DRAFT
October 3, 2012

ORDINANCE NO. 12-32

AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF WESTFIELD, INDIANA, PROVIDING FOR THE DISPOSITION OF THE WATERWORKS UTILITY AND WASTEWATER UTILITY OF THE CITY

WHEREAS, the City of Westfield, Indiana (the "City"), has heretofore established and currently owns and operates (i) a sewage works for the collection and treatment of sewage and other waste (the "Wastewater Utility") pursuant to the provisions of IND. CODE § 36-9-23, as amended, and (ii) a waterworks furnishing the public water supply to the City and its inhabitants (the "Waterworks Utility" and collectively with the Wastewater Utility, the "Utilities"), pursuant to the provisions of IND. CODE § 8-1.5, as amended;

WHEREAS, the City has been exploring the possible disposition of the Utilities in order to pay for necessary upgrades to the City's basic utilities infrastructure, while maintaining the City's competitive cost structure relative to its peer cities in central Indiana and mitigating future utility rate increases for the City's utility customers;

WHEREAS, the City issued a Request for Proposals ("RFP") relating to the sale and disposition of the Utilities for the purpose of providing for the combined operation of the Utilities to achieve operating efficiencies, to keep customer rates as low as possible and to raise capital for City infrastructure projects;

WHEREAS, Citizens Energy Group ("Citizens") responded to the City's RFP indicating its desire to acquire the Utilities and entered into extensive discussions with the City which has resulted in the preparation of an Asset Purchase Agreement relating to the Water Utility (the "Water Utility Purchase Agreement" and an Asset Purchase Agreement relating to the Wastewater Utility (the "Wastewater Utility Purchase Agreement" and with the Water Utility Purchase Agreement, the "Agreements");

WHEREAS, IND. CODE § 8-1.5-2 generally provides for a process that a municipality must adhere to when undertaking the sale of any non-surplus utility property, including the property of the Water Utility;

WHEREAS, the Wastewater Utility, an operational utility of the City, constitutes more than real property or personal property and as such provisions relating solely to the disposition of real property and provisions relating solely to the disposition of personal property do not adequately serve to address the disposition of the Wastewater Utility;

WHEREAS, studies have shown that (i) issues related to urban water supply and demand should not be considered independently of issues related to wastewater disposal and water reuse; and (ii) water management strategies and opportunities for water reuse can only be properly evaluated in the context of their interactions with the overall waterworks system;

WHEREAS, the EPA has recognized that ensuring a sustainable water supply and infrastructure is a top national priority and has led collaborative efforts to integrate the management systems for water and wastewater operations, such as establishment of the Sustainable Water Infrastructure Initiative designed to ensure that all components of our nation's water infrastructure are capable of meeting future needs;

WHEREAS, to provide for a uniform and formal process for the disposition of both the Water Utility and the Wastewater Utility, the Common Council of the City (the "Common Council") adopted Ordinance No. 12-18 on June 25, 2012, pursuant to which the Common Council determined to exercise the powers available to it under IND. CODE § 8-1.5-2 with respect to the disposition of the Wastewater Utility, all as authorized by IND. CODE §36-1-3;

WHEREAS, IND. CODE § 8-1.5-2-4 provides that whenever a municipal legislative body determines to sell or otherwise dispose of non-surplus municipally owned utility property, it must appoint three disinterested persons to serve as appraisers for the purpose of appraising the value of the assets of the utility or utilities to be disposed by the City;

WHEREAS, the Common Council adopted Resolution No. 12-110 on September 10, 2012, setting forth its desire to initiate the proceedings to provide for the disposition of the Utilities and appointing Burgess & Niple, Inc, Integra Realty Resources, and SAIC Energy, Environmental and Infrastructure, LLC (collectively, the "Appraisers") as appraisers to provide an appraisal of the assets of the Utilities as required by IND. CODE § 8-1.5-2-4;

WHEREAS, the Appraisers completed their appraisal of the City's Utilities and determined that the value of the Waterworks Utility is $16,605,000 and the value for the Wastewater Utility is $57,819,000, as more fully set forth in the Appraisal Report previously presented to the Common Council (the "Appraisal");

WHEREAS, this Common Council adopted Resolution No. 12-111 on September 24, 2012, determining to proceed with the disposition of the Utilities and conduct a public hearing for the purpose of (i) reviewing and explaining the Appraisal; (ii) receiving public comments on the proposed disposition of the Utilities; and (iii) considering adoption of an ordinance providing for the sale or disposition of the Utilities;

WHEREAS, the Common Council conducted a public hearing on October 29, 2012 pursuant to the notice published in accordance with IND. CODE § 5-3-1;

WHEREAS, the Common Council desires to approve of and authorize the execution of the Water Utility Purchase Agreement which is attached hereto as Exhibit A and the

Wastewater Utility Purchase Agreement attached hereto as Exhibit B and the disposition of the assets of the Utilities to Citizens;

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the Common Council of the City of Westfield, Indiana, as follows:

Section 1. This Common Council hereby approves of the substantially final forms of the Water Utility Purchase Agreement attached hereto as Exhibit A and the Wastewater Utility Purchase Agreement attached hereto at Exhibit B providing for the sale of the Utilities to Citizens.

Section 2. This Common Council hereby authorizes the Mayor and the Clerk of the City to execute and deliver the Agreements in substantially the forms attached hereto at Exhibit A and Exhibit B with such changes to such Agreements and the schedules attached thereto as may be necessary or appropriate upon the approval of counsel.

Section 3. Upon the execution of the Agreements, this Common Council authorizes the officers of the City to take such action as may be necessary to consummate the sale and disposition of the Utilities to Citizens.

Section 4. Upon the conclusion of the Closing (as such term is defined in the Agreements), those ordinances of the City which are inconsistent with the operation and ownership of the Utilities by Citizens or otherwise inconsistent with the provisions of this Ordinance are repealed to the extent of such inconsistencies.

Section 5. Should any provision of this Ordinance be declared by a court of competent jurisdiction to be invalid for any reason, the remaining provisions hereof shall remain unaffected to the extent that such remaining provisions can, without the invalid provision or provisions, be given the effect intended by this Common Council in adopting this Ordinance.

Section 6. This Ordinance shall be in full force and effect from and upon compliance with the procedures required by law.

* * * * *

ALL OF WHICH IS ORDAINED THIS _____ DAY OF _____, 2012.

WESTFIELD COMMON COUNCIL

Voting For	**Voting Against**	**Abstain**
_____	_____	_____
Jim Ake	Jim Ake	Jim Ake
_____	_____	_____
John Dippel	John Dippel	John Dippel
_____	_____	_____
Steven Hoover	Steven Hoover	Steven Hoover
_____	_____	_____
Robert L. Horkay	Robert L. Horkay	Robert L. Horkay
_____	_____	_____
Robert J. Smith	Robert J. Smith	Robert J. Smith
_____	_____	_____
Cindy Spoljaric	Cindy Spoljaric	Cindy Spoljaric
_____	_____	_____
Robert W. Stokes	Robert W. Stokes	Robert W. Stokes

ATTEST:

_____

Cindy J. Gossard, Clerk Treasurer

I hereby certify that ORDINANCE NO. 12-32 was delivered to the Mayor of Westfield on the _____ day of _____, 2012, at _____ ___. m.

_____
Cindy J. Gossard, Clerk Treasurer

I hereby APPROVE Ordinance No. 12-32
this _____ day of _____, 2012.

_____
J. Andrew Cook, Mayor

I hereby VETO Ordinance No. 12-32
this _____ day of _____, 2012.

_____
J. Andrew Cook, Mayor

ATTEST:

_____
Cindy J. Gossard, Clerk Treasurer

Faegre Baker Daniels
Draft 10/24//12

ASSET PURCHASE AGREEMENT

FOR THE WATER UTILITIES

By and Among

THE CITY OF WESTFIELD

and the

PUBLIC WORKS DEPARTMENT
ACTING BY AND THROUGH THE BOARD OF PUBLIC WORKS

(Seller)

and

CITIZENS WATER OF WESTFIELD, LLC

(Purchaser)

Dated as of November __, 2012

TABLE OF CONTENTS

		Page
ARTICLE I.	DEFINITIONS	2
ARTICLE II.	TERMS OF PURCHASE AND ASSUMPTION OF LIABILITIES	12
Section 2.01.	Purchase and Sale of Acquired Assets	12
Section 2.02.	Excluded Assets	13
Section 2.03.	Sale Free of Liens	14
Section 2.04.	Assumption of Liabilities.	14
Section 2.05.	Subsequent Documentation	15
Section 2.06.	Assignment of Contracts.	15
ARTICLE III.	PURCHASE PRICE	16
Section 3.01.	Purchase Price	16
Section 3.02.	Fair Consideration	16
Section 3.03.	Working Capital; Collection of Accounts Receivable.	16
Section 3.04.	Allocation of the Purchase Price	17
Section 3.05.	Escrow	17
ARTICLE IV.	REPRESENTATIONS AND WARRANTIES OF THE SELLER	17
Section 4.01.	Power	17
Section 4.02.	Authorization and Validity of Agreement	18
Section 4.03.	No Conflict or Violations	18
Section 4.04.	Consents and Approvals	18
Section 4.05.	Financial Statements.	18
Section 4.06.	Absence of Certain Changes or Events	19
Section 4.07.	Tax Matters	19
Section 4.08.	Real Property	20
Section 4.09.	Equipment and Machinery/Distribution System.	20
Section 4.10.	Supplies	20
Section 4.11.	Intellectual Property.	21
Section 4.12.	Employee Benefit Plans.	21
Section 4.13.	Employees; Labor Relations.	22
Section 4.14.	Environmental Compliance.	23
Section 4.15.	Licenses and Permits	24
Section 4.16.	Insurance	25
Section 4.17.	Contracts and Commitments.	25
Section 4.18.	Compliance with Law	26
Section 4.19.	Litigation	26
Section 4.20.	Title to the Acquired Assets and Related Matters	26
Section 4.21.	No Other Agreements to Sell Assets	26
Section 4.22.	Broker's and Finder's Fees	26
Section 4.23.	Occupancy Agreements	26

Section 4.24. All Material Information 27

ARTICLE V. REPRESENTATIONS AND WARRANTIES OF PURCHASER 27

Section 5.01. Entity Organization 27
Section 5.02. Authorization and Validity of Agreement 27
Section 5.03. No Conflict or Violation 28
Section 5.04. Approvals and Consents 28
Section 5.05. Broker's and Finder's Fees 28
Section 5.06. Financial Ability 28
Section 5.07. Financing 28
Section 5.08. Independent Decision 28
Section 5.09. Disclosure Schedule Matters 29
Section 5.10. WARN ACT 29

ARTICLE VI. TITLE TO REAL ESTATE; UCC STATEMENTS 29

Section 6.01. Evidence of Title 29
Section 6.02. Survey and Other Evidence of Boundary 29
Section 6.03. Objections to Title 30
Section 6.04. Title Expenses 31
Section 6.05. UCC Search; Releases 31
Section 6.06. Post-Closing Access Rights 31
Section 6.07. Occupancy Agreements 31
Section 6.08. Unscheduled Real Property 31
Section 6.09. Public Access to Real Property 32
Section 6.10. Priority Two Property 32

ARTICLE VII. OTHER AGREEMENTS 32

Section 7.01. Taxes 32
Section 7.02. Cooperation on Tax Matters 32
Section 7.03. Files and Records 32
Section 7.04. Employee Matters. 32
Section 7.05. System's Service to Seller 34
Section 7.06. Right of First Refusal; IURC Regulation 34
Section 7.07. Future Rates 34
Section 7.08. Use of and Repair of Public Rights of Way 35
Section 7.09. Safe Water Supply 35
Section 7.10. MBE/WBE/VBE Opportunities 36
Section 7.11. Compliance with Applicable Laws; Cooperation with the City 36
Section 7.12. Seller's Utility Plant 36
Section 7.13. Capital Plan 37
Section 7.14. Public Safety Training Academy Property 37
Section 7.15. Public Works Building Lease 37

ARTICLE VIII. DISPUTE RESOLUTION; INDEMNIFICATION 37

Section 8.01. Survival 37
Section 8.02. Dispute Resolution. 37
Section 8.03. Indemnification by Seller 41
Section 8.04. Indemnification by Purchaser 41
Section 8.05. Procedure. 42
Section 8.06. Limitations on Indemnification Obligations. 43
Section 8.07. Tort Claims 44
Section 8.08. Indemnified Claims 44

ARTICLE IX. PRE-CLOSING COVENANTS OF THE SELLER 44

Section 9.01. Operation of the System 44
Section 9.02. Prior Purchaser Approval 44
Section 9.03. Due Diligence 45
Section 9.04. Cooperation 45
Section 9.05. Exclusivity 45
Section 9.06. Notification of Certain Matters 45
Section 9.07. Supplements and Updates to Representations and Warranties and Related Disclosure Schedules 45
Section 9.08. Governmental Approvals 46
Section 9.09. Defeasance 46

ARTICLE X. PRE-CLOSING COVENANTS OF PURCHASER 46

Section 10.01. Actions Before the Closing Date 46
Section 10.02. Cooperation 46
Section 10.03. Notification of Certain Matters 47
Section 10.04. Supplements and Updates to Representations and Warranties and Related Disclosure Schedule 47
Section 10.05. Governmental Approvals 47

ARTICLE XI. CONDITIONS PRECEDENT TO OBLIGATIONS OF THE SELLER 48

Section 11.01. Consents and Approvals 48
Section 11.02. Representations and Warranties of Purchaser 48
Section 11.03. No Injunctions 48
Section 11.04. Legal Opinions 48
Section 11.05. Performance of the Obligations of Purchaser 48
Section 11.06. Bond Debt Defeasance/Pay Off 48
Section 11.07. Deliveries by Purchaser 48
Section 11.08. Performance of the Obligations of Purchaser 48
Section 11.09. Simultaneous Closing 49

ARTICLE XII. CONDITIONS PRECEDENT TO OBLIGATIONS OF PURCHASER 49

Section 12.01. Consents and Approvals 49
Section 12.02. Representations and Warranties of Seller 49
Section 12.03. Due Diligence 49
Section 12.04. Financing....49
Section 12.05. No Injunctions....49
Section 12.06. No Material Adverse Change....49
Section 12.07. Legal Opinions....49
Section 12.08. Deliveries by Seller....50
Section 12.09. Performance of the Obligations of Seller....50
Section 12.10. IURC Approval of Purchaser Petition 50
Section 12.11. Satisfaction of Seller's Bonds and Notes 50
Section 12.12. Environmental Approvals 50
Section 12.13. Simultaneous Closing 51

ARTICLE XIII. CLOSING 51

Section 13.01. Closing Date....51
Section 13.02. Deliveries by Seller....51
Section 13.03. Deliveries by Purchaser 52

ARTICLE XIV. TERMINATION....53

Section 14.01. Events of Termination....53
Section 14.02. Effect of Termination....54

ARTICLE XV. MISCELLANEOUS 54

Section 15.01. Confidentiality 54
Section 15.02. Public Announcements 54
Section 15.03. Expenses; Brokers....54
Section 15.04. Utilities Proration....54
Section 15.05. Risk of Loss 55
Section 15.06. Reasonable Efforts; Cooperation 55
Section 15.07. Notices 55
Section 15.08. Headings 56
Section 15.09. Construction....56
Section 15.10. Severability 57
Section 15.11. Entire Agreement 57
Section 15.12. Amendments; Waivers....57
Section 15.13. Parties in Interest....58
Section 15.14. Successors and Assigns....58
Section 15.15. Governing Law; Jurisdiction....58
Section 15.16. Counterparts....58

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT ("Agreement"), dated as of November __, 2012 (the "Effective Date"), is made and entered into by and among the CITY OF WESTFIELD, INDIANA (the "City" or "Seller") and the PUBLIC WORKS DEPARTMENT ACTING BY AND THROUGH THE BOARD OF PUBLIC WORKS (together, the "Department," and together with the City, "Seller") and CITIZENS WATER OF WESTFIELD, LLC (the "Purchaser"). References to the "City" or "Seller" in this Agreement shall include Department, which may act for and on behalf of the City with respect to the System (defined below).

WITNESSETH:

WHEREAS, the City owns and operates, by and through the Department, pursuant to the provisions of IND. CODE § 36-9-23 and related statutes, a wastewater collection and treatment system (the "Wastewater System");

WHEREAS, the City owns and operates, by and through the Department, pursuant to the provisions of IND. CODE § 8-1.5-3 and related statutes, a water system (the "System" and, collectively with the Wastewater System, the "Systems");

WHEREAS, the City has elected to sell the assets of the System and the Wastewater System;

WHEREAS, the City recognizes the impact Wastewater System operations have on the quality of water in the City's rivers, streams and aquifers and has therefore determined that an integrated sale of the System and the Wastewater System is necessary to achieve the ultimate water quality goals of the City;

WHEREAS, the disposition of the assets of the System are subject to IND. CODE § 8-1.5-2;

WHEREAS, the City has found that there is no specific statutory scheme that applies to the disposition of wastewater assets;

WHEREAS, the City has adopted an ordinance under IND. CODE § 36-1-3 (the "Home Rule Statute"), which allows the City to dispose of the assets of the Wastewater System pursuant to IND. CODE § 8-1.5-2, by electing to be governed by that Indiana Code section;

WHEREAS, Purchaser is an affiliate of Citizens Water and CWA Authority, Inc., which entities are currently engaged in the ownership and operation of water and wastewater utilities, respectively;

WHEREAS, the City issued a Request for Proposals regarding the sale of the Systems as it explored ways to achieve operating efficiencies, to improve customer service, to pay off debt of the Systems and to keep customer rates as low as possible;

WHEREAS, Seller has determined that the sale of the Systems to Purchaser will result in operating and capital project synergies that will benefit the City and its inhabitants;

WHEREAS, the City and Purchaser have determined that it would be advisable for Purchaser directly or through its designated Affiliate(s) to acquire the Systems in order to achieve the benefits of professional operation and operating synergies;

WHEREAS, Purchaser:

a. will be qualified to own, operate and finance the Systems under various federal and state statutes or regulations; and

b. will have all of the powers that are necessary, useful or appropriate for the acquisition, ownership and operation of the Systems;

WHEREAS, Purchaser's or its Affiliates' acquisition of each of the Systems will be as a going concern and as part of an integrated transaction involving both Systems, with each part dependent on the other; and

WHEREAS, Purchaser, in reliance upon the representations, warranties and covenants of Seller, desires to purchase and acquire from Seller, and Seller desires to sell, transfer and convey all of the Acquired Assets (defined below) as a going concern at Closing, except for the Excluded Assets, and in connection therewith, Purchaser has agreed to assume certain ongoing obligations and liabilities of Seller, all on the terms and conditions set forth in this Agreement.

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

ARTICLE I.
DEFINITIONS

In addition to the capitalized terms defined elsewhere in this Agreement, the following terms, as used in this Agreement and in all Related Agreements, shall have the meanings set forth in this Article I:

"**Access Rights**" has the meaning specified in Section 6.06.

"**Accounts Receivable**" means all accounts and notes receivable, rights to refunds, unbilled revenue (net of bad debt) and deposits of any kind of Seller, accrued by or on behalf of Seller in the operation of the System, to the extent constituting a current asset, outstanding as of the Closing Date.

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

"**Acquired Authorizations**" has the meaning specified in Section 2.01(i).

"**Affiliate**" means, with respect to Purchaser, a limited liability company, corporation (or equivalent legal entity under foreign law), joint venture, limited partnership, limited liability partnership or general partnership (or equivalent under foreign law) or other Person that controls

or owns, is owned or controlled by, or is under common ownership or control with, Purchaser, and with respect to Seller, any department of the City controlled by the City.

"**Agreement**" means this Asset Purchase Agreement and the Schedules and Exhibits attached hereto as they may be amended or modified in accordance with the applicable provisions hereof.

"Aquifer" means the permeable water-bearing geological formation underlain by a less permeable layer and the water contained in the saturated zone of the formation, located in part beneath the City.

"**Arbitration Award**" has the meaning specified in Section 8.02(d)(v).

"**Arbitration Demand**" has the meaning specified in Section 8.02(d)(i).

"**Arbitration Response**" has the meaning specified in Section 8.02(d)(i).

"**Arbitrators**" has the meaning specified in Section 8.02(d)(ii).

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

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

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

"**Bond Debt**" means all of the City's bond-related indebtedness related to the System in the principal amount of Eight Million Three Hundred Thirty Two Thousand Eight Hundred Sixty Eight Dollars and No/100 ($8,332,868) as of July 31, 2012, as further summarized on Exhibit A.

"**Bond Payoff**" has the meaning specified in Section 12.12.

"**Boundary Evidence**" has the meaning specified in Section 6.03(a).

"**Business Day**" means any day other than Saturday, Sunday, and any day on which commercial banks in Indiana are authorized by Law to be closed.

"**Capital Plan**" has the meaning specified in Section 7.12.

"CERCLA" means the Comprehensive Environmental Response Compensation and Liabilities Act of 1980, as amended.

"CIAC" means cash, services or property contributed in aid of construction within the meaning of applicable Laws pertaining to Indiana water utilities regulated by the IURC.

"**City**" means the City of Westfield, Indiana.

"**City Officials**" means Seller's Mayor, the Chief of Staff, the Director of the Department, Bryan Forkner and Robert Lambert (with respect to operations), Diana Peyton (with respect to human resources matters) and Derrick Cash (with respect to information technology matters).

"**Claim**" has the meaning specified in Section 8.03.

"**Closing**" means the consummation of the sale and purchase of the Acquired Assets in accordance with the terms and conditions of this Agreement as provided for in Section 13.01.

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

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

"**COBRA**" means Title X of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, including, without limitation, Sections 2201 through 2208 of the Public Health Service Act and Part 6 of Subtitle B of the Employee Retirement Income Security Act of 1974, as amended, and Section 4980B of the Code.

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

"**Commitment Preconditions**" has the meaning specified in Section 6.03(a).

"**Contracts**" has the meaning specified in Section 4.17(a).

"**Council**" means the Common Council of the City.

"**Counterproposal**" has the meaning specified in Section 8.02(c)(iii).

"**Damages**" means any and all losses, obligations, penalties, interest, damages, liabilities, causes of action, judgments, actions, demands, claims, costs or expenses, including reasonable attorneys' fees sustained or incurred in investigating, preparing or defending any Claim. Notwithstanding the foregoing, Damages shall not include incidental damages, loss of profits or punitive damages, if any, unless the Party seeking indemnification has had incidental damages, lost profits or punitive damages assessed or asserted against it by a third party.

"**Department**" means the City of Westfield Public Works Department acting by and through the Board of Public Works.

"**Designated Parties**" has the meaning specified in Section 8.02(c)(v).

"**Dispute**" has the meaning specified in Section 8.02(a).

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

"**Employee**" means any Person employed by Seller who worked for the System immediately before the Closing.

"Environmental Claims" means all formal investigations, warnings, notice letters, notices of violations, Liens, orders, claims, demands, suits or administrative or judicial actions

for any injunctive relief, fines, penalties, or any damage, including, without limitation, natural resource damages, or environmental response costs arising out of an Environmental Condition and/or pursuant to Environmental Laws, including such claims, etc., arising from the exposure of persons to Hazardous Materials at the work place or the exposure of persons or property to Hazardous Materials migrating or otherwise emanating from, to, or located at, under or on the Real Property.

"Environmental Conditions" means the (i) state of the environment, including natural resources (e.g., flora and fauna), soil, surface water, ground water, any present drinking water supply, subsurface strata or ambient air, relating to or arising out of the use, handling, storage, treatment, recycling, generating, transportation, spilling, leaking, pumping, pouring, injecting, emptying, discharging, emitting, escaping, leaching, dumping, disposal, release, or threatened release of Hazardous Materials and (ii) any repair, replacement, retrofit, or activity, required to be completed, performed, remediated or corrected on the Real Property and Acquired Assets, in either case, as necessary to bring the properties into compliance with all applicable Laws or Environmental Laws and in either case, which is reasonably expected to result in or does result in an Environmental Claim.

"**Environmental Laws**" means all Laws relating to human health, pollution, or protection of the environment (including ambient air, surface water, ground water, land surface or surface strata), including (i) Laws relating to Releases, or threatened Releases of Hazardous Materials, (ii) Laws relating to the identification, generation, manufacture, processing, distribution, use, treatment, storage, disposal, recovery, transport or other handling of Hazardous Materials, (iii) CERCLA; the Toxic Substances Control Act, as amended; the Hazardous Materials Transportation Act, as amended; the RCRA; the Clean Water Act, as amended; the Safe Drinking Water Act, as amended; the Clean Air Act, as amended; and (iv) all analogous Laws promulgated or issued by any state Governmental Authority.

"Environmental Permits" has the meaning specified in Section 4.16.

"**EPA**" means the United States Environmental Protection Agency.

"**Equipment and Machinery**" means (i) all the equipment, tangible personal property, machinery, office furniture and equipment, fixtures, tooling, spare maintenance or replacement parts and vehicles owned or leased by Seller (including all leases of such property), which are used, necessary or important in the operation of the System; (ii) any rights of Seller to warranties applicable to the foregoing (to the extent assignable), and licenses received from manufacturers and seller of any such item; and (iii) any related claims, credits, and rights of recovery with respect thereto.

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

"Escrow" means the escrow established under the Escrow Agreement.

"Escrow Agent" has the meaning specified in Section 3.05.

"Escrow Agreement" has the meaning specified in Section 3.05.

"Escrow Amount" mean means Five Hundred Thousand Dollars and No/100 ($500,000.00).

"Escrow Deposit" has the meaning specified in Section 3.05.

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

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

(a) constituting Trade Payables;

(b) related to any of the Excluded Assets;

(c) any liabilities or obligations of Seller relating to or arising out of (i) the employment or termination of employment of any Employee on or before the Closing or (ii) worker's compensation claims of any Employee that relate to events occurring on or before the Closing Date;

(d) any liability or obligation that constitutes any claim, liability or obligation in respect of Employees of the Seller arising on or prior to the Closing Date (including by reason of the transactions contemplated by this Agreement) by or on behalf of any such Employee for (A) payments for unemployment compensation, (B) bonus, (C) hospital, medical, life insurance or disability claims, (D) Seller's Qualified Benefit Plans or Seller's Benefit Plans, (E) severance or termination payments, (F) accrued vacation or accrued sick leave, (G) workers' compensation, (H) any other benefit obligation of the Seller, including any Contracts listed in Section 4.17(a)(i) of this Agreement, or (I) other compensation or damages;

(e) Seller's Bonds and Notes;

(f) related to any tort claims against Seller ("Tort Claims");

(g) related to any claim for Damages to the extent the Seller has the right to be indemnified by a third party other than Purchaser or to receive insurance proceeds related thereto;

(h) related to any malfeasance or penalties or fines, or interest thereon, assessed by the EPA or IDEM, by reason of any acts or omissions of Seller prior to Closing alleged to be in violation of applicable Environmental Law; or

(i) those liabilities and obligations set forth in Schedule 1.01.

"**Existing Survey**" has the meaning specified in Section 6.02.

"**Face-to-Face Meeting**" has the meaning specified in Section 8.02(c)(iv).

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

"**Financial Statements**" has the meaning specified in Section 4.05.

"**First Notice of Claim**" has the meaning specified in Section 8.02(c)(ii).

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

"**Governmental Authority**" means any court, department, commission, board, bureau, municipality, agency or instrumentality of the United States, any state, county, city or political subdivision thereof, or any foreign governmental body, including without limitation, the EPA, IDEM, the IURC and the City Council.

"**Hazardous Materials**" mean (i) any substance that is defined as a "hazardous substance," "hazardous waste," "hazardous material," pollutant, or contaminant under Environmental Laws ; (ii) petroleum (including crude oil and any fraction thereof); (iii) any natural or synthetic gas (whether in liquid or gaseous state); (iv) polychlorinated biphenyls ("PCBs") and PCB-containing equipment, (v) pesticides, (vi) explosives, flammables, corrosives and (ix) substances that are regulated by, or may form the basis of liability under, any Environmental Law and includes the meanings of all such terms in or under any Environmental Law.

"**IDEM**" means the Indiana Department of Environmental Management.

"**Indemnified Party**" has the meaning specified in Section 8.05(a).

"**Indemnifying Party**" has the meaning specified in Section 8.05(a).

"**Intellectual Property**" means all United States patents and patent applications (whether utility, design, or plant product), registered and unregistered trademarks, service marks, trade names, copyrights and copyright applications (and all derivations thereof), logos, brands, business identifiers, private labels, trade dress (including all goodwill and reputation symbolized by any of the foregoing), rights of publicity, processes, industrial designs, drawings, specifications, inventions, improvements, discoveries, formulae, know-how, and trade secrets, customer lists, supplier lists, proposals and analyses, business plans and strategies, licenses, research and development files, manuals, sales literature and promotional material, URLs, domain names and all rights with respect to the foregoing, whether or not patentable or registerable.

"**Interim Financing**" means the issuance of Bond Anticipation Notes as approved by the City Council's adoption of water utility revenue bond ordinances.

"**IURC**" means the Indiana Utility Regulatory Commission.

"**Knowledge**" to the "**Knowledge**" of, and phrases of similar import, means the actual knowledge of (A) with respect to Seller, the City Officials or (B) with respect to Purchaser, Carey Lykins, John Brehm, Aaron Johnson and Randy Edgemon.

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

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

"**Licenses and Permits**" mean all licenses, permits, franchises, authorizations, certificates, registrations, consents, orders, variances, waivers and approvals issued or granted by Governmental Authorities to either Seller, including without limitation, Environmental Permits, operating permits and approvals that are held by Seller that relate directly or indirectly to the operation of the System, including those described in Schedule 4.15.

"**Liens**" means all liabilities, obligations, claims, security interests, leases, liens, mortgages, deeds of trust, pledges, rights of first refusal, encroachments, rights of third parties, charges, options, conditional sales or other title retention agreements, UCC-1 financing statements, licenses, rights of way, easements, encumbrances, restrictions, covenants, rights and defects in title of any nature whatsoever, including, without limitation, any restriction on use, transfer, receipt of income, or exercise of any other attribute of ownership.

"**Material Adverse Effect**" means any event, change, fact, condition, occurrence or circumstance that either individually or in the aggregate, has had or could reasonably be expected to have a materially adverse effect on the condition of the Acquired Assets, the business, financial condition, results of operations or other aspects of the System, taken as a whole, but excluding any effect to the extent arising from any one or more of the following: (i) any act or omission of Seller that is conducted with the prior written consent of Purchaser following Seller's disclosure to Purchaser of relevant, material facts or that is expressly authorized by the terms of this Agreement; (ii) any costs or expenses incurred or accrued in connection with the transactions as contemplated by this Agreement (except to the extent constituting an Assumed Liability or relating to or constituting a breach of any representation or warranty hereunder); or (iii) any such change, effect or circumstance resulting solely from the announcement of this Agreement.

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

"**Neutral Arbitrator**" has the meaning specified in Section 8.02(d)(ii).

"**Nonassignable Assets**" has the meaning specified in Section 2.06(a).

"**Occupancy Agreements**" has the meaning specified in Section 4.23.

"**Outside Date**" means one (1) year from the Effective Date.

"**Real Property**" has the meaning specified in Section 4.08.

"**Panel**" has the meaning specified in Section 8.02(d)(ii).

"**Party**" means Purchaser or Seller and the term "Parties" means collectively Purchaser and Seller.

"**Permitted Liens**" means (a) the Access Rights; (b) the Reserved Rights; (c) the liens, security interests and encumbrances in the Acquired Assets that are identified on Schedule 1.02; or (d) the "Permitted Real Property Encumbrances" as determined pursuant to Section 6.03(b).

"**PERF**" means the Indiana Public Employees Retirement Fund.

"**Person**" means any individual, corporation, partnership, joint venture, association, limited liability company, joint-stock company, trust, or unincorporated organization, or any governmental agency, officer, department, commission, board, bureau, or instrumentality thereof.

"**Policies**" and "**Policy**" have the meanings specified in Section 4.16.

"**Priority Two Property**" has the meaning specified in Section 6.10.

"**Proposed Resolution**" has the meaning specified in Section 8.02(c)(ii).

"Public Safety Training Academy Property" means the 92-acre parcel of land near the Cherry Tree Water Treatment Plant subject to the Public Safety Training Academy License.

"Public Safety Training Academy License" has the meaning specified in Section 7.14.

"Public Works Building" means the building located at 2706 E. 171st Street, Westfield, Indiana 46074 and all assets associates with the building all as set forth on Exhibit B.

"Public Works Building Lease" means the capital lease between Purchaser and the City for the Public Works Building provided for in Section 7.15.

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

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

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

"RCRA" means the Resource Conservation and Recovery Act, as amended.

"**Real Property**" has the meaning specified in Section 4.08.

"**Related Agreements**" means all agreements, instruments, ordinances and other documents contemplated by or executed, delivered or performed pursuant to this Agreement.

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment of Hazardous Materials.

"**Reserved Rights**" means title to public rights-of-way except for any subsurface occupancies or improvements used in the operation of the System.

"**Response**" has the meaning specified in Section 8.02(c)(iii).

"**Scheduled Occupancy Agreements**" has the meaning specified in Section 4.23.

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

"Seller's Benefit Plans" means each voluntary employees' beneficiary association under Section 501(c)(9) of the Code whose members include any Employees and any employee benefit plans, as defined in Section 3(3) of ERISA, or any other retirement, profit sharing, Seller's Qualified Benefit Plan, stock option, stock bonus, deferred compensation (including any "nonqualified deferred compensation plan" within the meaning of Section 409A of the Code), severance, sick leave or other material plan or arrangement providing benefits to current or former Employee, in each case, whether or not terminated, to which the Seller or an Affiliate are a plan sponsor, as defined in Section 3(16)(B) of ERISA, or to which the Seller or an Affiliate otherwise contribute or have contributed (including without limitation PERF), or in which the Seller or an Affiliate otherwise participate or have participated. It shall further include all obligations, arrangements, or practices, whether or not legally enforceable, to provide benefits, other than salary or wages to present or former directors, employees or agents, other than obligations, arrangements and practices that are Seller's Benefit Plans, that are owed, adopted or followed by the Seller or an Affiliate to the extent that the Seller would have any liability with respect to such obligation, arrangement or practice of the Affiliate. Seller's Benefit Plans also include consulting agreements under which the compensation paid does not depend upon the amount of service rendered, sabbatical policies, severance payment policies and fringe benefits within the meaning of Code §132. For these purposes "Affiliate" also includes any member of an affiliated group as defined under Section 414(m) of the Code, and all entities under common control with Seller pursuant to Section 414(b) or (c) of the Code.

"Seller's Bonds and Notes" means any and all bonds, notes, repurchase agreements, or other debt for money borrowed, including the following bonds and debt of Seller: Waterworks Revenue Bonds Series 1998; Waterworks Revenue Bonds Series 2002; Waterworks Energy Savings Bank Debt; Sewage Works Revenue Bonds 2002; Sewage Works Revenue Bonds 2004; Sewage Works Refunding Revenue Bonds 2006; Sewage Works Revenue Bonds 2007; Energy Saving Bank Debt; and Interim Financing.

"**Seller's Indemnified Persons**" has the meaning specified in Section 8.04.

"**Seller's Qualified Benefit Plan**" has the meaning specified in Section 4.12(b).

"**Standing Panel**" has the meaning specified in Section 8.02(b).

"**Supplies**" means all the lubricants, spare parts, fuel, chemicals, raw materials, and other supplies owned by Seller or to which Seller may have rights, which are used, necessary or important in the operation of the System and related to the System, and all rights of Seller to warranties received from their suppliers with respect to the foregoing (to the extent assignable) and related claims, credits and rights of recovery with respect thereto.

"**Survey**" has the meaning specified in Section 6.02.

"**Survey Affidavit**" has the meaning specified in Section 6.02.

"**System**" has the meaning specified in the recitals to this Agreement. The term "System" as used herein means the System as a whole and does not mean any particular asset constituting part of the System.

"**Systems**" has the meaning specified in the recitals to this Agreement.

"**Tax**" or "**Taxes**" means all federal, state, and local employment taxes, unemployment taxes, and sales and use taxes, if any, imposed upon a Person (including all taxes or payments in lieu of taxes which a Person is required to collect and/or pay over to any government), and all related additions to tax, penalties or interest thereon. For the avoidance of doubt, "Tax" or "Taxes" includes, without limitation, all federal, state and local income taxes and property taxes.

"**Threshold Amount**" has the meaning specified in Section 8.06(a).

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

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

"**Title Evidence**" has the meaning specified in Section 6.03(a).

"**Top Executive Negotiation**" has the meaning specified in Section 8.02(c)(v).

"**Tort Claims**" has the meaning specified in subparagraph (e) of the definition of "Excluded Liabilities."

"**Trade Payables**" means any current liability representing an amount owed by Seller in respect of the System, whether arising from the purchase of merchandise, materials, Supplies or services, payments to Employees, any damages the nature of which relates to failure to pay or perform any Trade Payable, and all other amounts typically deemed current liabilities, in each case to the extent constituting a current liability, outstanding as of the Closing Date.

"Transferred Employee" has the meaning set forth in Section 7.04(a).

"Transition Services Agreement" means the Transition Services Agreement by and between Purchaser and Seller, to be in a form mutually agreeable to Purchaser and Seller and entered into concurrently with the Closing.

"**UCC Search**" has the meaning specified in Section 6.05.

"**Unsatisfactory Exceptions**" has the meaning specified in Section 6.03(a).

"**Unscheduled Occupancy Agreements**" has the meaning specified in Section 4.23.

"Utility Plant" means that portion of the System's assets that is used and useful for the operations of the water system, including without limitation, plant in service, construction work in progress, materials, supplies and other items included in utility plant under applicable Law, and excluding CIAC, plant leased to others and, unless expressly allowed by the IURC as utility plant under applicable Law, plant held for future use, and net of accumulated depreciation and amortization.

"**U.S. 31 Project**" means those certain Highway Utility Agreements by and among Seller and the Indiana Department of Transportation, dated as of September 21, 2012.

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

"Wastewater Purchase Agreement" has the meaning specified in Section 11.09.

"**Wastewater System**" has the meaning specified in the recitals to this Agreement.

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

"Wells" mean water withdrawal facilities used to extract water from underlying water bearing strata (including aquifers), including the casings, screens, pumping equipment and controls, piping structures and related land.

"Working Capital" has the meaning specified in Section 3.03(a).

ARTICLE II.
TERMS OF PURCHASE AND ASSUMPTION OF LIABILITIES

Section 2.01. **Purchase and Sale of Acquired Assets**. With the exception of the Excluded Assets, subject to the terms and conditions set forth in this Agreement, at Closing, Purchaser shall purchase from the City, and the City shall sell, transfer, assign and deliver to Purchaser, free and clear of all Liens except for the Permitted Liens, all of the right, title and interest of the City in, to and under all of the assets, properties and rights of the City, to the extent such assets, properties and rights exist as of the Closing Date and are used, necessary or important in the operation of the System (whether or not any such asset(s) have any value for accounting purposes or are carried or reflected on the books or financial statements of the Seller) (the assets to be conveyed collectively referred to as the "Acquired Assets"), including without limitation, the following:

(a) all real and personal property interests owned, licensed or leased by Seller and any real or personal property interests that are in the process of being acquired, licensed or leased by Seller or any of its Affiliates, including without limitation, the Wells, the Real Property, the

Public Works Building Lease, the Public Safety Training Academy Property, rights to draw water from the Aquifer and Occupancy Agreements;

(b) except for those contracts, licenses and leases listed on Schedule 2.01(b), all contracts, licenses and leases related to the System to which the City is a party, including without limitation leases for Equipment and Machinery, vehicles and other items of personal property (the "Assigned Contracts");

(c) all Supplies, except Supplies consumed or used by Seller between the Effective Date and the Closing Date in the ordinary course of business and in accordance with the terms of this Agreement;

(d) all personal property, fixtures, equipment and fixed assets owned, licensed or leased by Seller, including, without limitation, Equipment and Machinery, system pipes, auxiliary equipment and plant equipment;

(e) all Intellectual Property;

(f) Seller's other intangible assets, including, without limitation, the benefit of third-party representations, warranties, guarantees, performance bonds, maintenance bonds, correspondence and the computer software and programs (whether proprietary or not);

(g) Seller's Files and Records;

(h) all prepaid expenses, credits, advance payments, security, deposits, charges, sums and fees to the extent related to any Acquired Assets;

(i) subject to Section 2.06, all Licenses and Permits, but only to the extent such Licenses and Permits may be transferred under Applicable Law (the "Acquired Authorizations");

(j) the assets listed on Schedule 2.01(j); and

(k) the System as a going concern.

Section 2.02. **Excluded Assets**. Other than the Acquired Assets subject to Section 2.01, Purchaser expressly understands and agrees that it is not purchasing or acquiring, and Seller is not selling or assigning any other assets or properties of Seller, and all such other assets and properties shall be excluded from the Acquired Assets (the "Excluded Assets"). Excluded Assets include the following assets and properties of Seller:

(a) cash, cash equivalents and invested funds of the City or any of the City's Affiliates representing the unexpended bond proceeds, plus investment earnings, and other amounts in the capital improvement, bond and/or construction fund balances and reserves for the System.

(b) the Public Works Building, subject to the Public Works Building Lease;

(c) all contracts that are not Assigned Contracts;

(d) the Accounts Receivable;

(e) all insurance policies of Seller and all rights to applicable claims and proceeds thereunder, except to the extent pertaining to the Acquired Assets as to which a loss has occurred prior to Closing;

(f) all assets, properties and rights used by the City which are not used, necessary or important in the operation of the System;

(g) the rights that accrue or will accrue to Seller under this Agreement and Related Agreements;

(h) Seller's Access Rights, Reserved Rights and any other assets listed in Schedule 2.02(h); and

(i) Cell Tower Antenna Agreements.

Section 2.03. **Sale Free of Liens**. The Acquired Assets sold, conveyed, transferred, assigned and delivered by Seller to Purchaser, as herein provided, are and shall be as of the Closing, free and clear of all Liens other than Permitted Liens. Such Acquired Assets shall be conveyed by appropriate deeds, bills of sale, endorsements, leases, mortgages, security interests, pledges, assignments and other instruments of transfer and conveyance described herein, and if not expressly described herein, then by transfer documents satisfactory in form and substance to Purchaser and Seller and their counsel in their reasonable discretion.

Section 2.04. **Assumption of Liabilities**.

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

(i) all liabilities and obligations arising on or after the Closing under the Assigned Contracts;

(ii) except as set forth in Section 7.04, all liabilities and obligations relating to employee benefits, compensation or other arrangements with respect to any Transferred Employee arising after the Closing;

(iii) any litigation initiated against Seller related to the System or the Acquired Assets resulting from events that occur or conditions caused by Purchaser that exist on or after the Closing; and

(iv) all other liabilities and obligations arising out of or relating to Purchaser's ownership or operation of the System and the Acquired Assets on or after the Closing.

(b) At the Closing, to the extent the Seller is not released therefrom, Seller shall be indemnified against its obligations under the Assumed Liabilities in accordance with Section 8.04.

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

Section 2.05. **Subsequent Documentation**. At any time and from time to time after the Closing Date, Seller shall, upon the request of Purchaser, and Purchaser shall, upon the request of Seller, promptly execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such other instruments of conveyance and transfer and other documents, and perform or cause to be performed such further acts, as may be reasonably required to evidence or effectuate, or more fully evidence or effectuate, (a) the sale, conveyance, transfer, assignment and delivery hereunder of the Acquired Assets to Purchaser; (b) the assumption by Purchaser of any of the Assumed Liabilities; (c) Seller's or Purchaser's rights under any Access Rights or Reserved Rights; (d) performance by the Parties of any of their other respective obligations under this Agreement or the Related Agreements; (e) the satisfaction of Excluded Liabilities; (f) the financing by Purchaser of the Purchase Price; and (g) any other matters reasonably requested by a Party to carry out the provisions, purposes and intent of this Agreement or the Related Agreements.

Section 2.06. **Assignment of Contracts**.

(a) Notwithstanding anything to the contrary set forth herein, to the extent that any of the Assigned Contracts or Acquired Authorizations that constitute an Acquired Asset are not assignable or transferable without the consent of the issuer thereof or the other party thereto or any third party including, without limitation, a Governmental Authority (the "Nonassignable Assets"), this Agreement shall not constitute an assignment or transfer of the Nonassignable Assets if such assignment or transfer or attempted assignment or transfer would constitute a breach thereof or a violation of any Law. Seller shall use reasonable efforts, at reasonable cost to Seller, to obtain any consents or waivers necessary to any such assignment. To the extent that such consents or waivers are not obtained by Seller on or before the Closing, Seller agrees to cooperate with Purchaser and to take such reasonable actions, at reasonable cost to Seller, as Purchaser may reasonably request in order to secure any arrangement designed to provide for Purchaser the benefits of such Nonassignable Assets. Seller shall further assign and deliver to Purchaser any net proceeds or net receivables by Seller pursuant to the Nonassignable Assets except and to the extent that Seller has previously provided Purchaser with the benefits of such proceeds or receivables or to the extent the assignment is not permitted under the Nonassignable Assets. In connection therewith, Seller shall enforce, for the benefit of Purchaser, any and all material rights of Seller against such issuer or such other party or parties, to the extent reasonably permitted.

(b) To the extent Purchaser receives the benefit of any Nonassignable Asset pursuant to Section 2.06(a), Purchaser agrees to assume and discharge any liability or obligation related to the benefits of such Nonassignable Asset.

ARTICLE III.
PURCHASE PRICE

Section 3.01. **Purchase Price**. Subject to the terms and conditions, including adjustments, set forth in this Agreement, the aggregate purchase price for the Acquired Assets shall be [allocable portion of Ninety One Million Dollars and No/100 ($91,000,000.00)] cash payment paid upon Closing plus the assumption of Assumed Liabilities (the "Purchase Price"), payable subject to the terms and conditions of this Agreement. Upon Closing, the cash payment of the Purchase Price shall be paid by wire transfer of immediately available funds (i) in the case of the Escrow Amount to the Escrow Agent in accordance with the Escrow Agreement and (ii) with the remaining amount the Purchase Price paid to one or more accounts designated in writing by the City to the Purchaser (with such designation no later than two (2) business days before the Closing Date).

Section 3.02. **Fair Consideration**. The Parties acknowledge and agree that the consideration provided for in this Article III represents fair consideration and reasonable equivalent value for the sale and transfer of the Acquired Assets and the transactions, covenants and agreements set forth in this Agreement, which consideration was agreed upon as the result of arm's-length, good faith negotiations between the Parties and their respective representatives.

Section 3.03. **Working Capital; Collection of Accounts Receivable**.

(a) For the avoidance of doubt, the Parties intend that the Purchaser shall provide its own Working Capital to operate the System after Closing and that Seller will retain rights to all Accounts Receivable and the obligation to satisfy all Trade Payables including any accrued Taxes. As used herein, the term "Working Capital" shall mean normal and customary working capital consisting of current assets less current liabilities.

(b) Purchaser shall collect the Accounts Receivable and promptly, but in no event later than ten (10) days after receipt, remit all amounts representing Accounts Receivable to Seller. From time to time after Closing, the Parties will reconcile amounts related to Accounts Receivable, Trade Payables and other assets and liabilities affected by the timing of Closing. Any disagreements or disputes relating to this Section 3.03 shall be resolved by the Parties pursuant to the provisions of Section 8.02(b) of this Agreement. Seller hereby authorizes Purchaser, effective as of the Closing, to open any mail addressed to Seller and received by Purchaser at any location relating to the operation of the System. Additionally, in order to effectuate customer transition, Seller shall cooperate with Purchaser in coordinating the transfer of lock boxes and other payment processes for customers of the System who pay their bills through Automated Clearinghouse (ACH) or similar processes.

(c) In the event that Purchaser fails to remit the City the amount due pursuant to Section 3.03(b) within ten (10) days after receipt, then interest shall accrue on such delinquent amount at a rate equal to ten percent (10%) per annum, commencing on the eleventh (11th) day after receipt and continuing until such amount is received. Notwithstanding the foregoing, this Section 3.03(c) shall not apply to any amounts that Purchaser asserts in good faith that it is not required to pay even if later determined to be due.

Section 3.04. **Allocation of the Purchase Price**. Purchaser and Seller agree to allocate the Purchase Price, plus the amount of the Assumed Liabilities, to the Acquired Assets as specified in Schedule 3.04 in accordance and consistent with applicable accounting standards.

Section 3.05. **Escrow.** At the Closing, Purchaser shall deposit Five Hundred Thousand and No/100 Dollars ($500,000.00) with an escrow agent agreed upon by the Parties (the "Escrow Agent"), by wire transfer of immediately available funds (the "Escrow Amount" and, together with all earnings thereon, collectively, the "Escrow Deposit"), which shall be used to secure satisfaction of Seller's obligations pursuant to Article VIII herein, including obligations under the Wastewater Purchase Agreement, if any, pursuant to the terms of the Escrow Agreement. To the extent the Escrow Deposit is not applied as set forth in the Escrow Agreement, it shall be returned to the City. The Escrow Deposit shall be held, invested and disbursed as specified in and pursuant to the terms and conditions of an escrow agreement, in a form mutually agreeable to Purchaser and Seller (the "Escrow Agreement") and in accordance with the terms and conditions of Article VIII.

ARTICLE IV.
REPRESENTATIONS AND WARRANTIES OF THE SELLER

Seller makes only the representations and warranties which are set forth in this Article IV. Any disclosure set forth on any particular schedule of the Disclosure Schedules shall be deemed disclosure in reference to all schedules comprising the Disclosure Schedules to which such disclosure is clearly applicable based solely upon such disclosure.

Purchaser acknowledges that it has conducted an independent investigation of the financial condition, assets, liabilities, properties and projected operations of the System in making its determination as to the propriety of the transaction contemplated by this Agreement and, in entering into this Agreement and Related Agreements, has relied solely on the results of the investigation and on the representations and warranties of Seller expressly contained in Article IV of this Agreement. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT AND THE RELATED AGREEMENTS, THE SELLER MAKES NO EXPRESS OR IMPLIED WARRANTY OF ANY KIND WHATSOEVER, INCLUDING ANY REPRESENTATIONS AS TO THE PHYSICAL CONDITION OR VALUE OF ANY OF THE ASSETS OF THE SYSTEM OR THE FUTURE PROFITABILITY OR FUTURE EARNINGS PERFORMANCE OF THE SYSTEM. ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY EXCLUDED.

Seller represents and warrants to Purchaser that the statements contained in this Article IV are true and correct as of the date hereof.

Section 4.01. **Power**. Seller has all requisite power and authority to own, lease and operate the Acquired Assets and the System as operated on the Effective Date, to sell and transfer in the manner described herein the Acquired Assets and powers described herein to Purchaser and to enter into, execute and deliver this Agreement.

Section 4.02. **Authorization and Validity of Agreement**. The execution and delivery of this Agreement and the Related Agreements by Seller and the consummation by Seller of the transactions contemplated by this Agreement and the Related Agreements have been duly and validly authorized by all necessary or proper action on the part of Seller and no other proceedings on the part of Seller is necessary to authorize the execution, delivery and performance of this Agreement. This Agreement has been duly executed and delivered by Seller and constitutes a legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms and conditions, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency, reorganization or other laws affecting the enforcement of creditors' rights generally.

Section 4.03. **No Conflict or Violations**. The execution, delivery and performance of this Agreement, and the sale of the System, by Seller does not and shall not: (a) violate any material provision of Law applicable to Seller or the System; (b) in any material respect, violate or result in a breach of or constitute (with due notice or lapse of time or both) a default under any contract, lease, loan agreement, mortgage, security agreement, license, consent order, indenture or other instrument or obligation to which Seller is a party, or by which its assets or properties may be bound; or (c) result in the imposition of any Liens or material restrictions on either of the System or any of the Acquired Assets.

Section 4.04. **Consents and Approvals**. Schedule 4.04 sets forth a list of each consent, waiver, authorization or approval of any Governmental Authority, or of any other Person, and each declaration to or filing or registration with any Governmental Authority required in connection with the execution and delivery of this Agreement by Seller or the performance by Seller of its obligations hereunder. Any and all notices, consents, authorizations and approvals set forth in Schedule 4.04 have been or prior to the Closing will be made and obtained. In addition, Schedule 4.04 contains a true and complete list of all Nonassignable Assets as of the Effective Date.

Section 4.05. **Financial Statements**.

(a) Schedule 4.05 sets forth correct and complete copies of the following financial statements (collectively, the "Financial Statements"):

(i) unaudited statement of operations of the System as of the twelve month period ended December 31, 2011 and for the six (6)-month period ended June 30, 2012;

(ii) unaudited statement of cash flow of the System as of the twelve month period ended December 31, 2011 and for the six (6)-month period ended June 30, 2012; and

(iii) unaudited balance sheet of the System at each of December 31, 2011 and June 30, 2012.

In addition, Seller shall provide to Purchaser by November 1, 2012, the statement of operations, statement of cash flow and balance sheet as of the 12-month period ended December 31, 2011, as audited by the State Board of Accounts, which shall become part of the Financial Statements defined above.

(b) Between the Effective Date and the Closing Date, Seller shall provide to Purchaser correct and complete monthly unaudited statement of operations as they are produced in the ordinary course of business.

(c) The Financial Statements have been prepared and presented in accordance with the applicable standards for financial reporting of the Governmental Accounting Standards Board (GASB), the financial information as presented in the Financial Statements is accurate in all material respects and is presented in a manner designed to set forth the financial position and results of operations of the System for the periods indicated. Except as reflected or reserved for in the Financial Statements, or as set forth in Schedule 4.05, Seller is not subject to any liability or obligation related to the System, other than immaterial current liabilities and obligations incurred since the date of such Financial Statement in the ordinary and usual course of business consistent with past practice.

Section 4.06. **Absence of Certain Changes or Events**. Except as reflected in the Financial Statements, since June 30, 2012, Seller has operated the System in the ordinary course of business consistent with past practice and other than in the ordinary course of business consistent with past practice with respect to the System, to Seller's Knowledge there has not been any:

(a) change, event or condition (whether or not covered by insurance) that has resulted in a Material Adverse Effect;

(b) sale, assignment or transfer of any of the Acquired Assets or other properties of Seller necessary or important to the operation of the System;

(c) failure to repay or discharge any material obligation or liability;

(d) failure to operate the System in the ordinary course or to preserve the System intact, to keep available to Purchaser the services of the Employees and to preserve for Purchaser, to the extent practicable, the goodwill of Seller's dealers, suppliers, customers and others having business relations with it;

(e) damage, destruction or loss affecting the Acquired Assets or the System resulting in a Material Adverse Effect;

(f) except as otherwise provided in Section 2.04, material indebtedness, obligations or liabilities incurred, increased or modified with respect to the System that would constitute Assumed Liabilities;

(g) agreements, waivers, permits, fees, charges, or other burdens of any nature placed on the System by the City for the benefit of the City; or

(h) agreement by Seller to do any of the foregoing or any act or omission that would result in any of the foregoing.

Section 4.07. **Tax Matters**. No state or local Taxing authority has assessed any Taxes on the Acquired Assets or on the operation of the System and no Taxes will be due and

payable on or before the Closing Date. Seller has timely paid all Taxes that may have been or may be due and payable by Seller on or before the Closing Date, arising from the ownership or operation of the Acquired Assets or the System on or before the Closing Date, including without limitation, withholding with respect to compensation paid to employees, and the amounts withheld have been properly paid over to the appropriate Taxing authorities. No taxing authority has asserted any claim against the Seller for the assessment of any additional Tax liability or initiated any action or proceeding which could result in such an assertion.

Section 4.08. **Real Property**. Schedule 4.08 contains a list and brief description of all real property the Seller owns and uses in the operation of the System (the "Real Property"). Except for the Permitted Real Property Encumbrances and as set forth in Schedule 4.08, Seller has good and marketable title in the Real Property. Except as set forth on Schedule 4.08, none of the Real Property is subject to any lease or grant to any Person of any right to the use, occupancy or enjoyment of such Real Property or any portion thereof. Except for Permitted Liens, the Real Property is not subject to any use restrictions, exceptions, reservations or limitations which in any material respect interfere with or impair the present and continued use thereof in the ordinary course of business and in the same manner after Closing as conducted by Seller prior to Closing. There are no pending or, to the Knowledge of the Seller, threatened condemnation proceedings relating to any of the Real Property. All buildings, structures and improvements located on, fixtures contained in, and appurtenances attached to the Real Property conform in all material respects to applicable federal, state, county, local and foreign laws, regulations and ordinances, including without limitation, those related to zoning, use or construction, and the Real Property is zoned for the purposes for which they are presently used by Seller. Seller does not lease any real property from any third party that is used for or necessary or important to the operation of the System.

Section 4.09. **Equipment and Machinery/Distribution System**.

(a) Schedule 4.09(a) sets forth a list of, or otherwise describes, all material Equipment and Machinery included in the Acquired Assets. Seller has good title, free and clear of all Liens (other than the Permitted Liens) to the Equipment and Machinery owned by Seller.

(b) Seller holds good and transferable leasehold interests in all Equipment and Machinery leased by them, in each case under valid and enforceable leases. Except as set forth on Schedule 4.09(b), none of the leased Equipment and Machinery of Seller requires the approval of the lessor to be assigned, or upon assignment will experience a material change in terms, costs or tax recapture.

(c) To the Knowledge of Seller, the Equipment and Machinery are in good operating condition and repair (except for ordinary wear and tear), and are being operated in conformity in all material respects with all applicable Laws and warranty conditions.

Section 4.10. **Supplies**. All Supplies included in the Acquired Assets consist of a quality and quantity usable in the ordinary course of business, consistent with past practice.

Section 4.11. Intellectual Property.

(a) All material Intellectual Property owned by or licensed to Seller and related to the System is listed on Schedule 4.11(a). All Intellectual Property material to the System is owed by or licensed to Seller free and clear of all Liens, except for Permitted Liens, and is in good standing, is duly authorized, valid, issued and enforceable, has not been canceled, and, to the Knowledge of Seller, is not the subject of any challenge. To the Knowledge of Seller, no facts exist that would invalidate or render unenforceable any Intellectual Property.

(b) (i) There are no licenses now outstanding or other rights granted to third parties under any Intellectual Property and (ii) Seller is not a party to any agreement or understanding restricting the use of any Intellectual Property. To the Knowledge of Seller, the Intellectual Property does not infringe the patent, trademark, copyright, trade secret or other proprietary right of any third party. All filings or recordations necessary or appropriate to protect the interests of Seller in any Intellectual Property have been duly made and are in full force and effect.

Section 4.12. Employee Benefit Plans.

(a) Schedule 4.12(a) contains a list of each of Seller's Benefit Plans.

(b) Except as would not have a Material Adverse Effect and to the Knowledge of Seller, each Seller's Benefit Plan complies with all applicable Laws (including ERISA and the Code and the regulations promulgated thereunder). Each Seller's Benefit Plan that is intended to be qualified under Section 401(a) of the Code (a "Seller's Qualified Benefit Plan") has received a favorable determination letter from the Internal Revenue Service, or with respect to a prototype plan, can rely on an opinion letter from the Internal Revenue Service to the prototype plan sponsor, to the effect that such Seller's Qualified Benefit Plan is so qualified and that the plan and the trust related thereto are exempt from federal income Taxes under Sections 401(a) and 501(a), respectively, of the Code, and, to Seller's Knowledge, nothing has occurred that could reasonably be expected to cause the revocation of such determination letter from the Internal Revenue Service or the unavailability of reliance on such opinion letter from the Internal Revenue Service, as applicable.

(c) Except as set forth in Schedule 4.12(c), no Seller's Benefit Plan: (i) is subject to the minimum funding standards of Section 302 of ERISA or Section 412 of the Code; or (ii) is a "multi-employer plan" (as defined in Section 3(37) of ERISA). Seller has not: (A) except with respect to the PERF Plan, withdrawn from any pension plan under circumstances resulting (or expected to result) in liability; or (B) engaged in any transaction which would give rise to a liability under Section 4069 or Section 4212(c) of ERISA.

(d) Other than as required under Section 4980B of the Code or other applicable Law, no Seller's Benefit Plan provides benefits or coverage in the nature of health, life or disability insurance following retirement or other termination of employment (other than death benefits when termination occurs upon death).

(e) Except to the extent not material, other than as a result of the process set forth in Section 7.04(e), no Seller's Benefit Plan exists that could: (i) result in the payment to any Employee or consultant of the System of any money or other property; or (ii) accelerate the

vesting of or provide any additional rights or benefits (including funding of compensation or benefits through a trust or otherwise) to any Employee or consultant of the System, in each case, as a result of the execution of this Agreement.

(f) The representations and warranties set forth in this Section 4.12 are Seller's sole and exclusive representations and warranties regarding employee benefit matters.

(g) Seller has been in full compliance with the requirements with COBRA and seller is not subject to any excise tax under Section 4980B of the Code for the current or any prior taxable years.

(h) Notwithstanding anything in this Agreement to the contrary, it is expressly understood that Purchaser shall not acquire any asset, or assume any liability or obligation relating to any of Seller's Benefit Plans.

Section 4.13. <u>Employees; Labor Relations</u>.

(a) Seller is not a party to, or bound by, any collective bargaining or other agreement with a labor organization representing any of the Employees. There has not been, nor, to Seller's Knowledge, has there been any threat of, any strike, slowdown, work stoppage, lockout, concerted refusal to work overtime or other similar labor activity or dispute affecting Seller or any of the Employees.

(b) Seller is in compliance in all material respects with all applicable Laws pertaining to employment and employment practices to the extent they relate to the Employees.

(c) With respect to all Employees:

(i) there is no unfair labor practice charge or complaint against the Seller pending, or to the Knowledge of the Seller, threatened (and the Seller does not believe that there exists any reasonable basis therefor);

(ii) there is no grievance pending against the Seller filed by any Employee arising out of any grievance or complaint procedure (and the Seller does not have Knowledge that there exists any reasonable basis therefor);

(iii) there is no charge of employment discrimination, harassment or retaliation with respect to or relating to any Employee or group of Employees pending before the Equal Employment Opportunity Commission or any other agency responsible for the prevention or investigation of unlawful and/or discriminatory employment practices (and the Seller does not have Knowledge that there exists any reasonable basis therefor);

(iv) the Seller has not received any written notice of the intent of any Governmental Authority responsible for the enforcement of labor or employment laws to conduct an investigation or other inquiry, and to the Knowledge of Seller, no such investigation or other inquiry is in progress; and

(v) there is no claim, action, suit, proceeding, investigation or inquiry pending against the Seller or, to the Knowledge of the Seller, threatened, in any forum by or on behalf of any Employee, any applicant for employment with Seller, or classes of the foregoing alleging breach of any express or implied contract of employment, violation of any law governing employment or the termination thereof or other discriminatory, wrongful or tortious conduct in connection with the employment relationship.

(d) As between Section 4.18 and this Section 4.13, the representations and warranties in Sections 4.07, 4.12, 4.24 and this Section 4.13 shall control and be exclusive as to compliance with Laws relating to employees and labor relations.

Section 4.14. Environmental Compliance.

(a) (i) Except as set forth in Schedule 4.14(a)(i), to the Knowledge of Seller, Seller's uses and operations of any Real Property comply in all material respects with general operating and engineering standards of the water supply industry; and (ii) except as set forth in Schedule 4.14(a)(ii), to the Knowledge of Seller, Seller's uses and operations of any Real Property comply in all material respects with Environmental Laws and Seller has obtained and is in material compliance with the terms, conditions, and requirements of all necessary Licenses and Permits required under Environmental Laws ("Environmental Permits"). No enforcement proceeding is pending or, to the Knowledge of Seller, threatened relating to the revocation or limitation of any of the Environmental Permits. Such Environmental Permits are set forth in Schedule 4.14(a)(iii) and are in full force and effect. Seller has made true and complete copies of all the Environmental Permits currently in effect available to Purchaser.

(b) Except as set forth in Schedule 4.14(b), Seller has not generated, manufactured, used, transported, treated, stored, handled, disposed or offered for disposal, transferred, processed or otherwise handled any Hazardous Materials on the Real Property except in material compliance with all applicable Environmental Laws. Seller has not received any written notice that it is liable under CERCLA or RCRA for the Release or threatened Release of a Hazardous Substance, IND. CODE § 13-25-4-8 or any analogous Environmental Law that addresses the Release or threatened Release of Hazardous Substances in respect of any operations now conducted by Seller. To the Knowledge of Seller, no previous owner or tenant of the Real Property has Released any Hazardous Materials into, upon, or from any Real Property or into or upon the soil, ground or surface water thereof, except in material compliance with all applicable Environmental Laws, nor has any previous owner or tenant of the Real Property violated any Environmental Laws with respect to the Real Property, in either case in a manner that would reasonably be expected to result in an Environmental Claim.

(c) Except as set forth in Schedule 4.14(c), Seller has not received any written notice of any pending, nor to the Knowledge of Seller is there any, threatened, formal investigation, notice of violation, Lien, order, claim, suit or administrative or judicial action for any injunctive relief, fines, penalties from any Governmental Authority relating to Seller's alleged violation of any Environmental Laws that either has not been resolved to the satisfaction of the Governmental Authority or that would reasonably be expected to result in an Environmental Claim.

(d) Except as set forth in Schedule 4.14(d), Seller has not received any written notice of any pending, nor to the Knowledge of Seller is there any, threatened, claim, demand, suit, judgment or judicial proceeding that Seller is or may be liable to any Person or Governmental Authority as a result of a Release or threatened Release of any Hazardous Materials from or onto any Real Property or the real property of any Person. Seller has no written agreement with or written commitments to, and to the Knowledge of the Seller, has made no binding oral commitments to, any Governmental Authority relating to the investigation or remediation of any Hazardous Materials at any Real Property or real property of any Person.

(e) To the Knowledge of the Seller, there are no storage tanks subject to regulation pursuant to 329 IAC 9-1-1 or 675 IAC 22-2.4-1, underground or otherwise (whether or not out of service, closed or decommissioned), currently located on the Real Property other than in material compliance with applicable Environmental Laws, and no Governmental Authority has conducted any audits, assessments, tests or other reviews in connection with such storage tanks that, to the Knowledge of the Seller, have not been resolved to the satisfaction of the Governmental Authority.

(f) Except to the extent otherwise expressly mutually agreed in writing by the Parties, Seller has delivered to Purchaser all audits, tests, reports or other reviews, including Phase I and Phase II environmental assessments or subsurface investigations conducted on the Real Property which relate to environmental impact performed by or on behalf of Seller that are in the possession of Seller or of any agent, consultant or other service provider of Seller.

(g) Except as set forth on Schedule 4.14(g), to the Knowledge of the Seller, Seller has not Released any Hazardous Material on or from any Real Property or at any geologically or hydrologically adjoining property, nor are any Hazardous Materials present on or in the ambient air, surface water, ground water, land surface or surface strata at any Real Property, including from any Hazardous Materials contained in barrels, aboveground or underground storage tanks, landfills, land deposits, dumps, equipment (whether movable or fixed) or other containers, either temporary or permanent, and deposited or located in land, water, sumps, or any other part of the Real Property or such adjoining property, or incorporated into any structure therein or thereon, except in each case (1) in material compliance with Environmental Laws; or (2) when resulting from acts authorized by, and in material compliance with, an Environmental Permit.

(h) As between Section 4.18 and this Section 4.14, the representations and warranties in Sections 4.07 and 4.24 and this Section 4.14 shall control and be exclusive as to Seller's representations and warranties with respect to compliance with Environmental Laws.

Section 4.15. Licenses and Permits. Schedule 4.15 lists or describes the Licenses and Permits. The Licenses and Permits are all the licenses and permits that are necessary or important for the operation of the System. The Licenses and Permits are in full force and effect. Seller has made true and complete copies of all the Licenses and Permits available to Purchaser. Seller is in compliance with all material terms, conditions and requirements of all Licenses and Permits and no proceeding is pending or, to the Knowledge of Seller, threatened relating to the revocation or limitation of any of the Licenses or Permits.

Section 4.16. **Insurance**. Schedule 4.16 lists all of Seller's policies of title, liability, fire, casualty, business interruption, workers' compensation, surety bonds and other forms of insurance insuring the properties, assets or operations of the System (collectively, "Policies" and individually, a "Policy"), setting forth the carrier, policy number, expiration dates, premiums, description of type of coverage and coverage amounts. Seller has made true and complete copies of all such policies available to Purchaser. Such policies are in amounts deemed to be adequate by Seller, all premiums with respect thereto are currently paid, such policies are in full force and effect and Seller has not received any notice that any such policy will not be renewed.

Section 4.17. **Contracts and Commitments**.

(a) With respect to the System, Schedule 4.17 lists all of the following material contracts (collectively, the "Contracts"):

(i) employment, consulting, bonus, deferred compensation, pension, welfare, or retirement agreements and commitments with the Employees;

(ii) bonds, notes, mortgages, contracts, agreements, swaps or other derivatives or commitments for the repayment or borrowing of money by Seller, or for a line of credit including borrowings by Seller in the form of a guarantee of, indemnification for, or agreement to acquire any obligation of others, and all security or pledge agreements related thereto;

(iii) contracts, including management, operating or service agreements, contracts related to ongoing construction, including insurance contracts, surety bonds, architect agreement or consultant agreement, providing for payments in excess of One Hundred Thousand Dollars ($100,000) by Seller in any twelve (12) month period;

(iv) contracts, agreements or commitments containing covenants purporting to limit the freedom of Seller or any Employee to compete in any business or in any geographic area; and

(v) contracts not made in the ordinary course of business, providing for payments by Seller in excess of One Hundred Thousand Dollars ($100,000) in any twelve (12) month period.

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

(c) Seller has no liability for debt other than the debt reflected in the Seller's Bonds and Notes.

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

Section 4.18. **Compliance with Law**. The System is in material compliance with all applicable Laws. Seller is not in material violation of any Law applicable to the System, its Employees or any of the Acquired Assets, nor is Seller aware that any factual circumstances are reasonably likely to result in such violation.

Section 4.19. **Litigation**. Except as set forth on Schedule 4.19, (a) there are no claims, actions, suits, proceedings, arbitral actions or investigations pending or, to the Knowledge of Seller, threatened against Seller with respect to the System or any of the Acquired Assets before or by any Governmental Authority; and (b) there are no unsatisfied judgments of any kind against Seller with respect to the System or the Acquired Assets requiring payment in excess of One Hundred Thousand and No/Dollars ($100,000).

Section 4.20. **Title to the Acquired Assets and Related Matters**. Except with respect to Real Property (the sole representations and warranties for which are contained in Section 4.08), Seller has good and marketable title to all of the Acquired Assets owned by Seller, free and clear of all Liens, subject to the Permitted Liens. With the exception of Nonassignable Assets, Seller has complete and unrestricted power and the right to sell, convey, assign, transfer and deliver the Acquired Assets in the manner described herein, and the deeds and other instruments of assignment and transfer to be executed and delivered by Seller to Purchaser at the Closing, subject to the approvals and consents required to consummate the transactions contemplated by this Agreement subject to the Permitted Liens. Such deeds and other instruments of assignment and transfer will be valid and binding obligations of Seller, enforceable in accordance with their respective terms. All consents necessary to consummate the transactions contemplated by this Agreement have been obtained, or will be obtained on or prior to and be in effect as of the Closing Date, and are or will be when obtained valid and binding upon the Persons giving the same. The Acquired Assets include all properties and assets (real, personal and mixed, tangible and intangible, and all leases, licenses and other agreements) necessary to permit Purchaser to carry on the operation of the System subsequent to the Closing in substantially the manner conducted by Seller.

Section 4.21. **No Other Agreements to Sell Assets**. Seller does not have any obligation, absolute or contingent, to any other Person to sell any of the Acquired Assets, or to effect any merger, consolidation or other reorganization of Seller or to enter into any agreement with respect thereto.

Section 4.22. **Broker's and Finder's Fees**. No broker, finder, or Person is entitled to any commission or finder's fee by reason of any agreement or action of Seller in connection with this Agreement or the transactions contemplated by this Agreement. Seller agrees to pay when due the fees and expenses of their financial and technical advisors.

Section 4.23. **Occupancy Agreements**. Schedule 4.23 contains a list of all easements, licenses, use agreements and other occupancy agreements for real property granted by third parties to Seller that are Known to Seller and are used or expected to be used in the operation of the System (the "Scheduled Occupancy Agreements"). Seller has made available true and complete copies of all Scheduled Occupancy Agreements to Purchaser. To Seller's Knowledge, Seller is not in breach of or in default under the Scheduled Occupancy Agreements (for which applicable notices have been delivered and cure periods have elapsed) and no party to

any Scheduled Occupancy Agreements has given Seller written notice of or made a claim with respect to any breach or default thereunder, nor is Seller aware of any condition that currently exists or with the passage of time will result in a default or breach by any party to a Scheduled Occupancy Agreement. The Parties acknowledge that Seller may own other easements, licenses, use agreements, and other occupancy agreements for real property that are used or expected to be used in the operation or future expansion of the System other than those listed in Schedule 4.23 (the "Unscheduled Occupancy Agreements"). The terms Scheduled Occupancy Agreements and Unscheduled Occupancy Agreements shall collectively be referred to as "Occupancy Agreements."

Section 4.24. **All Material Information**. Seller has not withheld from Purchaser any material facts relating to the Systems or the Acquired Assets. To the Knowledge of Seller, no representation or warranty made herein by the Seller and no statement contained in any certificate or other instrument furnished or to be furnished to Purchaser by the Seller in connection with the transactions contemplated by this Agreement contains or will contain an untrue statement of material fact or omits or will omit to state any material fact necessary in order to make any representation, warranty, or other statement of the Seller not misleading.

ARTICLE V.
REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser makes only the representations and warranties which are set forth in this Article V. Any disclosure set forth on any particular schedule of the Disclosure Schedules shall be deemed disclosure in reference to all schedules comprising the Disclosure Schedules to which such disclosure is clearly applicable based solely upon such disclosure.

As a material inducement to Seller to enter into this Agreement and to consummate the transactions contemplated hereby, Purchaser hereby represents and warrants to Seller as follows:

Section 5.01. **Entity Organization**. Purchaser is a limited liability company created and existing pursuant to the Indiana Business Flexibility Act, as amended, created and existing under the laws of the State of Indiana, and has all requisite power and authority to own, lease and operate the Acquired Assets and the System as operated on the Effective Date and to perform its obligations hereunder.

Section 5.02. **Authorization and Validity of Agreement**. Purchaser has all requisite power and authority to execute and deliver this Agreement and all Related Agreements. The execution and delivery of this Agreement and the Related Agreements, the performance of the obligations of Purchaser hereunder and the consummation by Purchaser of the transactions contemplated by this Agreement and the Related Agreements have been duly and validly authorized by all necessary action of the Purchaser's Board and no other proceeding on the part of Purchaser is necessary to authorize the execution, delivery and performance of this Agreement. This Agreement has been duly executed and delivered by Purchaser and constitutes a legal, valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms and conditions, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency, reorganization or other laws affecting the enforcement of creditors' rights generally.

Section 5.03. **No Conflict or Violation**. The execution, delivery and performance of this Agreement by Purchaser upon satisfaction of the conditions set forth herein do not and shall not: (a) violate or conflict with any provision of any governing document of Purchaser; (b) violate any provision of Law, or any order, judgment or decree of any court or other Governmental Authority; or (c) violate or result in a breach of, or constitute (with due notice or lapse of time or both) a default under any contract, lease, loan agreement, mortgage, security agreement, indenture or other agreement or instrument to which Purchaser is a party or by which it is bound or to which any of its properties or assets is subject.

Section 5.04. **Approvals and Consents**. Except as set forth on Schedule 5.04, the execution, delivery and performance of this Agreement by Purchaser and the consummation by Purchaser of the transactions contemplated hereby will not require any notice to, or consent, authorization or approval from any Person or Governmental Authority or any third party. Except as set forth in Schedule 5.04, any and all notices, consents, authorizations and approvals set forth in Schedule 5.04 have been or prior to the Closing will be made and obtained.

Section 5.05. **Broker's and Finder's Fees**. No broker, finder or other Person is entitled to any commission or finder's fee in connection with this Agreement or the transactions contemplated by this Agreement. Purchaser agrees to pay when due the fees and expenses of its financial and technical advisors.

Section 5.06. **Financial Ability**. Upon satisfaction of the conditions to Closing, absent facts or circumstances that would constitute a breach of a representation or warranty of Seller, and after giving effect to the consummation of the transactions contemplated hereby and the incurrence of any indebtedness in connection therewith, Purchaser will have the financial ability and will have sufficient Working Capital for its needs and anticipated needs to operate the System as a utility system regulated by the IURC.

Section 5.07. **Financing**. Upon satisfaction of the conditions to Closing, absent facts or circumstances that would constitute a breach of a representation or warranty of Seller, at the Closing, Purchaser will have sufficient funds available to consummate the transaction contemplated by this Agreement and to pay expenses related to the transactions contemplated by this Agreement and to generally provide Working Capital for the operations of the System following the Closing assuring that the residents of the City will receive adequate, safe and reliable water service.

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

Section 5.09. **Disclosure Schedule Matters**. Purchaser acknowledges that: (a) the inclusion of any matter on any Disclosure Schedule shall not necessarily be deemed an admission by Seller that such listed matter is material or that such listed matter has or could have a Material Adverse Effect or constitutes a material liability with respect to the Acquired Assets; (b) matters reflected in the Disclosure Schedules are not necessarily limited to matters required by this Agreement to be reflected in such Disclosure Schedules; and (c) such additional matters are set forth for informational purposes only and do not necessarily include other matters of a similar nature.

Section 5.10. **WARN ACT**. Purchaser has no present plans or intention to carry out, as part of the transaction, any "plant closing" or "mass layoff," as each term is defined in the WARN Act, affecting any site of employment or facility of the System.

ARTICLE VI.
TITLE TO REAL ESTATE; UCC STATEMENTS

Section 6.01. **Evidence of Title**. Subject to Section 6.10, with respect to all Real Property, Seller shall obtain and deliver to Purchaser within one hundred eighty (180) days after the Effective Date (with the understanding that Seller shall use good faith efforts to obtain the same as soon as reasonably practicable) a commitment for an owner's policy of title insurance on ALTA Owner's Form 2006 (the "Title Commitment"), issued by Chicago Title (the "Title Company"), having an effective date after the Effective Date, and containing such endorsements as Purchaser reasonably requests, to the extent available from the Title Company. The Title Company shall agree to insure, in Purchaser, good, merchantable and marketable title to the fee simple estate in the Real Property for the portion of the Purchase Price allocated to the Real Property. The final title policy or policies for Real Property shall be issued without the standard general exceptions for: (i) rights or claims of parties in possession not shown by the public records, (ii) easements, or claims of easements, not shown by the public records, (iii) encroachments, overlaps, boundary line disputes or other matters which would be disclosed by an accurate survey and (iv) any lien, or right to a lien, for services, labor or material theretofore or thereafter furnished, imposed by law and not shown by the public records. If, after exercising reasonable diligence, Seller is unable to obtain each Title Commitment during the time period specified above, Seller shall have the right to extend such period by written notice to Purchaser for an additional ninety (90) day period.

Section 6.02. **Survey and Other Evidence of Boundary**. Within one hundred eighty (180) days after the Effective Date, Seller shall obtain and deliver to Purchaser a staked survey of the portions of the Real Property that comprise real property (and any buildings or structures located thereon) made in accordance with the "Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys," jointly established and adopted by the American Land Title Association and the American Congress on Surveying and Mapping in 1999, and including Items 1, 2, 3, 4, 6, 7(a), 8, 10, 11(b), 13 of Table A thereof (collectively, the "Survey"). The Surveys shall be sufficient to permit the Title Company to delete the standard survey-related exceptions from the final title policy, as provided in Section 6.01. The Purchaser and the Seller shall share equally in the costs of obtaining all Surveys. Notwithstanding anything to the contrary in this Section 6.02, Seller shall not have to comply with this Section 6.02 as to a specific Property if Seller (i) delivers to Purchaser and the Title Company a survey of the

Property at issue that was completed before the Effective Date (the "Existing Survey") and (ii) agrees to execute an affidavit regarding the accuracy of Existing Survey that is sufficient to cause the Title Company to delete the standard survey exception from the final title policy and to issue an affirmative survey endorsement for the Property at issue (a "Survey Affidavit"). If, after exercising reasonable diligence, Seller is unable to obtain the Survey during the time period specified above, Seller shall have the right to extend such period by written notice to Purchaser for an additional ninety (90) day period.

Section 6.03. Objections to Title.

(a) Objections. Within thirty (30) days after receipt of the later of (i) the Title Commitment (collectively, the "Title Evidence") and (ii) the Survey or the Existing Survey (collectively, the "Boundary Evidence"), whichever is applicable to the Real Property at issue (excluding the Priority Two Property), Purchaser shall give Seller written notice of any of the following shown in or disclosed by the Title Evidence and Boundary Evidence: (1) matters that are unsatisfactory to Purchaser ("Unsatisfactory Exceptions") and (2) any of Seller's requirements shown in the "Requirements" Section of the Title Commitment which must be satisfied by Seller before the Title Company will issue a final title policy for the applicable portion of the Real Property (the "Commitment Preconditions"). Seller shall have the obligation, at its sole cost and expense, to satisfy all Commitment Preconditions prior to Closing.

(b) Seller's Obligation to Cure. Seller shall have the obligation to cure prior to the Closing Date or make arrangements to cure after the Closing Date all Unsatisfactory Exceptions that (i) can be cured without paying money to third parties, (ii) are Liens or (iii) will materially restrict or prevent the use of the Real Property at issue in the operation of the System. Nothing in this Section 6.03 shall be deemed to restrict or modify the Parties' respective obligations after the Closing Date with respect to Real Property or Occupancy Agreements. Any matter disclosed by the Title Evidence or Boundary Evidence to which Purchaser fails to timely object or with respect to which Seller has no obligation to cure pursuant to this Section 6.03(b) shall be deemed a "Permitted Real Property Encumbrance."

(c) Insurable Claims. To the extent any Claim for Damages under Article VIII constitutes an Insurable Claim (as defined herein), Purchaser agrees to assert and pursue with reasonable diligence such Insurable Claim against the Title Company (which shall include commencing litigation and diligently prosecuting such Insurable Claim to judgment) prior to pursuing a Claim for Damages under Article VIII. If at any time following a non-favorable judgment that substantially denies the relief sought by Purchaser from the Title Company in connection with the Insurable Claim (each a "Non-Favorable Judgment"), Purchaser shall be permitted, following such Non-Favorable Judgment, to pursue Seller with a Claim for Damages under Article VIII (any such Claim against Seller following an attempted Insurable Claim against the Title Company being a "Residual Title Claim"). Notwithstanding anything to the contrary in Article VIII, Purchaser shall have the right to assert a Claim for Damages based upon a Residual Title Claim for a sixty (60) day period after the Non-Favorable Judgment. For purposes of this Section 6.03(c), an "Insurable Claim" shall mean a Claim that: (i) arises out of Purchaser's discovery of a title defect or encumbrance with respect to any of the Real Property following the Closing that materially restricts or prevents the use of such Real Property at issue

in the operation of the System; and (ii) constitutes a colorable claim against the Title Company under Purchaser's final title policies contemplated by Section 6.01(b) hereof.

Section 6.04. **Title Expenses**. Whether or not the transaction described by this Agreement is consummated, all costs and expenses of obtaining the Title Commitment, Title Report and the title policy or policies shall be paid by Seller. All costs and expenses for title work for any lender or trustee policy, special coverages and/or endorsements to the Title Commitment and final title policy shall be paid by Purchaser.

Section 6.05. **UCC Search; Releases**. Within one hundred eighty (180) days after the Effective Date, Seller shall obtain at its expense a Uniform Commercial Code search against Seller covering any of the personal property or fixtures included among the Acquired Assets from the Office of the Secretary of State of Indiana and the Recorder of Hamilton County, Indiana (the "UCC Search"). On or prior to the Closing, Seller shall at its expense obtain releases of any and all security interests in any of the Acquired Assets which are not Permitted Liens on or prior to the Closing. The form of the releases of such security interests shall be provided to Purchaser on or prior to the Closing Date.

Section 6.06. **Post-Closing Access Rights**. If at any time before, on or after the Closing, Seller or Purchaser determines that as a result of the transfer of the Acquired Assets that (i) they or their Affiliates are, or will likely be, unable to access any Real Property in the same manner as before the Closing; and (ii) access to such Real Property is necessary for a Party to properly and effectively operate any other assets owned, licensed or leased by it or any of its Affiliates, then the other Party hereby agrees to grant to the requesting Party or its Affiliates, as applicable, a right of entry and access so that the requesting Party can access the Real Property at issue; provided that such entry and access rights shall not materially interfere with the current use or contemplated use of the granting Party's property (collectively, the "Access Rights"). As soon as reasonably practicable after the request for Access Rights, the granting Party shall deliver to the requesting Party a legal document granting Access Rights in form and substance reasonably acceptable to Seller and Purchaser and in recordable form. A grant of Access Rights shall be free of charge to the requesting Party, and each Party shall bear its own costs incurred with respect to memorializing the Access Rights as contemplated in this Section 6.06. The obligations and rights of the Parties under this Section 6.06 shall survive the Closing.

Section 6.07. **Occupancy Agreements**. Seller shall use commercially reasonable efforts to obtain any required consents or satisfy any preconditions necessary to transfer the Scheduled Occupancy Agreements prior to the Closing Date. If after the Closing Date, Purchaser determines that a third-party consent or precondition must be satisfied in order to transfer an Unscheduled Occupancy Agreement, Seller shall obtain such third-party consent or satisfy such precondition and execute any documents necessary to effectuate such transfer pursuant to Seller's obligations in Section 2.05.

Section 6.08. **Unscheduled Real Property**. The Parties acknowledge that Seller may own interests in or have the legal right to use or occupy the Real Property that is necessary or essential to the operation of the System and that is not specifically identified in Schedule 4.08, Schedule 4.23 or Schedule 6.10 (collectively, the "Unscheduled Real Property"). In the event the Parties discover prior to or after the Closing Date, one or more parcels of Unscheduled Real

Property, the discovering party shall give written notice of such discovery to the non-discovering party. In addition to its obligations in Section 2.05, Seller shall have the obligation to convey, assign or otherwise transfer any rights to each parcel of Unscheduled Real Property in such a manner as to provide Purchaser with reasonable assurances that it shall have the right to use or occupy the Unscheduled Real Property at issue as it was used by Seller as of the Effective Date. Any sums that Seller pays to third parties to satisfy its obligations under this Section 6.08 shall be subject to the limitations described in Section 8.05. The obligations and rights of the Parties under this Section 6.08 shall survive the Closing.

Section 6.09. **Public Access to Real Property**. To the extent Seller has granted, permitted or allowed the public access to any of the Real Property prior to the Closing Date, Purchaser shall continue to permit or allow similar public access to the applicable Real Property after the Closing, provided that Purchaser shall have the right to modify, restrict or deny such public access rights if Purchaser, in its reasonable good faith discretion, determines that doing so is necessary for the prudent operation, safety or security of the System.

Section 6.10. **Priority Two Property**. The Real Property described in Schedule 6.10 shall be defined as "Priority Two Property." With respect to the Priority Two Property, Seller shall only be required to satisfy the requirements set forth or referenced in Schedule 6.10.

ARTICLE VII.
OTHER AGREEMENTS

Section 7.01. **Taxes**. Seller shall pay any and all Taxes, if any, arising out of the ownership of the Acquired Assets and out of the operation of the System before the Closing. Any special assessments on the Real Property incurred prior to the Closing Date, whether or not currently due and payable, shall be paid by Seller in accordance with their terms.

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

Section 7.03. **Files and Records**. After the Closing Date, upon reasonable notice and during normal business hours, Seller shall provide access to Purchaser and its attorneys, accountants and other representatives, at Purchaser's expense, to Files and Records that remain in Seller's possession as Purchaser may reasonably deem necessary to properly prepare for, file, prove, answer, prosecute, and/or defend any such return, filing, audit, protest, claim, suit, inquiry or other proceeding.

Section 7.04. **Employee Matters**.

(a) Purchaser shall, or shall cause an Affiliate of Purchaser to, offer employment effective on the Closing Date, to the Employees set forth in Schedule 7.04(a), subject to Purchaser's existing standard hiring policies and procedures applicable to new employees, except with respect to benefits as otherwise provided in Section 7.04(c). The Employees who accept such employment and commence employment on the Closing Date, shall be referred to in this Agreement as the "Transferred Employees." Purchaser may also interview Seller's management

employees with knowledge of the System for possible hiring in Purchaser's sole discretion. Should Purchaser offer employment to any such management employees in its sole discretion, Seller shall not directly or indirectly prevent such employment with Purchaser and shall release any such employees from any applicable restrictive employment covenants or non-competition agreements without penalty.

(b) Transferred Employees shall be employees-at-will of Purchaser. Purchaser shall provide each Transferred Employee compensation and benefits which are substantially comparable to the compensation and benefits then provided to similarly situated employees of Purchaser. Nothing in this Agreement shall require Purchaser to provide any particular form or type of employee benefit program, plan or policy to any Transferred Employee as a result of the transactions contemplated by this Agreement.

(c) With respect to any employee benefit plan maintained by Purchaser or an Affiliate of Purchaser for the benefit of any Transferred Employee, effective as of the Closing, Purchaser shall, or shall cause its Affiliate to, recognize all service of the Transferred Employees with Seller, as if such service were with Purchaser for eligibility and vesting purposes (but Purchaser shall not be required to recognize such service for purposes of benefit accruals under Purchaser's defined benefit plan).

(d) Effective as of the Closing, the Transferred Employees shall cease active participation in the Seller's Benefit Plans. Seller shall remain liable for all eligible claims for benefits under the Seller's Benefit Plans that are incurred by the Employees prior to the Closing Date. Except as provided in Section 7.04(e), Seller shall remain liable to make any contributions to Seller's Benefit Plans related to, and/or to fund any retirement benefits accrued by, the Transferred Employee prior to Closing, including without limitation for making any contributions due to PERF related to the Transferred Employee's employment with Seller. For purposes of this Agreement, the following claims shall be deemed to be incurred as follows: (i) life, accidental death and dismemberment, short-term disability, and workers' compensation insurance benefits, on the event giving rise to such benefits; (ii) medical, vision, dental, and prescription drug benefits, on the date the applicable services, materials or supplies were provided; and (iii) long-term disability benefits, on the eligibility date determined by the long-term disability insurance carrier for the plan in which the applicable Employee participates.

(e) Seller shall initiate and complete the process set forth in IND. CODE § 5-10.3-6-8 to withdraw the Transferred Employees as a departmental, an occupational, or other definable classification of employees from participation in PERF effective as of the Closing. To the extent that Seller is assessed any additional funding obligations pursuant to IND. CODE § 5-10.3-6-8(d) or (e) with regard to the Transferred Employees that is not attributable to unpaid contributions to PERF that related to the Transferred Employees' service with Seller, Purchaser shall reimburse Seller for such additional funding up to One Million and No/100 Dollars ($1,000,000.00) ("Pension Liability Cap").

(f) This Section 7.04 shall be binding upon and inure solely to the benefit of each of the Parties to this Agreement, and nothing in this Section 7.04 express or implied, shall confer upon any other Person any rights or remedies of any nature whatsoever under or by reason of this Section 7.04. Nothing contained herein, express or implied, shall be construed to establish,

amend or modify any benefit plan, program, agreement or arrangement. The Parties hereto acknowledge and agree that the terms set forth in this Section 7.04 shall not create any right in any Transferred Employee or any other Person to any continued employment with Purchaser or any of its Affiliates or compensation or benefits of any nature or kind whatsoever, and shall not be deemed to restrict Purchaser in the exercise of its independent business judgment in establishing or modifying any of the terms or conditions of the employment of the Transferred Employees.

(g) Notwithstanding anything in this Agreement to the contrary, it is expressly understood that Purchaser will not acquire any asset, or assume any liability or obligation in connection with the transaction contemplated by this Agreement relating to any of the Seller's Benefit Plans, Seller's Qualified Benefit Plans or Contracts described in Section 4.17(a)(i) of this Agreement. Seller shall be solely responsible for any liability, funding obligation, claim or expense arising from the Seller's Benefit Plans, Seller's Qualified Benefit Plans or Contracts described in Section 4.17(a)(i) of this Agreement, both prior to, and after, the Closing Date, except as provided in Section 7.04(c).

(h) Seller shall comply with the requirements of COBRA, and shall provide continuing health benefit coverage as described under COBRA to all persons who are "M&A qualified beneficiaries" (as described in IRS Regulation Section 54.4980B-9, Question and Answer 4) with respect to transactions contemplated under this Agreement.

Section 7.05. System's Service to Seller. After the Closing, subject to the initial approval and ongoing jurisdiction of the IURC and Purchaser's ability to recover the cost of providing such services through rates, to the extent Seller and its Affiliates receive services of the System after the Closing that are the same or similar to the services Seller and its Affiliates received before the Closing, Seller and its Affiliates shall purchase or receive such services of the System in the same manner and at the same cost as Seller and its Affiliates received prior to the Closing, which services and related charges are set forth on Schedule 7.05.

Section 7.06. Right of First Refusal; IURC Regulation. Purchaser hereby acknowledges and agrees that:

(a) The System will be subject to IURC jurisdiction and Purchaser shall not withdraw or attempt to withdraw the System from IURC regulation over rates and charges and terms and conditions of service.

(b) Purchaser shall not sell the System for ten (10) years following the Closing (the "Restriction Period").

(c) If, after the Restriction Period, Purchaser, for any reason, elects to sell or dispose of the System, the City shall have a right of first refusal to purchase the System at its then fair market value.

Section 7.07. Future Rates. Purchaser shall seek adoption of rates and charges set forth in Schedule 7.07 and so long as adopted by the IURC shall not seek additional rates during that period, subject to unforeseen circumstances and developments, unanticipated regulatory conditions or compliance costs, any need for emergency rate relief under IND. CODE § 8-1-2-113,

necessary increases in rates to avoid a default under coverage or other covenants of Purchaser set forth in any applicable bond indenture or agreement and such other exceptions as shall be mutually agreed by the Parties. To the extent Purchaser is entitled to seek rate relief under this Section 7.07 or otherwise with respect to one of the Systems, it shall also have the right to do so with respect to the other System. Neither this Section nor the rates and charges set forth in Schedule 7.07 shall preclude Purchaser from seeking or obtaining approval of a distribution system improvement charge under applicable Law or deferred accounting authorizations.

Section 7.08. **Use of and Repair of Public Rights of Way**. In using public rights of way in the operation and maintenance of the System, subject to IND. CODE § 8-1-2-101, Purchaser agrees to comply with all applicable Laws of the City of such rights of way, except to the extent such Laws of the City alter the agreements embodied in this Agreement or any Related Agreement. Except as otherwise provided in this Agreement, Purchaser shall be required to make payments to Seller and its Affiliates for construction and System-related fees, licenses, permits, assessments and other similar charges in the same manner other persons doing business in the City make payments for such fees, licenses, permits, assessments and other similar charges. In the event that Purchaser in operating, maintaining, and extending the System installs or repairs facilities in public rights of way, including but not limited to roads or sidewalks, Purchaser shall comply with all applicable Laws (except to the extent any such Laws of the City alter the agreements embodied in this Agreement or any Related Agreement) with respect to restoration of such rights of way, including but not limited to roads and sidewalks (subject to any reimbursement provided or allowed by federal, state or local Laws, including, but not limited to such reimbursement with respect to the U.S. 31 Project), subject to IND. CODE § 8-1-2-101. The Parties acknowledge that Purchaser and Seller may plan construction projects that could be more efficiently implemented if the Purchaser and Seller cooperate with respect to scheduling and implementation of such projects. Each of Purchaser and Seller agrees to use its commercially reasonable efforts to cooperate with each other in scheduling and implementing any construction that may affect both the System and the City's assets.

Section 7.09. **Safe Water Supply**. Purchaser understands and agrees with the importance of ensuring that the City and its residents are served by a water system providing a reliable, adequate and safe water supply. To that end, Purchaser: (i) will develop and include the System as part of a long-term strategic water supply plan together with its affiliate, Citizens Water with water quality goals consistent with those established by Citizens Water; (ii) will include the mission of providing a reliable, adequate and safe water supply as part of its purposes as set forth in its Articles of Organization; (iii) will develop and implement a reasonable action plan designed to support the foregoing goals and mission; and (iv) will commit to undertake such actions as shall be necessary to comply with the level of service and facilities requirements of IND. CODE § 8-1-2-4 and all other applicable Laws for an Indiana water utility regulated by the IURC and with all applicable Laws regarding water safety. Specifically, Purchaser shall establish initial water quality goals for the System similar to those currently used by Citizens Water as set forth in Schedule 7.09 which Purchaser shall strive to meet or exceed. These goals are subject to revision from time to time and while Purchaser shall strive to meet or exceed these goals, due to various factors no commitment is being made that these goals shall be achieved or any particular goal achieved 100% at all times. Enforcement of this Section 7.09 shall be exclusively subject to proceedings before the IURC under such applicable Laws, and no claim under or with respect to this Section 7.09 shall be made in any other forum. Upon any future

transfer of the System, the foregoing commitment regarding level of service and facilities requirements shall be binding on the transferee as successor to the fullest extent permitted by Law.

Section 7.10. MBE/WBE/VBE Opportunities. To the extent consistent with applicable Law, Purchaser will establish policies and procedures designed to provide minority business enterprises ("MBEs"), women-owned business enterprises ("WBEs"), veteran-owned business enterprises ("VBEs") and local firms the maximum practicable opportunity to compete for work related to the System. Purchaser shall recognize certification of at least the following: State of Indiana; Indiana Minority Supplier Development Council; and Women's Business Enterprise National Council.

Section 7.11. Compliance with Applicable Laws; Cooperation with the City. Because of the City's dependence upon a reliable, adequate and safe water supply, during the time Purchaser owns and operates the System, Purchaser and Seller agree to cooperate with each other with respect to the System, and Purchaser shall:

(a) Comply in all material respects with all applicable federal and state laws relating to the System; and

(b) Provide a quarterly and annual report to the City Council and the Mayor related to water supply issues, customer complaints, water quality, taste and odor issues, the specific format of which shall be agreed upon by the Parties and set forth on Schedule 7.11;

(c) Promptly furnish its annual capital plan to the City Council and the Mayor;

(d) Consult and cooperate with the Mayor in the establishment, publication and implementation of any water conservation policies with the understanding that should the Mayor and Purchaser determine a water conservation measures or emergency should be imposed upon the City's residents, the Mayor shall have authority to announce, the implementation and expiration of any water conservation measures or emergencies upon recommendation of Purchaser; provided that Purchaser nonetheless shall have such authority with respect to water conservation measures or emergencies as shall be necessary for it to meet its obligations with respect to the System and any requirements under applicable Law;

(e) Permit City designees to participate in Citizens Water's Stakeholder Alliance and Service Advisory Board; and

(f) Cooperate with the City in Purchaser's establishment and implementation of a coordinated emergency preparedness program and a coordinated safety program for the System and the City.

Section 7.12. Seller's Utility Plant. Seller's Utility Plant for the System as of Closing shall be Sixteen Million Six Hundred Thousand ($16,600,000). In the event Seller's actual Utility Plant at Closing does not equal the above-stated amount, the Purchase Price shall be adjusted, as follows: (a) to the extent Seller's actual Utility Plant as of Closing is less than the above-stated amount, the Purchase Price shall be adjusted in the amount and reduced in the manner and pursuant to the procedure set forth in Schedule 7.12, and (b) to the extent Seller's

actual Utility Plant as of Closing is greater than the above-stated amount, the Purchase Price shall be adjusted in the amount and increased in the manner and pursuant to the procedure set forth in Schedule 7.12.

Section 7.13. **Capital Plan.** Seller and Purchaser shall agree upon a Capital Plan to include all capital expenditures between the date of this Agreement and Closing and Seller shall comply with such Capital Plan except to the extent otherwise expressly provided in writing by Purchaser. The Capital Plan shall include the capital expenditures referenced in Schedule 7.13 and in any event, shall include any and all capital expenditures to maintain the System in the ordinary course of business consistent with industry standards, notwithstanding any adjustment contemplated in Section 7.12.

Section 7.14. **Public Safety Training Academy Property.** Purchaser agrees to grant a license to Seller to use the Public Safety Training Academy Property in the form mutually agreed upon by the Parties (the "Public Safety Training Academy License").

Section 7.15. **Public Works Building Lease.** On and after Closing, Purchaser agrees to lease from the City a portion of the Public Works Building for its use in the operations of the System pursuant to a capital lease in the form and substance reasonably acceptable to both Purchaser and Seller.

ARTICLE VIII.
DISPUTE RESOLUTION; INDEMNIFICATION

Section 8.01. **Survival**. All representations and warranties contained in this Agreement shall survive for a period of eighteen (18) months after the execution, delivery and performance of this Agreement, notwithstanding any investigation conducted at any time, except that: (a) representations and warranties made in any of Section 4.07 (Tax Matters), Section 4.12 (Employee Benefit Plans) and 4.14 (Environmental Compliance) shall survive until the expiration of the statutory period of limitations applicable to the subject matter addressed in each Section; and (b) representations and warranties made in Section 4.01 (Power), Section 4.02 (Authorization and Validity of Agreement), the second sentence of Section 4.08 (Title to Real Property), Section 5.02 (Authorization and Validity of Agreement) and Section 4.20 (Title to Acquired Assets) will not expire.

Section 8.02. **Dispute Resolution**.

(a) Any and all disputes relating in any way to the creation, interpretation, operation, performance, breach or enforcement of this Agreement, including but not limited to any challenge to the validity or legality of this Agreement under any state or federal law, (the "Dispute") that cannot be resolved in the ordinary course of business shall be resolved exclusively pursuant to this dispute resolution process, except as otherwise provided in Section 7.09. Time is of the essence with respect to resolving any such Dispute under this Agreement.

(b) The Parties hereby agree that certain Disputes which arise after the Closing which would have a financial impact to any Party of less than Five Hundred Thousand Dollars ($500,000) will be referred to an independent panel with expertise in the subject area of the applicable Dispute (for example, financial, real estate) (each, a "Standing Panel"). Each

Standing Panel shall have final, binding, non-appealable authority to resolve any dispute referred to it, and each of the Parties hereby agrees to be bound by the decisions of each Standing Panel. Prior to the Closing, the Parties will agree to the subject matter which will be referred to the Standing Panels, the composition of each Standing Panel and the scope of each Standing Panel's authority. In the event the Parties are unable to agree on the identity of a Standing Panel, Seller shall select one (1) member of such Standing Panel, Purchaser shall select one (1) member of such Standing Panel, and those two (2) individuals will select a third (3rd) member of such Standing Panel. The Parties hereby agree to the Standing Panels set forth in Schedule 8.02(b). In the event the Parties are unable to agree on the subject matter to be referred to a Standing Panel or the Standing Panels, or the authority of a Standing Panel or the Standing Panels, such disagreement shall be a Dispute not subject to this Section 8.02(b) and shall be subject to the other provisions described in this Section 8.02.

(c) Except as provided in this Section, and as a prerequisite before any proceeding regarding a Dispute is initiated in a court or in arbitration, the following mandatory dispute resolution process shall be followed:

(i) Service of Notices. All notices required or allowed under this Section shall be served as provided for in Section 15.07 of this Agreement with copies as provided for in Section 15.07.

(ii) First Notice of Claim. Any Dispute shall first be set forth in writing in a "First Notice of Claim" which shall state the exact nature of the claims, the applicable dates relative to the dispute, the precise amount of any dollar amount at issue, the identification of any specific applicable documents that are alleged to govern the dispute, the names of any individuals involved in the Dispute, the identification of any relevant third parties to the Dispute, any other information that will help facilitate the prompt resolution of the Dispute, and a proposed resolution (the "Proposed Resolution").

(iii) Response. Within seven (7) calendar days of receipt of any First Notice of Claim, the Party receiving the First Notice of Claim shall respond in writing to the First Notice of Claim either with an Acceptance of the Proposed Resolution or with a response (the "Response") which shall include any additional information not included in the First Notice of Claim that will facilitate the prompt resolution of the Dispute and a counterproposal (the "Counterproposal").

(iv) Face-to-Face Meeting. If a Counterproposal is provided, the Party serving the Counterproposal shall arrange for a face-to-face meeting (the "Face-to-Face Meeting") to be held within ten (10) calendar days of the service of the Counterproposal. Each Party shall send to the Face-to-Face Meeting a Person with authority to negotiate and resolve the dispute, subject to any board approval that is otherwise required. The Parties shall negotiate in good faith to resolve such Dispute promptly by negotiation. All negotiations pursuant to this Section 8.02(c) shall be deemed confidential and, with respect to claims involving litigation or anticipated litigation with third parties, shall be treated as compromise and settlement negotiations pursuant to the Federal Rules of Civil Procedure or other applicable rules of civil procedure.

(v) Top Executive Negotiation. If the Parties are unable to resolve a dispute at the Face-to-Face Meeting, the Dispute shall be referred to and resolved by the CEO, President or another top executive of Purchaser, and the Mayor or Mayor's Chief of Staff of the City (the "Designated Parties") depending on the nature of the Dispute (the "Top Executive Negotiation"). The First Notice of Claim, Response and all information relevant to the Dispute shall be provided to the Designated Parties who shall meet and confer within ten (10) Business Days in a final effort to resolve the Dispute.

(vi) Independent Mediator. The Parties may choose to engage an independent mediator to assist in the negotiations of the Face-to-Face Meeting or the Top Executive Negotiation, and the Parties may adjourn any meeting, as necessary, to facilitate any resolution. Any resolution shall be immediately reduced to writing and signed and dated by the Party representative with the authority to execute the resolution and engage the mediator, if any.

(vii) Failure to Resolve Dispute. If the Parties are unable to resolve the Dispute through this mandatory process, then any Party may proceed immediately to binding arbitration. If any Party fails for any reason to participate in any part of the mandatory dispute resolution process, then the other Party may proceed immediately to binding arbitration or may seek an injunction in court to require the other Party to participate in the mandatory dispute resolution proceeding.

(d) The binding arbitration procedures shall be as follows:

(i) An arbitration process to decide any Dispute under this Agreement shall be initiated by providing a written demand for arbitration (the "Arbitration Demand") to the Person designated to receive notice under Section 15.07 with a courtesy copy sent by hand delivery or next day delivery with a courtesy electronic copy to the Person designated to receive a copy in Section 15.07. Any Arbitration Demand shall state specifically the nature of the claim(s), the relevant time periods, the relevant and controlling document(s), if any, the names of any relevant known witnesses associated with either of the parties, the identification of any third parties that may be relevant to the dispute, a specific dollar amount alleged to be owing, if any, and any other specific information that may be necessary to define the nature of the dispute. The Party receiving the Arbitration Demand shall provide a written response (the "Arbitration Response") within ten (10) calendar days after receiving the Arbitration Demand. The Arbitration Response may be a simple denial or may set forth in writing any counterclaims including the same type of information required in an original Arbitration Demand. If an Arbitration Response includes any counterclaims, then the Party originally demanding the arbitration may reply within ten (10) calendar days after receiving the Arbitration Response. If any Party fails to respond to any claim or counterclaim, the Party shall be deemed to deny the demand. No claims or counterclaims may be added to the arbitration without the written approval of the arbitration panel.

(ii) Any Dispute submitted to arbitration shall be decided by a single arbitrator unless the Parties are unable to agree upon a single arbitrator, or within five (5) calendar days of the date when an Arbitration Response is served or due (if no Arbitration

Response is served), any Party demands that the Dispute be decided by a panel of three (3) arbitrators. If the Parties are unable to agree on a single neutral arbitrator within fifteen (15) days when an Arbitration Response is served or due (if no Arbitration Response is served), then each Party shall then have an additional ten (10) calendar days to appoint one arbitrator and the two appointed arbitrators ("Arbitrators") shall within ten (10) calendar days appoint a third, neutral arbitrator (the "Neutral Arbitrator"). The Arbitrators and the Neutral Arbitrator shall serve as a panel of three (3) arbitrators (the "Panel") which shall jointly decide all issues. The Neutral Arbitrator shall be a lawyer who has been engaged in the practice of law for at least fifteen (15) years with experience in commercial disputes involving public utilities. The Party appointing an Arbitrator shall pay all of the fees and expenses of that Arbitrator, in each case, and the fees and expenses of the Neutral Arbitrator shall be paid in equal shares by the Parties, unless the Arbitration Award provides differently. If for any reason a Neutral Arbitrator cannot be selected by agreement, either Party may petition a court of competent jurisdiction for the appointment of a Neutral Arbitrator.

(iii) The arbitration shall be held at a neutral location in Indianapolis, Indiana as soon as possible and in any event shall commence within ninety (90) calendar days after the selection of the sole arbitrator or Neutral Arbitrator. The arbitration may be adjourned as necessary as determined by the sole arbitrator or the Panel presiding over the arbitration.

(iv) Each Party shall have the right to engage in reasonable pre-arbitration discovery in the form of requests for production of documents and depositions as allowed by the arbitration panel. Presentation of the case shall include: opening statements, testimony of necessary witnesses, stipulated or properly authenticated documents and closing statements. No documents may be submitted as evidence unless the documents have been provided to the opposing party in advance of the arbitration as allowed by the arbitrators' panel. Either Party may demand that a transcript of the hearing be prepared. If such a demand is made, then the Parties shall pay in equal shares for the cost of the transcript.

(v) The Panel shall issue a reasoned decision within thirty (30) days of the conclusion of the arbitration and the decision shall include written findings of fact and any conclusions of law. Indiana law shall be used by the Panel to decide all questions and claims that are a part of the Disputes, notwithstanding any choice of law provisions to the contrary. The Panel shall have the authority to order the losing party to pay some or all or the fees, costs, or expenses (such as expenses for expert witnesses, deposition transcripts, travel, etc.) of the arbitration proceeding to the prevailing party as part of the arbitration award (the "Arbitration Award"). The Panel shall not have the authority to award any incidental, consequential or punitive damages to any party, but may order interest at the statutory rate. The Arbitration Award shall be final and binding on the Parties, except that either Party may, within ten (10) days of the Arbitration Award request the Panel for a reconsideration of the any issue if it appears from Arbitration Award that an Indiana law has been incorrectly interpreted or applied or it appears from the reasoned decision that any monetary award was incorrectly calculated. Otherwise, any Party may appeal an Arbitration Award only as provided in the Indiana Uniform

Arbitration Act or the Federal Arbitration Act. The Arbitration Award may be enforced in any court having proper jurisdiction over the Parties and the subject matter.

(e) Any Party may initiate an action in court (i) for injunctive relief if the injunctive relief is deemed necessary to preserve the status quo and to prevent irreparable harm from occurring before or during the pendency of the arbitration, or (ii) to enforce the mandatory dispute resolution provisions or the arbitration required in this Section, or (iii) to obtain the subpoena power of the court if necessary to compel witnesses at a deposition or at the arbitration, or to obtain allowed documents, (iv) to obtain assistance in the appointment of an arbitrator, or (v) to enforce any arbitration award. Any action initiated in court shall be filed and litigated (including all discovery proceedings) exclusively in a state or federal court located in Hamilton County or Marion County, Indiana, as applicable, and all objections as to personal jurisdiction and venue are waived, except an action to subpoena a witness or to obtain documents in a foreign jurisdiction may be filed in the county where the Person or documents are located. The fees, costs and expenses of seeking or defending a claim for injunction, or obtaining the assistance of any court in discovery or enforcement may be added to the allowed recovery in any arbitration related to the subject matter of the injunction.

Section 8.03. **Indemnification by Seller**. To the maximum extent permitted by applicable Law, Seller agrees to indemnify, defend and hold harmless Purchaser and its successors and Affiliates, and their respective employees, officers, directors, trustees and agents (the "Purchaser Indemnified Persons"), from and against any and all claims for Damages (each a "Claim") arising from or relating to: (a) any breach of the representations and warranties in this Agreement or any Related Agreement (except for any breach of the representation and warranty set forth in Section 4.14(a)(i), as to which Seller shall not be obligated to pay any amount to Purchaser or a third party, but shall otherwise hold Purchaser harmless); (b) the nonfulfillment of any of the covenants or agreements of Seller contained in this Agreement or any Related Agreement other than the covenant in Section 7.12; (c) subject to Sections 8.07 and 8.08, any Excluded Liability; (d) any investigation, civil, criminal or administrative action with respect to the Seller's Benefit Plans (including without limitation, any claim for benefits under a Seller Benefit Plan by any personnel of Seller); (e) any COBRA obligation of Seller arising from any qualifying event as defined under COBRA occurring before the Closing Date; (f) any Environmental Claim arising or existing prior to the Closing; and (g) any and all actions, suits, investigations, proceedings, demands, assessments, audits and judgments arising out of any of the foregoing; provided, however, the obligations of Seller under this Section 8.03 with respect to noncompliance with Section 7.13 and Seller's Capital Plan shall be determined after taking into account any and all adjustments under Section 7.12.

Section 8.04. **Indemnification by Purchaser**. To the maximum extent permitted by applicable Law, Purchaser agrees to indemnify, defend and hold harmless Seller and its successors and Affiliates and their respective employees, officers, directors, trustees and agents (the "Seller's Indemnified Persons") from and against any and all Claims arising from or relating to: (a) any breach of the representations and warranties in this Agreement or any Related Agreement; (b) the nonfulfillment of any of the covenants or agreements of Purchaser contained in this Agreement or any Related Agreement; (c) any Assumed Liability; or (d) any and all actions, suits, investigations, proceedings, demands, assessments, audits and judgments arising out of any of the foregoing. Purchaser shall not be obligated under this Section 8.04 with respect

to any matter to the extent Seller is obligated to indemnify, defend or hold harmless Purchaser therefrom under this Agreement or any Related Agreement.

Section 8.05. Procedure.

(a) Promptly (and in any event within fifteen (15) days after the service of any citation or summons) after acquiring Knowledge of any Claim for which one of the Parties hereto (the "Indemnified Party") may seek indemnification against another Party (the "Indemnifying Party") pursuant to this Article VIII, the Indemnified Party shall give written notice thereof to the Indemnifying Party. Failure to provide written notice shall not relieve the Indemnifying Party of its obligations under this Article VIII except to the extent that the Indemnifying Party demonstrates actual damage caused by that failure. The Indemnifying Party shall have the right to assume the defense of any Claim with counsel reasonably acceptable to the Indemnified Party upon delivery of written notice to that effect to the Indemnified Party. If the Indemnifying Party, after written notice from the Indemnified Party, fails to take timely action to defend the action resulting from the Claim, the Indemnified Party shall have the right to defend the action resulting from the Claim by counsel of its own choosing, but at the cost and expense of the Indemnifying Party. The Indemnified Party shall have the right to settle or compromise any Claim against it, and, as the case may be, recover from the Indemnifying Party any amount paid in settlement or compromise thereof, if it has given written notice thereof to the Indemnifying Party and the Indemnifying Party has failed to take timely action to defend the same. The Indemnifying Party shall have the right to settle or compromise any claim against the Indemnified Party without the consent of the Indemnified Party provided that the terms of the settlement or compromise provide for the unconditional release of the Indemnified Party and require the payment of monetary damages only.

(b) Upon satisfaction of a Claim by the Indemnifying Party pursuant to this Article VIII, the Indemnified Party shall deliver to the Indemnifying Party such documents as the Indemnifying Party may reasonably request assigning to the Indemnifying Party any and all rights, to the extent the Indemnified Party has been indemnified, that the Indemnified Party may have against third parties with respect to the Claim for which indemnification was received.

(c) Other than as provided in Section 8.06, in no event shall the aggregate amount due for Damages under this Agreement and the Wastewater Agreement, to Purchaser and any Purchaser Indemnified Person (as defined in this Agreement and the Wastewater Agreement, as applicable) exceed Nine Million One Hundred Thousand Dollars and No/100 ($9,100,000.00) (the "Liability Cap").

(d) In the event any indemnification Claim involves the claim of any third party, the Indemnified Party shall cooperate (and shall cause its Affiliates to cooperate) with the Indemnifying Party in the defense of any such Claim. Without limiting the generality of the foregoing, the Indemnified Party shall furnish the Indemnifying Party with such documentary or other evidence as is then in its or any of its Affiliates' possession as may be reasonably requested by the Indemnifying Party for the purpose of defending against such Claim. Whether or not the Indemnifying Party chooses to defend or prosecute any Claim involving a third party, all the Parties shall cooperate in the defense or prosecution thereof and shall furnish such records,

information and testimony, and attend such conferences, discovery proceedings, hearing, trials and appeals, as may be reasonably requested in connection therewith.

(e) The Escrow Deposit shall be used to satisfy Seller's indemnification obligations under both this Agreement and the Wastewater Purchase Agreement. To the extent that Purchaser (or an Affiliate) is owed any amount under this Article VIII or under the Wastewater Purchase Agreement, Purchaser and its Affiliates shall first be entitled to recover such amount from the Escrow Deposit in accordance with the Escrow Agreement, and thereafter from Seller in immediately available funds.

Section 8.06. Limitations on Indemnification Obligations.

(a) Other than as provided in this Section 8.06, neither Purchaser nor Purchaser Indemnified Persons shall be entitled to indemnification pursuant to Section 8.03(a) of this Agreement (other than for an intentional breach of any agreement or covenant contained in this Agreement) unless the aggregate amount of Damages incurred by Purchaser or such Purchaser Indemnified Persons (as defined in this Agreement or the Wastewater Purchase Agreement, as applicable) under this Agreement and the Wastewater Purchase Agreement exceeds Two Hundred Fifty Thousand Dollars and No/100 ($250,000.00) in the aggregate (the "Threshold Amount"), in which case the Indemnifying Party (as defined in this Agreement or the Wastewater Purchase Agreement, as applicable) shall then be liable for Damages in excess of the Threshold Amount.

(b) Other than as provided in this Section 8.06, neither Seller nor Seller's Indemnified Persons shall be entitled to indemnification pursuant to Section 8.04(a) of this Agreement (other than for an intentional breach of any agreement or covenant contained in this Agreement) unless the aggregate amount of Damages incurred by Seller and Seller's Indemnified Persons (as defined in this Agreement or the Wastewater Purchase Agreement, as applicable) under this Agreement and the Wastewater Purchase Agreement exceeds the Threshold Amount, in which case the Indemnifying Party (as defined in this Agreement or the Wastewater Purchase Agreement, as applicable) shall then be liable for Damages in excess of the Threshold Amount.

(c) Other than as provided in this Section 8.06, the cumulative, combined, aggregate indemnity obligation or liability for Damages of Seller pursuant to this Agreement shall not exceed the Liability Cap.

(d) The Threshold Amount and the Liability Cap shall not apply to Seller's obligations to indemnify (i) pursuant to 8.03(c) due to failure to pay or discharge an Excluded Liability, (ii) to the extent due to an intentional breach of any agreement or covenant contained in this Agreement, (iii) if related to a Claim for breach of a representation under Section 4.01 (Power), Section 4.02 (Authorization and Validity of Agreement), Section 4.07 (Tax Matters), the second sentence of Section 4.08 (Title to Real Property), Section 4.12 (Employee Benefit Plans) or Section 4.20 (Title to Acquired Assets), (iii) for a Claim arising out of the intentional breach of any agreement or covenant in this Agreement, fraud or willful misconduct of Seller.

(e) The rights of Seller set forth in this Article VIII shall be the sole and exclusive remedy available to Seller for any Claim for Damages pursued under this Agreement.

(f) The rights of Purchaser set forth in this Article VIII shall be the sole and exclusive remedy available to Purchaser for any Claim for Damages pursued under this Agreement.

(g) For purposes of calculating the amount of Damages incurred by the Indemnified Party arising out of or resulting from any breach of, a representation, covenant, or agreement by any Party hereto, the references to a "Material Adverse Effect" or materiality shall be disregarded.

Section 8.07. **Tort Claims**. Purchaser shall reimburse the Seller for Damages related to any Tort Claims. The procedures for the Seller's defense of such Tort Claims shall be detailed in the Transition Services Agreement.

Section 8.08. **Indemnified Claims**. Seller, pursuant to subparagraph (g) of the definition of "Excluded Liability" have agreed to retain certain indemnification and insurance rights thereunder; provided that Purchaser shall hold Seller harmless with respect to any resulting Damages and Purchaser shall pay on behalf of the Seller, any cost, expense, liability or Damages as a result of the assertion of any indemnification right. In furtherance of the foregoing, Purchaser shall either assume and assert such claim or, if the Seller asserts such claim, pay any Damages on an "as incurred" basis. The procedures for implementing this Section 8.08 shall be further detailed in the Transition Services Agreement.

ARTICLE IX.
PRE-CLOSING COVENANTS OF THE SELLER

Section 9.01. **Operation of the System**. Subject to Section 7.13, Seller covenants and agrees that between the Effective Date and the earlier of the Closing or the termination of this Agreement in accordance with the terms hereof, Seller shall use commercially reasonable efforts to conduct the System only in the ordinary course of business in accordance with past practices and procedures and use commercially reasonable efforts to maintain the business and assets of the System, including the Acquired Assets, unless otherwise approved by Purchaser.

Section 9.02. **Prior Purchaser Approval**. Except as permitted in this Agreement or a Related Agreement, prior to Closing, Seller shall not, without the prior written consent of Purchaser:

(a) dispose of or incur material liabilities with respect to, pledge, mortgage, grant a security interest in or encumber any Acquired Assets;

(b) materially increase the base compensation of any Employee or grant any unusual or extraordinary bonuses, benefits or other forms of direct or indirect compensation to any Employee;

(c) enter into, amend or modify any employment or severance agreement or increase, terminate, amend or otherwise modify in any respect any plan or arrangement for the benefit of Employees of the System; or

(d) create any Assumed Liabilities, other than in the ordinary course of business consistent with past practices.

Section 9.03. **Due Diligence**. Seller shall cooperate with Purchaser's due diligence procedures and shall provide Purchaser and its representatives with reasonable access to its Files and Records and any facilities or properties upon request during normal business hours.

Section 9.04. **Cooperation**. Seller shall generally cooperate with Purchaser and its employees, attorneys, accountants and other agents and, generally, act in reasonably and good faith to timely effectuate the purposes of this Agreement and the consummation of the transactions contemplated by this Agreement, including but not limited to participating as a joint petitioner in the IURC approval proceeding.

Section 9.05. **Exclusivity**. In light of Seller's obligation to sell the Acquired Assets to Purchaser pursuant to the terms and conditions of this Agreement and except as otherwise provided in this Agreement, neither Seller nor any of the City's departments shall, through any employee, representative, agent or otherwise, directly or indirectly, (a) solicit, initiate or encourage submission of any inquiry, proposal or offer from any Person relating to any transaction involving any sale or transfer of any of the Acquired Assets or the System; (b) enter into or participate in any discussions or negotiations (except with Purchaser) regarding, or furnish any information to or cooperate with any Person (other than Purchaser) with respect to, any transaction involving any of the Acquired Assets or the System; or (c) enter into any agreement (except with Purchaser) relating in any manner to any transaction involving any sale or transfer of any of the Acquired Assets or the System.

Section 9.06. **Notification of Certain Matters**. Seller shall give prompt notice to Purchaser of:

(a) the occurrence, or failure to occur, of any event which occurrence or failure would, to Seller's Knowledge, be likely to cause any representation or warranty of Seller contained in this Agreement to be untrue or inaccurate in any material respect at any time from the Effective Date to the Closing Date; and

(b) any failure of Seller to comply with or satisfy in any material respect any covenant, condition, or agreement to be complied with or satisfied by Seller hereunder. Seller shall use commercially reasonable efforts to remedy promptly any such failure.

Section 9.07. **Supplements and Updates to Representations and Warranties and Related Disclosure Schedules**. Upon any notice pursuant to Section 9.06, Seller shall deliver to Purchaser any supplemental information updating or amending the information set forth in the representations and warranties set forth in Article IV of this Agreement (each a "Seller Schedule Supplement") so that such representations and warranties as supplemented by such information will be true and correct as of the Closing Date as if then made on such date, and each such Seller Schedule Supplement shall be deemed to be incorporated into and to supplement and amend the Disclosure Schedules as of the Closing Date; provided that no information added to or deleted from the representations and warranties of Seller and the updated Disclosure Schedules after the Effective Date shall impair Purchaser's right to assert failure of a condition precedent to

Purchaser's obligations to consummate the transactions contemplated by this Agreement and/or a claim for a breach of the Seller's representations and warranties made on the Effective Date, and any Damages accruing to Purchaser shall be paid as provided in the indemnification provisions of this Agreement. At least ten (10) Business Days prior to the Closing Date, Seller shall advise Purchaser of any facts which would constitute a breach of a representation or warranty as of the date made or a default in a covenant contained herein. To the extent Purchaser fails to exercise its right to assert failure of a condition precedent to consummation of the transaction after Seller's disclosure of these facts and the Parties consummate the Closing, Purchaser shall be deemed to have waived its right to make a Claim based upon the facts as disclosed by Seller. The previous sentence, however, shall not apply to a breach or alleged breach of a representation or warranty contained in Section 4.01 or Section 4.02.

Section 9.08. **Governmental Approvals**. Promptly after the execution of this Agreement, or as required by Law, Seller shall file all applications and reports that are required to be filed by Seller with any Governmental Authority as provided on Schedule 4.04. Seller shall also promptly provide all information that any Governmental Authority may require in connection with any such application or report. Seller shall use all commercially reasonable efforts to obtain all consents and approvals of any kind from any Person in connection with the transactions contemplated hereby. All authorizations of any Governmental Authority necessary to consummate the transactions contemplated by this Agreement shall have been obtained in form and content reasonably satisfactory to Purchaser and Seller prior to Closing and shall be final and non-appealable.

Section 9.09. **Defeasance**. Seller shall use commercially reasonable efforts to obtain all necessary approvals to defease or pay off all outstanding Bond Debt to Purchaser's reasonable satisfaction.

ARTICLE X.
PRE-CLOSING COVENANTS OF PURCHASER

Purchaser covenants and agrees to comply with the following provisions:

Section 10.01. **Actions Before the Closing Date**. Purchaser shall use commercially reasonable efforts not take any action which shall cause it to be in breach of any representation, warranty, covenant or agreement contained in this Agreement or cause it to be unable to perform in any material respect its obligations hereunder, and Purchaser shall use commercially reasonable efforts (subject to any conditions set forth in this Agreement) to perform and satisfy all conditions to Closing to be performed or satisfied by Purchaser under this Agreement, including action necessary to obtain all consents and approvals of third parties required to be obtained by Purchaser to effect the transactions contemplated by this Agreement.

Section 10.02. **Cooperation**. Purchaser shall generally cooperate with Seller and its Employees, attorneys, accountants and other agents and, generally, do such other acts and things in good faith as may be reasonable to timely effectuate the purposes of this Agreement and the consummation of the transactions contemplated in accordance with the provisions of this Agreement, including cooperating with Seller to obtain all necessary signatures, information, and documentation for any approvals or consents from any Governmental Authority.

Section 10.03. **Notification of Certain Matters**. Purchaser shall give prompt notice to Seller of:

(a) the occurrence, or failure to occur, of any event which occurrence or failure would, to the Knowledge of Purchaser, be likely to cause any representation or warranty of Purchaser contained in this Agreement to be untrue or inaccurate in any material respect at any time from the Effective Date to the Closing Date; or

(b) any failure of Purchaser to comply with or satisfy in any material respect any covenant, condition, or agreement to be complied with or satisfied by Purchaser hereunder. Purchaser shall use commercially reasonable efforts to remedy promptly any such failure.

Section 10.04. **Supplements and Updates to Representations and Warranties and Related Disclosure Schedule**. Upon notice pursuant to Section 10.03, Purchaser shall deliver to Seller any supplemental information updating or amending the information set forth in the representations and warranties set forth in Article V of this Agreement (each a "Purchaser Schedule Supplement") so that such representations and warranties as supplemented by such information will be true and correct as of the Closing Date as if then made on such date, and each such Purchaser Schedule Supplement shall be deemed to be incorporated into and to supplement and amend the Disclosure Schedules as of the Closing Date; provided that no information added to or deleted from the representations and warranties of Purchaser and the updated Disclosure Schedules after the Effective Date shall impair Seller's right to assert failure of a condition precedent to Seller's obligations to consummate the transactions contemplated by this Agreement and/or a claim for a breach of the Purchaser's representations and warranties made on the Effective Date, and any Damages accruing to Seller shall be paid as provided in the indemnification provisions of this Agreement. At least ten (10) Business Days prior to the Closing Date, Purchaser shall advise Seller of any facts which would constitute a breach of a representation or warranty as of the date made or a default in a covenant contained herein. To the extent Seller fails to exercise its right to assert failure of a condition precedent to consummation of the transaction after Purchaser's disclosure of these facts and the Parties consummate the Closing, Seller shall be deemed to have waived its right to make a Claim based upon the facts as disclosed by Purchaser. The previous sentence, however, shall not apply to a breach or alleged breach of a representation or warranty contained in Section 5.01 or Section 5.02.

Section 10.05. **Governmental Approvals**. Promptly after the execution of this Agreement, or as required by Law, Purchaser shall file all applications and reports which are required to be filed by Purchaser with any Governmental Authority as provided on Schedule 5.04. Purchaser shall also promptly provide all information that any Governmental Authority may reasonably require in connection with any such application or report. Purchaser shall use all commercially reasonable efforts to obtain all required consents and approvals of any kind from any Person in connection with the transactions contemplated hereby. All authorizations of any Governmental Authority (including without limitation the IURC) necessary to the consummation of the transactions contemplated by this Agreement shall have been obtained in form and content reasonably satisfactory to Purchaser and Seller prior to Closing and shall be final and non-appealable.

ARTICLE XI.
CONDITIONS PRECEDENT TO OBLIGATIONS OF THE SELLER

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

Section 11.01. **Consents and Approvals**. Receipt of all required material, non-governmental third-party consents and any other approvals necessary to consummate the transactions contemplated by this Agreement and all consents, waivers, authorizations and approvals of any Governmental Authority (including without limitation the IURC) or any third party necessary to permit the consummation of the transactions contemplated by this Agreement shall have been duly obtained in form and content reasonably satisfactory to Seller in its sole discretion and shall be final and non-appealable and in full force and effect on the Closing Date;

Section 11.02. **Representations and Warranties of Purchaser**. All representations and warranties made by Purchaser in this Agreement shall be true and correct in all material respects on and as of the Closing Date as if made by Purchaser on and as of that date, and Seller shall have received a certificate to that effect from Purchaser dated as of the Closing Date;

Section 11.03. **No Injunctions**. Neither of Seller nor Purchaser shall be subject to any injunction, preliminary restraining order or other similar decree of a court of competent jurisdiction prohibiting the consummation of the transactions contemplated by this Agreement;

Section 11.04. **Legal Opinions**. Appropriate legal opinions, closing instruments, certificates and other documentation to Seller's satisfaction shall have been executed and delivered by Purchaser and Purchaser's legal counsel, as applicable;

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

Section 11.06. **Bond Debt Defeasance/Pay Off.** Seller shall have obtained all necessary approvals and commitments to defease or pay off all outstanding Bond Debt to Seller's satisfaction; and

Section 11.07. **Deliveries by Purchaser.** Purchaser shall have made delivery to Seller of the documents and items specified in Section 13.03 herein; and

Section 11.08. **Performance of the Obligations of Purchaser.** Purchaser shall have performed in all material respects all obligations required under this Agreement to be performed by Purchaser on or before the Closing Date, and Seller shall have received a certificate to that effect from Purchaser dated the Closing Date.

Section 11.09. **Simultaneous Closing.** Sellers shall be satisfied that Purchaser has satisfied all conditions precedent with respect to that certain Asset Purchase Agreement by and between the City and Purchaser's Affiliate, Citizens Wastewater of Westfield, LLC, dated as of the Effective Date ("Wastewater Purchase Agreement") and that the transactions contemplated by the Wastewater Purchase Agreement have closed simultaneously with the transactions contemplated by this Agreement.

ARTICLE XII.
CONDITIONS PRECEDENT TO OBLIGATIONS OF PURCHASER

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

Section 12.01. **Consents and Approvals**. Receipt of all required material, non-governmental third-party consents and any other approvals necessary or advisable to consummate the transactions contemplated by this Agreement and all consents, waivers, authorizations and approvals of any Governmental Authority or any third party necessary to permit the consummation of the transactions contemplated by this Agreement shall have been duly obtained in form and content satisfactory to Purchaser in its reasonable discretion and shall be final and non-appealable and in full force and effect on the Closing Date, including without limitation, resolutions of the Purchaser's Board approving the transactions described herein;

Section 12.02. **Representations and Warranties of Seller**. All representations and warranties made by Seller in this Agreement shall be true and correct in all material respects on and as of the Closing Date as if made by Seller on and as of that date, and Purchaser shall have received a certificate to that effect from Seller dated as of the Closing Date;

Section 12.03. **Due Diligence**. Purchaser shall have completed its due diligence review and shall have found the results reasonably satisfactory;

Section 12.04. **Financing.** Purchaser shall have secured financing necessary to complete the transactions described in this Agreement, on terms acceptable to Purchaser in its sole discretion.

Section 12.05. **No Injunctions**. Neither of Seller nor Purchaser shall be subject to any injunction, preliminary restraining order or other similar decree of a court of competent jurisdiction prohibiting the consummation of the transactions contemplated by this Agreement;

Section 12.06. **No Material Adverse Change**. There shall not have occurred any event or condition which gives rise to a Material Adverse Effect with respect to the Acquired Assets or the System;

Section 12.07. **Legal Opinions**. Appropriate legal opinions, closing instruments, certificates and other documentation to Purchaser's satisfaction shall have been executed and delivered by Seller and Seller's legal counsel, as applicable;

Section 12.08. **Deliveries by Seller**. Seller shall have made delivery to Purchaser of the documents and items specified in Section 13.02 herein;

Section 12.09. **Performance of the Obligations of Seller**. Seller shall have performed in all material respects all obligations required under this Agreement to be performed by Seller on or before the Closing Date, and Purchaser shall have received a certificate to that effect from Seller dated as of the Closing Date;

Section 12.10. **IURC Approval of Purchaser Petition**. IURC approval of Purchaser's petition (submitted at Purchaser's expense, excluding Seller's expenses in connection with such petition and proceedings) in a final non-appealable order that Purchaser determines in its reasonable discretion, does not contain findings, terms or conditions that materially, adversely impact valuation or Purchaser's ability to consummate the transaction or operate the System. An acceptable IURC order must include without limitation, the following:

(a) approval of the acquisition of the System by Purchaser, including without limitation approval of all necessary consents, licenses, permits, certificates and franchises to provide utility service through the System following the Closing, and a finding that the acquisition is reasonable and in the public interest;

(b) approval of accounting and rate base treatment of Utility Plant identified on Schedule 12.10(b) as of the dates indicated and in a manner consistent with that set forth in Schedule 12.10(b);

(c) to the extent determined by Purchaser to be necessary or desirable, approval of Purchaser's assumption of Assumed Liabilities and issuance of debt and equity, in the manner determined by Purchaser;

(d) determination of rates and charges consistent with Schedules 7.05 and 7.07;

(e) to the extent determined by Purchaser to be necessary or desirable, approval of any operating and other affiliate agreements; and

(f) approval of Purchaser's proposed depreciation rates as set forth on Schedule 12.10(f).

Section 12.11. **Satisfaction of Seller's Bonds and Notes**. Evidence to Purchaser's satisfaction in its reasonable discretion of the payment, release, defeasance and/or redemption of Seller's Bonds and Notes (the "Bond Payoff").

Section 12.12. **Environmental Approvals**. The receipt of copies of any EPA and IDEM applications, notifications or requests to transfer Environmental Permits, as set forth in Schedule 12.12, timely submitted in the form required by EPA or IDEM and necessary to consummate the transactions contemplated by this Agreement and the receipt of any EPA or IDEM approvals or consents necessary to consummate the transaction in form and content satisfactory to Purchaser in its reasonable discretion, and without terms or conditions not included in such previous Environmental Permits that materially, adversely impact Purchaser's ability to consummate the transaction or which otherwise have a Material Adverse Effect.

Section 12.13. **Simultaneous Closing**. Purchaser shall be satisfied that the City has satisfied all conditions precedent with respect to the Wastewater Purchase Agreement and that the transactions contemplated by the Wastewater Purchase Agreement have closed simultaneously with the transactions contemplated by this Agreement.

ARTICLE XIII.
CLOSING

Section 13.01. **Closing Date**. The Closing shall take place at the offices of Faegre Baker Daniels, at 300 N. Meridian Street, Indianapolis, IN 46204, at 10:00 a.m. eastern standard time on the earliest agreed upon date after the date upon which all the conditions precedent to Closing described in this Agreement have been fulfilled or waived and Purchaser and Seller receive the last of the required consents, waivers, authorizations and approvals from the Governmental Authorities, in each case, for the transactions contemplated by this Agreement, or at such other place and time, or on such other date, as may be mutually agreed to by the Parties (the "Closing Date"). The Closing shall be effective at 12:01 a.m., Indianapolis time, on the Closing Date (the "Closing Effective Time").

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

(a) A Quitclaim Deed conveying to Purchaser all of Seller's rights, title and interest in and to the Real Property;

(b) A Bill of Sale transferring all of the Acquired Assets comprising personal property;

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

(d) A duly executed counterpart to an Assignment and Assumption Agreement with respect to the Assumed Liabilities and the Occupancy Agreements (the "Assignment and Assumption Agreement");

(e) A duly executed counterpart to the Escrow Agreement;

(f) A duly executed counterpart to the Transition Services Agreement;

(g) A duly executed counterpart to the Public Works Building Lease;

(h) A duly executed counterpart to the Public Safety Training Academy License;

(i) Copies of each consent, waiver, authorization and approval required pursuant to Section 4.04 of this Agreement;

(j) The consents or approvals required for all of the Assigned Contracts, Intellectual Property and Licenses and Permits, to the extent required hereunder;

(k) Title certificates to any motor vehicles included in the Acquired Assets, duly executed by Seller (together with any transfer forms necessary to transfer title to such vehicles);

(l) All Related Agreements, duly executed by Seller;

(m) An opinion letter of counsel for Seller, in a form mutually agreed to prior to Closing;

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

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

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

(q) Evidence of Seller's submission of the required applications, notifications, or requests to transfer to EPA and IDEM as contemplated by Section 12.12;

(r) Copies of any Bond Payoff;

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

Section 13.03. **Deliveries by Purchaser**. At the Closing, Purchaser shall have delivered to Seller the following agreements, documents and other items:

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

(b) An opinion letter of counsel for Purchaser, in a form mutually agreed to prior to Closing;

(c) All Related Agreements, duly executed by Purchaser;

(d) A duly executed counterpart to the Escrow Agreement;

(e) A duly executed counterpart to the Transition Services Agreement;

(f) A duly executed counterpart to the Public Works Building Lease;

(g) A duly executed counterpart to the Public Safety Training Academy License;

(h) An opinion letter of counsel for Purchaser, in a form mutually agreed to prior to Closing;

(i) Certificates of Purchaser pursuant to Section 11.02 of this Agreement; and

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

ARTICLE XIV.
TERMINATION

Section 14.01. **Events of Termination**. This Agreement may, by notice given in the manner hereinafter provided, be terminated and abandoned at any time prior to completion of the Closing:

(a) by Seller if there has been a material misrepresentation or a material default or breach by Purchaser with respect to Purchaser's representations and warranties in Article V of this Agreement or the due and timely performance of any of the material covenants or agreements of Purchaser contained in this Agreement, and in the case of a covenant or agreement default or breach, such default or breach shall not have been cured within ninety (90) days after receipt by Purchaser of notice specifying particularly such default or breach;

(b) by Purchaser if there has been a material misrepresentation or a material default or breach by Seller with respect to Seller's representations and warranties in Article IV of this Agreement or the due and timely performance of any of the material covenants and agreements of Seller contained in this Agreement, and in the case of a covenant or agreement default or breach, such default or breach shall not have been cured within ninety (90) days after receipt by Seller of notice specifying particularly such default or breach;

(c) by Purchaser if, in the judgment of Purchaser, a Material Adverse Effect has occurred since the Effective Date and the effect of such Material Adverse Effect has not been cured by Seller within ninety (90) days after receipt by Seller of notice specifying particularly such Material Adverse Effect;

(d) by Purchaser if, prior to the Closing Date, Purchaser is not satisfied with its business, financial, legal, environmental, regulatory and similar due diligence to Purchaser's satisfaction;

(e) by Seller or Purchaser at any time after the Outside Date, if the Closing has not occurred and the Party seeking to terminate this Agreement is not in any material respect in breach or default of any provisions of this Agreement that has not been expressly waived in writing**;**

(f) by Seller or Purchaser if (i) any Governmental Authority (other than the City, the Council or the Department) the consent from or approval by which is a condition to the obligations of the Parties to consummate the transactions contemplated hereby shall have determined not to grant its consent or approval as contemplated by this Agreement as applicable; or (ii) any court of competent jurisdiction shall have issued an order, judgment or decree (other than a temporary restraining order) restraining, enjoining or otherwise prohibiting the transactions contemplated hereby; or

(g) by mutual agreement of Seller and Purchaser.

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

Section 14.02. **Effect of Termination**. In the event this Agreement is terminated pursuant to Section 14.01(c)-(g) of this Agreement, all obligations of the Parties shall terminate without any liability of a Party to the other Party; provided, however, that the obligations of the Parties set forth in Sections 15.01, 15.02 and 15.03 of this Agreement shall indefinitely survive the termination of this Agreement. Nothing in this Section 14.02 shall be deemed to release either Purchaser or Seller from any liability for any willful breach by such Party of the terms of this Agreement.

ARTICLE XV.
MISCELLANEOUS

Section 15.01. **Confidentiality**. Except as and to the extent required by law (including but not limited to the Indiana access to public record law at IND. CODE § 5-14-3) or pursuant to an order of a court of competent jurisdiction, no Party hereto shall, directly or indirectly, disclose or use (and no party shall permit its representatives to disclose or use) any Confidential Information (as defined below) with respect to any other Party furnished, or to be furnished, by such other Party hereto or its shareholders, directors, officers, agents, or representatives to any other Party hereto or its employees, directors, officers, agents or representatives in connection herewith at any time or in any manner other than in connection with the completion of the transactions contemplated by this Agreement and related transactions. For purposes of this paragraph, the term "Confidential Information" means any information about Purchaser, Seller or the System related to the transactions contemplated by this Agreement; provided, however, that such term does not include information which the receiving Party can demonstrate (a) is generally available to or known by the public other than as a result of improper disclosure by the receiving Party; (b) is obtained by the receiving Party from a source other than the disclosing Party, provided that such source was not bound by a duty of confidentiality to the disclosing Party with respect to such information; or (c) is legally in the public domain.

Section 15.02. **Public Announcements**. Subject to applicable law, any public announcement relating to the transactions contemplated by this Agreement will be mutually agreed upon and jointly made by the Parties.

Section 15.03. **Expenses; Brokers**.

(a) Purchaser and Seller shall be responsible for and bear all of their respective costs and expenses incurred in connection with this Agreement, including, without limitation, any legal, accounting or other representative or advisor costs and expenses.

(b) Each Party will be responsible for any fees or expenses of any financial advisor, broker or finder retained by such Party payable upon consummation of the transactions contemplated by this Agreement.

Section 15.04. **Utilities Proration**. Purchaser shall be solely responsible for all utility charges with respect to the System on and after the Closing Date. Seller shall use commercially reasonable efforts to have meters for electricity, telephone, gas and water read as of the close of business on the day before the Closing Date or the opening of business on the Closing Date and

for bills to be rendered to Seller based upon such readings. To the extent such meter readings are not used as the basis for calculating all such charges, the electricity, telephone, gas and water utility charges shall be pro-rated as of the closing of business on the Closing Date between Seller and Purchaser (based upon the number of days in applicable pre-Closing and post-Closing periods).

Section 15.05. **Risk of Loss**. The risk of loss of or damage to any of the Acquired Assets shall be on Seller at all times prior to the Closing Effective Time. In the event of any such loss or damage, Seller shall repair or replace the lost or damaged assets as soon as practicable at its sole cost and expense. Seller shall have no risk of loss of or damage to the Acquired Assets on and after the Closing Effective Time.

Section 15.06. **Reasonable Efforts; Cooperation**. Subject to the terms and conditions of this Agreement, each Party will use its commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary or desirable to consummate the transactions contemplated by this Agreement and the Related Agreements. The Parties each agree to execute and deliver such other documents, certificates, agreements and other writings and to take such other actions as may be necessary or desirable in order to consummate or implement expeditiously the transactions contemplated by this Agreement and the Related Agreements, and from time to time, upon the request of the other Parties to this Agreement and without further consideration, to execute, acknowledge and deliver in proper form any further instruments, and take such other action as the other Parties may reasonably require, in order to effectively carry out the intent of this Agreement and the Related Agreements. In addition, following the Closing, the Seller shall, from time to time, upon request of Purchaser, provide reasonable cooperation, free of charge, with respect to the operation of the System, including without limitation water conservation to the extent providing such cooperation does not impose unduly burdensome financial or operational obligations upon Seller; *provided,* Seller may provide services requested by Purchaser for a reasonable fee agreed upon by the Parties.

Section 15.07. **Notices**. All notices, requests, demands and other communications that are required or may be given pursuant to the terms of this Agreement or any of the Related Agreements shall be in writing, and delivery shall be deemed sufficient in all respects and to have been duly given as follows: (a) on the actual date of service if delivered personally; (b) at the time of receipt of confirmation by the transmitting party if by facsimile transmission; (c) at the time of receipt if given by electronic mail, provided that a Party sending notice by electronic delivery shall bear the burden of authentication and of proving transmittal, receipt and time of receipt; (d) on the third day after mailing if mailed by first class mail return receipt requested, postage prepaid and properly addressed as set forth in this Section 15.07; or (e) on the day after delivery to a nationally recognized overnight courier service during its business hours or the Express Mail service maintained by the United States Postal Service during its business hours for overnight delivery against receipt, and properly addressed as set forth in this Section:

If to Seller, to:

City of Westfield
Office of the Mayor
130 Penn Street
Westfield, IN 46074
Attention: Andy Cook, Mayor of the City

with copies to (which copy alone shall not constitute notice for the purposes of this Agreement):

Faegre Baker Daniels LLP
202 South Michigan Street, Suite 1400
South Bend, IN 46601-2020
Attention: Richard L. Hill

Krieg Devault
12800 North Meridian Street, Suite 300
Carmel, IN 46032-9422
Attention: Brian J. Zaiger

If to Purchaser, to:

Citizens Water of Westfield, LLC
2020 North Meridian Street
Indianapolis, IN 46202-1393
Attention: Aaron D. Johnson

with a copy to (which copy alone shall not constitute notice for the purposes of this Agreement):

Ice Miller LLP
One American Square, Suite 2900
Indianapolis, IN 46282
Attention: Richard J. Thrapp

Any Party may change its address and preferred recipient or other contact information for notice by giving notice to each other Party in accordance with the terms of this Section 15.07. In no event will delivery to a copied Person alone constitute delivery to the Party represented by such copied Person.

Section 15.08. **Headings**. The article, Section and paragraph headings in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

Section 15.09. **Construction**.

(a) The Parties have participated jointly in the negotiation and drafting of this Agreement, and, in the event of an ambiguity or a question of intent or a need for interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption

or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

(b) Except as otherwise specifically provided in this Agreement (such as by "sole," "absolute discretion," "complete discretion," or words of similar import), if any provision of this Agreement requires or provides for the consent, waiver or approval of a Party, such consent, waiver and/or approval shall not be unreasonably withheld, conditioned or delayed.

(c) The Parties intend that each representation, warranty and covenant herein shall have independent significance. If any Party has breached any representation, warranty or covenant contained herein in any respect, the fact that there exists another representation, warranty, or covenant relating to the same subject matter (regardless of the relative levels of specificity) which the Party has not breached shall not detract from or mitigate the fact that the Party is in breach of the first representation, warranty or covenant, as the case may be.

(d) Words of any gender used in this Agreement shall be held and construed to include any other gender; words in the singular shall be held to include the plural; and words in the plural shall be held to include the singular; unless and only to the extent the context indicates otherwise.

(e) Reference to any Law means such Law as amended, modified, codified, replaced or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder, and reference to any Section or other provision of any Law means that provision of such Law from time to time in effect and constituting the substantive amendment, modification, codification, replacement or reenactment of such Section or other provision.

(f) The word "including" means "including, without limitation."

(g) References to documents, instruments or agreements shall be deemed to refer as well to all addenda, appendices, exhibits, schedules or amendments thereto.

Section 15.10. **Severability**. If any term, provision, covenant or restriction contained in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions contained in this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

Section 15.11. **Entire Agreement**. This Agreement and the Related Agreements represent the entire agreement among the Parties with respect to the subject matter hereof thereof and supersede all prior or contemporaneous written or oral agreements or understandings of any kind among the Parties hereto and thereto with respect to the subject matter hereof and thereof. All Exhibits and Schedules hereto are expressly made a part of this Agreement as fully as though completely set forth herein.

Section 15.12. **Amendments; Waivers**. This Agreement may be amended or modified, and any of the terms, covenants, representations, warranties or conditions hereof may be waived, only by a written instrument executed by the Parties hereto, or in the case of a waiver, by the Party waiving compliance. Any waiver by any Party of any condition, or of the breach of

any provision, term, covenant, representation or warranty contained in this Agreement, in any one or more instances, shall not be deemed to be or construed as a further or continuing waiver of any condition or of the breach of any other provision, term, covenant, representation or warranty of this Agreement.

Section 15.13. **Parties in Interest**. Nothing in this Agreement is intended to confer any rights, remedies or obligations under or by reason of this Agreement on any Person other than Seller and Purchaser and their respective Affiliates, successors and permitted assigns. For the avoidance of doubt, the Parties intend that only Seller and Purchaser shall have any rights, remedies or obligations to each other under this Agreement. In no event shall any Affiliate of Seller or Purchaser have any right, remedy or obligation under this Agreement or any Related Agreement unless otherwise expressly set forth herein.

Section 15.14. **Successors and Assigns**. No Party hereto shall assign or delegate this Agreement or any rights or obligations hereunder without the prior written consent of the other Party hereto, and any attempted assignment or delegation without prior written consent shall be void and of no force or effect. This Agreement shall inure to the benefit of and shall be binding upon the successors and permitted assigns of the Parties hereto.

Section 15.15. **Governing Law; Jurisdiction**. This Agreement shall be construed and enforced in accordance with, and governed by, the laws of the State of Indiana (without giving effect to the principles of conflicts of laws thereof). Subject to Section 8.02, the Parties hereto irrevocably agree and consent to the jurisdiction of the courts of the State of Indiana and the federal courts of the United States, sitting in Indianapolis, Indiana, for the adjudication of any matters arising under or in connection with this Agreement. Any action initiated in court shall be filed and litigated (including all discovery proceedings) exclusively in a state or federal court located in Hamilton County or Marion County, Indiana, as applicable, and all objections as to personal jurisdiction and venue are waived.

Section 15.16. **Counterparts**. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall together constitute the same instrument.

[THIS PAGE INTENTIONALLY LEFT BLANK;
SIGNATURES NEXT PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed, or caused to be executed by their duly authorized representatives, this Agreement as of the date first above written.

"SELLER"

CITY OF WESTFIELD

By: _____

Printed: _____

Its: _____

"PURCHASER"

CITIZENS WATER OF WESTFIELD, LLC

By: _____

Printed: _____

Its: _____

DEPARTMENT OF PUBLIC WORKS OF THE CITY OF WESTFIELD ACTING BY AND THROUGH THE BOARD OF PUBLIC WORKS

By: _____

Printed: _____

Its: _____

ASSET PURCHASE AGREEMENT

FOR THE WASTEWATER UTILITY

By and Among

THE CITY OF WESTFIELD

and the

PUBLIC WORKS DEPARTMENT
ACTING BY AND THROUGH THE BOARD OF PUBLIC WORKS

(Seller)

and

CITIZENS WASTEWATER OF WESTFIELD, LLC

(Purchaser)

Dated as of November __, 2012

TABLE OF CONTENTS

Page

ARTICLE I. DEFINITIONS 2

ARTICLE II. TERMS OF PURCHASE AND ASSUMPTION OF LIABILITIES 12

Section 2.01. Purchase and Sale of Acquired Assets 12
Section 2.02. Excluded Assets 13
Section 2.03. Sale Free of Liens 14
Section 2.04. Assumption of Liabilities 14
Section 2.05. Subsequent Documentation 15
Section 2.06. Assignment of Contracts 15

ARTICLE III. PURCHASE PRICE 16

Section 3.01. Purchase Price 16
Section 3.02. Fair Consideration 16
Section 3.03. Working Capital; Collection of Accounts Receivable 16
Section 3.04. Allocation of the Purchase Price 17
Section 3.05. Escrow 17

ARTICLE IV. REPRESENTATIONS AND WARRANTIES OF THE SELLER 17

Section 4.01. Power 18
Section 4.02. Authorization and Validity of Agreement 18
Section 4.03. No Conflict or Violations 18
Section 4.04. Consents and Approvals 18
Section 4.05. Financial Statements 18
Section 4.06. Absence of Certain Changes or Events 19
Section 4.07. Tax Matters 20
Section 4.08. Real Property 20
Section 4.09. Equipment and Machinery/Distribution System 20
Section 4.10. Supplies 21
Section 4.11. Intellectual Property 21
Section 4.13. Employees; Labor Relations 22
Section 4.14. Environmental Compliance 23
Section 4.15. Licenses and Permits 25
Section 4.16. Insurance 25
Section 4.17. Contracts and Commitments 25
Section 4.18. Compliance with Law 26
Section 4.19. Litigation 26
Section 4.20. Title to the Acquired Assets and Related Matters 26
Section 4.21. No Other Agreements to Sell Assets 26
Section 4.22. Broker's and Finder's Fees 27
Section 4.23. Occupancy Agreements 27
Section 4.24. All Material Information 27

ARTICLE V. REPRESENTATIONS AND WARRANTIES OF PURCHASER 27

Section 5.01. Entity Organization 27
Section 5.02. Authorization and Validity of Agreement 28
Section 5.03. No Conflict or Violation 28
Section 5.04. Approvals and Consents 28
Section 5.05. Broker's and Finder's Fees 28
Section 5.06. Financial Ability 28
Section 5.07. Financing.....28
Section 5.08. Independent Decision.....29
Section 5.09. Disclosure Schedule Matters.....29
Section 5.10. WARN ACT 29

ARTICLE VI. TITLE TO REAL ESTATE; UCC STATEMENTS 29

Section 6.01. Evidence of Title.....29
Section 6.02. Survey and Other Evidence of Boundary 30
Section 6.03. Objections to Title.....30
Section 6.04. Title Expenses.....31
Section 6.05. UCC Search; Releases 31
Section 6.06. Post-Closing Access Rights 31
Section 6.07. Occupancy Agreements 32
Section 6.08. Unscheduled Real Property.....32
Section 6.09. Public Access to Real Property.....32
Section 6.10. Priority Two Property 32

ARTICLE VII. OTHER AGREEMENTS.....32

Section 7.01. Taxes 32
Section 7.02. Cooperation on Tax Matters 32
Section 7.03. Files and Records.....33
Section 7.04. Employee Matters 33
Section 7.05. System's Service to Seller 34
Section 7.06. Right of First Refusal; IURC Regulation.....35
Section 7.07. Future Rates 35
Section 7.08. Use of and Repair of Public Rights of Way.....35
Section 7.09. Safe Water Supply .....**Error! Bookmark not defined.**
Section 7.10. MBE/WBE/VBE Opportunities.....36
Section 7.11. Compliance with Applicable Laws; Cooperation with the City 36
Section 7.11. Compliance with Applicable Laws; Cooperation with the City 36
Section 7.12. Seller's Utility Plant 36
Section 7.13. Capital Plan.....36
Section 7.14. Lagoon Option 36
Section 7.15. Billing Services.....37
Section 7.16. Public Works Building Lease 37

ARTICLE VIII. DISPUTE RESOLUTION; INDEMNIFICATION 37

Section 8.01. Survival 37
Section 8.02. Dispute Resolution 38
Section 8.03. Indemnification by Seller 41
Section 8.04. Indemnification by Purchaser 42
Section 8.05. Procedure. 42
Section 8.06. Limitations on Indemnification Obligations 43
Section 8.07. Tort Claims 44
Section 8.08. Indemnified Claims 44

ARTICLE IX. PRE-CLOSING COVENANTS OF THE SELLER 44

Section 9.01. Operation of the System 44
Section 9.02. Prior Purchaser Approval 45
Section 9.03. Due Diligence 45
Section 9.04. Cooperation 45
Section 9.05. Exclusivity 45
Section 9.06. Notification of Certain Matters 45
Section 9.07. Supplements and Updates to Representations and Warranties and Related Disclosure Schedules 46
Section 9.08. Governmental Approvals 46
Section 9.09. Defeasance 46

ARTICLE X. PRE-CLOSING COVENANTS OF PURCHASER 46

Section 10.01. Actions Before the Closing Date 47
Section 10.02. Cooperation 47
Section 10.03. Notification of Certain Matters 47
Section 10.04. Supplements and Updates to Representations and Warranties and Related Disclosure Schedule 47
Section 10.05. Governmental Approvals 48

ARTICLE XI. CONDITIONS PRECEDENT TO OBLIGATIONS OF THE SELLER 48

Section 11.01. Consents and Approvals 48
Section 11.02. Representations and Warranties of Purchaser 48
Section 11.03. No Injunctions 48
Section 11.04. Legal Opinions 48
Section 11.05. Performance of the Obligations of Purchaser 48
Section 11.06. Bond Debt Defeasance/Pay Off 49
Section 11.07. Deliveries by Purchaser 49
Section 11.08. Performance of the Obligations of Purchaser 49
Section 11.09. Simultaneous Closing 49

ARTICLE XII. CONDITIONS PRECEDENT TO OBLIGATIONS OF PURCHASER 49

Section 12.01. Consents and Approvals 49

Section 12.02. Representations and Warranties of Seller 49
Section 12.03. Due Diligence 49
Section 12.04. Financing....50
Section 12.05. No Injunctions....50
Section 12.06. No Material Adverse Change....50
Section 12.07. Legal Opinions....50
Section 12.08. Deliveries by Seller....50
Section 12.09. Performance of the Obligations of Seller....50
Section 12.10. IURC Approval of Purchaser Petition 50
Section 12.11. Satisfaction of Seller's Bonds and Notes 51
Section 12.12. Environmental Approvals 51
Section 12.13. Simultaneous Closing 51

ARTICLE XIII. CLOSING 51

Section 13.01. Closing Date....51
Section 13.02. Deliveries by Seller....51
Section 13.03. Deliveries by Purchaser 52

ARTICLE XIV. TERMINATION....53

Section 14.01. Events of Termination....53
Section 14.02. Effect of Termination....54

ARTICLE XV. MISCELLANEOUS....54

Section 15.01. Confidentiality 54
Section 15.02. Public Announcements 55
Section 15.03. Expenses; Brokers....55
Section 15.04. Utilities Proration....55
Section 15.05. Risk of Loss 55
Section 15.06. Reasonable Efforts; Cooperation 55
Section 15.07. Notices 56
Section 15.08. Headings 57
Section 15.09. Construction....57
Section 15.10. Severability 58
Section 15.11. Entire Agreement 58
Section 15.12. Amendments; Waivers....58
Section 15.13. Parties in Interest....58
Section 15.14. Successors and Assigns....58
Section 15.15. Governing Law; Jurisdiction....58
Section 15.16. Counterparts....59

Exhibits

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT ("Agreement"), dated as of November __, 2012 (the "Effective Date"), is made and entered into by and among the CITY OF WESTFIELD, INDIANA (the "City") and the PUBLIC WORKS DEPARTMENT ACTING BY AND THROUGH THE BOARD OF PUBLIC WORKS (together, the "Department," and together with the City, "Seller") and CITIZENS WASTEWATER OF WESTFIELD, LLC (the "Purchaser"). References to the "City" or "Seller" in this Agreement shall include the Department, which may act for and on behalf of the City with respect to the System (defined below).

WITNESSETH:

WHEREAS, the City owns and operates, by and through the Department, pursuant to the provisions of IND. CODE § 8-1.5-3 and related statutes, a water system (the "Water System");

WHEREAS, the City owns and operates, by and through the Department, pursuant to the provisions of IND. CODE § 36-9-23 and related statutes, a wastewater collection and treatment system (the "System" and, collectively with the Water System, the "Systems");

WHEREAS, the City has elected to sell the assets of the System and the Water System;

WHEREAS, the City recognizes the impact System operations have on the quality of water in the City's rivers, streams and aquifers and has therefore determined that an integrated sale of the System and the Water System is necessary to achieve the ultimate water quality goals of the City;

WHEREAS, the disposition of the assets of the Water System are subject to IND. CODE § 8-1.5-2;

WHEREAS, the City has found that there is no specific statutory scheme that applies to the disposition of wastewater assets;

WHEREAS, the City has adopted an ordinance under IND. CODE § 36-1-3 (the "Home Rule Statute"), which allows the City to dispose of the assets of the System pursuant to IND. CODE § 8-1.5-2, by electing to be governed by that Indiana Code section;

WHEREAS, Purchaser is an affiliate of Citizens Water and CWA Authority, Inc., which entities are currently engaged in the ownership and operation of water and wastewater utilities, respectively;

WHEREAS, the City issued a Request for Proposals regarding the sale of the Systems as it explored ways to achieve operating efficiencies, to improve customer service, to pay off debt of the Systems and to keep customer rates as low as possible;

WHEREAS, Seller has determined that the sale of the Systems to Purchaser will result in operating and capital project synergies that will benefit the City and its inhabitants;

WHEREAS, the City and Purchaser have determined that it would be advisable for Purchaser directly or through its designated Affiliate(s) to acquire the Systems in order to achieve the benefits of professional operation and operating synergies;

WHEREAS, Purchaser:

a. will be qualified to own, operate and finance the Systems under various federal and state statutes or regulations; and

b. will have all of the powers that are necessary, useful or appropriate for the acquisition, ownership and operation of the Systems;

WHEREAS, Purchaser's or its Affiliates' acquisition of each of the Systems will be as a going concern and as part of an integrated transaction involving both Systems, with each part dependent on the other; and

WHEREAS, Purchaser, in reliance upon the representations, warranties and covenants of Seller, desires to purchase and acquire from Seller, and Seller desires to sell, transfer and convey all of the Acquired Assets (defined below) as a going concern at Closing, except for the Excluded Assets, and in connection therewith, Purchaser has agreed to assume certain ongoing obligations and liabilities of Seller, all on the terms and conditions set forth in this Agreement.

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

ARTICLE I.
DEFINITIONS

In addition to the capitalized terms defined elsewhere in this Agreement, the following terms, as used in this Agreement and in all Related Agreements, shall have the meanings set forth in this Article I:

"**Access Rights**" has the meaning specified in Section 6.06.

"**Accounts Receivable**" means all accounts and notes receivable, rights to refunds, unbilled revenue (net of bad debt) and deposits of any kind of Seller, accrued by or on behalf of Seller in the operation of the System, to the extent constituting a current asset, outstanding as of the Closing Date.

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

"**Acquired Authorizations**" has the meaning specified in Section 2.01(i).

"**Affiliate**" means, with respect to Purchaser, a limited liability company, corporation (or equivalent legal entity under foreign law), joint venture, limited partnership, limited liability partnership or general partnership (or equivalent under foreign law) or other Person that controls

or owns, is owned or controlled by, or is under common ownership or control with, Purchaser, and with respect to Seller, any department of the City controlled by the City.

"**Agreement**" means this Asset Purchase Agreement and the Schedules and Exhibits attached hereto as they may be amended or modified in accordance with the applicable provisions hereof.

"**Arbitration Award**" has the meaning specified in Section 8.02(d)(v).

"**Arbitration Demand**" has the meaning specified in Section 8.02(d)(i).

"**Arbitration Response**" has the meaning specified in Section 8.02(d)(i).

"**Arbitrators**" has the meaning specified in Section 8.02(d)(ii).

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

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

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

"**Bond Debt**" means all of the City's bond-related indebtedness related to the System in the principal amount of Thirty Seven Million Eight Hundred Seventy Four Thousand Three Hundred Forty Three Dollars and No/100 ($37,874,343.00) as of July 31, 2012, as further summarized on Exhibit A.

"**Bond Payoff**" has the meaning specified in Section 12.12.

"**Boundary Evidence**" has the meaning specified in Section 6.03(a).

"**Business Day**" means any day other than Saturday, Sunday, and any day on which commercial banks in Indiana are authorized by Law to be closed.

"**Capital Plan**" has the meaning specified in Section 7.12.

"CERCLA" means the Comprehensive Environmental Response Compensation and Liabilities Act of 1980, as amended.

"CIAC" means property contributed in aid of construction within the meaning of applicable Laws pertaining to Indiana water utilities regulated by the IURC.

"**City**" means the City of Westfield, Indiana.

"**City Officials**" means Seller's Mayor, the Chief of Staff, the Director of the Department, Randy Higginbotham and Robert Lambert (with respect to operations), Diana Peyton (with respect to human resources matters) and Derrick Cash (with respect to information technology matters).

"**Claim**" has the meaning specified in Section 8.03.

"**Closing**" means the consummation of the sale and purchase of the Acquired Assets in accordance with the terms and conditions of this Agreement as provided for in Section 13.01.

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

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

"**COBRA**" means Title X of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, including, without limitation, Sections 2201 through 2208 of the Public Health Service Act and Part 6 of Subtitle B of the Employee Retirement Income Security Act of 1974, as amended, and Section 4980B of the Code.

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

"**Commitment Preconditions**" has the meaning specified in Section 6.03(a).

"**Contracts**" has the meaning specified in Section 4.17(a).

"**Council**" means the Common Council of the City.

"**Counterproposal**" has the meaning specified in Section 8.02(c)(iii).

"**Damages**" means any and all losses, obligations, penalties, interest, damages, liabilities, causes of action, judgments, actions, demands, claims, costs or expenses, including reasonable attorneys' fees sustained or incurred in investigating, preparing or defending any Claim. Notwithstanding the foregoing, Damages shall not include incidental damages, loss of profits or punitive damages, if any, unless the Party seeking indemnification has had incidental damages, lost profits or punitive damages assessed or asserted against it by a third party.

"**Department**" means the City of Westfield Public Works Department acting by and through the Board of Public Works.

"**Designated Parties**" has the meaning specified in Section 8.02(c)(v).

"**Dispute**" has the meaning specified in Section 8.02(a).

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

"**Employee**" means any Person employed by Seller who worked for the System immediately before the Closing.

"Environmental Claims" means all formal investigations, warnings, notice letters, notices of violations, Liens, orders, claims, demands, suits or administrative or judicial actions for any injunctive relief, fines, penalties, or any damage, including, without limitation, natural resource damages, or environmental response costs arising out of an Environmental Condition and/or pursuant to Environmental Laws, including such claims arising from the exposure of persons to Hazardous Materials at the work place or the exposure of persons or property to

Hazardous Materials migrating or otherwise emanating from, to, or located at, under or on the Real Property.

"Environmental Conditions" means the (i) state of the environment, including natural resources (e.g., flora and fauna), soil, surface water, ground water, any present drinking water supply, subsurface strata or ambient air, relating to or arising out of the use, handling, storage, treatment, recycling, generating, transportation, spilling, leaking, pumping, pouring, injecting, emptying, discharging, emitting, escaping, leaching, dumping, disposal, release, or threatened release of Hazardous Materials and (ii) any repair, replacement, retrofit, or activity, required to be completed, performed, remediated or corrected on the Real Property and Acquired Assets, in either case, as necessary to bring the properties into compliance with all applicable Laws or Environmental Laws, and in either case, which is reasonably expected to result in or does result in an Environmental Claim.

"**Environmental Laws**" means all Laws relating to human health, pollution, or protection of the environment (including ambient air, surface water, ground water, land surface or surface strata), including (i) Laws relating to Releases, or threatened Releases of Hazardous Materials, (ii) Laws relating to the identification, generation, manufacture, processing, distribution, use, treatment, storage, disposal, recovery, transport or other handling of Hazardous Materials, (iii) CERCLA; the Toxic Substances Control Act, as amended; the Hazardous Materials Transportation Act, as amended; the RCRA; the Clean Water Act, as amended; the Safe Drinking Water Act, as amended; the Clean Air Act, as amended; and (iv) all analogous Laws promulgated or issued by any state Governmental Authority.

"Environmental Permits" has the meaning specified in Section 4.16.

"**EPA**" means the United States Environmental Protection Agency.

"**Equipment and Machinery**" means (i) all the equipment, tangible personal property, machinery, office furniture and equipment, fixtures, tooling, spare maintenance or replacement parts and vehicles owned or leased by Seller (including all leases of such property), which are used, necessary or important in the operation of the System; (ii) any rights of Seller to warranties applicable to the foregoing (to the extent assignable), and licenses received from manufacturers and seller of any such item; and (iii) any related claims, credits, and rights of recovery with respect thereto.

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

"Escrow" means the escrow established under the Escrow Agreement.

"Escrow Agent" has the meaning specified in Section 3.05.

"Escrow Agreement" has the meaning specified in Section 3.05.

"Escrow Amount" mean means Five Hundred Thousand Dollars and No/100 ($500,000.00).

"Escrow Deposit" has the meaning specified in Section 3.05.

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

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

(a) constituting Trade Payables;

(b) related to any of the Excluded Assets;

(c) any liabilities or obligations of Seller relating to or arising out of (i) the employment or termination of employment of any Employee on or before the Closing or (ii) worker's compensation claims of any Employee that relate to events occurring on or before the Closing Date;

(d) any liability or obligation that constitutes any claim, liability or obligation in respect of Employees of the Seller arising on or prior to the Closing Date (including by reason of the transactions contemplated by this Agreement) by or on behalf of any such Employee for (A) payments for unemployment compensation, (B) bonus, (C) hospital, medical, life insurance or disability claims, (D) Seller's Qualified Benefit Plans or Seller's Benefit Plans, (E) severance or termination payments, (F) accrued vacation or accrued sick leave, (G) workers' compensation, (H) any other benefit obligation of the Seller, including any Contracts listed in Section 4.17(a)(i) of this Agreement, or (I) other compensation or damages;

(e) Seller's Bonds and Notes;

(f) related to any tort claims against Seller ("Tort Claims");

(g) related to any claim for Damages to the extent the Seller has the right to be indemnified by a third party other than Purchaser or to receive insurance proceeds related thereto;

(h) related to any malfeasance or penalties or fines, or interest thereon, assessed by the EPA or IDEM, by reason of any acts or omissions of Seller prior to Closing alleged to be in violation of applicable Environmental Law; or

(i) those liabilities and obligations set forth in Schedule 1.01.

"**Existing Survey**" has the meaning specified in Section 6.02.

"**Face-to-Face Meeting**" has the meaning specified in Section 8.02(c)(iv).

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

records relating to Employee to be employed or leased by Purchaser following the Closing, and whether stored on-site or off-site.

"**Financial Statements**" has the meaning specified in Section 4.05.

"**First Notice of Claim**" has the meaning specified in Section 8.02(c)(ii).

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

"**Governmental Authority**" means any court, department, commission, board, bureau, municipality, agency or instrumentality of the United States, any state, county, city or political subdivision thereof, or any foreign governmental body, including without limitation, the EPA, IDEM, the IURC and the City Council.

"**Hazardous Materials**" mean (i) any substance that is defined as a "hazardous substance," "hazardous waste," "hazardous material," pollutant, or contaminant under Environmental Laws ; (ii) petroleum (including crude oil and any fraction thereof); (iii) any natural or synthetic gas (whether in liquid or gaseous state); (iv) polychlorinated biphenyls ("PCBs") and PCB-containing equipment, (v) pesticides, (vi) explosives, flammables, corrosives and (ix) substances that are regulated by, or may form the basis of liability under, any Environmental Law and includes the meanings of all such terms in or under any Environmental Law.

"**IDEM**" means the Indiana Department of Environmental Management.

"**Indemnified Party**" has the meaning specified in Section 8.05(a).

"**Indemnifying Party**" has the meaning specified in Section 8.05(a).

"**Intellectual Property**" means all United States patents and patent applications (whether utility, design, or plant product), registered and unregistered trademarks, service marks, trade names, copyrights and copyright applications (and all derivations thereof), logos, brands, business identifiers, private labels, trade dress (including all goodwill and reputation symbolized by any of the foregoing), rights of publicity, processes, industrial designs, drawings, specifications, inventions, improvements, discoveries, formulae, know-how, and trade secrets, customer lists, supplier lists, proposals and analyses, business plans and strategies, licenses, research and development files, manuals, sales literature and promotional material, URLs, domain names and all rights with respect to the foregoing, whether or not patentable or registerable.

"**Interim Financing**" means the issuance of Bond Anticipation Notes as approved by the City Council's adoption of water utility revenue bond ordinances.

"**IURC**" means the Indiana Utility Regulatory Commission.

"**Knowledge**" to the "**Knowledge**" of, and phrases of similar import, means the actual knowledge of (A) with respect to Seller, the City Officials or (B) with respect to Purchaser, Carey Lykins, John Brehm, Aaron Johnson and Randy Edgemon.

"**Lagoon**" means the body of water and related property located behind the City's Public Works Department facilities located at 171st Street in Westfield, as more specifically set forth on Exhibit C.

"**Lagoon Option**" has the meaning specified in Section 7.12.

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

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

"**Licenses and Permits**" mean all licenses, permits, franchises, authorizations, certificates, registrations, consents, orders, variances, waivers and approvals issued or granted by Governmental Authorities to either Seller, including without limitation, Environmental Permits, operating permits and approvals that are held by Seller that relate directly or indirectly to the operation of the System, including those described in Schedule 4.15.

"**Liens**" means all liabilities, obligations, claims, security interests, leases, liens, mortgages, deeds of trust, pledges, rights of first refusal, encroachments, rights of third parties, charges, options, conditional sales or other title retention agreements, UCC-1 financing statements, licenses, rights of way, easements, encumbrances, restrictions, covenants, rights and defects in title of any nature whatsoever, including, without limitation, any restriction on use, transfer, receipt of income, or exercise of any other attribute of ownership.

"**Material Adverse Effect**" means any event, change, fact, condition, occurrence or circumstance that either individually or in the aggregate, has had or could reasonably be expected to have a materially adverse effect on the condition of the Acquired Assets, the business, financial condition, results of operations or other aspects of the System, taken as a whole, but excluding any effect to the extent arising from any one or more of the following: (i) any act or omission of Seller that is conducted with the prior written consent of Purchaser following Seller's disclosure to Purchaser of relevant, material facts or that is expressly authorized by the terms of this Agreement; (ii) any costs or expenses incurred or accrued in connection with the transactions as contemplated by this Agreement (except to the extent constituting an Assumed Liability or relating to or constituting a breach of any representation or warranty hereunder); or (iii) any such change, effect or circumstance resulting solely from the announcement of this Agreement.

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

"**Neutral Arbitrator**" has the meaning specified in Section 8.02(d)(ii).

"**Nonassignable Assets**" has the meaning specified in Section 2.06(a).

"**Occupancy Agreements**" has the meaning specified in Section 4.23.

"**Outside Date**" means one (1) year from the Effective Date.

"**Real Property**" has the meaning specified in Section 4.08.

"**Panel**" has the meaning specified in Section 8.02(d)(ii).

"**Party**" means Purchaser or Seller and the term "Parties" means collectively Purchaser and Seller.

"**Permitted Liens**" means (a) the Access Rights; (b) the Reserved Rights; (c) the liens, security interests and encumbrances in the Acquired Assets that are identified on Schedule 1.02; or (d) the "Permitted Real Property Encumbrances" as determined pursuant to Section 6.03(b).

"**PERF**" means the Indiana Public Employees Retirement Fund.

"**Person**" means any individual, corporation, partnership, joint venture, association, limited liability company, joint-stock company, trust, or unincorporated organization, or any governmental agency, officer, department, commission, board, bureau, or instrumentality thereof.

"**Policies**" and "**Policy**" have the meanings specified in Section 4.16.

"**Priority Two Property**" has the meaning specified in Section 6.10.

"**Proposed Resolution**" has the meaning specified in Section 8.02(c)(ii).

"Public Works Building" means the building located at 2706 E. 171st Street, Westfield, Indiana 46074 and all assets associates with the building all as set forth on Exhibit B.

"Public Works Building Lease" means the capital lease between Purchaser and the City for the Public Works Building provided for in Section 7.16.

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

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

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

"RCRA" means the Resource Conservation and Recovery Act, as amended.

"**Real Property**" has the meaning specified in Section 4.08.

"**Related Agreements**" means all agreements, instruments, ordinances and other documents contemplated by or executed, delivered or performed pursuant to this Agreement.

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment of Hazardous Materials.

"**Reserved Rights**" means title to public rights-of-way except for any subsurface occupancies or improvements used in the operation of the System.

"Response" has the meaning specified in Section 8.02(c)(iii).

"Scheduled Occupancy Agreements" has the meaning specified in Section 4.23.

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

"Seller's Benefit Plans" means each voluntary employees' beneficiary association under Section 501(c)(9) of the Code whose members include any Employees and any employee benefit plans, as defined in Section 3(3) of ERISA, or any other retirement, profit sharing, Seller's Qualified Benefit Plan, stock option, stock bonus, deferred compensation (including any "nonqualified deferred compensation plan" within the meaning of Section 409A of the Code), severance, sick leave or other material plan or arrangement providing benefits to current or former Employee, in each case, whether or not terminated, to which the Seller or an Affiliate are a plan sponsor, as defined in Section 3(16)(B) of ERISA, or to which the Seller or an Affiliate otherwise contribute or have contributed (including without limitation PERF), or in which the Seller or an Affiliate otherwise participate or have participated. It shall further include all obligations, arrangements, or practices, whether or not legally enforceable, to provide benefits, other than salary or wages to present or former directors, employees or agents, other than obligations, arrangements and practices that are Seller's Benefit Plans, that are owed, adopted or followed by the Seller or an Affiliate to the extent that the Seller would have any liability with respect to such obligation, arrangement or practice of the Affiliate. Seller's Benefit Plans also include consulting agreements under which the compensation paid does not depend upon the amount of service rendered, sabbatical policies, severance payment policies and fringe benefits within the meaning of Code §132. For these purposes "Affiliate" also includes any member of an affiliated group as defined under Section 414(m) of the Code, and all entities under common control with Seller pursuant to Section 414(b) or (c) of the Code.

"Seller's Bonds and Notes" means any and all bonds, notes, repurchase agreements, or other debt for money borrowed, including the following bonds and debt of Seller: Sewage Works Energy Savings Bank Debt; Sewage Works Revenue Bonds 2002; Sewage Works Revenue Bonds 2004; Sewage Works Refunding Revenue Bonds 2006; Sewage Works Revenue Bonds 2007; and [2012 Interim Financing].

"**Seller's Indemnified Persons**" has the meaning specified in Section 8.04.

"**Seller's Qualified Benefit Plan**" has the meaning specified in Section 4.12(b).

"**Standing Panel**" has the meaning specified in Section 8.02(b).

"Stormwater System Assets" means all assets used or necessary in the operation of the stormwater system, including but not limited to (i) those assets listed on Schedule 2.02(b) and

(ii) drains, pipes and collection basins and all other stormwater drainage assets used for stormwater collection and transportation within the Multiple Separate Storm Sewer System (MS4). MS4 is a stormwater conveyance system which is owned or operated by the City of Westfield under Section 208 of the Clean Water Act that discharges into the waters of the United States (40 CFR 122.26 (b)(8)). Stormwater facilities are drains, pipes and collection basins that are considered part of the stormwater system and are located within the City owned right of way or within plated or designated easements for the collection and conveyance of stormwater. Stormwater System Assets that are not part of the System are ditches, swales, lakes, detention or retention ponds, or Hamilton County Regulated Drains. Stormwater Systems Assets shall not include any property that is jointly used for (a) the collection, transportation and treatment of stormwater or otherwise in the operation of the stormwater system, and (b) the operation of the Wastewater System, except to the extent such property jointly used is listed on Schedule 2.02(b).

"**Supplies**" means all the lubricants, spare parts, fuel, chemicals, raw materials, and other supplies owned by Seller or to which Seller may have rights, which are used, necessary or important in the operation of the System and related to the System, and all rights of Seller to warranties received from their suppliers with respect to the foregoing (to the extent assignable) and related claims, credits and rights of recovery with respect thereto.

"**Survey**" has the meaning specified in Section 6.02.

"**Survey Affidavit**" has the meaning specified in Section 6.02.

"**System**" has the meaning specified in the recitals to this Agreement. The term "System" as used herein means the System as a whole and does not mean any particular asset constituting part of the System.

"**Systems**" has the meaning specified in the recitals to this Agreement.

"**Tax**" or "**Taxes**" means all federal, state, and local employment taxes, unemployment taxes, and sales and use taxes, if any, imposed upon a Person (including all taxes or payments in lieu of taxes which a Person is required to collect and/or pay over to any government), and all related additions to tax, penalties or interest thereon. For the avoidance of doubt, "Tax" or "Taxes" includes, without limitation, all federal, state and local income taxes and property taxes.

"**Threshold Amount**" has the meaning specified in Section 8.06(a).

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

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

"**Title Evidence**" has the meaning specified in Section 6.03(a).

"**Top Executive Negotiation**" has the meaning specified in Section 8.02(c)(v).

"**Tort Claims**" has the meaning specified in subparagraph (e) of the definition of "Excluded Liabilities."

"**Trade Payables**" means any current liability representing an amount owed by Seller in respect of the System, whether arising from the purchase of merchandise, materials, Supplies or services, payments to Employees, any damages the nature of which relates to failure to pay or perform any Trade Payable, and all other amounts typically deemed current liabilities, in each case to the extent constituting a current liability, outstanding as of the Closing Date.

"Transferred Employee" has the meaning set forth in Section 7.04(a).

"Transition Services Agreement" means the Transition Services Agreement by and between Purchaser and Seller, to be in a form mutually agreeable to Purchaser and Seller and entered into concurrently with the Closing.

"**UCC Search**" has the meaning specified in Section 6.05.

"**Unsatisfactory Exceptions**" has the meaning specified in Section 6.03(a).

"**Unscheduled Occupancy Agreements**" has the meaning specified in Section 4.23.

"Utility Plant" means that portion of the System's assets that is used and useful for the operations of the water system, including without limitation, plant in service, construction work in progress, materials, supplies and other items included in utility plant under applicable Law, and excluding CIAC, plant leased to others and, unless expressly allowed by the IURC as utility plant under applicable Law, plant held for future use, and net of accumulated depreciation and amortization.

"**U.S. 31 Project**" means those certain Highway Utility Agreements by and among Seller and the Indiana Department of Transportation, dated as of September 21, 2012.

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

"Water Purchase Agreement" has the meaning specified in Section 11.09.

"**Water System**" has the meaning specified in the recitals to this Agreement.

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

"Working Capital" has the meaning specified in Section 3.03(a).

ARTICLE II.
TERMS OF PURCHASE AND ASSUMPTION OF LIABILITIES

Section 2.01. **Purchase and Sale of Acquired Assets**. With the exception of the Excluded Assets, subject to the terms and conditions set forth in this Agreement, at Closing, Purchaser shall purchase from the City, and the City shall sell, transfer, assign and deliver to Purchaser, free and clear of all Liens except for the Permitted Liens, all of the right, title and interest of the City in, to and under all of the assets, properties and rights of the City, to the extent such assets, properties and rights exist as of the Closing Date and are used, necessary or important in the operation of the System (whether or not any such asset(s) have any value for

accounting purposes or are carried or reflected on the books or financial statements of the Seller) (the assets to be conveyed collectively referred to as the "Acquired Assets"), including without limitation, the following:

(a) all real and personal property interests owned, licensed or leased by Seller and any real or personal property interests that are in the process of being acquired, licensed or leased by Seller or any of its Affiliates, including without limitation, the Real Property, the Public Works Building Lease and Occupancy Agreements;

(b) except for those contracts, licenses and leases listed on Schedule 2.01(b), all contracts, licenses and leases related to the System to which the City is a party, including without limitation leases for Equipment and Machinery, vehicles and other items of personal property (the "Assigned Contracts");

(c) all Supplies, except Supplies consumed or used by Seller between the Effective Date and the Closing Date in the ordinary course of business and in accordance with the terms of this Agreement;

(d) all personal property, fixtures, equipment and fixed assets owned, licensed or leased by Seller, including, without limitation, Equipment and Machinery, system pipes, auxiliary equipment and plant equipment;

(e) all Intellectual Property;

(f) Seller's other intangible assets, including, without limitation, the benefit of third-party representations, warranties, guarantees, performance bonds, maintenance bonds, correspondence and the computer software and programs (whether proprietary or not);

(g) Seller's Files and Records;

(h) all prepaid expenses, credits, advance payments, security, deposits, charges, sums and fees to the extent related to any Acquired Assets;

(i) subject to Section 2.06, all Licenses and Permits, but only to the extent such Licenses and Permits may be transferred under Applicable Law (the "Acquired Authorizations");

(j) the assets listed on Schedule 2.01(j); and

(k) the System as a going concern.

Section 2.02. Excluded Assets. Other than the Acquired Assets subject to Section 2.01, Purchaser expressly understands and agrees that it is not purchasing or acquiring, and Seller is not selling or assigning any other assets or properties of Seller, and all such other assets and properties shall be excluded from the Acquired Assets (the "Excluded Assets"). Excluded Assets include the following assets and properties of Seller:

(a) cash, cash equivalents and invested funds of the City or any of the City's Affiliates representing the unexpended bond proceeds, plus investment earnings, and other

amounts in the capital improvement, bond and/or construction fund balances and reserves for the System.

(b) the Stormwater System Assets as set forth on Schedule 2.02(b) except to the extent Stormwater System Assets are jointly used by the System and the Stormwater System;

(c) the Public Works Building, subject to the Public Works Building Lease;

(d) all contracts that are not Assigned Contracts;

(e) the Accounts Receivable;

(f) the Lagoon, subject to the Lagoon Option;

(g) all insurance policies of Seller and all rights to applicable claims and proceeds thereunder, except to the extent pertaining to the Acquired Assets as to which a loss has occurred prior to Closing;

(h) all assets, properties and rights used by the City which are not used, necessary or important in the operation of the System;

(i) the rights that accrue or will accrue to Seller under this Agreement and Related Agreements;

(j) Seller's Access Rights, Reserved Rights and any other assets listed in Schedule 2.02(j); and

(k) Cell Tower Antenna Agreements.

Section 2.03. **Sale Free of Liens**. The Acquired Assets sold, conveyed, transferred, assigned and delivered by Seller to Purchaser, as herein provided, are and shall be as of the Closing, free and clear of all Liens other than Permitted Liens. Such Acquired Assets shall be conveyed by appropriate deeds, bills of sale, endorsements, leases, mortgages, security interests, pledges, assignments and other instruments of transfer and conveyance described herein, and if not expressly described herein, then by transfer documents satisfactory in form and substance to Purchaser and Seller and their counsel in their reasonable discretion.

Section 2.04. **Assumption of Liabilities**.

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

(i) all liabilities and obligations arising on or after the Closing under the Assigned Contracts;

(ii) except as set forth in Section 7.04, all liabilities and obligations relating to employee benefits, compensation or other arrangements with respect to any Transferred Employee arising after the Closing;

(iii) any litigation initiated against Seller related to the System or the Acquired Assets resulting from events that occur or conditions caused by Purchaser that exist on or after the Closing; and

(iv) all other liabilities and obligations arising out of or relating to Purchaser's ownership or operation of the System and the Acquired Assets on or after the Closing.

(b) At the Closing, to the extent the Seller is not released therefrom, Seller shall be indemnified against its obligations under the Assumed Liabilities in accordance with Section 8.04.

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

Section 2.05. **Subsequent Documentation**. At any time and from time to time after the Closing Date, Seller shall, upon the request of Purchaser, and Purchaser shall, upon the request of Seller, promptly execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such other instruments of conveyance and transfer and other documents, and perform or cause to be performed such further acts, as may be reasonably required to evidence or effectuate, or more fully evidence or effectuate, (a) the sale, conveyance, transfer, assignment and delivery hereunder of the Acquired Assets to Purchaser; (b) the assumption by Purchaser of any of the Assumed Liabilities; (c) Seller's or Purchaser's rights under any Access Rights or Reserved Rights; (d) performance by the Parties of any of their other respective obligations under this Agreement or the Related Agreements; (e) the satisfaction of Excluded Liabilities; (f) the financing by Purchaser of the Purchase Price; and (g) any other matters reasonably requested by a Party to carry out the provisions, purposes and intent of this Agreement or the Related Agreements.

Section 2.06. **Assignment of Contracts**.

(a) Notwithstanding anything to the contrary set forth herein, to the extent that any of the Assigned Contracts or Acquired Authorizations that constitute an Acquired Asset are not assignable or transferable without the consent of the issuer thereof or the other party thereto or any third party including, without limitation, a Governmental Authority (the "Nonassignable Assets"), this Agreement shall not constitute an assignment or transfer of the Nonassignable Assets if such assignment or transfer or attempted assignment or transfer would constitute a breach thereof or a violation of any Law. Seller shall use reasonable efforts, at reasonable cost to Seller, to obtain any consents or waivers necessary to any such assignment. To the extent that such consents or waivers are not obtained by Seller on or before the Closing, Seller agrees to cooperate with Purchaser and to take such reasonable actions, at reasonable cost to Seller, as Purchaser may reasonably request in order to secure any arrangement designed to provide for Purchaser the benefits of such Nonassignable Assets. Seller shall further assign and deliver to

Purchaser any net proceeds or net receivables by Seller pursuant to the Nonassignable Assets except and to the extent that Seller has previously provided Purchaser with the benefits of such proceeds or receivables or to the extent the assignment is not permitted under the Nonassignable Assets. In connection therewith, Seller shall enforce, for the benefit of Purchaser, any and all material rights of Seller against such issuer or such other party or parties, to the extent reasonably permitted.

(b) To the extent Purchaser receives the benefit of any Nonassignable Asset pursuant to Section 2.06(a), Purchaser agrees to assume and discharge any liability or obligation related to the benefits of such Nonassignable Asset.

ARTICLE III.
PURCHASE PRICE

Section 3.01. **Purchase Price**. Subject to the terms and conditions, including adjustments, set forth in this Agreement, the aggregate purchase price for the Acquired Assets shall be [allocable portion of Ninety One Million Dollars and No/100 ($91,000,000.00)] cash payment paid upon Closing plus the assumption of Assumed Liabilities (the "Purchase Price"), payable subject to the terms and conditions of this Agreement. Upon Closing, the cash payment of the Purchase Price shall be paid by wire transfer of immediately available funds (i) in the case of the Escrow Amount to the Escrow Agent in accordance with the Escrow Agreement and (ii) with the remaining amount the Purchase Price paid to one or more accounts designated in writing by the City to the Purchaser (with such designation no later than two (2) business days before the Closing Date).

Section 3.02. **Fair Consideration**. The Parties acknowledge and agree that the consideration provided for in this Article III represents fair consideration and reasonable equivalent value for the sale and transfer of the Acquired Assets and the transactions, covenants and agreements set forth in this Agreement, which consideration was agreed upon as the result of arm's-length, good faith negotiations between the Parties and their respective representatives.

Section 3.03. **Working Capital; Collection of Accounts Receivable**.

(a) For the avoidance of doubt, the Parties intend that the Purchaser shall provide its own Working Capital to operate the System after Closing and that Seller will retain rights to all Accounts Receivable and the obligation to satisfy all Trade Payables including any accrued Taxes. As used herein, the term "Working Capital" shall mean normal and customary working capital consisting of current assets less current liabilities.

(b) Purchaser shall collect the Accounts Receivable and promptly, but in no event later than ten (10) days after receipt, remit all amounts representing Accounts Receivable to Seller. From time to time after Closing, the Parties will reconcile amounts related to Accounts Receivable, Trade Payables and other assets and liabilities affected by the timing of Closing. Any disagreements or disputes relating to this Section 3.03 shall be resolved by the Parties pursuant to the provisions of Section 8.02(b) of this Agreement. Seller hereby authorizes Purchaser, effective as of the Closing, to open any mail addressed to Seller and received by Purchaser at any location relating to the operation of the System. Additionally, in order to

effectuate customer transition, Seller shall cooperate with Purchaser in coordinating the transfer of lock boxes and other payment processes for customers of the System who pay their bills through Automated Clearinghouse (ACH) or similar processes.

(c) In the event that Purchaser fails to remit the City the amount due pursuant to Section 3.03(b) within ten (10) days after receipt, then interest shall accrue on such delinquent amount at a rate equal to ten percent (10%) per annum, commencing on the eleventh (11th) day after receipt and continuing until such amount is received. Notwithstanding the foregoing, this Section 3.03(c) shall not apply to any amounts that Purchaser asserts in good faith that it is not required to pay even if later determined to be due.

Section 3.04. **Allocation of the Purchase Price**. Purchaser and Seller agree to allocate the Purchase Price, plus the amount of the Assumed Liabilities, to the Acquired Assets as specified in Schedule 3.04 in accordance and consistent with applicable accounting standards.

Section 3.05. **Escrow.** At the Closing, Purchaser shall deposit Five Hundred Thousand and No/100 Dollars ($500,000.00) with an escrow agent agreed upon by the Parties (the "Escrow Agent"), by wire transfer of immediately available funds (the "Escrow Amount" and, together with all earnings thereon, collectively, the "Escrow Deposit"), which shall be used to secure satisfaction of Seller's obligations pursuant to Article VIII herein, including obligations under the Water Purchase Agreement, if any, pursuant to the terms of the Escrow Agreement. To the extent the Escrow Deposit is not applied as set forth in the Escrow Agreement, it shall be returned to the City. The Escrow Deposit shall be held, invested and disbursed as specified in and pursuant to the terms and conditions of an escrow agreement, in a form mutually agreeable to Purchaser and Seller (the "Escrow Agreement") and in accordance with the terms and conditions of Article VIII.

ARTICLE IV.
REPRESENTATIONS AND WARRANTIES OF THE SELLER

Seller makes only the representations and warranties which are set forth in this Article IV. Any disclosure set forth on any particular schedule of the Disclosure Schedules shall be deemed disclosure in reference to all schedules comprising the Disclosure Schedules to which such disclosure is clearly applicable based solely upon such disclosure.

Purchaser acknowledges that it has conducted an independent investigation of the financial condition, assets, liabilities, properties and projected operations of the System in making its determination as to the propriety of the transaction contemplated by this Agreement and, in entering into this Agreement and Related Agreements, has relied solely on the results of the investigation and on the representations and warranties of Seller expressly contained in Article IV of this Agreement. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT AND THE RELATED AGREEMENTS, THE SELLER MAKES NO EXPRESS OR IMPLIED WARRANTY OF ANY KIND WHATSOEVER, INCLUDING ANY REPRESENTATIONS AS TO THE PHYSICAL CONDITION OR VALUE OF ANY OF THE ASSETS OF THE SYSTEM OR THE FUTURE PROFITABILITY OR FUTURE EARNINGS PERFORMANCE OF THE SYSTEM. ALL IMPLIED WARRANTIES OF

MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY EXCLUDED.

Seller represents and warrants to Purchaser that the statements contained in this Article IV are true and correct as of the date hereof.

Section 4.01. **Power**. Seller has all requisite power and authority to own, lease and operate the Acquired Assets and the System as operated on the Effective Date, to sell and transfer in the manner described herein the Acquired Assets and powers described herein to Purchaser and to enter into, execute and deliver this Agreement.

Section 4.02. **Authorization and Validity of Agreement**. The execution and delivery of this Agreement and the Related Agreements by Seller and the consummation by Seller of the transactions contemplated by this Agreement and the Related Agreements have been duly and validly authorized by all necessary or proper action on the part of Seller and no other proceedings on the part of Seller is necessary to authorize the execution, delivery and performance of this Agreement. This Agreement has been duly executed and delivered by Seller and constitutes a legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms and conditions, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency, reorganization or other laws affecting the enforcement of creditors' rights generally.

Section 4.03. **No Conflict or Violations**. The execution, delivery and performance of this Agreement, and the sale of the System, by Seller does not and shall not: (a) violate any material provision of Law applicable to Seller or the System; (b) in any material respect, violate or result in a breach of or constitute (with due notice or lapse of time or both) a default under any contract, lease, loan agreement, mortgage, security agreement, license, consent order, indenture or other instrument or obligation to which Seller is a party, or by which its assets or properties may be bound; or (c) result in the imposition of any Liens or material restrictions on either of the System or any of the Acquired Assets.

Section 4.04. **Consents and Approvals**. Schedule 4.04 sets forth a list of each consent, waiver, authorization or approval of any Governmental Authority, or of any other Person, and each declaration to or filing or registration with any Governmental Authority required in connection with the execution and delivery of this Agreement by Seller or the performance by Seller of its obligations hereunder. Any and all notices, consents, authorizations and approvals set forth in Schedule 4.04 have been or prior to the Closing will be made and obtained. In addition, Schedule 4.04 contains a true and complete list of all Nonassignable Assets as of the Effective Date.

Section 4.05. **Financial Statements**.

(a) Schedule 4.05 sets forth correct and complete copies of the following financial statements (collectively, the "Financial Statements"):

(i) unaudited statement of operations of the System as of the twelve month period ended December 31, 2011 and for the six (6)-month period ended June 30, 2012;

(ii) unaudited statement of cash flow of the System as of the twelve month period ended December 31, 2011 and for the six (6)-month period ended June 30, 2012; and

(iii) unaudited balance sheet of the System at each of December 31, 2011 and June 30, 2012.

In addition, Seller shall provide to Purchaser by November 1, 2012, the statement of operations, statement of cash flow and balance sheet as of the 12-month period ended December 31, 2011, as audited by the State Board of Accounts, which shall become part of the Financial Statements defined above.

(b) Between the Effective Date and the Closing Date, Seller shall provide to Purchaser correct and complete monthly unaudited statement of operations as they are produced in the ordinary course of business.

(c) The Financial Statements have been prepared and presented in accordance with the applicable standards for financial reporting of the Governmental Accounting Standards Board (GASB), the financial information as presented in the Financial Statements is accurate in all material respects and is presented in a manner designed to set forth the financial position and results of operations of the System for the periods indicated. Except as reflected or reserved for in the Financial Statements, or as set forth in Schedule 4.05, Seller is not subject to any liability or obligation related to the System, other than immaterial current liabilities and obligations incurred since the date of such Financial Statement in the ordinary and usual course of business consistent with past practice.

Section 4.06. **Absence of Certain Changes or Events**. Except as reflected in the Financial Statements, since June 30, 2012, Seller has operated the System in the ordinary course of business consistent with past practice and other than in the ordinary course of business consistent with past practice with respect to the System, to Seller's Knowledge there has not been any:

(a) change, event or condition (whether or not covered by insurance) that has resulted in a Material Adverse Effect;

(b) sale, assignment or transfer of any of the Acquired Assets or other properties of Seller necessary or important to the operation of the System;

(c) failure to repay or discharge any material obligation or liability;

(d) failure to operate the System in the ordinary course or to preserve the System intact, to keep available to Purchaser the services of the Employees and to preserve for Purchaser, to the extent practicable, the goodwill of Seller's dealers, suppliers, customers and others having business relations with it;

(e) damage, destruction or loss affecting the Acquired Assets or the System resulting in a Material Adverse Effect;

(f) except as otherwise provided in Section 2.04, material indebtedness, obligations or liabilities incurred, increased or modified with respect to the System that would constitute Assumed Liabilities;

(g) agreements, waivers, permits, fees, charges, or other burdens of any nature placed on the System by the City for the benefit of the City; or

(h) agreement by Seller to do any of the foregoing or any act or omission that would result in any of the foregoing.

Section 4.07. **Tax Matters**. No state or local Taxing authority has assessed any Taxes on the Acquired Assets or on the operation of the System and no Taxes will be due and payable on or before the Closing Date. Seller has timely paid all Taxes that may have been or may be due and payable by Seller on or before the Closing Date, arising from the ownership or operation of the Acquired Assets or the System on or before the Closing Date, including without limitation, withholding with respect to compensation paid to employees, and the amounts withheld have been properly paid over to the appropriate Taxing authorities. No taxing authority has asserted any claim against the Seller for the assessment of any additional Tax liability or initiated any action or proceeding which could result in such an assertion.

Section 4.08. **Real Property**. Schedule 4.08 contains a list and brief description of all real property the Seller owns and uses in the operation of the System (the "Real Property"). Except for the Permitted Real Property Encumbrances and as set forth in Schedule 4.08, Seller has good and marketable title in the Real Property. Except as set forth on Schedule 4.08, none of the Real Property is subject to any lease or grant to any Person of any right to the use, occupancy or enjoyment of such Real Property or any portion thereof. Except for Permitted Liens, the Real Property is not subject to any use restrictions, exceptions, reservations or limitations which in any material respect interfere with or impair the present and continued use thereof in the ordinary course of business and in the same manner after Closing as conducted by Seller prior to Closing. There are no pending or, to the Knowledge of the Seller, threatened condemnation proceedings relating to any of the Real Property. All buildings, structures and improvements located on, fixtures contained in, and appurtenances attached to the Real Property conform in all material respects to applicable federal, state, county, local and foreign laws, regulations and ordinances, including without limitation, those related to zoning, use or construction, and the Real Property is zoned for the purposes for which they are presently used by Seller. Seller does not lease any real property from any third party that is used for or necessary or important to the operation of the System.

Section 4.09. **Equipment and Machinery/Distribution System**.

(a) Schedule 4.09(a) sets forth a list of, or otherwise describes, all material Equipment and Machinery included in the Acquired Assets. Seller has good title, free and clear of all Liens (other than the Permitted Liens) to the Equipment and Machinery owned by Seller.

(b) Seller holds good and transferable leasehold interests in all Equipment and Machinery leased by them, in each case under valid and enforceable leases. Except as set forth on Schedule 4.09(b), none of the leased Equipment and Machinery of Seller requires the

approval of the lessor to be assigned, or upon assignment will experience a material change in terms, costs or tax recapture.

(c) To the Knowledge of Seller, the Equipment and Machinery are in good operating condition and repair (except for ordinary wear and tear), and are being operated in conformity in all material respects with all applicable Laws and warranty conditions.

Section 4.10. **Supplies**. All Supplies included in the Acquired Assets consist of a quality and quantity usable in the ordinary course of business, consistent with past practice.

Section 4.11. **Intellectual Property**.

(a) All material Intellectual Property owned by or licensed to Seller and related to the System is listed on Schedule 4.11(a). All Intellectual Property material to the System is owed by or licensed to Seller free and clear of all Liens, except for Permitted Liens, and is in good standing, is duly authorized, valid, issued and enforceable, has not been canceled, and, to the Knowledge of Seller, is not the subject of any challenge. To the Knowledge of Seller, no facts exist that would invalidate or render unenforceable any Intellectual Property.

(b) (i) There are no licenses now outstanding or other rights granted to third parties under any Intellectual Property and (ii) Seller is not a party to any agreement or understanding restricting the use of any Intellectual Property. To the Knowledge of Seller, the Intellectual Property does not infringe the patent, trademark, copyright, trade secret or other proprietary right of any third party. All filings or recordations necessary or appropriate to protect the interests of Seller in any Intellectual Property have been duly made and are in full force and effect.

Section 4.12. **Employee Benefit Plans**.

(a) Schedule 4.12(a) contains a list of each of Seller's Benefit Plans.

(b) Except as would not have a Material Adverse Effect and to the Knowledge of Seller, each Seller's Benefit Plan complies with all applicable Laws (including ERISA and the Code and the regulations promulgated thereunder). Each Seller's Benefit Plan that is intended to be qualified under Section 401(a) of the Code (a "Seller's Qualified Benefit Plan") has received a favorable determination letter from the Internal Revenue Service, or with respect to a prototype plan, can rely on an opinion letter from the Internal Revenue Service to the prototype plan sponsor, to the effect that such Seller's Qualified Benefit Plan is so qualified and that the plan and the trust related thereto are exempt from federal income Taxes under Sections 401(a) and 501(a), respectively, of the Code, and, to Seller's Knowledge, nothing has occurred that could reasonably be expected to cause the revocation of such determination letter from the Internal Revenue Service or the unavailability of reliance on such opinion letter from the Internal Revenue Service, as applicable.

(c) Except as set forth in Schedule 4.12(c), no Seller's Benefit Plan: (i) is subject to the minimum funding standards of Section 302 of ERISA or Section 412 of the Code; or (ii) is a "multi-employer plan" (as defined in Section 3(37) of ERISA). Seller has not: (A) except with respect to the PERF Plan, withdrawn from any pension plan under circumstances resulting (or

expected to result) in liability; or (B) engaged in any transaction which would give rise to a liability under Section 4069 or Section 4212(c) of ERISA.

(d) Other than as required under Section 4980B of the Code or other applicable Law, no Seller's Benefit Plan provides benefits or coverage in the nature of health, life or disability insurance following retirement or other termination of employment (other than death benefits when termination occurs upon death).

(e) Except to the extent not material, other than as a result of the process set forth in Section 7.04(e), no Seller's Benefit Plan exists that could: (i) result in the payment to any Employee or consultant of the System of any money or other property; or (ii) accelerate the vesting of or provide any additional rights or benefits (including funding of compensation or benefits through a trust or otherwise) to any Employee or consultant of the System, in each case, as a result of the execution of this Agreement.

(f) The representations and warranties set forth in this Section 4.12 are Seller's sole and exclusive representations and warranties regarding employee benefit matters.

(g) Seller has been in full compliance with the requirements with COBRA and seller is not subject to any excise tax under Section 4980B of the Code for the current or any prior taxable years.

(h) Notwithstanding anything in this Agreement to the contrary, it is expressly understood that Purchaser shall not acquire any asset, or assume any liability or obligation relating to any of Seller's Benefit Plans.

Section 4.13. <u>Employees; Labor Relations</u>.

(a) Seller is not a party to, or bound by, any collective bargaining or other agreement with a labor organization representing any of the Employees. There has not been, nor, to Seller's Knowledge, has there been any threat of, any strike, slowdown, work stoppage, lockout, concerted refusal to work overtime or other similar labor activity or dispute affecting Seller or any of the Employees.

(b) Seller is in compliance in all material respects with all applicable Laws pertaining to employment and employment practices to the extent they relate to the Employees.

(c) With respect to all Employees:

(i) there is no unfair labor practice charge or complaint against the Seller pending, or to the Knowledge of the Seller, threatened (and the Seller does not believe that there exists any reasonable basis therefor);

(ii) there is no grievance pending against the Seller filed by any Employee arising out of any grievance or complaint procedure (and the Seller does not have Knowledge that there exists any reasonable basis therefor);

(iii) there is no charge of employment discrimination, harassment or retaliation with respect to or relating to any Employee or group of Employees pending before the Equal Employment Opportunity Commission or any other agency responsible for the prevention or investigation of unlawful and/or discriminatory employment practices (and the Seller does not have Knowledge that there exists any reasonable basis therefor);

(iv) the Seller has not received any written notice of the intent of any Governmental Authority responsible for the enforcement of labor or employment laws to conduct an investigation or other inquiry, and to the Knowledge of Seller, no such investigation or other inquiry is in progress; and

(v) there is no claim, action, suit, proceeding, investigation or inquiry pending against the Seller or, to the Knowledge of the Seller, threatened, in any forum by or on behalf of any Employee, any applicant for employment with Seller, or classes of the foregoing alleging breach of any express or implied contract of employment, violation of any law governing employment or the termination thereof or other discriminatory, wrongful or tortious conduct in connection with the employment relationship.

(d) As between Section 4.18 and this Section 4.13, the representations and warranties in Sections 4.07, 4.12, 4.24 and this Section 4.13 shall control and be exclusive as to compliance with Laws relating to employees and labor relations.

Section 4.14. Environmental Compliance.

(a) (i) Except as set forth in Schedule 4.14(a)(i), to the Knowledge of Seller, Seller's uses and operations of any Real Property comply in all material respects with general operating and engineering standards of the water supply industry; and (ii) except as set forth in Schedule 4.14(a)(ii), to the Knowledge of Seller, Seller's uses and operations of any Real Property comply in all material respects with Environmental Laws and Seller has obtained and is in material compliance with the terms, conditions, and requirements of all necessary Licenses and Permits required under Environmental Laws ("Environmental Permits"). No enforcement proceeding is pending or, to the Knowledge of Seller, threatened relating to the revocation or limitation of any of the Environmental Permits. Such Environmental Permits are set forth in Schedule 4.14(a)(iii) and are in full force and effect. Seller has made true and complete copies of all the Environmental Permits currently in effect available to Purchaser.

(b) Except as set forth in Schedule 4.14(b), Seller has not generated, manufactured, used, transported, treated, stored, handled, disposed or offered for disposal, transferred, processed or otherwise handled any Hazardous Materials on the Real Property except in material compliance with all applicable Environmental Laws. Seller has not received any written notice that it is liable under CERCLA or RCRA for the Release or threatened Release of a Hazardous Substance, IND. CODE § 13-25-4-8 or any analogous Environmental Law that addresses the Release or threatened Release of Hazardous Substances in respect of any operations now conducted by Seller. To the Knowledge of Seller, no previous owner or tenant of the Real Property has Released any Hazardous Materials into, upon, or from any Real Property or into or upon the soil, ground or surface water thereof, except in material compliance with all applicable Environmental Laws, nor has any previous owner or tenant of the Real Property violated any

Environmental Laws with respect to the Real Property, in either case in a manner that would reasonably be expected to result in an Environmental Claim.

(c) Except as set forth in Schedule 4.14(c), Seller has not received any written notice of any pending, nor to the Knowledge of Seller is there any threatened, formal investigation, notice of violation, Lien, order, claim, suit or administrative or judicial action for any injunctive relief, fines, penalties from any Governmental Authority relating to Seller's alleged violation of any Environmental Laws that either has not been resolved to the satisfaction of the Governmental Authority or that would reasonably be expected to result in an Environmental Claim.

(d) Except as set forth in Schedule 4.14(d), Seller has not received any written notice of any pending, nor to the Knowledge of Seller is there any threatened, claim, demand, suit, judgment or judicial proceeding that Seller is or may be liable to any Person or Governmental Authority as a result of a Release or threatened Release of any Hazardous Materials from or onto any Real Property or the real property of any Person. Seller has no written agreement with or written commitments to, and to the Knowledge of the Seller, has made no binding oral commitments to, any Governmental Authority relating to the investigation or remediation of any Hazardous Materials at any Real Property or real property of any Person.

(e) To the Knowledge of the Seller, there are no storage tanks subject to regulation pursuant to 329 IAC 9-1-1 or 675 IAC 22-2.4-1, underground or otherwise (whether or not out of service, closed or decommissioned), currently located on the Real Property other than in material compliance with applicable Environmental Laws, and no Governmental Authority has conducted any audits, assessments, tests or other reviews in connection with such storage tanks that, to the Knowledge of the Seller, have not been resolved to the satisfaction of the Governmental Authority.

(f) Except to the extent otherwise expressly mutually agreed in writing by the Parties, Seller has delivered to Purchaser all audits, tests, reports or other reviews, including Phase I and Phase II environmental assessments or subsurface investigations conducted on the Real Property which relate to environmental impact performed by or on behalf of Seller that are in the possession of Seller or of any agent, consultant or other service provider of Seller.

(g) Except as set forth on Schedule 4.14(g), to the Knowledge of the Seller, Seller has not Released any Hazardous Material on or from any Real Property or at any geologically or hydrologically adjoining property, nor are any Hazardous Materials present on or in the ambient air, surface water, ground water, land surface or surface strata at any Real Property, including from any Hazardous Materials contained in barrels, aboveground or underground storage tanks, landfills, land deposits, dumps, equipment (whether movable or fixed) or other containers, either temporary or permanent, and deposited or located in land, water, sumps, or any other part of the Real Property or such adjoining property, or incorporated into any structure therein or thereon, except in each case (1) in material compliance with Environmental Laws; or (2) when resulting from acts authorized by, or in material compliance with an Environmental Permit.

(h) As between Section 4.18 and this Section 4.14, the representations and warranties in Sections 4.07, 4.24 and this Section 4.14 shall control and be exclusive as to compliance with Laws relating to employees and labor relations.

Section 4.15. **Licenses and Permits**. Schedule 4.15 lists or describes the Licenses and Permits. The Licenses and Permits are all the licenses and permits that are necessary or important for the operation of the System. The Licenses and Permits are in full force and effect. Seller has made true and complete copies of all the Licenses and Permits available to Purchaser. Seller is in compliance with all material terms, conditions and requirements of all Licenses and Permits and no proceeding is pending or, to the Knowledge of Seller, threatened relating to the revocation or limitation of any of the Licenses or Permits.

Section 4.16. **Insurance**. Schedule 4.16 lists all of Seller's policies of title, liability, fire, casualty, business interruption, workers' compensation, surety bonds and other forms of insurance insuring the properties, assets or operations of the System (collectively, "Policies" and individually, a "Policy"), setting forth the carrier, policy number, expiration dates, premiums, description of type of coverage and coverage amounts. Seller has made true and complete copies of all such policies available to Purchaser. Such policies are in amounts deemed to be adequate by Seller, all premiums with respect thereto are currently paid, such policies are in full force and effect and Seller has not received any notice that any such policy will not be renewed.

Section 4.17. **Contracts and Commitments**.

(a) With respect to the System, Schedule 4.17 lists all of the following material contracts (collectively, the "Contracts"):

(i) employment, consulting, bonus, deferred compensation, pension, welfare, or retirement agreements and commitments with the Employees;

(ii) bonds, notes, mortgages, contracts, agreements, swaps or other derivatives or commitments for the repayment or borrowing of money by Seller, or for a line of credit including borrowings by Seller in the form of a guarantee of, indemnification for, or agreement to acquire any obligation of others, and all security or pledge agreements related thereto;

(iii) contracts, including management, operating or service agreements, contracts related to ongoing construction, including insurance contracts, surety bonds, architect agreement or consultant agreement, providing for payments in excess of One Hundred Thousand Dollars ($100,000) by Seller in any twelve (12) month period;

(iv) contracts, agreements or commitments containing covenants purporting to limit the freedom of Seller or any Employee to compete in any business or in any geographic area; and

(v) contracts not made in the ordinary course of business, providing for payments by Seller in excess of One Hundred Thousand Dollars ($100,000) in any twelve (12) month period.

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

(c) Seller has no liability for debt other than the debt reflected in the Seller's Bonds and Notes.

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

Section 4.18. **Compliance with Law**. The System is in material compliance with all applicable Laws. Seller is not in material violation of any Law applicable to the System, its Employees or any of the Acquired Assets, nor is Seller aware that any factual circumstances are reasonably likely to result in such violation.

Section 4.19. **Litigation**. Except as set forth on Schedule 4.19, (a) there are no claims, actions, suits, proceedings, arbitral actions or investigations pending or, to the Knowledge of Seller, threatened against Seller with respect to the System or any of the Acquired Assets before or by any Governmental Authority; and (b) there are no unsatisfied judgments of any kind against Seller with respect to the System or the Acquired Assets requiring payment in excess of One Hundred Thousand Dollars ($100,000).

Section 4.20. **Title to the Acquired Assets and Related Matters**. Except with respect to Real Property (the sole representations and warranties for which are contained in Section 4.08), Seller has good and marketable title to all of the Acquired Assets owned by Seller, free and clear of all Liens, subject to the Permitted Liens. With the exception of Nonassignable Assets, Seller has complete and unrestricted power and the right to sell, convey, assign, transfer and deliver the Acquired Assets in the manner described herein, and the deeds and other instruments of assignment and transfer to be executed and delivered by Seller to Purchaser at the Closing, subject to the approvals and consents required to consummate the transactions contemplated by this Agreement subject to the Permitted Liens. Such deeds and other instruments of assignment and transfer will be valid and binding obligations of Seller, enforceable in accordance with their respective terms. All consents necessary to consummate the transactions contemplated by this Agreement have been obtained, or will be obtained on or prior to and be in effect as of the Closing Date, and are or will be when obtained valid and binding upon the Persons giving the same. The Acquired Assets include all properties and assets (real, personal and mixed, tangible and intangible, and all leases, licenses and other agreements) necessary to permit Purchaser to carry on the operation of the System subsequent to the Closing in substantially the manner conducted by Seller.

Section 4.21. **No Other Agreements to Sell Assets**. Seller does not have any obligation, absolute or contingent, to any other Person to sell any of the Acquired Assets, or to effect any merger, consolidation or other reorganization of Seller or to enter into any agreement with respect thereto.

Section 4.22. **Broker's and Finder's Fees**. No broker, finder, or Person is entitled to any commission or finder's fee by reason of any agreement or action of Seller in connection with this Agreement or the transactions contemplated by this Agreement. Seller agrees to pay when due the fees and expenses of their financial and technical advisors.

Section 4.23. **Occupancy Agreements**. Schedule 4.23 contains a list of all easements, licenses, use agreements and other occupancy agreements for real property granted by third parties to Seller that are Known to Seller and are used or expected to be used in the operation of the System (the "Scheduled Occupancy Agreements"). Seller has made available true and complete copies of all Scheduled Occupancy Agreements to Purchaser. To Seller's Knowledge, Seller is not in breach of or in default under the Scheduled Occupancy Agreements (for which applicable notices have been delivered and cure periods have elapsed) and no party to any Scheduled Occupancy Agreements has given Seller written notice of or made a claim with respect to any breach or default thereunder, nor is Seller aware of any condition that currently exists or with the passage of time will result in a default or breach by any party to a Scheduled Occupancy Agreement. The Parties acknowledge that Seller may own other easements, licenses, use agreements, and other occupancy agreements for real property that are used or expected to be used in the operation or future expansion of the System other than those listed in Schedule 4.23 (the "Unscheduled Occupancy Agreements"). The terms Scheduled Occupancy Agreements and Unscheduled Occupancy Agreements shall collectively be referred to as "Occupancy Agreements."

Section 4.24. **All Material Information**. Seller has not withheld from Purchaser any material facts relating to the Systems or the Acquired Assets. To the Knowledge of Seller, no representation or warranty made herein by the Seller and no statement contained in any certificate or other instrument furnished or to be furnished to Purchaser by the Seller in connection with the transactions contemplated by this Agreement contains or will contain an untrue statement of material fact or omits or will omit to state any material fact necessary in order to make any representation, warranty, or other statement of the Seller not misleading.

ARTICLE V.
REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser makes only the representations and warranties which are set forth in this Article V. Any disclosure set forth on any particular schedule of the Disclosure Schedules shall be deemed disclosure in reference to all schedules comprising the Disclosure Schedules to which such disclosure is clearly applicable based solely upon such disclosure.

As a material inducement to Seller to enter into this Agreement and to consummate the transactions contemplated hereby, Purchaser hereby represents and warrants to Seller as follows:

Section 5.01. **Entity Organization**. Purchaser is a limited liability company created and existing pursuant to the Indiana Business Flexibility Act, as amended, created and existing under the laws of the State of Indiana, and has all requisite power and authority to own, lease and operate the Acquired Assets and the System as operated on the Effective Date and to perform its obligations hereunder.

Section 5.02. **Authorization and Validity of Agreement**. Purchaser has all requisite power and authority to execute and deliver this Agreement and all Related Agreements. The execution and delivery of this Agreement and the Related Agreements, the performance of the obligations of Purchaser hereunder and the consummation by Purchaser of the transactions contemplated by this Agreement and the Related Agreements have been duly and validly authorized by all necessary action of the Purchaser's Board and no other proceeding on the part of Purchaser is necessary to authorize the execution, delivery and performance of this Agreement. This Agreement has been duly executed and delivered by Purchaser and constitutes a legal, valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms and conditions, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency, reorganization or other laws affecting the enforcement of creditors' rights generally.

Section 5.03. **No Conflict or Violation**. The execution, delivery and performance of this Agreement by Purchaser upon satisfaction of the conditions set forth herein do not and shall not: (a) violate or conflict with any provision of any governing document of Purchaser; (b) violate any provision of Law, or any order, judgment or decree of any court or other Governmental Authority; or (c) violate or result in a breach of, or constitute (with due notice or lapse of time or both) a default under any contract, lease, loan agreement, mortgage, security agreement, indenture or other agreement or instrument to which Purchaser is a party or by which it is bound or to which any of its properties or assets is subject.

Section 5.04. **Approvals and Consents**. Except as set forth on Schedule 5.04, the execution, delivery and performance of this Agreement by Purchaser and the consummation by Purchaser of the transactions contemplated hereby will not require any notice to, or consent, authorization or approval from any Person or Governmental Authority or any third party. Except as set forth in Schedule 5.04, any and all notices, consents, authorizations and approvals set forth in Schedule 5.04 have been or prior to the Closing will be made and obtained.

Section 5.05. **Broker's and Finder's Fees**. No broker, finder or other Person is entitled to any commission or finder's fee in connection with this Agreement or the transactions contemplated by this Agreement. Purchaser agrees to pay when due the fees and expenses of its financial and technical advisors.

Section 5.06. **Financial Ability**. Upon satisfaction of the conditions to Closing, absent facts or circumstances that would constitute a breach of a representation or warranty of Seller, and after giving effect to the consummation of the transactions contemplated hereby and the incurrence of any indebtedness in connection therewith, Purchaser will have the financial ability and will have sufficient Working Capital for its needs and anticipated needs to operate the System as a utility system regulated by the IURC.

Section 5.07. **Financing**. Upon satisfaction of the conditions to Closing, absent facts or circumstances that would constitute a breach of a representation or warranty of Seller, at the Closing, Purchaser will have sufficient funds available to consummate the transaction contemplated by this Agreement and to pay expenses related to the transactions contemplated by this Agreement and to generally provide Working Capital for the operations of the System

following the Closing assuring that the residents of the City will receive adequate, safe and reliable water service.

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

Section 5.09. **Disclosure Schedule Matters**. Purchaser acknowledges that: (a) the inclusion of any matter on any Disclosure Schedule shall not necessarily be deemed an admission by Seller that such listed matter is material or that such listed matter has or could have a Material Adverse Effect or constitutes a material liability with respect to the Acquired Assets; (b) matters reflected in the Disclosure Schedules are not necessarily limited to matters required by this Agreement to be reflected in such Disclosure Schedules; and (c) such additional matters are set forth for informational purposes only and do not necessarily include other matters of a similar nature.

Section 5.10. **WARN ACT**. Purchaser has no present plans or intention to carry out, as part of the transaction, any "plant closing" or "mass layoff," as each term is defined in the WARN Act, affecting any site of employment or facility of the System.

ARTICLE VI.
TITLE TO REAL ESTATE; UCC STATEMENTS

Section 6.01. **Evidence of Title**. Subject to Section 6.10, with respect to all Real Property, Seller shall obtain and deliver to Purchaser within one hundred eighty (180) days after the Effective Date (with the understanding that Seller shall use good faith efforts to obtain the same as soon as reasonably practicable) a commitment for an owner's policy of title insurance on ALTA Owner's Form 2006 (the "Title Commitment"), issued by Chicago Title (the "Title Company"), having an effective date after the Effective Date, and containing such endorsements as Purchaser reasonably requests, to the extent available from the Title Company. The Title Company shall agree to insure, in Purchaser, good, merchantable and marketable title to the fee simple estate in the Real Property for the portion of the Purchase Price allocated to the Real Property. The final title policy or policies for Real Property shall be issued without the standard general exceptions for: (i) rights or claims of parties in possession not shown by the public records, (ii) easements, or claims of easements, not shown by the public records, (iii) encroachments, overlaps, boundary line disputes or other matters which would be disclosed by an accurate survey and (iv) any lien, or right to a lien, for services, labor or material theretofore or thereafter furnished, imposed by law and not shown by the public records. If, after exercising reasonable diligence, Seller is unable to obtain each Title Commitment during the time period

specified above, Seller shall have the right to extend such period by written notice to Purchaser for an additional ninety (90) day period.

Section 6.02. **Survey and Other Evidence of Boundary**. Within one hundred eighty (180) days after the Effective Date, Seller shall obtain and deliver to Purchaser a staked survey of the portions of the Real Property that comprise real property (and any buildings or structures located thereon) made in accordance with the "Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys," jointly established and adopted by the American Land Title Association and the American Congress on Surveying and Mapping in 1999, and including Items 1, 2, 3, 4, 6, 7(a), 8, 10, 11(b), 13 of Table A thereof (collectively, the "Survey"). The Surveys shall be sufficient to permit the Title Company to delete the standard survey-related exceptions from the final title policy, as provided in Section 6.01. The Purchaser and the Seller shall share equally in the costs of obtaining all Surveys. Notwithstanding anything to the contrary in this Section 6.02, Seller shall not have to comply with this Section 6.02 as to a specific Property if Seller (i) delivers to Purchaser and the Title Company a survey of the Property at issue that was completed before the Effective Date (the "Existing Survey") and (ii) agrees to execute an affidavit regarding the accuracy of Existing Survey that is sufficient to cause the Title Company to delete the standard survey exception from the final title policy and to issue an affirmative survey endorsement for the Property at issue (a "Survey Affidavit"). If, after exercising reasonable diligence, Seller is unable to obtain the Survey during the time period specified above, Seller shall have the right to extend such period by written notice to Purchaser for an additional ninety (90) day period.

Section 6.03. **Objections to Title**.

(a) Objections. Within thirty (30) days after receipt of the later of (i) the Title Commitment (collectively, the "Title Evidence") and (ii) the Survey or the Existing Survey (collectively, the "Boundary Evidence"), whichever is applicable to the Real Property at issue (excluding the Priority Two Property), Purchaser shall give Seller written notice of any of the following shown in or disclosed by the Title Evidence and Boundary Evidence: (1) matters that are unsatisfactory to Purchaser ("Unsatisfactory Exceptions") and (2) any of Seller's requirements shown in the "Requirements" Section of the Title Commitment which must be satisfied by Seller before the Title Company will issue a final title policy for the applicable portion of the Real Property (the "Commitment Preconditions"). Seller shall have the obligation, at its sole cost and expense, to satisfy all Commitment Preconditions prior to Closing.

(b) Seller's Obligation to Cure. Seller shall have the obligation to cure prior to the Closing Date or make arrangements to cure after the Closing Date all Unsatisfactory Exceptions that (i) can be cured without paying money to third parties, (ii) are Liens or (iii) will materially restrict or prevent the use of the Real Property at issue in the operation of the System. Nothing in this Section 6.03 shall be deemed to restrict or modify the Parties' respective obligations after the Closing Date with respect to Real Property or Occupancy Agreements. Any matter disclosed by the Title Evidence or Boundary Evidence to which Purchaser fails to timely object or with respect to which Seller has no obligation to cure pursuant to this Section 6.03(b) shall be deemed a "Permitted Real Property Encumbrance."

(c) Insurable Claims. To the extent any Claim for Damages under Article VIII constitutes an Insurable Claim (as defined herein), Purchaser agrees to assert and pursue with reasonable diligence such Insurable Claim against the Title Company (which shall include commencing litigation and diligently prosecuting such Insurable Claim to judgment) prior to pursuing a Claim for Damages under Article VIII. If at any time following a non-favorable judgment that substantially denies the relief sought by Purchaser from the Title Company in connection with the Insurable Claim (each a "Non-Favorable Judgment"), Purchaser shall be permitted, following such Non-Favorable Judgment, to pursue Seller with a Claim for Damages under Article VIII (any such Claim against Seller following an attempted Insurable Claim against the Title Company being a "Residual Title Claim"). Notwithstanding anything to the contrary in Article VIII, Purchaser shall have the right to assert a Claim for Damages based upon a Residual Title Claim for a sixty (60) day period after the Non-Favorable Judgment. For purposes of this Section 6.03(c), an "Insurable Claim" shall mean a Claim that: (i) arises out of Purchaser's discovery of a title defect or encumbrance with respect to any of the Real Property following the Closing that materially restricts or prevents the use of such Real Property at issue in the operation of the System; and (ii) constitutes a colorable claim against the Title Company under Purchaser's final title policies contemplated by Section 6.01(b) hereof.

Section 6.04. Title Expenses. Whether or not the transaction described by this Agreement is consummated, all costs and expenses of obtaining the Title Commitment, Title Report and the title policy or policies shall be paid by Seller. All costs and expenses for title work for any lender or trustee policy, special coverages and/or endorsements to the Title Commitment and final title policy shall be paid by Purchaser.

Section 6.05. UCC Search; Releases. Within one hundred eighty (180) days after the Effective Date, Seller shall obtain at its expense a Uniform Commercial Code search against Seller covering any of the personal property or fixtures included among the Acquired Assets from the Office of the Secretary of State of Indiana and the Recorder of Hamilton County, Indiana (the "UCC Search"). On or prior to the Closing, Seller shall at its expense obtain releases of any and all security interests in any of the Acquired Assets which are not Permitted Liens on or prior to the Closing. The form of the releases of such security interests shall be provided to Purchaser on or prior to the Closing Date.

Section 6.06. Post-Closing Access Rights. If at any time before, on or after the Closing, Seller or Purchaser determines that as a result of the transfer of the Acquired Assets that (i) they or their Affiliates are, or will likely be, unable to access any Real Property in the same manner as before the Closing; and (ii) access to such Real Property is necessary for a Party to properly and effectively operate any other assets owned, licensed or leased by it or any of its Affiliates, then the other Party hereby agrees to grant to the requesting Party or its Affiliates, as applicable, a right of entry and access so that the requesting Party can access the Real Property at issue; provided that such entry and access rights shall not materially interfere with the current use or contemplated use of the granting Party's property (collectively, the "Access Rights"). As soon as reasonably practicable after the request for Access Rights, the granting Party shall deliver to the requesting Party a legal document granting Access Rights in form and substance reasonably acceptable to Seller and Purchaser and in recordable form. A grant of Access Rights shall be free of charge to the requesting Party, and each Party shall bear its own costs incurred

with respect to memorializing the Access Rights as contemplated in this Section 6.06. The obligations and rights of the Parties under this Section 6.06 shall survive the Closing.

Section 6.07. **Occupancy Agreements**. Seller shall use commercially reasonable efforts to obtain any required consents or satisfy any preconditions necessary to transfer the Scheduled Occupancy Agreements prior to the Closing Date. If after the Closing Date, Purchaser determines that a third-party consent or precondition must be satisfied in order to transfer an Unscheduled Occupancy Agreement, Seller shall obtain such third-party consent or satisfy such precondition and execute any documents necessary to effectuate such transfer pursuant to Seller's obligations in Section 2.05.

Section 6.08. **Unscheduled Real Property**. The Parties acknowledge that Seller may own interests in or have the legal right to use or occupy the Real Property that is necessary or essential to the operation of the System and that is not specifically identified in Schedule 4.08, Schedule 4.23 or Schedule 6.10 (collectively, the "Unscheduled Real Property"). In the event the Parties discover prior to or after the Closing Date, one or more parcels of Unscheduled Real Property, the discovering party shall give written notice of such discovery to the non-discovering party. In addition to its obligations in Section 2.05, Seller shall have the obligation to convey, assign or otherwise transfer any rights to each parcel of Unscheduled Real Property in such a manner as to provide Purchaser with reasonable assurances that it shall have the right to use or occupy the Unscheduled Real Property at issue as it was used by Seller as of the Effective Date. Any sums that Seller pays to third parties to satisfy its obligations under this Section 6.08 shall be subject to the limitations described in Section 8.05. The obligations and rights of the Parties under this Section 6.08 shall survive the Closing.

Section 6.09. **Public Access to Real Property**. To the extent Seller has granted, permitted or allowed the public access to any of the Real Property prior to the Closing Date, Purchaser shall continue to permit or allow similar public access to the applicable Real Property after the Closing, provided that Purchaser shall have the right to modify, restrict or deny such public access rights if Purchaser, in its reasonable good faith discretion, determines that doing so is necessary for the prudent operation, safety or security of the System.

Section 6.10. **Priority Two Property**. The Real Property described in Schedule 6.10 shall be defined as "Priority Two Property." With respect to the Priority Two Property, Seller shall only be required to satisfy the requirements set forth or referenced in Schedule 6.10.

ARTICLE VII.
OTHER AGREEMENTS

Section 7.01. **Taxes**. Seller shall pay any and all Taxes, if any, arising out of the ownership of the Acquired Assets and out of the operation of the System before the Closing. Any special assessments on the Real Property incurred prior to the Closing Date, whether or not currently due and payable, shall be paid by Seller in accordance with their terms.

Section 7.02. **Cooperation on Tax Matters**. Seller shall furnish or cause to be furnished to Purchaser, as promptly as practicable, whether before or after the Closing Date, such

information and assistance relating to the System as is reasonably necessary for the preparation and filing by Purchaser of any filings relating to any Tax matters.

Section 7.03. **Files and Records**. After the Closing Date, upon reasonable notice and during normal business hours, Seller shall provide access to Purchaser and its attorneys, accountants and other representatives, at Purchaser's expense, to Files and Records that remain in Seller's possession as Purchaser may reasonably deem necessary to properly prepare for, file, prove, answer, prosecute, and/or defend any such return, filing, audit, protest, claim, suit, inquiry or other proceeding.

Section 7.04. **Employee Matters**.

(a) Purchaser shall, or shall cause an Affiliate of Purchaser to, offer employment effective on the Closing Date, to the Employees set forth in Schedule 7.04(a), subject to Purchaser's existing standard hiring policies and procedures applicable to new employees, except with respect to benefits as otherwise provided in Section 7.04(c). The Employees who accept such employment and commence employment on the Closing Date, shall be referred to in this Agreement as the "Transferred Employees." Purchaser may also interview Seller's management employees with knowledge of the System for possible hiring in Purchaser's sole discretion. Should Purchaser offer employment to any such management employees in its sole discretion, Seller shall not directly or indirectly prevent such employment with Purchaser and shall release any such employees from any applicable restrictive employment covenants or non-competition agreements without penalty.

(b) Transferred Employees shall be employees-at-will of Purchaser. Purchaser shall provide each Transferred Employee compensation and benefits which are substantially comparable to the compensation and benefits then provided to similarly situated employees of Purchaser. Nothing in this Agreement shall require Purchaser to provide any particular form or type of employee benefit program, plan or policy to any Transferred Employee as a result of the transactions contemplated by this Agreement.

(c) With respect to any employee benefit plan maintained by Purchaser or an Affiliate of Purchaser for the benefit of any Transferred Employee, effective as of the Closing, Purchaser shall, or shall cause its Affiliate to, recognize all service of the Transferred Employees with Seller, as if such service were with Purchaser for eligibility and vesting purposes (but Purchaser shall not be required to recognize such service for purposes of benefit accruals under Purchaser's defined benefit plan).

(d) Effective as of the Closing, the Transferred Employees shall cease active participation in the Seller's Benefit Plans. Seller shall remain liable for all eligible claims for benefits under the Seller's Benefit Plans that are incurred by the Employees prior to the Closing Date. Except as provided in Section 7.04(e), Seller shall remain liable to make any contributions to Seller's Benefit Plans related to, and/or to fund any retirement benefits accrued by, the Transferred Employee prior to Closing, including without limitation for making any contributions due to PERF related to the Transferred Employee's employment with Seller. For purposes of this Agreement, the following claims shall be deemed to be incurred as follows: (i) life, accidental death and dismemberment, short-term disability, and workers' compensation

insurance benefits, on the event giving rise to such benefits; (ii) medical, vision, dental, and prescription drug benefits, on the date the applicable services, materials or supplies were provided; and (iii) long-term disability benefits, on the eligibility date determined by the long-term disability insurance carrier for the plan in which the applicable Employee participates.

(e) Seller shall initiate and complete the process set forth in IND. CODE § 5-10.3-6-8 to withdraw the Transferred Employees as a departmental, an occupational, or other definable classification of employees from participation in PERF effective as of the Closing. To the extent that Seller is assessed any additional funding obligations pursuant to IND. CODE § 5-10.3-6-8(d) or (e) with regard to the Transferred Employees that is not attributable to unpaid contributions to PERF that related to the Transferred Employees' service with Seller, Purchaser shall reimburse Seller for such additional funding up to One Million and No/100 Dollars ($1,000,000.00) ("Pension Liability Cap").

(f) This Section 7.04 shall be binding upon and inure solely to the benefit of each of the Parties to this Agreement, and nothing in this Section 7.04 express or implied, shall confer upon any other Person any rights or remedies of any nature whatsoever under or by reason of this Section 7.04. Nothing contained herein, express or implied, shall be construed to establish, amend or modify any benefit plan, program, agreement or arrangement. The Parties hereto acknowledge and agree that the terms set forth in this Section 7.04 shall not create any right in any Transferred Employee or any other Person to any continued employment with Purchaser or any of its Affiliates or compensation or benefits of any nature or kind whatsoever, and shall not be deemed to restrict Purchaser in the exercise of its independent business judgment in establishing or modifying any of the terms or conditions of the employment of the Transferred Employees.

(g) Notwithstanding anything in this Agreement to the contrary, it is expressly understood that Purchaser will not acquire any asset, or assume any liability or obligation in connection with the transaction contemplated by this Agreement relating to any of the Seller's Benefit Plans, Seller's Qualified Benefit Plans or Contracts described in Section 4.17(a)(i) of this Agreement. Seller shall be solely responsible for any liability, funding obligation, claim or expense arising from the Seller's Benefit Plans, Seller's Qualified Benefit Plans or Contracts described in Section 4.17(a)(i) of this Agreement, both prior to, and after, the Closing Date, except as provided in Section 7.04(c).

(h) Seller shall comply with the requirements of COBRA, and shall provide continuing health benefit coverage as described under COBRA to all persons who are "M&A qualified beneficiaries" (as described in IRS Regulation Section 54.4980B-9, Question and Answer 4) with respect to transactions contemplated under this Agreement.

Section 7.05. **System's Service to Seller**. After the Closing, subject to the initial approval and ongoing jurisdiction of the IURC and Purchaser's ability to recover the cost of providing such services through rates, to the extent Seller and its Affiliates receive services of the System after the Closing that are the same or similar to the services Seller and its Affiliates received before the Closing, Seller and its Affiliates shall purchase or receive such services of the System in the same manner and at the same cost as Seller and its Affiliates received prior to the Closing, which services and related charges are set forth on Schedule 7.05.

Section 7.06. **Right of First Refusal; IURC Regulation**. Purchaser hereby acknowledges and agrees that:

(a) The System will be subject to IURC jurisdiction and Purchaser shall not withdraw or attempt to withdraw the System from IURC regulation over rates and charges and terms and conditions of service.

(b) Purchaser shall not sell the System for ten (10) years following the Closing (the "Restriction Period").

(c) If, after the Restriction Period, Purchaser, for any reason, elects to sell or dispose of the System, the City shall have a right of first refusal to purchase the System at its then fair market value.

Section 7.07. **Future Rates**. Purchaser shall seek adoption of rates and charges set forth in Schedule 7.07 and so long as adopted by the IURC shall not seek additional rates during that period, subject to unforeseen circumstances and developments, unanticipated regulatory conditions or compliance costs, any need for emergency rate relief under IND. CODE § 8-1-2-113, necessary increases in rates to avoid a default under coverage or other covenants of Purchaser set forth in any applicable bond indenture or agreement and such other exceptions as shall be mutually agreed by the Parties. To the extent Purchaser is entitled to seek rate relief under this Section 7.07 or otherwise with respect to one of the Systems, it shall also have the right to do so with respect to the other System. Neither this Section nor the rates and charges set forth in Schedule 7.07 shall preclude Purchaser from seeking or obtaining approval of a distribution system improvement charge under applicable Law or deferred accounting authorizations.

Section 7.08. **Use of and Repair of Public Rights of Way**. In using public rights of way in the operation and maintenance of the System, subject to IND. CODE § 8-1-2-101, Purchaser agrees to comply with all applicable Laws of the City of such rights of way, except to the extent such Laws of the City alter the agreements embodied in this Agreement or any Related Agreement. Except as otherwise provided in this Agreement, Purchaser shall be required to make payments to Seller and its Affiliates for construction and System-related fees, licenses, permits, assessments and other similar charges in the same manner other persons doing business in the City make payments for such fees, licenses, permits, assessments and other similar charges. In the event that Purchaser in operating, maintaining, and extending the System installs or repairs facilities in public rights of way, including but not limited to roads or sidewalks, Purchaser shall comply with all applicable Laws (except to the extent any such Laws of the City alter the agreements embodied in this Agreement or any Related Agreement) with respect to restoration of such rights of way, including but not limited to roads and sidewalks (subject to any reimbursement provided or allowed by federal, state or local Laws, including, but not limited to such reimbursement with respect to the U.S. 31 Project), subject to IND. CODE § 8-1-2-101. The Parties acknowledge that Purchaser and Seller may plan construction projects that could be more efficiently implemented if the Purchaser and Seller cooperate with respect to scheduling and implementation of such projects. Each of Purchaser and Seller agrees to use its commercially reasonable efforts to cooperate with each other in scheduling and implementing any construction that may affect both the System and the City's assets.

Section 7.09. **MBE/WBE/VBE Opportunities.** To the extent consistent with applicable Law, Purchaser will establish policies and procedures designed to provide minority business enterprises ("MBEs"), women-owned business enterprises ("WBEs"), veteran-owned business enterprises ("VBEs") and local firms the maximum practicable opportunity to compete for work related to the System. Purchaser shall recognize certification of at least the following: State of Indiana; Indiana Minority Supplier Development Council; and Women's Business Enterprise National Council.

Section 7.10. **Compliance with Applicable Laws; Cooperation with the City**. Because of the City's dependence upon a reliable, adequate and safe water supply, during the time Purchaser owns and operates the System, Purchaser and Seller agree to cooperate with each other with respect to the System, and Purchaser shall:

(a) Comply in all material respects with all applicable federal and state laws relating to the System; and

(b) Provide a quarterly and annual report to the City Council and the Mayor related to customer complaints, the specific format of which shall be agreed upon by the Parties and set forth on Schedule 7.11;

(c) Promptly furnish its annual capital plan to the City Council and the Mayor;

(d) Permit City designees to participate in Citizens Service Advisory Board; and

(e) Cooperate with the City in Purchaser's establishment and implementation of a coordinated emergency preparedness program and a coordinated safety program for the System and the City.

Section 7.11. **Seller's Utility Plant**. Seller's Utility Plant for the System as of Closing shall be Forty Eight Million Five Hundred Seventy Six Thousand Dollars ($48,576,000). In the event Seller's actual Utility Plant at Closing does not equal the above-stated amount, the Purchase Price shall be adjusted, as follows: (a) to the extent Seller's actual Utility Plant as of Closing is less than the above-stated amount, the Purchase Price shall be adjusted in the amount and reduced in the manner and pursuant to the procedure set forth in Schedule 7.12, and (b) to the extent Seller's actual Utility Plant as of Closing is greater than the above-stated amount, the Purchase Price shall be adjusted in the amount and increased in the manner and pursuant to the procedure set forth in Schedule 7.12.

Section 7.12. **Capital Plan.** Seller and Purchaser shall agree upon a Capital Plan to include all capital expenditures between the date of this Agreement and Closing and Seller shall comply with such Capital Plan except to the extent otherwise expressly provided in writing by Purchaser. The Capital Plan shall include the capital expenditures referenced in Schedule 7.13 and in any event, shall include any and all capital expenditures to maintain the System in the ordinary course of business consistent with industry standards, notwithstanding any adjustment contemplated in Section 7.12.

Section 7.13. **Lagoon Option**. Seller hereby grants to Purchaser at Closing an option to purchase all or any portion of the Lagoon (the "Lagoon Option"), in a form mutually agreeable

to the Parties. Prior to Closing, pursuant to due diligence, Purchaser will determine whether the Lagoon or a portion of the Lagoon is necessary, important useful or otherwise desirable, to operate the System (the "Purchased Lagoon"). The Parties hereby agree that the terms and conditions of the Lagoon Option are the following:

(a) Purchaser shall exercise the Lagoon Option by a written notice to Seller specifying whether all or a portion of the Lagoon will be purchased (the "Option Exercise Notice") at any time after the Effective Date;

(b) the Lagoon Option shall expire one (1) year after the Closing;

(c) the closing of the purchase and sale of the Purchased Lagoon contemplated by the Lagoon Option shall be consummated either upon Closing of the other transaction contemplated by this Agreement, or not later than sixty (60) days after the date of the Option Exercise Notice as specified by Purchaser;

(d) the consideration to be paid by Purchaser for the Purchased Lagoon shall be the assumption of liabilities related to the Purchased Lagoon to the extent such liabilities would meet the definition of "Assumed Liabilities" in this Agreement if the Lagoon were an "Acquired Asset"; and

(e) the Purchased Lagoon shall be conveyed to Purchaser subject to representations warranties and indemnities substantially similar to those for other property conveyed under this Agreement and as otherwise agreeable to the Parties.

Section 7.14. Billing Services. Purchaser agrees to provide billing and collection services for the City's customers of its stormwater system and trash services for the five-year period beginning on the Closing Date (the "Billing Services"). As consideration for the Billing Services, the City will reimburse Purchaser its verifiable costs incurred for providing the Billing Services pursuant to an agreement agreed upon by the City and Purchaser in substantially the form attached as Exhibit D (the "Billing Services Agreement").

Section 7.15. Public Works Building Lease. On and after Closing, Purchaser agrees to lease from the City a portion of the Public Works Building for its use in the operations of the System pursuant to a capital lease in the form and substance reasonably acceptable to both Purchaser and Seller.

ARTICLE VIII.
DISPUTE RESOLUTION; INDEMNIFICATION

Section 8.01. Survival. All representations and warranties contained in this Agreement shall survive for a period of eighteen (18) months after the execution, delivery and performance of this Agreement, notwithstanding any investigation conducted at any time, except that: (a) representations and warranties made in any of Section 4.07 (Tax Matters), Section 4.12 (Employee Benefit Plans) and 4.14 (Environmental Compliance) shall survive until the expiration of the statutory period of limitations applicable to the subject matter addressed in each Section; and (b) representations and warranties made in Section 4.01 (Power), Section 4.02 (Authorization and Validity of Agreement), the second sentence of Section 4.08 (Title to Real

Property), Section 5.02 (Authorization and Validity of Agreement) and Section 4.20 (Title to Acquired Assets) will not expire.

Section 8.02. Dispute Resolution.

(a) Any and all disputes relating in any way to the creation, interpretation, operation, performance, breach or enforcement of this Agreement, including but not limited to any challenge to the validity or legality of this Agreement under any state or federal law, (the "Dispute") that cannot be resolved in the ordinary course of business shall be resolved exclusively pursuant to this dispute resolution process, except as otherwise provided in Section 7.09. Time is of the essence with respect to resolving any such Dispute under this Agreement.

(b) The Parties hereby agree that certain Disputes which arise after the Closing which would have a financial impact to any Party of less than Five Hundred Thousand Dollars ($500,000) will be referred to an independent panel with expertise in the subject area of the applicable Dispute (for example, financial, real estate) (each, a "Standing Panel"). Each Standing Panel shall have final, binding, non-appealable authority to resolve any dispute referred to it, and each of the Parties hereby agrees to be bound by the decisions of each Standing Panel. Prior to the Closing, the Parties will agree to the subject matter which will be referred to the Standing Panels, the composition of each Standing Panel and the scope of each Standing Panel's authority. In the event the Parties are unable to agree on the identity of a Standing Panel, Seller shall select one (1) member of such Standing Panel, Purchaser shall select one (1) member of such Standing Panel, and those two (2) individuals will select a third (3rd) member of such Standing Panel. The Parties hereby agree to the Standing Panels set forth in Schedule 8.02(b). In the event the Parties are unable to agree on the subject matter to be referred to a Standing Panel or the Standing Panels, or the authority of a Standing Panel or the Standing Panels, such disagreement shall be a Dispute not subject to this Section 8.02(b) and shall be subject to the other provisions described in this Section 8.02.

(c) Except as provided in this Section, and as a prerequisite before any proceeding regarding a Dispute is initiated in a court or in arbitration, the following mandatory dispute resolution process shall be followed:

(i) Service of Notices. All notices required or allowed under this Section shall be served as provided for in Section 15.07 of this Agreement with copies as provided for in Section 15.07.

(ii) First Notice of Claim. Any Dispute shall first be set forth in writing in a "First Notice of Claim" which shall state the exact nature of the claims, the applicable dates relative to the dispute, the precise amount of any dollar amount at issue, the identification of any specific applicable documents that are alleged to govern the dispute, the names of any individuals involved in the Dispute, the identification of any relevant third parties to the Dispute, any other information that will help facilitate the prompt resolution of the Dispute, and a proposed resolution (the "Proposed Resolution").

(iii) Response. Within seven (7) calendar days of receipt of any First Notice of Claim, the Party receiving the First Notice of Claim shall respond in writing to the First

Notice of Claim either with an Acceptance of the Proposed Resolution or with a response (the "Response") which shall include any additional information not included in the First Notice of Claim that will facilitate the prompt resolution of the Dispute and a counterproposal (the "Counterproposal").

(iv) Face-to-Face Meeting. If a Counterproposal is provided, the Party serving the Counterproposal shall arrange for a face-to-face meeting (the "Face-to-Face Meeting") to be held within ten (10) calendar days of the service of the Counterproposal. Each Party shall send to the Face-to-Face Meeting a Person with authority to negotiate and resolve the dispute, subject to any board approval that is otherwise required. The Parties shall negotiate in good faith to resolve such Dispute promptly by negotiation. All negotiations pursuant to this Section 8.02(c) shall be deemed confidential and, with respect to claims involving litigation or anticipated litigation with third parties, shall be treated as compromise and settlement negotiations pursuant to the Federal Rules of Civil Procedure or other applicable rules of civil procedure.

(v) Top Executive Negotiation. If the Parties are unable to resolve a dispute at the Face-to-Face Meeting, the Dispute shall be referred to and resolved by the CEO, President or another top executive of Purchaser, and the Mayor or Mayor's Chief of Staff of the City (the "Designated Parties") depending on the nature of the Dispute (the "Top Executive Negotiation"). The First Notice of Claim, Response and all information relevant to the Dispute shall be provided to the Designated Parties who shall meet and confer within ten (10) Business Days in a final effort to resolve the Dispute.

(vi) Independent Mediator. The Parties may choose to engage an independent mediator to assist in the negotiations of the Face-to-Face Meeting or the Top Executive Negotiation, and the Parties may adjourn any meeting, as necessary, to facilitate any resolution. Any resolution shall be immediately reduced to writing and signed and dated by the Party representative with the authority to execute the resolution and engage the mediator, if any.

(vii) Failure to Resolve Dispute. If the Parties are unable to resolve the Dispute through this mandatory process, then any Party may proceed immediately to binding arbitration. If any Party fails for any reason to participate in any part of the mandatory dispute resolution process, then the other Party may proceed immediately to binding arbitration or may seek an injunction in court to require the other Party to participate in the mandatory dispute resolution proceeding.

(d) The binding arbitration procedures shall be as follows:

(i) An arbitration process to decide any Dispute under this Agreement shall be initiated by providing a written demand for arbitration (the "Arbitration Demand") to the Person designated to receive notice under Section 15.07 with a courtesy copy sent by hand delivery or next day delivery with a courtesy electronic copy to the Person designated to receive a copy in Section 15.07. Any Arbitration Demand shall state specifically the nature of the claim(s), the relevant time periods, the relevant and controlling document(s), if any, the names of any relevant known witnesses associated

with either of the parties, the identification of any third parties that may be relevant to the dispute, a specific dollar amount alleged to be owing, if any, and any other specific information that may be necessary to define the nature of the dispute. The Party receiving the Arbitration Demand shall provide a written response (the "Arbitration Response") within ten (10) calendar days after receiving the Arbitration Demand. The Arbitration Response may be a simple denial or may set forth in writing any counterclaims including the same type of information required in an original Arbitration Demand. If an Arbitration Response includes any counterclaims, then the Party originally demanding the arbitration may reply within ten (10) calendar days after receiving the Arbitration Response. If any Party fails to respond to any claim or counterclaim, the Party shall be deemed to deny the demand. No claims or counterclaims may be added to the arbitration without the written approval of the arbitration panel.

(ii) Any Dispute submitted to arbitration shall be decided by a single arbitrator unless the Parties are unable to agree upon a single arbitrator, or within five (5) calendar days of the date when an Arbitration Response is served or due (if no Arbitration Response is served), any Party demands that the Dispute be decided by a panel of three (3) arbitrators. If the Parties are unable to agree on a single neutral arbitrator within fifteen (15) days when an Arbitration Response is served or due (if no Arbitration Response is served), then each Party shall then have an additional ten (10) calendar days to appoint one arbitrator and the two appointed arbitrators ("Arbitrators") shall within ten (10) calendar days appoint a third, neutral arbitrator (the "Neutral Arbitrator"). The Arbitrators and the Neutral Arbitrator shall serve as a panel of three (3) arbitrators (the "Panel") which shall jointly decide all issues. The Neutral Arbitrator shall be a lawyer who has been engaged in the practice of law for at least fifteen (15) years with experience in commercial disputes involving public utilities. The Party appointing an Arbitrator shall pay all of the fees and expenses of that Arbitrator, in each case, and the fees and expenses of the Neutral Arbitrator shall be paid in equal shares by the Parties, unless the Arbitration Award provides differently. If for any reason a Neutral Arbitrator cannot be selected by agreement, either Party may petition a court of competent jurisdiction for the appointment of a Neutral Arbitrator.

(iii) The arbitration shall be held at a neutral location in Indianapolis, Indiana as soon as possible and in any event shall commence within ninety (90) calendar days after the selection of the sole arbitrator or Neutral Arbitrator. The arbitration may be adjourned as necessary as determined by the sole arbitrator or the Panel presiding over the arbitration.

(iv) Each Party shall have the right to engage in reasonable pre-arbitration discovery in the form of requests for production of documents and depositions as allowed by the arbitration panel. Presentation of the case shall include: opening statements, testimony of necessary witnesses, stipulated or properly authenticated documents and closing statements. No documents may be submitted as evidence unless the documents have been provided to the opposing party in advance of the arbitration as allowed by the arbitrators' panel. Either Party may demand that a transcript of the hearing be prepared. If such a demand is made, then the Parties shall pay in equal shares for the cost of the transcript.

(v) The Panel shall issue a reasoned decision within thirty (30) days of the conclusion of the arbitration and the decision shall include written findings of fact and any conclusions of law. Indiana law shall be used by the Panel to decide all questions and claims that are a part of the Disputes, notwithstanding any choice of law provisions to the contrary. The Panel shall have the authority to order the losing party to pay some or all or the fees, costs, or expenses (such as expenses for expert witnesses, deposition transcripts, travel, etc.) of the arbitration proceeding to the prevailing party as part of the arbitration award (the "Arbitration Award"). The Panel shall not have the authority to award any incidental, consequential or punitive damages to any party, but may order interest at the statutory rate. The Arbitration Award shall be final and binding on the Parties, except that either Party may, within ten (10) days of the Arbitration Award request the Panel for a reconsideration of the any issue if it appears from Arbitration Award that an Indiana law has been incorrectly interpreted or applied or it appears from the reasoned decision that any monetary award was incorrectly calculated. Otherwise, any Party may appeal an Arbitration Award only as provided in the Indiana Uniform Arbitration Act or the Federal Arbitration Act. The Arbitration Award may be enforced in any court having proper jurisdiction over the Parties and the subject matter.

(e) Any Party may initiate an action in court (i) for injunctive relief if the injunctive relief is deemed necessary to preserve the status quo and to prevent irreparable harm from occurring before or during the pendency of the arbitration, or (ii) to enforce the mandatory dispute resolution provisions or the arbitration required in this Section, or (iii) to obtain the subpoena power of the court if necessary to compel witnesses at a deposition or at the arbitration, or to obtain allowed documents, (iv) to obtain assistance in the appointment of an arbitrator, or (v) to enforce any arbitration award. Any action initiated in court shall be filed and litigated (including all discovery proceedings) exclusively in a state or federal court located in Hamilton County or Marion County, Indiana, as applicable, and all objections as to personal jurisdiction and venue are waived, except an action to subpoena a witness or to obtain documents in a foreign jurisdiction may be filed in the county where the Person or documents are located. The fees, costs and expenses of seeking or defending a claim for injunction, or obtaining the assistance of any court in discovery or enforcement may be added to the allowed recovery in any arbitration related to the subject matter of the injunction.

Section 8.03. **Indemnification by Seller**. To the maximum extent permitted by applicable Law, Seller agrees to indemnify, defend and hold harmless Purchaser and its successors and Affiliates, and their respective employees, officers, directors, trustees and agents (the "Purchaser Indemnified Persons"), from and against any and all claims for Damages (each a "Claim") arising from or relating to: (a) any breach of the representations and warranties in this Agreement or any Related Agreement (except for any breach of the representation and warranty set forth in Section 4.14(a)(i)), as to which Seller shall not be obligated to pay any amount to Purchaser or a third party, but shall otherwise hold Purchaser harmless); (b) the nonfulfillment of any of the covenants or agreements of Seller contained in this Agreement or any Related Agreement other than the covenant in Section 7.12; (c) subject to Sections 8.07 and 8.08, any Excluded Liability; (d) any investigation, civil, criminal or administrative action with respect to the Seller's Benefit Plans (including without limitation, any claim for benefits under a Seller Benefit Plan by any personnel of Seller); (e) any COBRA obligation of Seller arising from any qualifying event as defined under COBRA occurring before the Closing Date; (f) any

Environmental Claim arising or existing prior to the Closing; and (g) any and all actions, suits, investigations, proceedings, demands, assessments, audits and judgments arising out of any of the foregoing; provided, however, the obligations of Seller under this Section 8.03 with respect to noncompliance with Section 7.13 and Seller's Capital Plan shall be determined after taking into account any and all adjustments under Section 7.12.

Section 8.04. Indemnification by Purchaser. To the maximum extent permitted by applicable Law, Purchaser agrees to indemnify, defend and hold harmless Seller and its successors and Affiliates and their respective employees, officers, directors, trustees and agents (the "Seller's Indemnified Persons") from and against any and all Claims arising from or relating to: (a) any breach of the representations and warranties in this Agreement or any Related Agreement; (b) the nonfulfillment of any of the covenants or agreements of Purchaser contained in this Agreement or any Related Agreement; (c) any Assumed Liability; or (d) any and all actions, suits, investigations, proceedings, demands, assessments, audits and judgments arising out of any of the foregoing. Purchaser shall not be obligated under this Section 8.04 with respect to any matter to the extent Seller is obligated to indemnify, defend or hold harmless Purchaser therefrom under this Agreement or any Related Agreement.

Section 8.05. Procedure.

(a) Promptly (and in any event within fifteen (15) days after the service of any citation or summons) after acquiring Knowledge of any Claim for which one of the Parties hereto (the "Indemnified Party") may seek indemnification against another Party (the "Indemnifying Party") pursuant to this Article VIII, the Indemnified Party shall give written notice thereof to the Indemnifying Party. Failure to provide written notice shall not relieve the Indemnifying Party of its obligations under this Article VIII except to the extent that the Indemnifying Party demonstrates actual damage caused by that failure. The Indemnifying Party shall have the right to assume the defense of any Claim with counsel reasonably acceptable to the Indemnified Party upon delivery of written notice to that effect to the Indemnified Party. If the Indemnifying Party, after written notice from the Indemnified Party, fails to take timely action to defend the action resulting from the Claim, the Indemnified Party shall have the right to defend the action resulting from the Claim by counsel of its own choosing, but at the cost and expense of the Indemnifying Party. The Indemnified Party shall have the right to settle or compromise any Claim against it, and, as the case may be, recover from the Indemnifying Party any amount paid in settlement or compromise thereof, if it has given written notice thereof to the Indemnifying Party and the Indemnifying Party has failed to take timely action to defend the same. The Indemnifying Party shall have the right to settle or compromise any claim against the Indemnified Party without the consent of the Indemnified Party provided that the terms of the settlement or compromise provide for the unconditional release of the Indemnified Party and require the payment of monetary damages only.

(b) Upon satisfaction of a Claim by the Indemnifying Party pursuant to this Article VIII, the Indemnified Party shall deliver to the Indemnifying Party such documents as the Indemnifying Party may reasonably request assigning to the Indemnifying Party any and all rights, to the extent the Indemnified Party has been indemnified, that the Indemnified Party may have against third parties with respect to the Claim for which indemnification was received.

(c) Other than as provided in Section 8.06, in no event shall the aggregate amount due for Damages under this Agreement and the Wastewater Agreement, to Purchaser and any Purchaser Indemnified Person (as defined in this Agreement and the Wastewater Agreement, as applicable) exceed Nine Million One Hundred Thousand Dollars and No/100 ($9,100,000.00) (the "Liability Cap").

(d) In the event any indemnification Claim involves the claim of any third party, the Indemnified Party shall cooperate (and shall cause its Affiliates to cooperate) with the Indemnifying Party in the defense of any such Claim. Without limiting the generality of the foregoing, the Indemnified Party shall furnish the Indemnifying Party with such documentary or other evidence as is then in its or any of its Affiliates' possession as may be reasonably requested by the Indemnifying Party for the purpose of defending against such Claim. Whether or not the Indemnifying Party chooses to defend or prosecute any Claim involving a third party, all the Parties shall cooperate in the defense or prosecution thereof and shall furnish such records, information and testimony, and attend such conferences, discovery proceedings, hearing, trials and appeals, as may be reasonably requested in connection therewith.

(e) The Escrow Deposit shall be used to satisfy Seller's indemnification obligations under both this Agreement and the Water Purchase Agreement. To the extent that Purchaser (or an Affiliate) is owed any amount under this Article VIII or under the Water Purchase Agreement, Purchaser and its Affiliates shall first be entitled to recover such amount from the Escrow Deposit in accordance with the Escrow Agreement, and thereafter from Seller in immediately available funds.

Section 8.06. Limitations on Indemnification Obligations.

(a) Other than as provided in this Section 8.06, neither Purchaser nor Purchaser Indemnified Persons shall be entitled to indemnification pursuant to Section 8.03(a) of this Agreement (other than for an intentional breach of any agreement or covenant contained in this Agreement) unless the aggregate amount of Damages incurred by Purchaser or such Purchaser Indemnified Persons (as defined in this Agreement or the Water Purchase Agreement, as applicable) under this Agreement and the Water Purchase Agreement exceeds Two Hundred Fifty Thousand Dollars and No/100 ($250,000.00) in the aggregate (the "Threshold Amount"), in which case the Indemnifying Party (as defined in this Agreement or the Water Purchase Agreement, as applicable) shall then be liable for Damages in excess of the Threshold Amount.

(b) Other than as provided in this Section 8.06, neither Seller nor Seller's Indemnified Persons shall be entitled to indemnification pursuant to Section 8.04(a) of this Agreement (other than for an intentional breach of any agreement or covenant contained in this Agreement) unless the aggregate amount of Damages incurred by Seller and Seller's Indemnified Persons (as defined in this Agreement or the Water Purchase Agreement, as applicable) under this Agreement and the Water Purchase Agreement exceeds the Threshold Amount, in which case the Indemnifying Party (as defined in this Agreement or the Water Purchase Agreement, as applicable) shall then be liable for Damages in excess of the Threshold Amount.

(c) Other than as provided in this Section 8.06, the cumulative, combined, aggregate indemnity obligation or liability for Damages of Seller pursuant to this Agreement shall not exceed the Liability Cap.

(d) The Threshold Amount and the Liability Cap shall not apply to Seller's obligations to indemnify (i) pursuant to 8.03(c) due to failure to pay or discharge an Excluded Liability, (ii) to the extent due to an intentional breach of any agreement or covenant contained in this Agreement, (iii) if related to a Claim for breach of a representation under Section 4.01 (Power), Section 4.02 (Authorization and Validity of Agreement), Section 4.07 (Tax Matters), the second sentence of Section 4.08 (Title to Real Property), Section 4.12 (Employee Benefit Plans) or Section 4.20 (Title to Acquired Assets), (iii) for a Claim arising out of the intentional breach of any agreement or covenant in this Agreement, fraud or willful misconduct of Seller.

(e) The rights of Seller set forth in this Article VIII shall be the sole and exclusive remedy available to Seller for any Claim for Damages pursued under this Agreement.

(f) The rights of Purchaser set forth in this Article VIII shall be the sole and exclusive remedy available to Purchaser for any Claim for Damages pursued under this Agreement.

(g) For purposes of calculating the amount of Damages incurred by the Indemnified Party arising out of or resulting from any breach of, a representation, covenant, or agreement by any Party hereto, the references to a "Material Adverse Effect" or materiality shall be disregarded.

Section 8.07. **Tort Claims**. Purchaser shall reimburse the Seller for Damages related to any Tort Claims. The procedures for the Seller's defense of such Tort Claims shall be detailed in the Transition Services Agreement.

Section 8.08. **Indemnified Claims**. Seller, pursuant to subparagraph (g) of the definition of "Excluded Liability" have agreed to retain certain indemnification and insurance rights thereunder; provided that Purchaser shall hold Seller harmless with respect to any resulting Damages and Purchaser shall pay on behalf of the Seller, any cost, expense, liability or Damages as a result of the assertion of any indemnification right. In furtherance of the foregoing, Purchaser shall either assume and assert such claim or, if the Seller asserts such claim, pay any Damages on an "as incurred" basis. The procedures for implementing this Section 8.08 shall be further detailed in the Transition Services Agreement.

ARTICLE IX.
PRE-CLOSING COVENANTS OF THE SELLER

Section 9.01. **Operation of the System**. Subject to Section 7.13, Seller covenants and agrees that between the Effective Date and the earlier of the Closing or the termination of this Agreement in accordance with the terms hereof, Seller shall use commercially reasonable efforts to conduct the System only in the ordinary course of business in accordance with past practices and procedures and use commercially reasonable efforts to maintain the business and assets of the System, including the Acquired Assets, unless otherwise approved by Purchaser.

Section 9.02. **Prior Purchaser Approval**. Except as permitted in this Agreement or a Related Agreement, prior to Closing, Seller shall not, without the prior written consent of Purchaser:

(a) dispose of or incur material liabilities with respect to, pledge, mortgage, grant a security interest in or encumber any Acquired Assets;

(b) materially increase the base compensation of any Employee or grant any unusual or extraordinary bonuses, benefits or other forms of direct or indirect compensation to any Employee;

(c) enter into, amend or modify any employment or severance agreement or increase, terminate, amend or otherwise modify in any respect any plan or arrangement for the benefit of Employees of the System; or

(d) create any Assumed Liabilities, other than in the ordinary course of business consistent with past practices.

Section 9.03. **Due Diligence**. Seller shall cooperate with Purchaser's due diligence procedures and shall provide Purchaser and its representatives with reasonable access to its Files and Records and any facilities or properties upon request during normal business hours.

Section 9.04. **Cooperation**. Seller shall generally cooperate with Purchaser and its employees, attorneys, accountants and other agents and, generally, act in reasonably and good faith to timely effectuate the purposes of this Agreement and the consummation of the transactions contemplated by this Agreement, including but not limited to participating as a joint petitioner in the IURC approval proceeding.

Section 9.05. **Exclusivity**. In light of Seller's obligation to sell the Acquired Assets to Purchaser pursuant to the terms and conditions of this Agreement and except as otherwise provided in this Agreement, neither Seller nor any of the City's departments shall, through any employee, representative, agent or otherwise, directly or indirectly, (a) solicit, initiate or encourage submission of any inquiry, proposal or offer from any Person relating to any transaction involving any sale or transfer of any of the Acquired Assets or the System; (b) enter into or participate in any discussions or negotiations (except with Purchaser) regarding, or furnish any information to or cooperate with any Person (other than Purchaser) with respect to, any transaction involving any of the Acquired Assets or the System; or (c) enter into any agreement (except with Purchaser) relating in any manner to any transaction involving any sale or transfer of any of the Acquired Assets or the System.

Section 9.06. **Notification of Certain Matters**. Seller shall give prompt notice to Purchaser of:

(a) the occurrence, or failure to occur, of any event which occurrence or failure would, to Seller's Knowledge, be likely to cause any representation or warranty of Seller contained in this Agreement to be untrue or inaccurate in any material respect at any time from the Effective Date to the Closing Date; and

(b) any failure of Seller to comply with or satisfy in any material respect any covenant, condition, or agreement to be complied with or satisfied by Seller hereunder. Seller shall use commercially reasonable efforts to remedy promptly any such failure.

Section 9.07. **Supplements and Updates to Representations and Warranties and Related Disclosure Schedules**. Upon any notice pursuant to Section 9.06, Seller shall deliver to Purchaser any supplemental information updating or amending the information set forth in the representations and warranties set forth in Article IV of this Agreement (each a "Seller Schedule Supplement") so that such representations and warranties as supplemented by such information will be true and correct as of the Closing Date as if then made on such date, and each such Seller Schedule Supplement shall be deemed to be incorporated into and to supplement and amend the Disclosure Schedules as of the Closing Date; provided that no information added to or deleted from the representations and warranties of Seller and the updated Disclosure Schedules after the Effective Date shall impair Purchaser's right to assert failure of a condition precedent to Purchaser's obligations to consummate the transactions contemplated by this Agreement and/or a claim for a breach of the Seller's representations and warranties made on the Effective Date, and any Damages accruing to Purchaser shall be paid as provided in the indemnification provisions of this Agreement. At least ten (10) Business Days prior to the Closing Date, Seller shall advise Purchaser of any facts which would constitute a breach of a representation or warranty as of the date made or a default in a covenant contained herein. To the extent Purchaser fails to exercise its right to assert failure of a condition precedent to consummation of the transaction after Seller's disclosure of these facts and the Parties consummate the Closing, Purchaser shall be deemed to have waived its right to make a Claim based upon the facts as disclosed by Seller. The previous sentence, however, shall not apply to a breach or alleged breach of a representation or warranty contained in Section 4.01 or Section 4.02.

Section 9.08. **Governmental Approvals**. Promptly after the execution of this Agreement, or as required by Law, Seller shall file all applications and reports that are required to be filed by Seller with any Governmental Authority as provided on Schedule 4.04. Seller shall also promptly provide all information that any Governmental Authority may require in connection with any such application or report. Seller shall use all commercially reasonable efforts to obtain all consents and approvals of any kind from any Person in connection with the transactions contemplated hereby. All authorizations of any Governmental Authority necessary to consummate the transactions contemplated by this Agreement shall have been obtained in form and content reasonably satisfactory to Purchaser and Seller prior to Closing and shall be final and non-appealable.

Section 9.09. **Defeasance**. Seller shall use commercially reasonable efforts to obtain all necessary approvals to defease or pay off all outstanding Bond Debt to Purchaser's reasonable satisfaction.

ARTICLE X.
PRE-CLOSING COVENANTS OF PURCHASER

Purchaser covenants and agrees to comply with the following provisions:

Section 10.01. **Actions Before the Closing Date**. Purchaser shall use commercially reasonable efforts not take any action which shall cause it to be in breach of any representation, warranty, covenant or agreement contained in this Agreement or cause it to be unable to perform in any material respect its obligations hereunder, and Purchaser shall use commercially reasonable efforts (subject to any conditions set forth in this Agreement) to perform and satisfy all conditions to Closing to be performed or satisfied by Purchaser under this Agreement, including action necessary to obtain all consents and approvals of third parties required to be obtained by Purchaser to effect the transactions contemplated by this Agreement.

Section 10.02. **Cooperation**. Purchaser shall generally cooperate with Seller and its Employees, attorneys, accountants and other agents and, generally, do such other acts and things in good faith as may be reasonable to timely effectuate the purposes of this Agreement and the consummation of the transactions contemplated in accordance with the provisions of this Agreement, including cooperating with Seller to obtain all necessary signatures, information, and documentation for any approvals or consents from any Governmental Authority.

Section 10.03. **Notification of Certain Matters**. Purchaser shall give prompt notice to Seller of:

(a) the occurrence, or failure to occur, of any event which occurrence or failure would, to the Knowledge of Purchaser, be likely to cause any representation or warranty of Purchaser contained in this Agreement to be untrue or inaccurate in any material respect at any time from the Effective Date to the Closing Date; or

(b) any failure of Purchaser to comply with or satisfy in any material respect any covenant, condition, or agreement to be complied with or satisfied by Purchaser hereunder. Purchaser shall use commercially reasonable efforts to remedy promptly any such failure.

Section 10.04. **Supplements and Updates to Representations and Warranties and Related Disclosure Schedule**. Upon notice pursuant to Section 10.03, Purchaser shall deliver to Seller any supplemental information updating or amending the information set forth in the representations and warranties set forth in Article V of this Agreement (each a "Purchaser Schedule Supplement") so that such representations and warranties as supplemented by such information will be true and correct as of the Closing Date as if then made on such date, and each such Purchaser Schedule Supplement shall be deemed to be incorporated into and to supplement and amend the Disclosure Schedules as of the Closing Date; provided that no information added to or deleted from the representations and warranties of Purchaser and the updated Disclosure Schedules after the Effective Date shall impair Seller's right to assert failure of a condition precedent to Seller's obligations to consummate the transactions contemplated by this Agreement and/or a claim for a breach of the Purchaser's representations and warranties made on the Effective Date, and any Damages accruing to Seller shall be paid as provided in the indemnification provisions of this Agreement. At least ten (10) Business Days prior to the Closing Date, Purchaser shall advise Seller of any facts which would constitute a breach of a representation or warranty as of the date made or a default in a covenant contained herein. To the extent Seller fails to exercise its right to assert failure of a condition precedent to consummation of the transaction after Purchaser's disclosure of these facts and the Parties consummate the Closing, Seller shall be deemed to have waived its right to make a Claim based

upon the facts as disclosed by Purchaser. The previous sentence, however, shall not apply to a breach or alleged breach of a representation or warranty contained in Section 5.01 or Section 5.02.

Section 10.05. **Governmental Approvals**. Promptly after the execution of this Agreement, or as required by Law, Purchaser shall file all applications and reports which are required to be filed by Purchaser with any Governmental Authority as provided on Schedule 5.04. Purchaser shall also promptly provide all information that any Governmental Authority may reasonably require in connection with any such application or report. Purchaser shall use all commercially reasonable efforts to obtain all required consents and approvals of any kind from any Person in connection with the transactions contemplated hereby. All authorizations of any Governmental Authority (including without limitation the IURC) necessary to the consummation of the transactions contemplated by this Agreement shall have been obtained in form and content reasonably satisfactory to Purchaser and Seller prior to Closing and shall be final and non-appealable.

ARTICLE XI.
CONDITIONS PRECEDENT TO OBLIGATIONS OF THE SELLER

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

Section 11.01. **Consents and Approvals**. Receipt of all required material, non-governmental third-party consents and any other approvals necessary to consummate the transactions contemplated by this Agreement and all consents, waivers, authorizations and approvals of any Governmental Authority (including without limitation the IURC) or any third party necessary to permit the consummation of the transactions contemplated by this Agreement shall have been duly obtained in form and content reasonably satisfactory to Seller in its sole discretion and shall be final and non-appealable and in full force and effect on the Closing Date;

Section 11.02. **Representations and Warranties of Purchaser**. All representations and warranties made by Purchaser in this Agreement shall be true and correct in all material respects on and as of the Closing Date as if made by Purchaser on and as of that date, and Seller shall have received a certificate to that effect from Purchaser dated as of the Closing Date;

Section 11.03. **No Injunctions**. Neither of Seller nor Purchaser shall be subject to any injunction, preliminary restraining order or other similar decree of a court of competent jurisdiction prohibiting the consummation of the transactions contemplated by this Agreement;

Section 11.04. **Legal Opinions**. Appropriate legal opinions, closing instruments, certificates and other documentation to Seller's satisfaction shall have been executed and delivered by Purchaser and Purchaser's legal counsel, as applicable;

Section 11.05. **Performance of the Obligations of Purchaser**. Purchaser shall have performed in all material respects all obligations required under this Agreement to be performed

by Purchaser on or before the Closing Date, and Seller shall have received a certificate to that effect from Purchaser dated as of the Closing Date;

Section 11.06. **Bond Debt Defeasance/Pay Off.** Seller shall have obtained all necessary approvals and commitments to defease or pay off all outstanding Bond Debt to Seller's satisfaction; and

Section 11.07. **Deliveries by Purchaser.** Purchaser shall have made delivery to Seller of the documents and items specified in Section 13.03 herein; and

Section 11.08. **Performance of the Obligations of Purchaser.** Purchaser shall have performed in all material respects all obligations required under this Agreement to be performed by Purchaser on or before the Closing Date, and Seller shall have received a certificate to that effect from Purchaser dated the Closing Date.

Section 11.09. **Simultaneous Closing.** Sellers shall be satisfied that Purchaser has satisfied all conditions precedent with respect to that certain Asset Purchase Agreement by and between the City and Purchaser's Affiliate, Citizens Water of Westfield, LLC, dated as of the Effective Date ("Water Purchase Agreement") and that the transactions contemplated by the Water Purchase Agreement have closed simultaneously with the transactions contemplated by this Agreement.

ARTICLE XII.
CONDITIONS PRECEDENT TO OBLIGATIONS OF PURCHASER

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

Section 12.01. **Consents and Approvals**. Receipt of all required material, non-governmental third-party consents and any other approvals necessary or advisable to consummate the transactions contemplated by this Agreement and all consents, waivers, authorizations and approvals of any Governmental Authority or any third party necessary to permit the consummation of the transactions contemplated by this Agreement shall have been duly obtained in form and content satisfactory to Purchaser in its reasonable discretion and shall be final and non-appealable and in full force and effect on the Closing Date, including without limitation, resolutions of the Purchaser's Board approving the transactions described herein;

Section 12.02. **Representations and Warranties of Seller**. All representations and warranties made by Seller in this Agreement shall be true and correct in all material respects on and as of the Closing Date as if made by Seller on and as of that date, and Purchaser shall have received a certificate to that effect from Seller dated as of the Closing Date;

Section 12.03. **Due Diligence**. Purchaser shall have completed its due diligence review and shall have found the results reasonably satisfactory;

Section 12.04. **Financing.** Purchaser shall have secured financing necessary to complete the transactions described in this Agreement, on terms acceptable to Purchaser in its sole discretion.

Section 12.05. **No Injunctions**. Neither of Seller nor Purchaser shall be subject to any injunction, preliminary restraining order or other similar decree of a court of competent jurisdiction prohibiting the consummation of the transactions contemplated by this Agreement;

Section 12.06. **No Material Adverse Change**. There shall not have occurred any event or condition which gives rise to a Material Adverse Effect with respect to the Acquired Assets or the System;

Section 12.07. **Legal Opinions**. Appropriate legal opinions, closing instruments, certificates and other documentation to Purchaser's satisfaction shall have been executed and delivered by Seller and Seller's legal counsel, as applicable;

Section 12.08. **Deliveries by Seller**. Seller shall have made delivery to Purchaser of the documents and items specified in Section 13.02 herein;

Section 12.09. **Performance of the Obligations of Seller**. Seller shall have performed in all material respects all obligations required under this Agreement to be performed by Seller on or before the Closing Date, and Purchaser shall have received a certificate to that effect from Seller dated as of the Closing Date;

Section 12.10. **IURC Approval of Purchaser Petition**. IURC approval of Purchaser's petition (submitted at Purchaser's expense, excluding Seller's expenses in connection with such petition and proceedings) in a final non-appealable order that Purchaser determines in its reasonable discretion, does not contain findings, terms or conditions that materially, adversely impact valuation or Purchaser's ability to consummate the transaction or operate the System. An acceptable IURC order must include without limitation, the following:

(a) approval of the acquisition of the System by Purchaser, including without limitation approval of all necessary consents, licenses, permits, certificates and franchises to provide utility service through the System following the Closing, and a finding that the acquisition is reasonable and in the public interest;

(b) approval of accounting and rate base treatment of Utility Plant identified on Schedule 12.10(b) as of the dates indicated and in a manner consistent with that set forth in Schedule 12.10(b);

(c) to the extent determined by Purchaser to be necessary or desirable, approval of Purchaser's assumption of Assumed Liabilities and issuance of debt and equity, in the manner determined by Purchaser;

(d) determination of rates and charges consistent with Schedules 7.05 and 7.07;

(e) to the extent determined by Purchaser to be necessary or desirable, approval of any operating and other affiliate agreements; and

(f) approval of Purchaser's proposed depreciation rates as set forth on Schedule 12.10(f).

Section 12.11. **Satisfaction of Seller's Bonds and Notes**. Evidence to Purchaser's satisfaction in its reasonable discretion of the payment, release, defeasance and/or redemption of Seller's Bonds and Notes (the "Bond Payoff").

Section 12.12. **Environmental Approvals**. The receipt of copies of any EPA and IDEM applications, notifications or requests to transfer Environmental Permits, as set forth in Schedule 12.12, timely submitted in the form required by EPA or IDEM and necessary to consummate the transactions contemplated by this Agreement and the receipt of any EPA or IDEM approvals or consents necessary to consummate the transaction in form and content satisfactory to Purchaser in its reasonable discretion, and without terms or conditions not included in such previous Environmental Permits that materially, adversely impact Purchaser's ability to consummate the transaction or which otherwise have a Material Adverse Effect.

Section 12.13. **Simultaneous Closing**. Purchaser shall be satisfied that the City has satisfied all conditions precedent with respect to the Water Purchase Agreement and that the transactions contemplated by the Water Purchase Agreement have closed simultaneously with the transactions contemplated by this Agreement.

ARTICLE XIII.
CLOSING

Section 13.01. **Closing Date**. The Closing shall take place at the offices of Faegre Baker Daniels, at 300 N. Meridian Street, Indianapolis, IN 46204, at 10:00 a.m. eastern standard time on the earliest agreed upon date after the date upon which all the conditions precedent to Closing described in this Agreement have been fulfilled or waived and Purchaser and Seller receive the last of the required consents, waivers, authorizations and approvals from the Governmental Authorities, in each case, for the transactions contemplated by this Agreement, or at such other place and time, or on such other date, as may be mutually agreed to by the Parties (the "Closing Date"). The Closing shall be effective at 12:01 a.m., Indianapolis time, on the Closing Date (the "Closing Effective Time").

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

(a) A Quitclaim Deed conveying to Purchaser all of Seller's rights, title and interest in and to the Real Property;

(b) A Bill of Sale transferring all of the Acquired Assets comprising personal property;

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

(d) A duly executed counterpart to an Assignment and Assumption Agreement with respect to the Assumed Liabilities and the Occupancy Agreements (the "Assignment and Assumption Agreement");

(e) A duly executed counterpart to the Escrow Agreement;

(f) A duly executed counterpart to the Transition Services Agreement;

(g) A duly executed counterpart to the Billing Services Agreement;

(h) A duly executed counterpart to the Public Works Building Lease;

(i) Copies of each consent, waiver, authorization and approval required pursuant to Section 4.04 of this Agreement;

(j) The consents or approvals required for all of the Assigned Contracts, Intellectual Property and Licenses and Permits, to the extent required hereunder;

(k) Title certificates to any motor vehicles included in the Acquired Assets, duly executed by Seller (together with any transfer forms necessary to transfer title to such vehicles);

(l) All Related Agreements, duly executed by Seller;

(m) An opinion letter of counsel for Seller, in a form mutually agreed to prior to Closing;

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

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

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

(p) Evidence of Seller's submission of the required applications, notifications, or requests to transfer to EPA and IDEM as contemplated by Section 12.12;

(q) Copies of any Bond Payoff;

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

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

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

(b) An opinion letter of counsel for Purchaser, in a form mutually agreed to prior to Closing;

(c) All Related Agreements, duly executed by Purchaser;

(d) A duly executed counterpart to the Escrow Agreement;

(e) A duly executed counterpart to the Transition Services Agreement;

(f) A duly executed counterpart to the Billing Services Agreement;

(g) A duly executed counterpart to the Public Works Building Lease;

(h) An opinion letter of counsel for Purchaser, in a form mutually agreed to prior to Closing;

(i) Certificates of Purchaser pursuant to Section 11.02 of this Agreement; and

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

ARTICLE XIV.
TERMINATION

Section 14.01. **Events of Termination**. This Agreement may, by notice given in the manner hereinafter provided, be terminated and abandoned at any time prior to completion of the Closing:

(a) by Seller if there has been a material misrepresentation or a material default or breach by Purchaser with respect to Purchaser's representations and warranties in Article V of this Agreement or the due and timely performance of any of the material covenants or agreements of Purchaser contained in this Agreement, and in the case of a covenant or agreement default or breach, such default or breach shall not have been cured within ninety (90) days after receipt by Purchaser of notice specifying particularly such default or breach;

(b) by Purchaser if there has been a material misrepresentation or a material default or breach by Seller with respect to Seller's representations and warranties in Article IV of this Agreement or the due and timely performance of any of the material covenants and agreements of Seller contained in this Agreement, and in the case of a covenant or agreement default or breach, such default or breach shall not have been cured within ninety (90) days after receipt by Seller of notice specifying particularly such default or breach;

(c) by Purchaser if, in the judgment of Purchaser, a Material Adverse Effect has occurred since the Effective Date and the effect of such Material Adverse Effect has not been cured by Seller within ninety (90) days after receipt by Seller of notice specifying particularly such Material Adverse Effect;

(d) by Purchaser if, prior to the Closing Date, Purchaser is not satisfied with its business, financial, legal, environmental, regulatory and similar due diligence to Purchaser's satisfaction;

(e) by Seller or Purchaser at any time after the Outside Date, if the Closing has not occurred and the Party seeking to terminate this Agreement is not in any material respect in breach or default of any provisions of this Agreement that has not been expressly waived in writing**;**

(f) by Seller or Purchaser if (i) any Governmental Authority (other than the City, the Council or the Department) the consent from or approval by which is a condition to the obligations of the Parties to consummate the transactions contemplated hereby shall have determined not to grant its consent or approval as contemplated by this Agreement as applicable; or (ii) any court of competent jurisdiction shall have issued an order, judgment or decree (other than a temporary restraining order) restraining, enjoining or otherwise prohibiting the transactions contemplated hereby; or

(g) by mutual agreement of Seller and Purchaser.

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

Section 14.02. **Effect of Termination**. In the event this Agreement is terminated pursuant to Section 14.01(c)-(g) of this Agreement, all obligations of the Parties shall terminate without any liability of a Party to the other Party; provided, however, that the obligations of the Parties set forth in Sections 15.01, 15.02 and 15.03 of this Agreement shall indefinitely survive the termination of this Agreement. Nothing in this Section 14.02 shall be deemed to release either Purchaser or Seller from any liability for any willful breach by such Party of the terms of this Agreement.

ARTICLE XV.
MISCELLANEOUS

Section 15.01. **Confidentiality**. Except as and to the extent required by law (including but not limited to the Indiana access to public record law at IND. CODE § 5-14-3) or pursuant to an order of a court of competent jurisdiction, no Party hereto shall, directly or indirectly, disclose or use (and no party shall permit its representatives to disclose or use) any Confidential Information (as defined below) with respect to any other Party furnished, or to be furnished, by such other Party hereto or its shareholders, directors, officers, agents, or representatives to any other Party hereto or its employees, directors, officers, agents or representatives in connection herewith at any time or in any manner other than in connection with the completion of the transactions contemplated by this Agreement and related transactions. For purposes of this paragraph, the term "Confidential Information" means any information about Purchaser, Seller or the System related to the transactions contemplated by this Agreement; provided, however, that such term does not include information which the receiving Party can demonstrate (a) is generally available to or known by the public other than as a result of improper disclosure by the receiving Party; (b) is obtained by the receiving Party from a source other than the disclosing

Party, provided that such source was not bound by a duty of confidentiality to the disclosing Party with respect to such information; or (c) is legally in the public domain.

Section 15.02. **Public Announcements**. Subject to applicable law, any public announcement relating to the transactions contemplated by this Agreement will be mutually agreed upon and jointly made by the Parties.

Section 15.03. **Expenses; Brokers**.

(a) Purchaser and Seller shall be responsible for and bear all of their respective costs and expenses incurred in connection with this Agreement, including, without limitation, any legal, accounting or other representative or advisor costs and expenses.

(b) Each Party will be responsible for any fees or expenses of any financial advisor, broker or finder retained by such Party payable upon consummation of the transactions contemplated by this Agreement.

Section 15.04. **Utilities Proration**. Purchaser shall be solely responsible for all utility charges with respect to the System on and after the Closing Date. Seller shall use commercially reasonable efforts to have meters for electricity, telephone, gas and water read as of the close of business on the day before the Closing Date or the opening of business on the Closing Date and for bills to be rendered to Seller based upon such readings. To the extent such meter readings are not used as the basis for calculating all such charges, the electricity, telephone, gas and water utility charges shall be pro-rated as of the closing of business on the Closing Date between Seller and Purchaser (based upon the number of days in applicable pre-Closing and post-Closing periods).

Section 15.05. **Risk of Loss**. The risk of loss of or damage to any of the Acquired Assets shall be on Seller at all times prior to the Closing Effective Time. In the event of any such loss or damage, Seller shall repair or replace the lost or damaged assets as soon as practicable at its sole cost and expense. Seller shall have no risk of loss of or damage to the Acquired Assets on and after the Closing Effective Time.

Section 15.06. **Reasonable Efforts; Cooperation**. Subject to the terms and conditions of this Agreement, each Party will use its commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary or desirable to consummate the transactions contemplated by this Agreement and the Related Agreements. The Parties each agree to execute and deliver such other documents, certificates, agreements and other writings and to take such other actions as may be necessary or desirable in order to consummate or implement expeditiously the transactions contemplated by this Agreement and the Related Agreements, and from time to time, upon the request of the other Parties to this Agreement and without further consideration, to execute, acknowledge and deliver in proper form any further instruments, and take such other action as the other Parties may reasonably require, in order to effectively carry out the intent of this Agreement and the Related Agreements. In addition, following the Closing, the Seller shall, from time to time, upon request of Purchaser, provide reasonable cooperation, free of charge, with respect to the operation of the System, including without limitation water conservation to the extent providing such cooperation

does not impose unduly burdensome financial or operational obligations upon Seller; *provided*, Seller may provide services requested by Purchaser for a reasonable fee agreed upon by the Parties.

Section 15.07. **Notices**. All notices, requests, demands and other communications that are required or may be given pursuant to the terms of this Agreement or any of the Related Agreements shall be in writing, and delivery shall be deemed sufficient in all respects and to have been duly given as follows: (a) on the actual date of service if delivered personally; (b) at the time of receipt of confirmation by the transmitting party if by facsimile transmission; (c) at the time of receipt if given by electronic mail, provided that a Party sending notice by electronic delivery shall bear the burden of authentication and of proving transmittal, receipt and time of receipt; (d) on the third day after mailing if mailed by first class mail return receipt requested, postage prepaid and properly addressed as set forth in this Section 15.07; or (e) on the day after delivery to a nationally recognized overnight courier service during its business hours or the Express Mail service maintained by the United States Postal Service during its business hours for overnight delivery against receipt, and properly addressed as set forth in this Section:

If to Seller, to:

City of Westfield
Office of the Mayor
130 Penn Street
Westfield, IN 46074
Attention: Andy Cook, Mayor of the City

with copies to (which copy alone shall not constitute notice for the purposes of this Agreement):

Faegre Baker Daniels LLP
202 South Michigan Street, Suite 1400
South Bend, IN 46601-2020
Attention: Richard L. Hill

Krieg Devault
12800 North Meridian Street, Suite 300
Carmel, IN 46032-9422
Attention: Brian J. Zaiger

If to Purchaser, to:

Citizens Water of Westfield, LLC
2020 North Meridian Street
Indianapolis, IN 46202-1393
Attention: Aaron D. Johnson

with a copy to (which copy alone shall not constitute notice for the purposes of this Agreement):

Ice Miller LLP
One American Square, Suite 2900
Indianapolis, IN 46282
Attention: Richard J. Thrapp

Any Party may change its address and preferred recipient or other contact information for notice by giving notice to each other Party in accordance with the terms of this Section 15.07. In no event will delivery to a copied Person alone constitute delivery to the Party represented by such copied Person.

Section 15.08. **Headings**. The article, Section and paragraph headings in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

Section 15.09. **Construction**.

(a) The Parties have participated jointly in the negotiation and drafting of this Agreement, and, in the event of an ambiguity or a question of intent or a need for interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

(b) Except as otherwise specifically provided in this Agreement (such as by "sole," "absolute discretion," "complete discretion," or words of similar import), if any provision of this Agreement requires or provides for the consent, waiver or approval of a Party, such consent, waiver and/or approval shall not be unreasonably withheld, conditioned or delayed.

(c) The Parties intend that each representation, warranty and covenant herein shall have independent significance. If any Party has breached any representation, warranty or covenant contained herein in any respect, the fact that there exists another representation, warranty, or covenant relating to the same subject matter (regardless of the relative levels of specificity) which the Party has not breached shall not detract from or mitigate the fact that the Party is in breach of the first representation, warranty or covenant, as the case may be.

(d) Words of any gender used in this Agreement shall be held and construed to include any other gender; words in the singular shall be held to include the plural; and words in the plural shall be held to include the singular; unless and only to the extent the context indicates otherwise.

(e) Reference to any Law means such Law as amended, modified, codified, replaced or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder, and reference to any Section or other provision of any Law means that provision of such Law from time to time in effect and constituting the substantive amendment, modification, codification, replacement or reenactment of such Section or other provision.

(f) The word "including" means "including, without limitation."

(g) References to documents, instruments or agreements shall be deemed to refer as well to all addenda, appendices, exhibits, schedules or amendments thereto.

Section 15.10. **Severability**. If any term, provision, covenant or restriction contained in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions contained in this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

Section 15.11. **Entire Agreement**. This Agreement and the Related Agreements represent the entire agreement among the Parties with respect to the subject matter hereof thereof and supersede all prior or contemporaneous written or oral agreements or understandings of any kind among the Parties hereto and thereto with respect to the subject matter hereof and thereof. All Exhibits and Schedules hereto are expressly made a part of this Agreement as fully as though completely set forth herein.

Section 15.12. **Amendments; Waivers**. This Agreement may be amended or modified, and any of the terms, covenants, representations, warranties or conditions hereof may be waived, only by a written instrument executed by the Parties hereto, or in the case of a waiver, by the Party waiving compliance. Any waiver by any Party of any condition, or of the breach of any provision, term, covenant, representation or warranty contained in this Agreement, in any one or more instances, shall not be deemed to be or construed as a further or continuing waiver of any condition or of the breach of any other provision, term, covenant, representation or warranty of this Agreement.

Section 15.13. **Parties in Interest**. Nothing in this Agreement is intended to confer any rights, remedies or obligations under or by reason of this Agreement on any Person other than Seller and Purchaser and their respective Affiliates, successors and permitted assigns. For the avoidance of doubt, the Parties intend that only Seller and Purchaser shall have any rights, remedies or obligations to each other under this Agreement. In no event shall any Affiliate of Seller or Purchaser have any right, remedy or obligation under this Agreement or any Related Agreement unless otherwise expressly set forth herein.

Section 15.14. **Successors and Assigns**. No Party hereto shall assign or delegate this Agreement or any rights or obligations hereunder without the prior written consent of the other Party hereto, and any attempted assignment or delegation without prior written consent shall be void and of no force or effect. This Agreement shall inure to the benefit of and shall be binding upon the successors and permitted assigns of the Parties hereto.

Section 15.15. **Governing Law; Jurisdiction**. This Agreement shall be construed and enforced in accordance with, and governed by, the laws of the State of Indiana (without giving effect to the principles of conflicts of laws thereof). Subject to Section 8.02, the Parties hereto irrevocably agree and consent to the jurisdiction of the courts of the State of Indiana and the federal courts of the United States, sitting in Indianapolis, Indiana, for the adjudication of any matters arising under or in connection with this Agreement. Any action initiated in court shall be filed and litigated (including all discovery proceedings) exclusively in a state or federal court

located in Hamilton County or Marion County, Indiana, as applicable, and all objections as to personal jurisdiction and venue are waived.

Section 15.16. **Counterparts**. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall together constitute the same instrument.

[THIS PAGE INTENTIONALLY LEFT BLANK;
SIGNATURES NEXT PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed, or caused to be executed by their duly authorized representatives, this Agreement as of the date first above written.

"SELLER"

CITY OF WESTFIELD

By: _____

Printed: _____

Its: _____

"PURCHASER"

CITIZENS WATER OF WESTFIELD, LLC

By: _____

Printed: _____

Its: _____

THE CITY OF WESTFIELD DEPARTMENT OF PUBLIC WORKS ACTING BY AND THROUGH THE PUBLIC WORKS BOARD

By: _____

Printed: _____

Its: _____