or other Representative of the other Party personally liable to such Party or Indemnified Party under any term or provision of this Agreement or because of the execution, attempted execution or any breach of this Agreement or any other Transaction Document.

8.16 No Partnership. Nothing contained in this Agreement or any other Transaction Document shall constitute or be deemed to create a partnership, joint venture, principal and agent relationship or employer and employee relationship between the Parties or among any of the Parties or any of their Representatives.

8.17 Disclosure Schedules; Updates. The information in the Schedules hereto are either exceptions to particular representations, warranties, covenants, agreement or obligations of a Party, as set forth in this Agreement or descriptions or lists referred to in this Agreement. No information set forth therein shall be deemed to be an admission by any Party to any third party of any matter whatsoever. Seller shall have the right to update or supplement the Schedules, in its discretion, prior to Closing by written notice, or the provision of a replacement Schedule, to Buyer, and such update or replacement shall be deemed to amend such Schedule for all purposes of this Agreement; *provided* that Seller may only make updates for information since the Effective Date and, if any such update results in a material adverse effect on the Assets and Assumed Liabilities to be transferred to Buyer as a whole, then Buyer's sole remedy is a termination of the Agreement, and upon such termination, this Agreement shall become void and there shall be no liability or obligation hereunder on the part of any Party. Notwithstanding the above, the Parties acknowledge and agree that (i) the PennVest information on the Schedules will require a pre-Closing update (including the PennVest Projects, the PennVest Loan Document and the Assumed PennVest Debt Amount), (ii) that such updates shall in no event be a material adverse effect (as referenced above) and the (iii) such updates, even though delivered prior to the Closing, will be effective and binding as a reasonable and good faith estimate as of the Closing (without the need for a post-Closing true-up). The headings contained in the Schedules are inserted for convenience only and shall not affect in any way the meaning or interpretation of the Schedules or the Agreement.

8.18 Certificate Review Process. If Seller objects to any Annual Installment Payment Certificate within 20 Business Days of its delivery, Buyer and Seller shall negotiate in good faith to resolve any disputes within such period. If such disputes are not resolved for any reason in such 20-Business Day period, Seller shall, within ten Business Days after such negotiation period, deliver a written statement to Buyer setting forth Seller's remaining objections or information requests related to any item, amount or calculation (the "**Statement of Review**"). If Seller delivers the Statement of Review within such ten Business Day period, then any items, amounts or calculations remaining in dispute or subject to information request shall be submitted for resolution to a certified public accountant who Buyer and Seller shall appoint with five Business Days thereafter by mutual agreement (subject the resolution of any deadlock pursuant to Section 8.19 below) (the "**Independent Accountant**"), who, acting as an expert and not an arbitrator, shall resolve the disputed items, amounts and calculations and information gaps and shall make any adjustments to the items, amounts and calculations reflected on the Annual Installment Payment Certificate, if any and as applicable. Upon the request the Independent Accountant, Buyer shall provide to the Independent Accountant, within such time period to allow the Independent Accountant to comply with the provisions of this Section, such financial and other information to allow the Independent Accountant make the adjustments and determinations described in this Section and determine the applicable Annual Installment Payment. The parties hereto agree that all adjustments shall be made without regard to materiality. The Independent Accountant shall review, take into account and adjust appropriately the entries on the Annual Installment Payment Certificate and determine the Annual Installment Payment thereon. The Independent Accountant shall make a determination as soon as practicable within 15 Business Days (or such other time as the parties hereto shall agree in writing) after his, her or its engagement, and his, her or its resolution of the amounts or calculations on the Annual Installment Payment Certificate and determination of the Annual Installment Payment shall be conclusive and binding upon Seller and Buyer. The fees and expenses of the Independent Accountant shall be paid 80% by Buyer and 20% by Seller if the Annual Installment Payment is greater than initially proposed by Seller in the initial Annual Installment Payment Certificate for that year, and shall be paid 80% by Seller and 20% by Buyer if the Annual Installment Payment is equal to or less than that initially proposed by Seller in the initial Annual Installment Payment Certificate for that year.

8.19 Independent Accountant. If Buyer and Seller cannot mutually agree, for any of the yearly Annual Installment Payment Certificates, on the Independent Accountant in the five-Business Day period provided therefor in Section 8.18, Buyer shall instruct its initially preferred certified public accountant and Seller shall instruct its initially preferred certified public accountant, respectively, to mutually agree with the other party's preferred accountant, using good faith and his, her or its best efforts, on a third independent alternative certified public accountant within three Business Days after such five-Business Day period, which such chosen third independent alternative certified public accountant shall be the Independent Accountant for such year. If either of Buyer or Seller fails to so instruct its preferred accountant to come to such agreement using good faith and his, her or its best efforts on the independent alternative certified public accountant within such period with the other's party's preferred accountant, then the party not so failing shall choose the independent alternative certified public accountant (which may not be its own accountant or its initially preferred accountant, unless agreed by the other party). To allow the parties to confirm compliance with this Section, such complete written instruction from Buyer or Seller to its preferred accountant to follow and comply with the provisions of this Section in the selection of the third independent alternative certified public accountant shall be made available to the other party within two Business Days upon request.

8.20 Governing Law; Jurisdiction. This Agreement and any disputes arising in connection herewith shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania, without giving effect to any conflict or choice of law rule or principle that would result in the imposition of the laws of a jurisdiction other than the Commonwealth of Pennsylvania. The Parties hereto irrevocably agree and consent to the jurisdiction of the Court of Common Pleas of Cambria County, Pennsylvania, for the adjudication of any matters arising under or in connection with this Agreement and any other Transaction Document. Any Action initiated in court shall be filed and litigated (including all discovery proceedings) exclusively in the Court of Common Pleas of Cambria 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.

8.21 Specific Performance. The Parties agree that irreparable damage would occur if any provision of this Agreement or the other Transaction Documents were not performed in accordance with the terms hereof and thereof and that the Parties shall be entitled to seek specific performance of the terms hereof, in addition to any other remedy, subject to the limitations in Section 6.5, to which they are entitled at law or in equity. Additionally, each Party shall not, and shall cause its Representatives not to, oppose the granting of such specific performance relief and each Party shall not, and shall cause its Representatives not to, require the posting of a bond to seek or receive such specific performance relief.

8.22 Counterparts; Execution. This Agreement may be executed in any number of counterparts which, taken together, shall constitute one and the same agreement. A signature to this Agreement delivered by facsimile or email of a PDF document shall be deemed an original signature hereto and such delivery shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[remainder of page left blank; signature page(s) follow]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

THE CITY OF JOHNSTOWN

By: _____

(Seal)

Frank J. Janakovic, Mayor, City of Johnstown

~~[Name], Manager~~

ATTEST:

~~[Name], [Title]~~

(Seal)

Nancy J. Cushing, City Clerk, City of Johnstown

Approved as to legal form: _____ (Seal)

~~[Name]~~ Elizabeth A. Benjamin, Esq., Solicitor, City of Johnstown

**GREATER JOHNSTOWN WATER
AUTHORITY**

By: _____

(Seal)

Don C. Hall, II, Chairman, Greater Johnstown
Water Authority

~~[Name], [Title]~~

ATTEST:

~~[Name], [Title]~~ (Seal)

Anthony Caputo, Assistant Secretary, Greater Johnstown Water Authority

Approved as to legal form: _____ (Seal)

~~This is Confidential to The City of Johnstown~~

~~{Name}~~ William G. Barbin, Esq., Solicitor, Greater Johnstown Water Authority

[Signature Page to Asset Purchase Agreement]

Exhibit A

Definitions

Term	Defined in
“Accounts Payable”	Section 1.2
“Accounts Receivable”	Section 1.2
“Accounts Receivable Payment”	Section 1.4
“Acknowledgement and Agreement regarding any Future Non-Governmental System Transfer”	Section 7.5
“Acquisition Bonds”	Exhibit F
“Administrative and Operating Expenses”	Exhibit F
“Agreement”	Preamble
“Amounts Available to Pay Debt Service”	Exhibit F
“Ancillary Post-Termination Provisions”	Section 2.4
“Assets”	Section 1.2
“Assigned Contracts”	Section 1.2
“Assigned DEP Consent Order”	Section 1.2
“Assigned Permits”	Section 1.2
“Assumed Liabilities”	Section 1.2
“Assumed PennVest Debt Amount”	Section 1.2
“Bid-Out Paving Obligations”	Section 5.11
“Bill of Sale and Assignment and Assumption Agreement”	Section 2.1
“Buyer Bring-Down Certificate”	Section 2.2
“Buyer Indemnified Parties”	Section 6.2
“Buyer”	Preamble
“City Charter Law”	Section 3.1
“City Code”	Section 3.1
“Clean Fill Disposal Site”	Section 1.2
“Clean Fill Disposal Site Maintenance Change Order”	Section 1.2
“Clean Fill Disposal Site Payment Obligations”	Section 1.2
“Closing”	Section 1.3
“Closing Date”	Section 1.3
“Closing Date Cash Payment”	Section 1.5
“Closing Date Price”	Section 1.4
“Closing Price”	Section 1.4
“Closing Statement”	Section 1.5
“Consent Order Assumption Agreement”	Section 2.2
“Contractor Bonds and Insurance Obligations”	Section 1.2
“Conversion Contractors”	Section 5.12
“Direct Claim”	Section 6.4
“Dornick Plant”	Background
“EADS”	Section 1.2
“EADS Contract”	Section 1.2
“Earnest Money”	Section 1.4
“Effective Date”	Preamble
“Engineer Estimates”	Section 5.11

Term	Defined in
“Existing Paving Obligations”	Section 5.11
“Governmental System Transfer Closing”	Section 7.5
“Independent Accountant”	Section 8.18
“Individual Stormwater Conversion”	Section 5.12
“Individual Stormwater Transfer”	Section 5.12
“JRA”	Background
“JRA Interceptor System”	Background
“Liability Cap”	Section 6.5
“Monthly Rental”	Section 5.2
“MS4 System”	Background
“Non-Governmental System Transfer Closing”	Section 7.1
“Outside Date”	Section 2.3
“Parties”	Preamble
“Paving Obligations”	Section 5.11
“PennVest Loan Documents”	Section 1.2
“PennVest Projects”	Section 1.2
“Post-Closing Accounts Payable”	Section 1.2
“Post-Closing Accounts Receivable”	Section 1.2
“Post-Termination Provisions”	Section 2.4
“Pre-Closing Accounts Payable”	Section 1.2
“Pre-Closing Accounts Receivable”	Section 1.2
“Prospect Pump Station Deed”	Section 2.1
“Purchase Price”	Section 1.4
“Quitclaim Deed”	Section 2.1
“Restrictive Period”	Section 7.1
“Retained Liabilities”	Section 1.2
“Sanitary Sewer Collection Assets”	Background
“Sanitary Sewer System”	Section 1.2
“Seller”	Preamble
“Seller Bring-Down Certificate”	Section 2.1
“Seller Indemnified Parties”	Section 6.3
“Service Area”	Background
“Southwest Regional Office Notice”	Section 2.1
“Statement of Review”	Section 8.18
“Stormwater Conversions”	Section 5.12
“Target Closing Date”	Section 1.3
“Third-Party Claim”	Section 6.4
“Total Debt Service on Acquisition Bonds and PennVest Loans related to the Johnstown Sanitary Sewer System”	Exhibit F
“Total Receipts and Revenues related to the Johnstown Sanitary Sewer System”	Exhibit F
“Transaction”	Section 1.3
“Uncovered Paving Amounts”	Section 5.11
“Vac Truck”	Section 1.2

“2004 Dornick Plant and Interceptor Sale Agreements” means (i) a Memorandum of Understanding, dated July 17, 2003, (ii) an Agreement for the Sale of Sewer Plant, dated September 13, 2004, (iii) a General Bill of Sale, Franchise and Instrument of Conveyance, (iv) an Agreement for the Provision of Personnel, dated September 13, 2004, (v) an Agreement for Finance Department Services, dated September 29, 2004, (vi) an Acknowledgement Concerning Agreement for Sale of Sewer Plan, dated October 20, 2004 and (vii) related agreements.

“Action” means any open, outstanding or unresolved action, claim, suit, audit, arbitration, proceeding, complaint or investigation by or before any Governmental Body.

“Adjusted for Inflation” means adjusted by the percentage increase, if any, or decrease, if any, in the Index during the applicable adjustment period.

“Affiliate” means, when used to indicate a relationship with a specified Person, a Person that, directly or indirectly, through one or more intermediaries, (i) has a 10% or more voting or economic interest in such specified Person or (ii) controls, is controlled by, or is under common control with such specified Person. For purposes of this definition, (a) “control” shall mean the power, directly or indirectly, to direct or cause the direction of the management or policies of another Person, whether through the ownership of voting securities, by contract, by trust or otherwise, (b) the terms “controlled by” and “under common control with” shall have correlative meanings and (c) 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.

“Annual Installment Payment” is defined in and shall be calculated, for each Reporting Year, according to Exhibit F and shall be subject to Section 8.18 (*Certificate Review Process*).

“Authority” means the Buyer.

“Authorizing Ordinance” means City Ordinance No. [NUMBER] adopted by 5292 resulting from the presentation of Bill No. 12 of 2020, introduced to the Johnstown City Council on [DATE] June 10, 2020 and adopted finally on June 23, 2020.

~~**“Authorizing Resolution”** means that certain resolution [IDENTIFIER] adopted by the GJWA Board on [DATE].~~

“Authorizing Resolutions” means resolutions adopted by the GJWA Board that duly authorize the GJWA to execute and deliver, and carry out the obligations of the GJWA under, this Agreement, by signature of Don C. Hall, II, as Chairman of the GJWA and the other authorities of the GJWA on the signature page hereto.

“Benefit Plan” means an employee benefit plan or any other retirement, bonus, deferred compensation, severance or sick leave employee plan.

“Business Day” means each Monday, Tuesday, Wednesday, Thursday and Friday that is not a day on which banking institutions in Johnstown, Pennsylvania are authorized or obligated by Law to close.

“City” means the Seller.

“Dollars” or “\$” means the lawful currency of the United States of America.

“GJWA” means the Buyer.

“GJWA Board” means the board of Buyer.

“GJWA Trust Indenture” means the Trust Indenture, ~~dated [_____], 2020,~~ between the GJWA and U.S. Bank National Association, a national banking association, as trustee.

“GJWA Trust Indenture’s Rate Covenant” means the covenant in the first paragraph of section 501(a) (*Rate Covenant*) in the GJWA Trust Indenture.

“Governmental Body” means any nation, state, commonwealth, county, municipality, district or other body having legal authority of any nature, including any government, division, subdivision, department, agency, bureau, commission, instrumentality, organization, regulatory or taxing body, court, arbitrator or other tribunal having legal authority, including the U.S. Environmental Protection Agency, the Pennsylvania Department of Environmental Protection, and the Pennsylvania Utility Commission.

“Governmental Asset Transfer” has the meaning set forth in the definition of “Non-Governmental Asset Transfer”.

“Governmental Change in Control” has the meaning set forth in the definition of “Non-Governmental Change in Control”.

“Governmental System Transfer” means a Governmental Change in Control of Buyer (or a Governmental Change in Control of any Resulting Governmental Entity) or a Governmental Asset Transfer.

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

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

“Index” means the “Consumer Price Index –for all Urban Consumers (CPI-U), Northeast Region” – (not seasonally adjusted) as published by the U.S. Department of Labor, Bureau of Labor Statistics (aka, the “CPI-U Index”).

“Johnstown City Council” means the City Council of Seller.

“Johnstown Sanitary Sewer System” means the Sanitary Sewer System.

“Knowledge” means, (i) with respect to Seller, the actual knowledge of the City Manager, the City Finance Director or the City Solicitor and (ii) with respect to Buyer, the actual knowledge of the GJWA Chairman, the GJWA Resident Manager or the GJWA Solicitor.

“**Law**” means any applicable statute, law, ordinance, rule, regulation, judgment, writ, decree, requirement, determination or order of any Governmental Body or common law.

“**Loss**” means any and all losses, liabilities, obligations, damages, penalties, interest, Taxes, judgments, and all other reasonable out-of-pocket costs and expenses sustained or incurred in investigating, preparing or defending or otherwise incident to any such underlying Action; *provided*, however, that “Losses” claimed by Buyer against Seller shall not include punitive, incidental, consequential, special or indirect damages, including loss of future revenue or income, loss of business reputation or opportunity, or diminution of value or any damages based on any type of earnings multiple, except in the case of fraud or to the extent actually awarded to a Governmental Body or other third party in respect of a Third-Party Claim.

“**Non-Governmental Asset Transfer**” with respect to group, collection or set of the Assets transferred pursuant hereto, whether accomplished through a single transaction or a series of related or unrelated transactions, in the same or separate years or other periods, and whether accomplished directly or indirectly, to sell, convey, assign, lease, sublease, transfer or otherwise dispose of all of or at least 55%, by reasonably determined fair market value, of such group, collection or set of Assets; *provided*, however, that notwithstanding anything to the contrary set forth in this definition (and the following shall each be defined as a “**Governmental Asset Transfer**”), (A) any sale and assumption of all of or at least 55%, by reasonably determined fair market value, of the Assets and Assumed Liabilities, by Buyer and any other governmental authority, city, state, commonwealth, county, municipality or governmental division or subdivision (a “**Receiving Governmental Entity**”) shall not constitute a “Non-Governmental Asset Transfer” and (B) any sale and assumption of all of or at least 55%, by reasonably determined fair market value, of the Assets and Assumed Liabilities, by any Receiving Governmental Entity and any other governmental authority, city, state, commonwealth, county, municipality or governmental division or subdivision (also, a “**Receiving Governmental Entity**”), shall also not constitute a “Non-Governmental Asset Transfer”.

“**Non-Governmental Change in Control**”, with respect to any Person, whether accomplished through a single transaction or a series of related or unrelated transactions, in the same or separate years or other periods, and whether accomplished directly or indirectly, either (i) a change in ownership so that fifty percent (50%) or more of the direct or indirect voting or economic interests in such Person is transferred to a Person or group of Persons acting in concert, (ii) the power directly or indirectly to direct or cause the direction of management and policy of such Person, whether through ownership of voting securities, by contract, management agreement, or common directors, officers or trustees or otherwise, is transferred to a Person or group of Persons acting in concert or (iii) the merger, consolidation, amalgamation or combination of such Person to the extent that, as a result of such merger, consolidation, amalgamation or combination, the circumstances described in either clause (i) or (ii) above are satisfied; *provided*, however, that notwithstanding anything to the contrary set forth in this definition (and the following shall each be defined as a “**Governmental Change in Control**”), (A) any of the foregoing described transactions involving only Buyer and any other governmental authority, city, state, commonwealth, county, municipality or governmental division or subdivision, that results in any other merged, consolidated, amalgamed or combined governmental authority, city, state, commonwealth, county, municipality or governmental division or subdivision (the “**Resulting Governmental Entity**”) shall not constitute a “Non-Governmental Change in Control” and (B) any of the foregoing described transactions involving only a Resulting Governmental Entity and any other governmental authority, city, state, commonwealth, county, municipality or governmental division or subdivision, that results in any other merged, consolidated,

amalgamed or combined governmental authority, city, state, commonwealth, county, municipality or governmental division or subdivision shall also not constitute a “Non-Governmental Change in Control”.

“**Non-Governmental System Transfer**” means a Non-Governmental Change in Control of Buyer (or a Non-Governmental Change in Control of any Resulting Governmental Entity) or a Non-Governmental Asset Transfer.

“**Non-Governmental System Transfer Liquidated Damages**” means (i) if to be paid to Seller in 2021, \$14,000,000 or (ii) if to be paid in any calendar year after 2021, \$14,000,000 Adjusted for Inflation from January 1, 2021 to the latest period covered by the most recent Index published as of the date of payment to Seller (with such entire period being the applicable adjustment period for purposes of the definition of “Adjusted for Inflation”).

“**PADEP**” means Pennsylvania Department of Environmental Protection, or successor thereto.

“**PennVest**” means the Pennsylvania Infrastructure Investment Authority, a state related entity of the Commonwealth of Pennsylvania (aka PENNVEST).

“**PennVest Project Loan**” means the loan(s) under each set of PennVest Loan Documents as they relate to the applicable PennVest Project.

“**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 Governmental Body.

“**Prospect Pump Station**” means that certain pump station as owned by Buyer, near the corner of Prosser Street and Morely Street, in The City of Johnstown, County of Cambria, Commonwealth of Pennsylvania, being known as Cambria County Tax Parcel Number 82-002. - 100.001.

“**Prudent Industry Practices**” means: those methods, techniques, standards and practices which, at the time they are employed and in light of the circumstances known or believed to exist at the time, are generally accepted as showing skill and good judgment in the wastewater collection industry as practiced in the Eastern United States of America for facilities of a similar nature and in a similar location as the Sanitary Sewer System.

“**Real Property**” means the improvements, fixtures, rights of way, easements and covenants of the Sanitary Sewer System, including any Highway Occupancy Permits that are Assets.

“**Reporting Year**” means each calendar year for 20 years beginning with the calendar year 2021 with respect to which an Annual Installment Payment is to be calculated and is due from Buyer to Seller hereunder.

“**Receipts and Revenues**” has the meaning as set forth in the GJWA Trust Indenture.

“Receiving Governmental Entity” has the meaning set forth in the definition of “Non-Governmental Asset Transfer”.

“Representative” means, with respect to any Person, any director, officer, employee, official, lender mortgagee, financier, provider of any financial instrument (or any agent or trustee acting on their behalf), partner, member, owner, agent, lawyer, accountant, auditor, professional advisor, consultant, engineer, contractor, subcontractor, 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.”

“Resulting Governmental Entity” has the meaning set forth in the definition of “Non-Governmental Change in Control”.

“Seller Transaction Expenses” means the fees, expenses or commissions of or to any lawyers to the Seller and payable by the Seller in connection with and related to the Transaction.

“Tax” 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.

“Third Party Governmental Body” means any Governmental Body that is not one of the Parties or a direct or indirect Governmental Body of one of the Parties.

“Transaction Documents” means this Agreement, the Seller Bring-Down Certificate, the Buyer Bring-Down Certificate, the Bill of Sale and Assignment and Assumption Agreement, the Prospect Pump Station Deed, and the Quitclaim Deed.

* * *

Exhibit B

FORM OF

**FUNDING DOCUMENTS ASSIGNMENT, ASSUMPTION AND MODIFICATION
AGREEMENT – LOAN # _____**

THIS FUNDING DOCUMENTS ASSIGNMENT, ASSUMPTION AND MODIFICATION AGREEMENT (the “**Agreement**”), made as of the _____, 20__ between and among (original FR – all Caps and bolded) _____, a [municipal authority/municipality] organized and existing under the laws of the Commonwealth of Pennsylvania **OR** a Pennsylvania limited partnership] (the “**Assignor**”), (new FR – all Caps and bolded) _____, a [municipal authority/municipality] organized and existing under the laws of the Commonwealth of Pennsylvania **OR** a Pennsylvania limited partnership] (the “**Assignee**”), and the **PENNSYLVANIA INFRASTRUCTURE INVESTMENT AUTHORITY** a state related entity of the Commonwealth of Pennsylvania (the “**Lender**”).

RECITALS

WHEREAS, Lender, a body corporate and politic, public instrumentality and state related entity of the Commonwealth of Pennsylvania (the “**Lender**”), has heretofore made a \$ (original closed amount) loan (the “**Loan**”) to the Assignor pursuant to a [Loan/Funding Agreement, Promissory Note/Bond / Debt Obligation] (the “**Note**”), and other instruments, agreements and documents executed and delivered in connection therewith, which documents are more particularly described on Exhibit A attached hereto and made a part hereof (collectively, the “**Funding Documents**”);

WHEREAS, the Lender made the Loan to the Assignor to fund a portion of the costs associated with construction related improvements to a certain [water/sewer/stormwater] system located in and around (city) _____, (county) _____ County, Pennsylvania (collectively, the “**System**”);

WHEREAS, concurrently with the execution and delivery of this Agreement, the Assignee is acquiring the System from the Assignor;

WHEREAS, the Assignee desires to acquire the Assignor's right, title and interest in and to, and to assume all of the Assignor's obligations under, the Funding Documents and the Loan, and the Assignor is willing to assign and transfer such right, title and interest, on the terms and subject to the terms and conditions hereof. Assignor and Assignee agree to transfer Assignor's interests in the Project, including all assets, accounts, real property interests, all licenses and permits required to operate the Project, and all liabilities related to the Project to Assignee;

WHEREAS, on (date of the Consent Letter), the Lender provided a written consent to the assignment and assumption of the Loan by the Assignee, a copy of the consent is set forth in Exhibit B; and

WHEREAS, pursuant to the consent the Lender and Assignor have agreed to the assignment and assumption of the Funding Documents and the Loan, to the release of the Assignor, and to certain modifications of the Loan as assigned to the Assignee on the terms and conditions hereinafter set forth.

WITNESSETH

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Assignor and the Assignee, intending to be legally bound, agree as follows:

SECTION 1: ASSIGNMENT AND ASSUMPTION OF FUNDING DOCUMENTS

Section 1.1. The recitals appearing above under the caption bearing that name constitute a material part of this Agreement and are expressly incorporated herein.

Section 1.2. The Assignor hereby assigns to the Assignee, and the Assignee hereby acquires from the Assignor, all of the Assignor's right, title and interest in, to and under, the Funding Documents and the Loan and, subject to the provisions of Section 1.3, Assignee assumes, and agrees to be bound by and to perform, each and every obligation of Assignor under the Funding Documents from and after the date of this Agreement.

Section 1.3. Notwithstanding anything herein or in the Funding Documents to the contrary, Assignee is bound by all stated terms and conditions of the Funding Documents including the

collateral requirements unless modified herein or through the Consent set forth in **Exhibit B** incorporated herein by reference or restated to the contrary in the **Allonge to Note/Bond/Debt Obligation** executed this date by Assignee provided that the foregoing shall not: (1) constitute a waiver of any obligation evidenced by the Note not otherwise modified thereby ; (2) limit the rights of the holder of the Note to name the Assignee as a party defendant in any action or suit for judicial foreclosure or rights to confess judgment as more fully described in the **Allonge to Note/Bond/Debt Obligation** or any action or proceeding hereunder so long as no judgment in the nature of a deficiency judgment shall be asked for or taken against the Assignee for such deficiency present as of this date; (3) release or impair the Note, The **Allonge to Note/Bond/Debt Obligation**, the lien on the System revenues, or any other collateral; (4) prevent or in any way hinder Lender from exercising, or constitute a defense, an affirmative defense, a counterclaim, or other basis for relief in respect of the exercise of, any other remedy against any instrument securing the Note; (5) prevent or in any way hinder Lender from exercising, or constitute a defense, an affirmative defense, a counterclaim, or other basis for relief in respect of the exercise of, its remedies in respect of any deposits, insurance proceeds, condemnation awards or other monies or other collateral or letters of credit securing the Note; (6) or relieve Assignee of any of its obligations under any indemnity delivered by Assignee to Lender.

Section 1.4. Lender hereby consents to the assignment and assumption of the Loan by the Assignee as set forth in this Agreement and hereby releases the Assignor from all liability arising under or in connection with the Funding Documents and the Loan from and after the date hereof.

SECTION 2: SETTLEMENT

Section 2.1. The Settlement of the assignment, assumption and related transactions under this Agreement (the “**Settlement**”) shall occur simultaneously with the execution and delivery of this Agreement.

Section 2.2. Concurrently with the Settlement, (i) the Assignor and the Assignee shall execute and deliver to the Lender the following; a list of liens set forth in **Exhibit C** identifying any liens in priority superior to the lien required herein by the Lender, the **Allonge to Note/Bond/Debt Obligation** as set forth in **Exhibit D** executed by the Assignee, the Waiver for Confession of Judgment as set forth in **Exhibit E** executed by the Assignee, the Secretary Certificate as set forth in **Exhibit F** executed by the Secretary of the Assignee, the Opinion of Counsel as set forth in **Exhibit G** submitted by counsel of Assignee, and any other documents or certifications requested by the Lender to secure

the Loan, (ii) the Assignor shall deliver to the Assignee, to the extent available, the original Funding Documents, as modified through the date hereof or, if the originals are not available, copies thereof, (iii) the Assignor shall deliver to the Assignee or the Lender such other agreements and documents that are customary for a transaction of the type contemplated hereby and as may be reasonably requested by the Assignee, including the appropriate UCC filings; provided, that all filing and recording fees, as applicable, to file or record any such assignments shall be the responsibility of the Assignee, (iv) after receipt of the forgoing the Lender shall deliver to the Assignor a Release as set forth in **Exhibit H**.

Section 2.3. After the Settlement, the Assignor shall, at the Assignee's or the Lender's request from time to time, and at the Assignee's cost and expense, (i) execute any additional documents, instruments or assignments to evidence and/or confirm the transfer of the Funding Documents, including but not limited to the appropriate UCC filing required in order to carry out the purpose of this Agreement which documents shall be prepared by Lender or the Assignee at the Assignee's expense and (ii) take such other action(s) as may be reasonably requested by the Lender or the Assignee, all at the Assignee's expense.

Section 2.4. Lender, Assignee and Assignor agree to the modification of the Loan and the Funding Documents at Settlement as follows:

A. The amount, term and interest rate of the Loan shall be modified, if any, as set forth in the **Allonge to Note/Bond/Debt Obligation** in **Exhibit D** which terms are incorporated herein by reference.

B. The Additional Debt provision of the Funding Agreement shall be deleted and replaced with the following language: Except as otherwise provided in this Paragraph, the Assignee shall be required to obtain the prior written approval of the Lender to incur additional debt or refinance existing debt. Notwithstanding the foregoing, the Assignee shall be permitted to incur the following types of additional debt, or refinance existing debt, without the prior written consent of the Lender, provided the Assignee satisfies one or more of the conditions set forth below and provides the Lender with written notification of the new issuance, or refinancing, including an identification of the applicable category below:

(i) BAN's, TAN's, TRAN's, RAN's. All bond anticipation notes, tax anticipation notes, tax and revenue anticipation notes, and revenue anticipation notes involving a short-term pledge of the taxes and/or revenues of the Assignee for a term up to one-year.

(ii) Subordinate Debt. To the extent that the Collateral set forth in **Exhibit B** includes a lien on revenues, any additional debt incurred by the Assignee, which is secured by a lien on the same revenues subordinate to the Lender's lien, on the condition that the incurrence of debt of such is approved by the Department of Community and Economic Development, in accordance with the Local Government Unit Debt Act or is sufficiently provided for under the existing rate structure approved by the PUC or is provided for pursuant to a rate increase approved by the PUC, as may be applicable.

(iii). Debt Unrelated to the Project Collateral. All additional debt secured by collateral which is unrelated to the Collateral as set forth in the in **Exhibit B**.

(iv). Refinancings/Refundings. Additional debt incurred by the Assignee to refinance or refund debt that was disclosed by the Assignor to the Lender on the List of Liens, attached as **Exhibit C** or previously consented to in writing by the Lender, on the condition that the total amount of the refinancing or refunding is equal to or less than the original amount of the debt disclosed or consented to by the Lender and the annual debt service does not increase.

C. The name of the Funding Recipient as that term is defined in the Funding Documents and primary obligor in the Funding Documents shall be modified and changed to the Assignee

D. The notices when directed to the Funding Recipient under the Funding Documents shall be sent to the Assignee at the address set forth in paragraph 5 below.

Section 2.5. Other than as expressly set forth in Sections 2.2, 2.3 and 2.4 above, all other terms and conditions of the original Loan and Funding Documents shall remain in full force and effect.

SECTION 3: REPRESENTATIONS, WARRANTIES AND

COVENANTS OF THE ASSIGNOR

Section 3.1. The Assignor hereby represents and warrants to the Assignee that: (i) the transactions contemplated by this Agreement, and the documents to be executed and delivered by or on behalf of the Assignor in connection therewith, have been duly authorized by the Assignor; (ii) the person executing this Agreement on behalf of the Assignor has the full power and authority to execute and deliver all documents necessary to consummate this transaction on behalf of the Assignor and to cause the Assignor to perform any act which may be necessary pursuant to the terms of this Agreement; (iii) the Assignor has subject to Lender's consent, the right, power and authority to assign the Funding Documents to the Assignee; (iv) the outstanding principal balance of the Loan as of the date hereof is \$ (this amount would come from the new amortization schedule from Finance) ; and (v) there is no outstanding accrued and unpaid interest on the Loan as of the date hereof.

SECTION 4: REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE ASSIGNEE

Section 4.1. The Assignee hereby represents and warrants to the Assignor that (i) Assignee has independently conducted its due diligence in connection with its assumption of the obligations of the Assignor under the Funding Documents and has made its decision to assume the obligations of the Assignor under the Funding Documents based upon such independent due diligence and has not relied upon any oral or written information provided by the Assignor or any agent or representative thereof except as expressly set forth in Section 3 hereof and the other provisions of this Agreement; (ii) the transactions contemplated by this Agreement, and the documents to be executed and delivered by or on behalf of the Assignee in connection therewith, have been duly authorized by the Assignee; and (iii) the person executing this Agreement on behalf of the Assignee has the full power and authority to execute and deliver all documents necessary to consummate this transaction on behalf of the Assignee and to cause the Assignee to perform any act which may be necessary pursuant to the terms of this Agreement.

Section 4.2. From and after the Settlement, the Assignee shall assume all of the Assignor's obligations and duties with respect to the Loan and the Funding Documents, as modified in Section 2 of this Agreement. It is understood and agreed that all other terms, conditions and covenants of each and all of the Funding Documents not modified hereby shall remain in effect.

SECTION 5: NOTICES

Section 5.1. Any notice request, demand or other communication required or permitted to be given to a party under this Agreement shall be given in writing and shall be delivered or sent by registered or certified mail, return receipt requested in a prepaid envelope, or by overnight mail or courier to the addresses of such party set forth below or such other address as such party shall hereafter designate by notice given pursuant to this Section:

If to the Assignor: **(original FR)**

Attention: _____

If to the Assignee: **(new FR)**

Attention: _____

If to the Lender: Pennsylvania Infrastructure Investment Authority
 Room 434 Forum Building
 607 South Drive
 Harrisburg, PA 17120
 Attention: Executive Director

Section 5.2. Such notice or other communication shall be deemed to have been given: (i) when delivered, if sent by registered or certified mail or delivered personally; or (ii) on the next following business day, if sent by overnight courier.

SECTION 6: MISCELLANEOUS

Section 6.1. Each part of this Agreement is intended to be severable. If any term, covenant, condition or provision of this Agreement is unlawful, invalid or unenforceable, such

illegality, invalidity or unenforceability shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect and shall be binding upon the parties.

Section 6.2. The headings of the Sections of this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement or any provision hereof.

Section 6.3. The parties agree that this Agreement shall be construed, and the rights and obligations of the parties under this Agreement shall be determined, in accordance with the laws of the Commonwealth of Pennsylvania without regard to its conflict of laws provisions. For the purpose of any suit, action or proceeding arising out of or relating to this Agreement, the Funding Documents or the Loan, the parties hereby irrevocably consent and submit to the jurisdiction and venue of the Courts of the Commonwealth of Pennsylvania.

Section 6.4. This Agreement shall not be assigned by either the Assignor or the Assignee without the express written consent of the Lender.

Section 6.5. The provisions of this Agreement are for the sole benefit of the parties hereto, and shall not give rise to any rights by or on behalf of anyone other than such parties.

Section 6.6. This Agreement, including any attachments, exhibits and schedules referred to herein and attached, constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes any and all prior agreements, representations and understandings of the parties, written or oral. The terms of this Agreement shall not be modified or amended except by subsequent written agreement of the parties.

Section 6.7. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

Section 6.8. Unless the context otherwise requires, singular nouns and pronouns used herein shall be deemed to include the plural, and pronouns of one gender shall be deemed to include the equivalent pronoun of the other gender.

Section 6.9. No waiver by either party of the other party's breach of any term, covenant or condition contained in this Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition of this Agreement.

Section 6.10. CONFESSION OF JUDGMENT. ASSIGNEE HEREBY IRREVOCABLY AUTHORIZES AND EMPOWERS ANY ATTORNEY OF RECORD, OR THE PROTHONOTARY OR CLERK OF ANY COURT IN THE COMMONWEALTH OF PENNSYLVANIA OR ELSEWHERE, TO APPEAR FOR LENDER AT ANY TIME OR TIMES, IN ANY SUCH COURT IN ANY ACTION BROUGHT AGAINST ASSIGNOR BY LENDER WITH RESPECT TO THE AGGREGATE AMOUNTS PAYABLE UNDER THE LOAN DOCUMENTS, WITH OR WITHOUT DECLARATION FILED, AS OF ANY TERM, AND THEREIN TO CONFESS OR ENTER JUDGMENT AGAINST ASSIGNEE FOR ALL SUMS PAYABLE BY ASSIGNEE TO LENDER UNDER THE LOAN DOCUMENTS, AS EVIDENCED BY AN AFFIDAVIT SIGNED BY A DULY AUTHORIZED DESIGNEE OF LENDER SETTING FORTH SUCH AMOUNT THEN DUE FROM ASSIGNEE TO LENDER, PLUS REASONABLE ATTORNEYS' FEES, WITH COSTS OF SUIT, RELEASE OF ERRORS AND WITHOUT RIGHT OF APPEAL. IF A COPY OF THIS NOTE, VERIFIED BY AN AFFIDAVIT, SHALL HAVE BEEN FILED IN SUCH ACTION, IT SHALL NOT BE NECESSARY TO FILE THE ORIGINAL AS A WARRANT OF ATTORNEY. ASSIGNEE WAIVES THE RIGHT TO ANY STAY OF EXECUTION AND THE BENEFIT OF ALL EXEMPTION LAWS NOW OR HEREAFTER IN EFFECT. NO SINGLE EXERCISE OF THE FOREGOING WARRANT AND POWER TO BRING ANY ACTION OR CONFESS JUDGMENT THEREIN SHALL BE DEEMED TO EXHAUST THE POWER, BUT THE POWER SHALL CONTINUE UNDIMINISHED AND MAY BE EXERCISED FROM TIME TO TIME AS OFTEN AS LENDER SHALL ELECT UNTIL ALL AMOUNT PAYABLE TO LENDER UNDER THE LOAN DOCUMENTS SHALL HAVE BEEN PAID IN FULL.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties hereto have caused this Agreement to be duly executed and sealed as of the day and year first above written.

WITNESS/ATTEST:

(new FR)

By: _____
Name:
Title:

(original FR)

By: _____
Name:
Title:

PENNSYLVANIA INFRASTRUCTURE
INVESTMENT AUTHORITY

By: _____
Name: Brion T. Johnson
Title: Executive Director

EXHIBIT A {to PennVest Document}

List of Funding Documents

- A. **Loan/Funding Agreement**
- B. **Note/Bond/Debt Obligation**
- C. **Account Security Agreement**

EXHIBIT B {to PennVest Document}

Consent

{In final form as required by PennVest}

EXHIBIT C {to PennVest Document}

List of Liens

{In final form as required by PennVest}

EXHIBIT D {to PennVest Document}
Allonge to Note/Bond/Debt Obligation

{In final form as required by PennVest}

EXHIBIT E {to PennVest Document}

Waiver Confession of Judgment

{In final form as required by PennVest}

EXHIBIT F {to PennVest Document}

Secretary Certificate

{In final form as required by PennVest}

EXHIBIT G {to PennVest Document}

Opinion of Counsel

{In final form as required by PennVest}

EXHIBIT H {to PennVest Document}
Account Security Agreement

{In final form as required by PennVest}

EXHIBIT I {to PennVest Document}

Release

{In final form as required by PennVest}

Exhibit C

BILL OF SALE AND ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS BILL OF SALE AND ASSIGNMENT AND ASSUMPTION AGREEMENT (this “**Agreement**”), dated as of [CLOSING DATE] (the “**Closing Date**”), is by and between The City of Johnstown, a political subdivision of the Commonwealth of Pennsylvania operating as a Third Class City under a Home Rule Charter (the “**Seller**”), and the Greater Johnstown Water Authority, a body corporate and politic organized under the Pennsylvania Municipality Authorities Act (the “**Buyer**” and together with Seller, the “**Parties**”).

Background

WHEREAS, Seller and Buyer have entered into that certain Asset Purchase Agreement, dated as of [June 23 _____], 2020 (if and as amended from time to time, the “**Purchase Agreement**”), pursuant to which, among other things, Seller has agreed to sell, transfer, assign and deliver all of its rights, title and interests in the Assets, which are assets of the sanitary sewer collection system, which are the pipes that convey wastewater within The City of Johnstown, comprising approximately 425,000 linear feet of sanitary sewer pipes ranging in size from 6 to 18 inches in diameter, the Prospect Pump Station, approximately 160,695 linear feet of lateral pipes, approximately 3,108 sanitary utility holes accessing such pipes, related mainline taps, of which there are approximately 8,156, and related viewport castings, of which there are approximately 7,004, serving residential, commercial and industrial customers, and Buyer has agreed to assume from Seller all duties, liabilities and obligations related to the Assets and other Assumed Liabilities (other than the Retained Liabilities).

Agreement

NOW, THEREFORE, for and in consideration of the foregoing and of the mutual representations, warranties, covenants and agreements set forth in this Agreement and the Purchase Agreement and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1. Definitions. All capitalized terms used in this Agreement, but not otherwise defined herein, have the meanings set forth in the Purchase Agreement.
2. Assignment and Bill of Sale. Seller does hereby sell, transfer, assign and deliver to Buyer, and Buyer does hereby purchase and assume from Seller, all of Seller’s right, title and interest in, to and under the Assets.
3. Assignment and Assumption. Seller does hereby transfer, assign and deliver to Buyer, and Buyer does hereby assume from Seller, all duties, liabilities and obligations related to the Assumed Liabilities.
4. Terms of the Purchase Agreement. This Agreement is subject in all respects to the terms and conditions of the Purchase Agreement. The Parties acknowledge and agree that the representations, warranties, covenants, agreements and indemnities, including the limitations thereon, contained in the Purchase Agreement shall not be superseded hereby but shall remain in full force

and effect if and to the extent provided therein. In the event of any conflict or inconsistency between the terms of the Purchase Agreement and the terms hereof, the terms of the Purchase Agreement shall govern.

5. Governing Law. This Agreement and any disputes arising in connection herewith shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania, without giving effect to any conflict or choice of law rule or principle that would result in the imposition of the laws of a jurisdiction other than the Commonwealth of Pennsylvania.

6. Construction. As used in this Agreement, (a) the gender of any word includes the masculine, feminine and neuter, (b) the number of any word includes the singular and plural, (c) the word “including” is exemplary, and not exclusive or limiting, and means “including, without limitation”, (d) the word “or” is not exclusive, (e) the words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to this Agreement, (f) the word “will” will be construed to have the same meaning as the word “shall”, and (g) the word “extent” in the phrase “to the extent” shall mean the degree to which a subject or other thing extends, and such phrase does not mean simply “if”.

7. 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.

8. No Third-Party Beneficiaries. Except as otherwise expressly provided in the Purchase Agreement, this Agreement is not intended to and shall not be construed to provide to any Person other than the Parties any rights or remedies hereunder.

9. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties named herein and their respective successors and permitted assigns; *provided* that neither Party hereto shall assign or delegate this Agreement or any rights or obligations hereunder without the prior written consent of the other Party, and any attempted assignment or delegation without such prior written consent shall be void and of no force or effect; *provided* further that (i) Buyer may assign this Agreement and the other Transaction Documents in their entirety, to extent permitted by Law, to any successor to or assign of all or substantially all of the Assets and Assumed Liabilities, including by merger, consolidation, amalgamation or combination, except in a Non-Governmental System Transfer, which is governed by the provision of Article VII of the Purchase Agreement and (ii) Seller may assign this Agreement in their entirety, to extent permitted by Law, to any successor of Seller, including by merger, consolidation, amalgamation or combination.

10. Counterparts; Execution. This Agreement may be executed in any number of counterparts which, taken together, shall constitute one and the same agreement. A signature to this Agreement delivered by facsimile or email of a PDF document shall be deemed an original signature hereto and such delivery shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[remainder of page left blank; signature page(s) follow]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Closing Date.

THE CITY OF JOHNSTOWN

By: _____
(Seal)
Frank J. Janakovic, Mayor, City of Johnstown

~~[Name], Manager~~

ATTEST:

~~[Name], [Title]~~

(Seal)
Nancy J. Cushing, City Clerk, City of Johnstown

Approved as to legal form: _____ (Seal)
~~[Name]~~ Elizabeth A. Benjamin, Esq., Solicitor, City of Johnstown

**GREATER JOHNSTOWN WATER
AUTHORITY**

By: _____
(Seal)
Don C. Hall, II, Chairman, Greater Johnstown
Water Authority

~~[Name], [Title]~~

ATTEST:

~~[Name], [Title]~~

(Seal)
Anthony Caputo, Assistant Secretary, Greater Johnstown Water Authority

Approved as to legal form: _____ (Seal)
[Name] William G. Barbin, Esq., Solicitor, Greater Johnstown Water
Authority

[Signature Page to Bill of Sale and Assignment and Assumption Agreement]

Exhibit D

Prospect Pump Station Deed

Prepared By: McNees Wallace & Nurick, LLC

Return To: McNees Wallace & Nurick, LLC
Attn: David Evenhuis, Esq.
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166

UPI: 82-002. -100.001

SPECIAL WARRANTY DEED

MADE this ____ day of _____ 2020,

B E T W E E N

CITY OF JOHNSTOWN, a political subdivision of the Commonwealth of Pennsylvania operating as a Third Class City under a Home Rule Charter (“Grantor”),

A N D

GREATER JOHNSTOWN WATER AUTHORITY, a body corporate and politic organized under the Pennsylvania Municipality Authorities Act (“Grantee”).

W I T N E S S E T H:

That Grantor, in consideration of [_____ Dollars (\$_____)], paid by Grantee to Grantor, the receipt and sufficiency whereof is acknowledged, hereby grants and conveys unto Grantee:

ALL THAT CERTAIN tract, piece, or parcel of land located in The City of Johnstown, County of Cambria, Commonwealth of Pennsylvania, being known as Cambria County Tax Parcel Number 82-002. -100.001.

EXCEPTING AND RESERVING (i) all oil, gas, mineral, water and air rights, and (ii) Grantor’s rights to create and maintain any public right of way on the property hereby conveyed.

UNDER AND SUBJECT to all mortgages, liens, easements, restrictions, encumbrances and other matters of record or that a visual inspection of the property would reveal.

AND Grantor shall and will warrant SPECIALLY the property hereby conveyed.

NOTICE: THIS DOCUMENT MAY NOT SELL, CONVEY, TRANSFER, INCLUDE OR INSURE THE TITLE TO THE COAL AND RIGHT OF SUPPORT UNDERNEATH THE SURFACE LAND DESCRIBED OR REFERRED TO HEREIN, AND THE OWNER OR OWNERS OF SUCH COAL

MAY HAVE THE COMPLETE LEGAL RIGHT TO REMOVE ALL OF SUCH COAL AND, IN THAT CONNECTION, DAMAGE MAY RESULT TO THE SURFACE OF THE LAND AND ANY HOUSE, BUILDING OR OTHER STRUCTURE ON OR IN SUCH LAND. THE INCLUSION OF THIS NOTICE DOES NOT ENLARGE, RESTRICT OR MODIFY ANY LEGAL RIGHTS OR ESTATES OTHERWISE CREATED, TRANSFERRED, EXCEPTED OR RESERVED BY THIS INSTRUMENT.

NOTICE: THE UNDERSIGNED HEREBY ACKNOWLEDGES THAT GRANTEE KNOWS, WITH RESPECT TO THE SURFACE PROPERTY CONVEYED BY THIS DEED, THAT GRANTEE MAY NOT BE OBTAINING THE RIGHT OF PROTECTION AGAINST SUBSIDENCE RESULTING FROM COAL MINING OPERATIONS, BUT THAT THE PURCHASED PROPERTY MAY BE PROTECTED FROM DAMAGE DUE TO MINE SUBSIDENCE BY A PRIVATE CONTRACT WITH THE OWNERS OF THE ECONOMIC INTEREST IN THE COAL. THIS NOTICE IS INCLUDED TO COMPLY WITH THE BITUMINOUS MINE SUBSIDENCE AND LAND CONSERVATION ACT (52 P.S. §§ 1406.1 to 1406.21).

WITNESS:

GRANTEE:

By: _____
Name:

By: _____
Name:

IN WITNESS WHEREOF, Grantor has caused this Deed to be duly executed as of the day and year first above written.

WITNESS/ATTEST:

GRANTOR:
CITY OF JOHNSTOWN

By: _____
Name:
Title:

By: _____
Name:
Title:

COMMONWEALTH OF PENNSYLVANIA :

: SS:

COUNTY OF CAMBRIA

:

On this _____ day of _____ 2020, before me, the undersigned officer, personally appeared _____, who acknowledged her/himself to be the _____ of the City of Johnstown (the "City"), and that s/he, as such officer, being authorized to do so, executed the foregoing instrument for the purposes thereon contained, by signing the name of the City by her/himself as such officer.

IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal.

Notary Public
(Seal)

My commission expires:

CERTIFICATION OF ADDRESS

I hereby certify that the precise address of the Grantee herein is:

Attorney or Agent for Grantee

Exhibit E

Prepared By: McNees Wallace & Nurick, LLC

Return To: McNees Wallace & Nurick, LLC
Attn: David Evenhuis, Esq.
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166

QUITCLAIM DEED

MADE this ____ day of _____ 2020,

B E T W E E N

CITY OF JOHNSTOWN, a political subdivision of the Commonwealth of Pennsylvania operating as a Third Class City under a Home Rule Charter ("**Grantor**"),

A N D

THE GREATER JOHNSTOWN WATER AUTHORITY, a body corporate and politic organized under the Pennsylvania Municipality Authorities Act ("**Grantee**").

WHEREAS, Grantor is the owner of the Seller owns that certain the sanitary sewer collection system, which are the pipes that convey wastewater within The City of Johnstown, comprising approximately 425,000 linear feet of sanitary sewer pipes ranging in size from 6 to 18 inches in diameter, approximately 160,695 linear feet of lateral pipes, approximately 3,108 sanitary utility holes accessing such pipes, related mainline taps, of which there are approximately 8,156, and related viewport castings, of which there are approximately 7,004, serving residential, commercial and industrial customers (the "**Sanitary Sewer Collection Assets**"), and all improvements and fixtures of any and every kind whatsoever forming a part of the Sanitary Sewer Collection Assets, and all rights of way, easements and covenants appurtenant to the foregoing, such as they exist, but specifically excluding (i) all oil, gas, mineral, water and air rights, and (ii) Grantor's rights to create and maintain the public way (the "**Sanitary Sewer System**");

WHEREAS, Grantor and Grantee desire to consolidate and unify in Grantee all right, title and interest in the Sanitary Sewer System; and

WHEREAS, Grantor now desires to release and quit claim unto Grantee any and all of Grantor's right, title and interest in the Sanitary Sewer System.

W I T N E S S E T H:

That Grantor, in consideration of [_____ Dollars (\$_____)], paid by Grantee to Grantor, the receipt and sufficiency whereof is acknowledged, hereby releases and quit claims to Grantee, its successors and assigns, all of Grantor's right, title and interest in and to the Sanitary Sewer System, and hereby grants to Grantee a license under, over and through those certain rights of way (A) that are owned by Grantor and (B) in or through which the Sanitary Sewer System is located for the limited purposes of maintaining, repairing and replacing the assets comprising the Sanitary Sewer System, which such license is subject and subordinate to all superior rights with respect to the rights of way; provided that Grantor's exercise of such license rights are done in accordance with all applicable laws, regulations, rules and ordinances.

NOTICE: THIS DOCUMENT MAY NOT SELL, CONVEY, TRANSFER, INCLUDE OR INSURE THE TITLE TO THE COAL AND RIGHT OF SUPPORT UNDERNEATH THE SURFACE LAND DESCRIBED OR REFERRED TO HEREIN, AND THE OWNER OR OWNERS OF SUCH COAL MAY HAVE THE COMPLETE LEGAL RIGHT TO REMOVE ALL OF SUCH COAL AND, IN THAT CONNECTION, DAMAGE MAY RESULT TO THE SURFACE OF THE LAND AND ANY HOUSE, BUILDING OR OTHER STRUCTURE ON OR IN SUCH LAND. THE INCLUSION OF THIS NOTICE DOES NOT ENLARGE, RESTRICT OR MODIFY ANY LEGAL RIGHTS OR ESTATES OTHERWISE CREATED, TRANSFERRED, EXCEPTED OR RESERVED BY THIS INSTRUMENT.

NOTICE: THE UNDERSIGNED HEREBY ACKNOWLEDGES THAT GRANTEE KNOWS, WITH RESPECT TO THE SURFACE PROPERTY CONVEYED BY THIS DEED, THAT GRANTEE MAY NOT BE OBTAINING THE RIGHT OF PROTECTION AGAINST SUBSIDENCE RESULTING FROM COAL MINING OPERATIONS, BUT THAT THE PURCHASED PROPERTY MAY BE PROTECTED FROM DAMAGE DUE TO MINE SUBSIDENCE BY A PRIVATE CONTRACT WITH THE OWNERS OF THE ECONOMIC INTEREST IN THE COAL. THIS NOTICE IS INCLUDED TO COMPLY WITH THE BITUMINOUS MINE SUBSIDENCE AND LAND CONSERVATION ACT (52 P.S. §§ 1406.1 to 1406.21).

WITNESS:

GRANTEE:

By: _____
Name:

By: _____
Name:

IN WITNESS WHEREOF, Grantor has caused this Quitclaim Deed to be duly executed as of the day and year first above written.

WITNESS/ATTEST:

GRANTOR:
CITY OF JOHNSTOWN

By: _____
Name:
Title:

By: _____
Name:
Title:

COMMONWEALTH OF PENNSYLVANIA :
: SS:
COUNTY OF CAMBRIA :

On this _____ day of _____ 2020, before me, the undersigned officer, personally appeared _____, who acknowledged her/himself to be the _____ of the City of Johnstown (the “City”), and that s/he, as such officer, being authorized to do so, executed the foregoing instrument for the purposes thereon contained, by signing the name of the City by her/himself as such officer.

IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal.

Notary Public
(Seal)

My commission expires:

Exhibit F

**Form of Certificate Related to
Annual Installment Payments**

[Date]

[To the City per Section 8.6 of the APA]

Re: Asset Purchase Agreement, dated _____ [____], 2020, as such may be amended pursuant to its terms from time to time ("APA") between The City of Johnstown (the "Seller") and the Greater Johnstown Water Authority (the "Buyer"). Terms used but not defined herein shall have the definitions set forth in the APA.

In accordance with Section 5.14 and the other provisions of the APA, the undersigned hereby certifies as to the following calculations on behalf of the Buyer for the Buyer's fiscal year ended [Date] in calculating the Annual Installment Payment payable by the Buyer to the Seller:

- I. Administrative and Operating Expenses
 - A. Total Administrative and Operating Expenses from all operations of Buyer. \$ _____
 - B. Administrative and Operating Expenses allocable to all sewer operations of Buyer \$ _____
 - C. Administrative and Operating Expenses allocable to operation of Johnstown Sanitary Sewer System \$ _____
 - D. Administrative and Operating Expenses allocable to operation of other sewer operations of Buyer \$ _____
- II. Debt Service
 - A. Total Debt Service on Acquisition Bonds and PennVest Loans related to the Johnstown Sanitary Sewer System \$ _____
- III. Total Receipts and Revenues
 - A. Total Receipts and Revenues related to Johnstown Sanitary Sewer System \$ _____

Total Receipts and Revenues (III.A.) less the Administrative and Operating Expenses allocable to operation of Johnstown Sanitary Sewer System (I.C.) = \$ _____ ("*Amounts Available to Pay Debt Service*").

The payment to City is equal to the amount by which Amounts Available to Pay Debt Service exceeds 1.10 *times* Total Debt Service on Acquisition Bonds and PennVest Loans related to the Johnstown Sanitary Sewer System (see II.A.), capped at \$400,000.

TO CALCULATE:

1.10 *times* Total Debt Service on Acquisition Bonds and PennVest Loans related to the Johnstown Sanitary Sewer System = \$ _____ (A)

Amounts Available to Pay Debt Service = \$ _____ (B).

Annual Installment Payment to City, if it is a positive number, is equal to "(B)" - "(A)" (but not in excess of \$400,000): = \$ _____

DEFINITIONS:

“Annual Installment Payment” means for each of the 20 Reporting Years commencing on January 1, 2021, an amount equal to the amount by which Amounts Available to Pay Debt Service exceeds 1.10 times Total Debt Service on Acquisition Bonds and PennVest Loans related to the Johnstown Sanitary Sewer System (defined below); provided that such amount shall be capped at \$400,000 in any given year.

“Total Receipts and Revenues related to the Johnstown Sanitary Sewer System” means all revenues and receipts of any nature whatsoever, derived from the Johnstown Sanitary Sewer System (e.g., rates and charges, fees of all kinds, surcharges, fines, penalties and interest).

“Administrative and Operating Expenses” relating to the Johnstown Sanitary Sewer System means all administrative and operating expenses of the Johnstown Sanitary Sewer System.

“Total Debt Service on Acquisition Bonds and PennVest Loans related to the Johnstown Sanitary Sewer System” means an amount equal to (A)(i) the amount that was required to be paid by Buyer for the principal of, premium if any, and interest on the Acquisition Bonds for the applicable Reporting Year and (ii) that portion of the mandatory sinking funds deposits paid for the applicable Reporting Year and solely allocable to the Acquisition Bonds in such Reporting Year and (iii) that portion of the restorative deposits to the debt service reserve fund paid for the applicable Reporting Year and solely allocable to the Acquisition Bonds plus (B) the amount that was required to be paid (and not voluntarily paid) by Buyer for the applicable Reporting Year for the principal of and interest (i) under the PennVest Loan Documents transferred from Seller to Buyer at Closing used solely for the Johnstown Sanitary Sewer System and (ii) under other PennVest loans to Buyer used solely for the Johnstown Sanitary Sewer System.

“Acquisition Bonds” means the Sewer Revenue Bonds, Series of 2020, to be issued under the GJWA Trust Indenture, or any refunding bonds thereof.

The undersigned, on behalf of the Buyer, hereby certifies that the foregoing calculations are true and correct and are subject to Section 8.18 of the APA.

GREATER JOHNSTOWN WATER AUTHORITY

By: _____
Name: _____
Title: _____

Exhibit G

Acknowledgement and Agreement regarding any Future Non-Governmental System Transfer

THIS ACKNOWLEDGEMENT AND AGREEMENT REGARDING ANY FUTURE NON-GOVERNMENTAL SYSTEM TRANSFER (this “**Agreement**”), dated as of [Date of Governmental System Transfer Closing], is by [the Resulting Governmental Entity or the Receiving Governmental Entity, as the case may be] (“**Transferee**”) to and for the benefit of [The City of Johnstown, a political subdivision of the Commonwealth of Pennsylvania operating as a Third Class City under a Home Rule Charter or its successor or permitted assign, as the case may be] (“**Original Seller**”).

Background

WHEREAS, Transferee is aware of and has read the Asset Purchase Agreement, dated as of [~~EFFECTIVE DATE~~], 2020, as such may have been amended from time to time (the “**Purchase Agreement**”), pursuant to which, among other things, there are restrictions and conditions on Non-Governmental System Transfers.

Agreement

NOW, THEREFORE, Transferee acknowledges and agrees as follows:

1. Definitions. All capitalized terms used in this Agreement, but not otherwise defined herein, have the meanings set forth in the Purchase Agreement.
2. Article VII. Transferee does hereby agree to and for the benefit of Original Seller to assume all the obligations of Buyer and be bound by the provisions applicable to Buyer of Article VII (*Restrictions on Non-Governmental System Transfer*) of the Purchase Agreement and those definitions in the Purchase Agreement and those provisions applicable to Buyer in Article VIII (*Miscellaneous Provisions*) of the Purchase Agreement that are applicable to the interpretation, enforcement or procedure of, for or related to such Article VII.
3. Purchase Agreement. Additionally, Transferee does hereby agree to and for the benefit of Original Seller to assume all the obligations and be bound by all the provisions of the Purchase Agreement and other Transaction Documents applicable to Buyer. Transferee acknowledges, for the avoidance of doubt, that Buyer (and any of its successors or permitted assigns prior to Transferee) shall remain jointly and severally liable (with Transferee) for such obligations and provisions (unless Buyer (or such applicable successor or permitted assign of Buyer prior to Transferee) has been released by the written consent of Original Seller, in its discretion).
4. Governing Law. This Agreement and any disputes arising in connection herewith shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania, without giving effect to any conflict or choice of law rule or principle that would result in the imposition of the laws of a jurisdiction other than the Commonwealth of Pennsylvania.
5. Amendments; Waivers. This Agreement may be amended, changed or supplemented only by a written agreement signed by Transferee and Original Seller. 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 Original Seller, and only in the specific instance and for the specific purpose for which it has been given. No failure on the part of Original Seller 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.

6. No Third-Party Beneficiaries. Except as otherwise expressly provided in the Purchase Agreement, this Agreement is not intended to and shall not be construed to provide to any Person other than Original Seller any rights or remedies hereunder.

7. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Original Seller and its respective successors and assigns.

8. Execution. A signature to this Agreement delivered by facsimile or email of a PDF document shall be deemed an original signature hereto and such delivery shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

IN WITNESS WHEREOF, Transferee has executed this Agreement as of [Date of Governmental System Transfer Closing].

[the Resulting Governmental Entity or the Receiving Governmental Entity, as the case may be]

By: _____
Name: _____
Title: _____

WITNESS/ATTEST:

Name: _____

Schedule 1.2(a)(1)

[Schedule may be updated / Draft Dated 5/13/20]

PennVest Projects

Description	Project Name
PV 79372	Hornerstown Phase I
PV 71390	Hornerstown Phase 2
PV 71397	Roxbury
PV 71406	Oakhurst
PV 71412	Woodvale/Prospect
PV 71417	Moxham Phase I
PV 27874	Wood/Oak
PV 27880	Morrelville
PV 75314	8th Ward
PV 24012	Moxham Phase II
PV 71429	Ohio Street
PV 71435	Kernville
PV 71442	Fairfield
PV 71441	Old Conemaugh
PV 27886	Cambria City/ Coopersdale/ Minersville
PV 75307	Horner St. Industrial
	Central Business District
	Miscellaneous

Schedule 1.2(a)(2)

Additional Contracts

~~[Schedule may be updated]~~

No.	Name of Contract/License	Date	Parties	Consent purported to be required under such contract for assignment
1	<p>Fairfield Ave. Interceptor Rehabilitation and Storm Water Separation Project – Contract No. 2018-03 and all specifications, specification book provisions, change orders, amendments, and addenda</p> <p><i>And, subject to Section 1.2(a)(iii) of the Agreement: Certificate of Liability Insurance dated 12/11/2019, by Penn National Security Insurance and Berkley National Insurance Company; Payment Bond dated 11/27/2019, by Aegis Security Insurance Company; and Performance Bond dated 11/27/2019 by Aegis Security Insurance Company</i></p>	11/13/2019	City of Johnstown and Terra Works, Inc.	Yes
2	<p>Old Conemaugh Sanitary/Storm Sewer Separation Project – Contract No. 2018-01 and all specifications, specification book provisions, change orders, amendments, and addenda</p> <p><i>And, subject to Section 1.2(a)(iii) of the Agreement: Certificate of Liability Insurance dated 11/27/2019 by Old Republic Insurance Company et al.; Payment Bond dated 11/19/2019, by Arch Insurance Company; and Performance Bond dated 11/19/2019 by Arch Insurance Company</i></p>	11/13/2019	City of Johnstown and A. Liberoni, Inc.	Yes
3	<p>Old Conemaugh Sanitary/Storm Sewer Separation Project – Contract No. 2018-02 and all specifications, specification book provisions, change orders, amendments, and addenda</p> <p><i>And, subject to Section 1.2(a)(iii) of the Agreement: Certificate of Liability Insurance dated 03/02/2020, by the Cincinnati Insurance Company et al.; Payment Bond dated 11/21/2019, by Cincinnati Insurance Company; and Performance Bond dated 11/21/2019, by Cincinnati Insurance Company</i></p>	11/13/2019	City of Johnstown and Snyder Environmental Services, Inc.	Yes
4	<p>Standard Pipe License Agreement – Contract Nos. 2018-01 (including Public Street Acknowledgment Form dated 12/05/2019) and 2018-02 and all specifications, specification book provisions, change orders, amendments, and addenda</p>	12/05/2019	City of Johnstown and Norfolk Southern Railway Company	Yes

No.	Name of Contract/License	Date	Parties	Consent purported to be required under such contract for assignment
5	Facility Encroachment Agreement – Agreement No. CSX882230 and all specifications, specification book provisions, change orders, amendments, and addenda	03/06/2019	City of Johnstown and CSX Transportation, Inc.	Yes
6	Facility Encroachment Agreement – Agreement No. CSX882235 and all specifications, specification book provisions, change orders, amendments, and addenda	03/06/2019	City of Johnstown and CSX Transportation, Inc.	Yes
7	Kernville Sanitary/Storm Sewer Separation Project – Contract No. 2017-08 and all specifications, specification book provisions, change orders, amendments, and addenda <i>And, subject to Section 1.2(a)(iii) of the Agreement: Certificate of Liability Insurance dated 05/11/2020 by the Cincinnati Insurance Company et al.; Payment Bond dated 11/19/2018 by Cincinnati Insurance Company; and Performance Bond dated 11/19/2018 by Cincinnati Insurance Company</i>	11/15/2018	City of Johnstown and Snyder Environmental Services, Inc.	Yes
8	Kernville Sanitary/Storm Sewer Separation Project – Contract No. 2017-09 and all specifications, specification book provisions, change orders, amendments, and addenda <i>And, subject to Section 1.2(a)(iii) of the Agreement: Certificate of Liability Insurance dated 11/20/2018 by Old Republic Insurance Company et al.; Payment Bond dated 11/19/2018 by Arch Insurance Company; and Performance Bond dated 11/19/2018 by Arch Insurance Company</i>	11/15/2018	City of Johnstown and A. Liberoni, Inc.	Yes
9	Billing and Collection Services Agreement and all specifications, specification book provisions, change orders, amendments, and addenda	04/12/2018	City of Johnstown and RDM-Johnstown, LLC (Resource Development and Management, Inc.)	Yes
10	Subscriber License and Data Delivery Services Agreement – HACH664957 and all specifications, specification book provisions, change orders, amendments, and addenda	03/22/2017	City of Johnstown and the Hach Company	Yes
11	Horner Street and Ohio Street Interceptor and Storm Water Separation Project – Contract No. 2017-05 and all relevant bid package documents, change orders, amendments, and addenda <i>And, subject to Section 1.2(a)(iii) of the Agreement: Certificate of Liability Insurance dated 05/29/2018 by Old Republic Insurance Company et al.; Payment Bond dated</i>	01/03/2018	City of Johnstown and A. Liberoni, Inc.	Yes

No.	Name of Contract/License	Date	Parties	Consent purported to be required under such contract for assignment
	<i>11/01/2017 by Arch Insurance Company; and Performance Bond dated 11/01/2017 by Arch Insurance Company</i>			

Schedule 1.2(a)(3)

Assigned Permits

[Schedule may be updated]

Permit	Transfer Document
Water Quality Management ("WQM") Permits	
1119400	PADEP Doc. No. 3800-PM-BCW0041b
1117404	PADEP Doc. No. 3800-PM-BCW0041b
1117406	PADEP Doc. No. 3800-PM-BCW0041b
1116407	PADEP Doc. No. 3800-PM-BCW0041b
1115412	PADEP Doc. No. 3800-PM-BCW0041b
1116400	PADEP Doc. No. 3800-PM-BCW0041b
1115402	PADEP Doc. No. 3800-PM-BCW0041b
1112403	PADEP Doc. No. 3800-PM-BCW0041b
1115400	PADEP Doc. No. 3800-PM-BCW0041b
1114405	PADEP Doc. No. 3800-PM-BCW0041b
1113403	PADEP Doc. No. 3800-PM-BCW0041b
1112404	PADEP Doc. No. 3800-PM-BCW0041b
1114401	PADEP Doc. No. 3800-PM-BCW0041b
NPDES Permits	
PAC110019	PADEP Doc. No. 3800-PM-BCW0041b
PAC110025	PADEP Doc. No. 3800-PM-BCW0041b
PAG-02001116014	PADEP Doc. No. 3800-PM-BCW0041b
PAG-02001112019	PADEP Doc. No. 3800-PM-BCW0041b
PAG-02001114020	PADEP Doc. No. 3800-PM-BCW0041b
PAG-02001115003	PADEP Doc. No. 3800-PM-BCW0041b
PAG-02001116004	PADEP Doc. No. 3800-PM-BCW0041b
PennDOT Hwy. Occupancy Permits ("HOP")	
09027825	PennDOT Doc. No. M-948
09028468	PennDOT Doc. No. M-948
09028723	PennDOT Doc. No. M-948
09027167	PennDOT Doc. No. M-948

Schedule 1.2(a)(4)

Assumed PennVest Loan Amounts

[Schedule may be updated / Draft Dated 5/13/20]

Description	Project Name	Projected Draws Construction Completed?	Expected Balance at August, 2020 (which is not in limitation of any provision of this Agreement)
PV 79372	Hornerstown Phase I	NONE Yes	\$ 1,059,693
PV 71390	Hornerstown Phase 2	NONE Yes	\$ 6,240,947
PV 71397	Roxbury	NONE Yes	\$ 7,184,071
PV 71406	Oakhurst	NONE Yes	\$ 6,805,376
PV 71412	Woodvale/Prospect	NONE Yes	\$ 8,289,106
PV 71417	Moxham Phase I	\$ Yes	7,131,844 \$ 7,154,553
PV 27874	Wood/Oak	\$ 5,000 Yes	\$ 793,791
PV 27880	Morrelville	\$ 5,000 Yes	7,663,662 \$ 7,633,662
PV 75314	8th Ward	\$ 30,000 Yes	3,257,800 \$ 3,258,979
PV 24012	Moxham Phase II	\$ 50,000 Yes	4,760,950 \$ 4,762,251
PV 71429	Ohio Street	\$ 50,000 No	2,251,398 \$ 2,252,256
PV 71435	Kernville	\$ 50,000 No	\$ 3,241,412
PV 71442	Fairfield	\$ No	\$ GRANT
PV 71441	Old Conemaugh	No	-\$ 4,065,356
<u>PV 27886</u>	<u>Cambria City/ Coopersdale/ Minersville</u>	<u>Yes</u>	<u>GRANT</u>
<u>PV 75307</u>	<u>Horner St. Industrial</u>	<u>Yes</u>	<u>GRANT</u>
	Central Business District	TBD No	TBD
	Miscellaneous	TBD No	TBD
		\$ 190,000	62,745,406 \$ 62,741,453
			\$ 62,935,406

~~This is Confidential to The City of Johnstown~~

Schedule 1.2(b)(1)

**Sections of the specification books related to the Clean Fill Disposal Site
that are Excluded Assets**

Attached.

SECTION 31 26 00 – CLEAN FILL DISPOSAL SITE

PART 1 GENERAL

1.1 SUMMARY

- A. Section Includes:
 - 1. All requirements for operation, maintenance, repair, and monitoring of the Clean Fill Disposal Site.
- B. Related Sections:
 - 1. Section 31 05 13 - Soils for Earthwork.
 - 2. Section 31 10 00 - Site Clearing.
 - 3. Section 31 23 17 – Trenching.
 - 4. Section 32 91 19 - Landscape Grading.
 - 5. Section 32 92 19 - Seeding.

1.2 MEASUREMENT AND PAYMENT

- A. The designated Clean Fill Disposal Site is an optional disposal area that can be used by the Contractor(s) during the project. The fee will be waived for Contract 2017-08 and the awarded contractor shall be required to operate and maintain the Clean Fill Dump Site for at least nine (9) months.
- B. The designated Clean Fill Disposal Site can be used for a lump sum unit price of \$55,000 for Contract 2017-09. The amount shall be paid monthly to the City of Johnstown based on the percentage of work completed (percentage of mainline pipe installed) as determined by the Engineer.
- C. The City of Johnstown is responsible for the NPDES Permit for Stormwater Discharges Associated with Construction Activities. The awarded contractor shall bring the existing Clean Fill Disposal Site to the permit conditions and maintain them throughout the nine (9) months of operations. The existing NPDES permit and obligations are attached at the end of this section.
- D. Only materials that meet the definition of clean fill shall be disposed of at the site. Clean fill is defined as uncontaminated, non-water-soluble, non-decomposable inert solid material including soil, rock, stone, dredged material, used asphalt, brick, block, or concrete from construction and demolition activities that is separate from other waste and recognizable as such.
- E. Materials from demolition of structures (buildings) and other projects not related to the Work performed under this Contract shall not be disposed of at the clean fill disposal site.
- F. Proper disposal of waste materials affected by a spill or release of a regulated substance at an approved site shall be the responsibility of the Contractor. Materials affected by a spill or release of a regulated substance shall not be disposed of at the clean fill disposal site.
- G. See the “Location Map” showing the Clean Fill Disposal Site and permissible access route on the following page. Contractor may only access the Clean Fill Disposal Site using North Sheridan

Street, Daniel Street, and Wynn Street. Use of any other streets to access the Clean Fill Disposal Site is not acceptable.

1.3 OPERATION AND MAINTENANCE

- A. The Contractor shall provide all required approved soil erosion and sedimentation controls for the clean fill disposal site and shall spread and compact materials at the site and maintain the site as determined by the grading plan submitted prior to the start of construction. The Owner reserves the right to deduct costs from any pay request if dump site maintenance is not satisfactorily completed.
- B. A Clean Fill Dump Site Grading Plan shall be submitted to the Owner & Engineer for approval with shop drawings as noted in bid item No. 50. Please see Price and Payment Procedures section 01 20 00.
- C. The Contractor shall provide a dozer no smaller than a D6 with a qualified operator 5 days per week, for a minimum of 40 hours per week, for a minimum of 9 months.
- D. The Contractor shall also be aware that multiple projects may be using the designated dump site throughout their operation and maintenance period. Please review the approximate schedule located after the Clean Fill Disposal Location Map.
- E. An average of 35 truckloads per day could be disposing of clean fill throughout the nine month time period of operations and maintenance. This total is for bidding purposes only and may fluctuate throughout the course of the project.
- F. Contractor shall provide a street sweeper similar to an “Elgin Road Wizard” mechanical broom sweeper and be responsible for roadway sweeping on Lloyd Court, Wynn Avenue, and Daniel Street to Sheridan Street on a daily basis or on an as needed basis.
- G. The Owner, Engineer, and Contractor, upon mutual agreement, shall be permitted to close the dump site until site conditions improve at no additional cost to the Owner. No claims for additional payment or losses due to closure will be considered.

SECTION 31 26 00 – CLEAN FILL DISPOSAL SITE

PART 1 GENERAL

1.1 SUMMARY

- A. Section Includes:
 - 1. All requirements for usage, maintenance, repair, and monitoring of the Clean Fill Disposal Site.

- B. Related Sections:
 - 1. Section 31 05 13 - Soils for Earthwork.
 - 2. Section 31 10 00 - Site Clearing.
 - 3. Section 31 23 17 – Trenching.
 - 4. Section 32 91 19 - Landscape Grading.
 - 5. Section 32 92 19 - Seeding.

1.2 MEASUREMENT AND PAYMENT

- A. The designated Clean Fill Disposal Site must be used for a lump sum unit price of \$100,000 for Contract 2018-01. The amount shall be paid monthly to the City of Johnstown based on the percentage of work completed (percentage of mainline pipe installed) as determined by the Engineer.

- B. The designated Clean Fill Disposal Site must be used for a lump sum unit price of \$100,000 for Contract 2018-02. The amount shall be paid monthly to the City of Johnstown based on the percentage of work completed (percentage of mainline pipe installed) as determined by the Engineer.

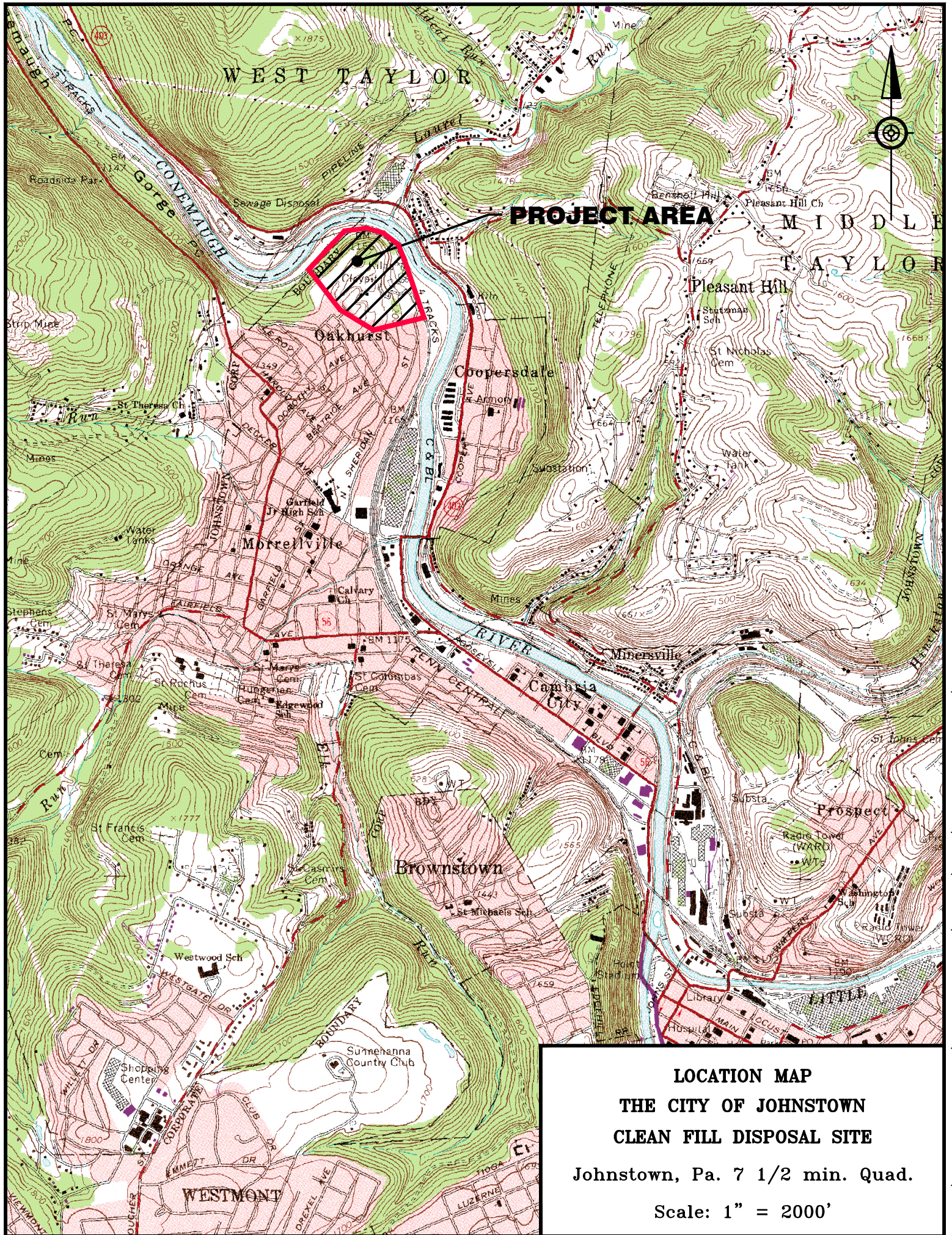
- C. The City of Johnstown is responsible for the NPDES Permit for Stormwater Discharges Associated with Construction Activities. The existing NPDES permit and obligations are attached at the end of this section.

- D. Only materials that meet the definition of clean fill shall be disposed of at the site. Clean fill is defined as uncontaminated, non-water-soluble, non-decomposable inert solid material including soil, rock, stone, dredged material, used asphalt, brick, block, or concrete from construction and demolition activities that is separate from other waste and recognizable as such.

- E. Materials from demolition of structures (buildings) and other projects not related to the Work performed under this Contract shall not be disposed of at the clean fill disposal site.

- F. Proper disposal of waste materials affected by a spill or release of a regulated substance at an approved site shall be the responsibility of the Contractor. Materials affected by a spill or release of a regulated substance shall not be disposed of at the clean fill disposal site.

- G. See the “Location Map” showing the Clean Fill Disposal Site and permissible access route on the following page. Contractor may only access the Clean Fill Disposal Site using North Sheridan Street, Daniel Street, and Wynn Street. Use of any other streets to access the Clean Fill Disposal Site is not acceptable.



PROJECT AREA

**LOCATION MAP
THE CITY OF JOHNSTOWN
CLEAN FILL DISPOSAL SITE**

Johnstown, Pa. 7 1/2 min. Quad.

Scale: 1" = 2000'

SECTION 2J – CLEAN FILL DISPOSAL SITE

2J.1 Clean Fill Disposal Site

- A. The designated Clean Fill Disposal Site fee is required to be paid by the Contractor during the project for a lump sum unit price of \$100,000.00 for Contract JRA 2018-INT-1 and \$50,000.00 for Contract COJ 2018-03. The amount shall be paid to the City of Johnstown based on the percentage of work completed (percentage of pipe installed) as determined by the Engineer.
- B. Only materials that meet the definition of clean fill shall be disposed of at the site. Clean fill is defined as uncontaminated, non-water-soluble, non-decomposable inert solid material including soil, rock, stone, dredged material, used asphalt, brick, block, or concrete from construction and demolition activities that is separate from other waste and recognizable as such.
- C. Materials from demolition of structures (buildings) and other projects not related to the Work performed under this Contract shall not be disposed of at the clean fill disposal site.
- D. Proper disposal of waste materials affected by a spill or release of a regulated substance at an approved site shall be the responsibility of the Contractor. Materials affected by a spill or release of a regulated substance shall not be disposed of at the clean fill disposal site.
- E. See the “Location Map” showing the Clean Fill Disposal Site and permissible access route on the following page.
 - 1. Contractor may only access the Clean Fill Disposal Site using North Sheridan Street, Daniel Street, and Wynn Street. Use of any other streets to access the Clean Fill Disposal Site is not acceptable.

Comparison Details	
Title	compareDocs Comparison Results
Date & Time	6/22/2020 3:40:37 PM
Comparison Time	9.71 seconds
compareDocs version	v4.3.300.65

Sources	
Original Document	Asset Purchase Agreement (A7310832-22).DOCX
Modified Document	Asset Purchase Agreement (A7310832-23).DOCX

Comparison Statistics	
Insertions	32
Deletions	29
Changes	38
Moves	0
Font Changes	0
Paragraph Style Changes	0
Character Style Changes	0
TOTAL CHANGES	99

Word Rendering Set Markup Options	
Name	Standard
<u>Insertions</u>	
Deletions	
<u>Moves / Moves</u>	
Font Changes	
Paragraph Style Changes	
Character Style Changes	
Inserted cells	
Deleted cells	
Merged cells	
Changed lines	Mark left border.
Comments color	By Author.
Balloons	False

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Open Comparison Report after Saving	General	Always
Report Type	Word	Formatting
Character Level	Word	False
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Include Footnotes / Endnotes	Word	True
Include List Numbers	Word	True
Include Tables	Word	True
Include Field Codes	Word	True
Include Moves	Word	False
Show Track Changes Toolbar	Word	True
Show Reviewing Pane	Word	True
Update Automatic Links at Open	Word	[Yes / No]
Summary Report	Word	End
Include Change Detail Report	Word	Separate
Document View	Word	Print
Remove Personal Information	Word	False
Flatten Field Codes	Word	True