

**ASSET PURCHASE AGREEMENT**  
**BY AND BETWEEN**  
**UNION PUBLIC SERVICE DISTRICT**  
**AND**  
**WEST VIRGINIA-AMERICAN WATER COMPANY**

**NOVEMBER \_\_, 2023**

## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE Agreement (“**Agreement**”), dated as of the \_\_\_ day of [November], 2023 (the “**Effective Date**”) by and between the Union Public Service District, a public utility organized and existing under the laws of the State of West Virginia (“**Union PSD**” or the “**Seller**”) and West Virginia-American Water Company, a corporation organized and existing under the laws of the State of West Virginia (“**WVAWC**”). In addition to the capitalized terms defined elsewhere in this Agreement, capitalized terms as used in this Agreement have the meanings set forth in **Appendix 1** unless otherwise specified herein.

### RECITALS

A. Seller owns, maintains and operates a Class A sanitary sewer collection, transmission, and treatment system in Kanawha County, West Virginia, identified with the West Virginia Department of Environmental Protection (“**DEP**”) National Pollutant Discharge Elimination System (“**NPDES**”) Permit No. WV0037486 (“**NPDES Permit**”), which provides wastewater service to approximately 5,500 residential, commercial, industrial, and public authority customers (the “**Wastewater System**” or “**System**”).

B. WVAWC is a regulated public utility that furnishes water and wastewater services to the public in various counties throughout West Virginia, as reflected in WVAWC’s duly filed and effective tariffs, as may be amended from time to time upon application by the company or as ordered by the West Virginia Public Service Commission (“**Tariff**”).

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

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

### **ARTICLE 1**

#### THE TRANSACTION

1.1 Sale and Purchase of Assets. Subject to the terms, representations and conditions set forth in this Agreement, WVAWC shall purchase from Seller, and Seller shall sell, assign, transfer, grant, convey and deliver to WVAWC at Closing, the Assets. The Assets shall be sold free and clear of all mortgages, liens, pledges, security interests, charges, claims, restrictions, and encumbrances of any and all nature (collectively, the “**Encumbrances**”).

## 1.2 Assets Further Defined.

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

- (a) the Assigned Contracts;
- (b) all interests in all real estate (excepting streets) and the System owed by the Seller including the property necessary to operate these systems such as pipes, pipelines, treatment facilities, odor control stations, pumping stations, lift stations, holding tanks, storage tanks, plants, structures, improvements, fixtures, excess treatment capacity, structures, improvements, fixtures, rights-of-way, rights, uses, franchises, licenses and easements owned by Seller and relating to the System, or in which Seller has an interest, and all hereditaments, tenements and appurtenances belonging, appertaining or relating thereto;
- (c) all machinery, equipment, tools, keys and locks, leasehold improvements, goods, and other tangible personal property relating to the System owned by Seller, or in which Seller has an interest;
- (d) all rights of Seller under any written or oral contract, easement, license, agreement, lease, plan, instrument, registration, permit, certificate, or other authorization or approval of any nature, or other document, commitment, arrangement, undertaking, practice, or authorization, relating to the System;
- (e) all rights and choices in action of Seller arising out of occurrences before or after the Closing relating to the Assets, including any rights of Seller under any warranties or insurance claims related to the Assets; and
- (f) all information, files, records, data, plans, contracts, and recorded knowledge relating to the Assets, including customer and supplier lists and property records, related to the foregoing.

## 1.3 Retained Liabilities.

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

Assigned Contracts arising out of or relating to a breach or other circumstances that occurred on or prior to the Closing Date).

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

- (a) all Contracts other than the Assigned Contracts;
- (b) the corporate seals, organizational documents, minute books, Tax Returns, books of account or other records having to do with the organization of the Seller, all employee-related or employee benefit-related files or records, other than personnel files of Transferred Personnel, and any other books and records which the Seller is prohibited from disclosing or transferring to WVAWC under applicable Law and is required by applicable Law to retain;
- (c) the Equipment and Machinery specifically set forth on **Schedule 1.4(c)** (the “**Retained Equipment and Machinery**”);
- (d) any and all connecting facilities (customer’s sewer laterals) from Seller’s wastewater lines, mains or collection facilities at the curb-line or edge-of-road that are within a customer’s property (the “**Customer Sewer Laterals**”);
- (e) any and all piping and fixtures internal to each individual customer’s structure (whether residential, commercial, industrial, or other types);
- (f) any and all stormwater system facilities located on, in, within, or under the real property, including easements, that is a part of the Assets and any and all storm water system facilities that are connected to the Wastewater System and located within the public right-of-way;
- (g) any MS4 NPDES Permits and the MS4 System Real Property, including the MS4 System Real Property listed on **Schedule 1.4(g)**;
- (h) Seller’s cash on hand on the date of Closing and Seller’s account receivables related to the System for services rendered through the close of business on the Closing Date;
- (i) all rights of Seller under this Agreement and related Bill of Sale and Assignment of Contracts Agreement as it pertains to the transfer and sale herein contemplated; and
- (j) the specific assets, properties and rights of Seller set forth on **Schedule 1.4**.

1.3 Accounts Receivable. Accounts receivable for wastewater services related to the System rendered through the close of business on the Closing Date shall be an Excluded Assets as per **Schedule 1.4**, and accounts receivable for wastewater services related to the System rendered thereafter shall belong to WVAWC.

## ARTICLE 2

### PURCHASE PRICE

2.2 Purchase Price for the Assets. Subject to the terms and conditions of this Agreement, the purchase price (the “**Purchase Price**”) for the Assets shall be Twenty-Four Million One Hundred and Twenty Thousand Dollars (\$24,120,000). The Purchase Price shall be payable directly to the Seller on the Closing Date by wire transfer.

2.3 Purchase Price Adjustments. Any payments made in advance by Seller’s wastewater customers for post-Closing service will be apportioned at Closing. At Closing, WVAWC shall receive a credit toward the Purchase Price in **Section 2.2** for the prorated amount of such advance payments for the service periods of such customer payments that are intended to follow Closing.

2.4 Payment of Outstanding Debt. At Closing, the proceeds of the Purchase Price shall be first used to pay and discharge in full the total amount of all outstanding indebtedness of Seller as set forth in **Schedule 2.4** (the “**Outstanding Indebtedness**”) and Seller shall take all actions necessary to defease any and all bonds or other instruments related to such Outstanding Indebtedness.

## ARTICLE 3

### THE CLOSING

3.2 Closing. Subject to the terms and conditions of this Agreement, the closing of the sale and purchase of the Assets (“**Closing**”) shall take place at the offices of WVAWC or such other mutually agreed upon location, commencing within thirty (30) days following the date on which all of the conditions set forth in **ARTICLE 6** and **ARTICLE 7** of this Agreement have been met (or waived). The date of the Closing is referred to herein as the “**Closing Date**”.

3.3 Deliveries and Proceedings at Closing. Subject to the terms and conditions of this Agreement, at the Closing, Seller shall deliver or cause to be delivered to WVAWC:

- (i) Bills of Sale and Assignment duly executed by Seller as necessary to transfer all of the Assets to WVAWC, including an assignment of contracts agreement covering the assignment and assumption of the Assigned Contracts in substantially the form of **Exhibit A** (“**Assignment of Contracts Agreement**”);
- (ii) A copy of each permit, license, easement, land-right, and other necessary authority for the operation of the System and the Assets, in each case validly issued in the name of Seller, and showing in full force and effect;
- (iii) The consents to transfer all Assigned Contracts, leases, intellectual property, Permits, and other Assets requiring such consents to be transferred to WVAWC;
- (iv) All written consents (of third parties or otherwise) and governmental approvals necessary to ensure that WVAWC will continue to have the same full rights with respect to the Assets that Seller had immediately prior to the Closing;

- (v) Evidence satisfactory to WVAWC of the transfer of all utilities with respect to the System from Seller to WVAWC in accordance with **Section 6.2(b)** below;
- (vi) One or more general warranty deeds of conveyance of the real estate and easements to WVAWC, duly executed and acknowledged by Seller and in recordable form, each sufficient to convey the title and rights of access to the Assets;
- (vii) Such other deeds, bills of sale, assignments, certificates of title, documents and other instruments of transfer and conveyance as may reasonably be requested by WVAWC, each in form and substance reasonably satisfactory to WVAWC;
- (viii) Certified copies of all ordinances and all resolutions duly adopted by Seller authorizing the execution, delivery and performance of this Agreement and all related agreements and the transactions contemplated hereby and thereby;
- (ix) As applicable, a payoff letter from each lender (whether institutional or otherwise) from which Seller has incurred indebtedness or borrowed money that is outstanding, and a release of all Encumbrances relating to the Assets (along with Form UCC3 Financing Statements effectuating a termination of all outstanding financing statements covering the Assets) executed, filed and/or recorded by the holder of or parties to each such Encumbrance, if any, in each case in substance and form reasonably satisfactory to WVAWC and its counsel;
- (x) The certificates and other documents required to be delivered by Seller under this Agreement as set forth in **Schedule 3.2(a)** hereof;
- (xi) A copy of the Resolution adopting the Closing Base Rate, certified by a proper representative of Seller;
- (xii) The Opinion of Seller's Counsel as set forth in **Exhibit C** hereof;
- (xiii) The Escrow Agreement, duly executed by Seller and Escrow Agent; and
- (xiv) All such other agreements, documents and instruments of conveyance required by this Agreement or as shall, in the reasonable opinion of WVAWC and its counsel, be necessary to transfer the Assets to WVAWC in accordance with this Agreement, and where necessary, in recordable form.

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

- (i) The Purchase Price;
- (ii) Certified copies of the resolutions duly adopted by WVAWC's Board of Directors authorizing the execution, delivery and performance of this Agreement (the "**Resolutions**"); and

- (iii) The certificates and other documents required to be delivered by WVAWC under this Agreement as set forth in **Schedule 3.2(b)** hereof.

## ARTICLE 4

### **REPRESENTATIONS AND WARRANTIES OF SELLER**

4.2 Seller's Representations. Seller hereby represents and warrants to WVAWC as follows:

(a) Organization. Union PSD is a public utility of the State of West Virginia regulated by the West Virginia Public Service Commission, validly existing, solvent, and in good standing under the laws of the State of West Virginia, and the Seller has the full power and lawful authority to transfer to WVAWC its rights, title and interest in and to the Assets.

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

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

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

(e) Current Operations. Seller has all requisite power and authority and all agreements, contracts, commitments, leases, certificates, licenses, Permits, regulatory authorizations, and other

instruments required to conduct the operations of the System as it has been and is now being conducted and to own and operate the Assets.

(f) No Approvals or Violations. This Agreement does not require any further approvals of any other party, does not violate any law, ordinance, or regulation, does not conflict with any order or decree, and does not conflict with or result in a breach of any contract, lease or Permit to which Seller is a party or is otherwise bound or affected, or by which the Assets may be bound or affected. The execution and delivery of this Agreement and all related documents and agreements, and the consummation of the transactions contemplated hereby and thereby, do not violate, conflict with or result in the breach of any term, condition or provision of Seller's articles of incorporation, bylaws or other governing documents, or any instrument, contract, lease, agreement, Permit, certificate or other document to which Seller is a party or is otherwise bound or affected, or by which the Assets may be bound or affected.

(g) Accounts Receivable. All accounts receivable being retained by Seller under **Section 1.3** (whether billed or unbilled) (collectively, the "**Retained Accounts Receivable**"), are valid, genuine, and existing and arose (or will have arisen on or prior to Closing) from bona fide sales of products or services actually made in the ordinary course of business on or prior to the Closing Date. All products and services with regard to the Retained Accounts Receivable have been provided by Seller (and no further obligations exist), and no offset, agreement for deduction, free goods, discount or deferred price or quantity adjustment has been made with respect to any Retained Accounts Receivable (or with respect to WVAWC's accounts receivable for the period after Closing).

(h) Free Service; Customer List; Prepayments. Seller has not entered into any agreements or other understandings for the provision of free or otherwise subsidized or discounted services to any parties. The data contained in the customer records provided to WVAWC under **Section 6.2(i)** is true and accurate in all material respects. Seller has not received payments made in advance by any third party for future service (including service after the Closing) with regard to the System or the Assets.

(i) Seller Outstanding Indebtedness; Undisclosed Liabilities. **Schedule 2.4** contains a complete and accurate listing of all outstanding bonds, loans, or other indebtedness of Seller. Except as set forth in **Schedule 2.4** and **Schedule 4.1(j)**, there are no material liabilities or obligations of Seller, either accrued, absolute, liquidated or unliquidated, contingent or otherwise, relating to the Assets that would be required to be set forth on a balance sheet prepared under GAAP as applicable to municipal authorities, other than liabilities incurred in the ordinary course. There is no basis for any claim against Seller, the System or any of the Assets for any such liability or obligation, and there is no basis for any such liability or obligation to become the liability or obligation of WVAWC from and after the Closing. All indebtedness and liabilities, including any outstanding grants, shall be paid out of Closing, or if grants, Seller will be required to seek forgiveness of those grants (see **Section 9.1(p)**).

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



(k) Contracts. **Schedule 4.1(l)** contains a true, complete, and accurate list of all agreements (including all verbal agreements and intermunicipal agreements), contracts, leases (including any leasehold interests constituting part of the Assets as described in **Section 4.2(b)**), licenses, commitments, arrangements and instruments related to the Assets to which Seller is a party or the Assets are otherwise subject or bound, along with all amendments and addenda related thereto (collectively, the “**Contracts**”). **Schedule 4.1(l)** also identifies with an asterisk any Contract which requires consent to, or prohibits, assignment of the Contract. All Contracts are in full force and effect and are valid and enforceable in accordance with their terms, and the parties thereto are in material compliance with the provisions thereof, and there exists no event or condition which with the giving of notice or lapse of time, or both, would constitute a default thereunder. Seller has received, or will receive prior to the Closing, the written consent of each party to the Assigned Contracts designated on **Schedule 4.1(l)** as requiring consent to the assignment, or otherwise complied with Seller’s obligations under **Section 6.2(b)** hereof. Seller has delivered to WVAWC correct and complete copies of those Contracts requested by WVAWC, as well as copies of the requisite assignments for each of the Assigned Contracts which effectuates the transfer of the Assigned Contracts to WVAWC as of the Closing Date. Except as disclosed on **Schedule 4.1(l)(i)**, Seller is not a party to any contract or subject to any arrangement for future payment of refunds under any extension agreement, customer deposit agreement or similar arrangement (including any prepaid tap fee) with respect to the Assets or the System.

(l) Adequacy of Property Rights; Real Property and Easements.

(i) Seller possesses all property rights necessary to operate the Assets, and Seller owns and has good and marketable title to the real property, free and clear of all options, leases, covenants, conditions, easements, agreements, claims, and other encumbrances of every kind, and there exists no restriction on the use or transfer of such property. As it relates to the Assets, **Schedule 4.1(m)(i)** contains a complete and accurate list of the real property owned by Seller and a complete and accurate list of each lease of real property to which Seller is a party (as the lessor, lessee or otherwise). Seller’s current use and occupancy of the real property and its operation of the System thereon does not violate any easement, covenant, condition, restriction, or similar provision in any instrument of record or other unrecorded agreement affecting such real property. All leases, licenses, rights of way, and easements related in any manner to the assets and properties comprising the Assets and all other instruments, documents, and agreements pursuant to which Seller has obtained the right to use any real property in connection with the Assets are in good standing, valid and effective in accordance with their respective terms, and with respect thereto, there is no existing material default or event that could constitute a material default. The real property is properly classified under applicable zoning laws, ordinances, and regulations for the current and continued operation of the System on the real property. No proceeding that could adversely affect the zoning classification of the real property is pending or threatened. At and after the Closing, WVAWC shall have the right to maintain and use the real property, including the space, facilities, and appurtenances outside of building lines, whether on, over or under the ground, and to conduct such activities thereon as maintained, used, or conducted by Seller on the date hereof, and such right is not subject to revocation. Seller has made available to WVAWC copies of all title reports, surveys, title policies and appraisals relating to the real property.

- (ii) Set forth on **Schedule 4.1(m)(ii)** hereto is a true, correct, and complete list of all easements and rights of way relating to the real property and the Assets. All of such easements and rights of way are valid and will be transferred to WVAWC and remain in full force as of the Closing and thereafter. Seller has not received any notice of violation of any easements, covenants, restrictions or similar instruments and there is no basis for the issuance of any such notice or the taking of any action for such violation. At and after the Closing, WVAWC shall have all rights, easements and agreements necessary for the use and maintenance of sewer or other utility pipelines, poles, wires, conduits or other like facilities, and appurtenances thereto, over, across and under the real property.
- (iii) There are no outstanding options, rights of first refusal or rights of first offer to purchase any of the real property or any portion thereof or interest therein, except as otherwise set forth on **Schedule 4.1(m)(iii)**.
- (iv) All improvements located on, and the use presently being made of, the real property comply with all applicable zoning and building codes, ordinances and regulations and all applicable fire, environmental, occupational safety and health standards and similar standards established by Applicable Law, and the same use thereof by WVAWC following Closing will not result in any violation of any such code, ordinance, regulation or standard. No improvements encroach on any land that is not included in the real property or on any easements affecting such real property, or violate any building lines or set-back lines, and there are no encroachments onto the real property, or any portion thereof, that would interfere with the use or occupancy of such real property or the continued operation of the System as currently conducted.
- (v) There is no unpaid tax, levy, or assessment against the real property (except for encumbrances relating to assessments not yet due and payable), nor is there pending or threatened any condemnation proceeding against the real property or any portion thereof. **Schedule 4.1(m)(v)** contains a list of all impending taxes, levies and assessments that are due and owing after the Closing Date.
- (vi) Except as set forth in **Schedule 4.1(m)(vi)**, there is no condition affecting the real property or the improvements located thereon that requires repair or correction to restore the same to reasonable operating condition.
- (vii) Notwithstanding the foregoing, if and to the extent Seller or WVAWC determines that Seller is missing or unable to locate the recording information for any easements or rights of way relating to the Assets and is unable to locate or obtain a new easement for the same (each a “**Missing Easement**”, and collectively, the “**Missing Easements**”), Seller covenants and agrees that it shall use its commercially reasonable and diligent efforts to obtain all of the Missing Easements as promptly as reasonably possible after the Closing. For the avoidance of doubt, Seller acknowledges and agrees that it will establish and maintain the Missing Easement Escrow for any Missing Easements that have not been obtained prior to Closing on the terms and conditions set forth in **Section 10.5** of this Agreement.

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

(n) Tax Matters.

- (i) Seller has timely and properly filed all tax returns that it was required to file. All such tax returns were complete and correct in all material respects and were prepared in compliance with all Applicable Laws. All taxes owed by Seller have been paid. Seller is not the beneficiary of any extensions of time within which to file any tax return. There are no Encumbrances on any of the Assets that arose in connection with any failure (or alleged failure) to pay any tax.
- (ii) Seller has withheld and paid all taxes required to have been withheld and paid in connection with any amounts paid or owing to any employee, independent contractor, supplier, vendor, creditor, or other third party. Forms W-2 and 1099 required with respect thereto have been properly completed and timely filed.
- (iii) There are no audits or examinations of any tax returns pending or threatened that relate to Seller's operation of the System or the Assets. Seller is not a party to any action or proceeding by any Governmental Authority for the assessment or collection of taxes relating to the operation of the System, nor has such event been asserted or threatened. There is no waiver or tolling of any statute of limitations in effect with respect to any tax returns relating to Seller's operation of the System or the Assets.

(o) No Material Adverse Conditions; Insurance. There are no facts, circumstances, or conditions existing or threatened that would have, or would be reasonably be expected to have, a material adverse effect on the condition, properties, assets, indebtedness, liabilities, commitments, operations or prospects of the System or the Assets. Seller maintains and has maintained appropriate insurance necessary for the full protection of all of the Assets, the System, and all related operations, products, and services. All such policies are in full force and effect and Seller will use commercially reasonable efforts to cause such policies to be outstanding and in full force and effect as of Closing and immediately following the execution of this Agreement and the consummation of the contemplated transactions. There

are no pending claims or proceedings arising out of, based upon or with respect to any of such policies of insurance and, to Seller's knowledge, no basis for any such claims or proceedings exists. Seller is not in default with respect to any provisions contained in any such insurance policies, and no insurance provider is in default with respect to such insurance policies.

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

(q) Adequacy of Permits. Set forth in **Schedule 4.1(r)** is a complete and correct list of all permits, licenses, registrations, approvals, and other authorizations (collectively, the "**Permits**") used by Seller in the continuing ownership, use, operation, and maintenance of the System and for the Assets. Such Permits constitute all those necessary for the continuing ownership, use, operation, and maintenance of the System and for the Assets, all such Permits are in full force and effect, and no such Permit is subject to any appeal or other administrative or judicial proceeding. No fact or circumstance exists that is reasonably likely to cause any such Permit to be revoked, suspended, or materially altered subsequent to the execution of this Agreement and the Closing Date, and neither the execution of this Agreement, nor the Closing do or will constitute or result in a default under or violation of any such Permit. Seller likewise has obtained and continues to possess all Permits required under, by or pursuant to Environmental Laws, has filed such timely and complete renewal applications as may be required prior to the Closing Date, and also has complied with all reporting and record keeping requirements under Environmental Laws. Such Permits shall be issued prior to Closing in a form and with terms and conditions that are reasonably satisfactory to WVAWC.

(r) Sanitary Sewer System / Storm Water. The Wastewater System and all wastewater collection systems which discharge into the Wastewater System constitute Sanitary Sewer Systems, and neither the Wastewater System nor any such collection systems constitute a Combined Sewer System.

(s) Environmental Matters.

(i) To the best of Seller's knowledge, there are no past or present events, conditions, circumstances, activities, practices, incidents, actions, or plans pertaining or relating to the Assets or the System that may materially impede or prevent compliance with Environmental Laws, and Seller is, and at all times has been, in full compliance with and has not been, and is not in violation of or liable under any applicable Environmental Law. Seller has no basis to expect, nor has it received any actual or threatened order, notice or other communication from any Governmental Authority or other person of any actual or potential violation or failure to comply with any Environmental Law or of any actual or threatened obligation to undertake or bear the cost of any environmental, health and safety liabilities with respect to real property or any other properties or assets (whether

real, personal or mixed) in which Seller has or has had an interest or with respect to the real property or any other real property at or to which hazardous materials were generated, manufactured, refined, transferred, imported, used or processed by Seller or any other person for whose conduct it is or may be held responsible, or from which hazardous materials have been transported, treated, stored, handled, transferred, disposed, recycled or received.

- (ii) There are no pending or threatened claims, encumbrances or other restrictions of any nature, resulting from any environmental, health and safety liabilities or arising under or pursuant to any Environmental Law with respect to or affecting Seller's real property or any other properties and assets (whether real, personal or mixed) in which Seller has or had an interest. Neither Seller nor any other person for whose conduct it is or may be held to be responsible has any material environmental, health and safety liabilities with respect to Seller's real property or with respect to any other properties and assets (whether real, personal or mixed) in which Seller (or any predecessor) has or has had an interest or at any property geologically or hydrologically adjoining the real property or any such other property or assets.
- (iii) There are no hazardous materials, except those used in connection with the ordinary course operation of the System in accordance with all Environmental Laws, present on or in the environment at the real property or at any geologically or hydrologically adjoining property, including any hazardous materials contained in barrels, above or underground storage tanks, landfills, land deposits, dumps, equipment (whether moveable or fixed) or other containers, either temporary or permanent and deposited or located in land, water, sumps or any other part of the real property or such adjoining property or incorporated into any structure therein or thereon. Neither Seller, nor any other person for whose conduct it is or may be held to be responsible has permitted or conducted, or is aware of, any hazardous activity conducted with respect to the real property or any other properties or assets (whether real, personal, or mixed) in which Seller has or has had an interest except in material compliance with all applicable Environmental Laws. There has been no release or threat of release, of any hazardous materials at or from the real property or from or by any other properties and assets (whether real, personal, or mixed) in which Seller has or has had an interest (e.g., other properties that may impact or affect the Assets or the System), or any geologically or hydrologically adjoining property, whether by Seller or any other person.
- (iv) Except as set forth in **Schedule 4.1(t)(iv)**, none of the following exists at the System or on the real property that is part of the Assets: (1) underground storage tanks; (2) asbestos-containing material in any form; (3) materials or equipment containing polychlorinated biphenyl; (4) groundwater monitoring wells; or (5) landfills, surface impoundments, or disposal areas.
- (v) Seller has delivered to WVAVC true and complete copies and results of any reports, studies, analyses, tests or monitoring possessed or initiated by Seller or its predecessors pertaining to hazardous materials or hazardous activities in, on or under the real property, or concerning compliance by Seller, its predecessors, or

any other person for whose conduct Seller is or may be held to be responsible, with Environmental Laws, said reports, studies, analyses, tests and monitoring to include without limitation, any and all Phase I environmental reports now or hereafter in the possession or control of Seller.

- (vi) Seller has been and is in compliance with all administrative and judicial orders, consent orders, decrees, consent decrees, judgments, directives and notices of violation issued by any Governmental Authority concerning or related to the Assets under or in connection with any applicable Environmental Laws.
- (vii) No wastewater discharged into the System or treated at the either of Seller's wastewater treatment plants, contains any materials that would constitute Hazardous Waste (as defined under RCRA and 40 C.F.R. Part 261), including by virtue of being mixed with Hazardous Waste or derived from the treatment of Hazardous Waste, in the absence of the exemption provided in 40 C.F.R. § 261.4(a)(1) for mixtures of domestic sewage and other wastes that passes through a sewer system to a publicly-owned treatment works.

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

## **ARTICLE 5**

### **REPRESENTATIONS AND WARRANTIES OF WVAWC**

5.2 WVAWC's Representations. WVAWC hereby represents and warrants to Seller as follows:

(a) Organization. WVAWC is a corporation duly organized, validly existing and subsisting under the laws of the State of West Virginia.

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

(c) Assigned Contracts. WVAWC has identified on **Schedule 5.1(c)** those Contracts which WVAWC has agreed to assume ("**Assigned Contracts**"), subject to receiving all necessary consents to assignment in accordance with the terms of **Section 9.2(g)**. WVAWC may update **Schedule 5.1(c)** between the date hereof and up to twenty (20) days before Closing to include any of the Contracts.

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

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

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

## ARTICLE 6

### COVENANTS

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

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

(b) Contracts and Commitments. Except normal and usual commitments for the purchase of materials and supplies consistent with past practice, no contract or commitment shall be entered into by or on behalf of Seller relating to the System or the Assets that would place an Encumbrance thereon or materially affect the operation of the System, the business or the Assets after Closing, except for those commitments approved or ratified in writing by WVAWC. Seller shall use reasonable commercial efforts to obtain, prior to Closing, the written consent of each party to the Assigned Contracts designated on **Schedule 4.1(k)** as requiring consent to the assignment. Notwithstanding any other provision of this Agreement, to the extent that any consent necessary for the assignment from Seller to WVAWC of the Assigned Contracts is not obtained, or cannot be obtained, prior to the Closing Date, Seller shall use its commercially reasonable efforts to secure an arrangement reasonably satisfactory to WVAWC intended to provide for WVAWC following the Closing all of the material benefits of Seller under such Assigned Contracts; provided that nothing in this **Section 6.2(b)** shall constitute a waiver of the condition set forth in **Section 9.2(g)**; and provided, further, that WVAWC shall not be obligated to assume, and shall not be liable under, any Assigned Contract for which Seller has not obtained all necessary consents, or otherwise secured an alternative arrangement satisfactory to WVAWC (in its sole

discretion) as provided above. Seller shall transfer all of the utilities used or necessary for the System from Seller to WVAWC effective as of the Closing Date, and Seller shall be responsible to pay all bills and fees for these utilities for the period prior to and including the Closing Date. WVAWC shall provide any necessary information reasonably required by Seller to effectuate this transfer.

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

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

(e) Supplemental Information.

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

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

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

(g) Access. Seller shall provide WVAWC and its representatives free and full access to and right to inspect, during normal business hours and upon prior written notice, all of the premises, properties, assets, records, Permits, contracts and other documents relating to the Assets and shall permit WVAWC to consult with its officers, employees and other representatives for purposes of making such investigation of the Assets as WVAWC shall desire to make, provided that no investigation shall unreasonably interfere with Seller's operation of the System.

(h) Customer List. Within thirty (30) days of execution of this Agreement, Seller shall provide WVAWC an accurate and complete listing of all bulk, wholesale, and retail customers of the



System. This customer list shall provide the customer names, account information, service addresses, billing addresses, and all other relevant billing information, such as metering and equivalent dwelling unit information. The parties will continue to work together to determine additional information that should be included on the customer list, which shall be updated prior to Closing to include such additional information. This customer list shall be true and correct as of the date such list is provided to WVAWC and shall be updated at Closing and provided to WVAWC at Closing so as to be true and correct as of the Closing Date.

(i) Industrial Pretreatment Program. Within thirty (30) days of execution of this Agreement, Seller shall provide WVAWC with (1) an accurate and complete listing of entities who are classified as Categorical Industrial Users, Significant Industrial Users, or Non-Significant Industrial Users as those terms are defined under CWA regulations (collectively, “**Regulated Industrial Users**”) that discharge wastewaters directly or indirectly into the System; (2) information concerning the nature and characteristics of wastewaters discharged by each such Regulated Industrial User; (3) an accurate and complete copy of the industrial pretreatment program regulations and procedures adopted and enforced by Seller; (4) copies of all industrial pretreatment program permits issued to any Regulated Industrial Users; and (5) records concerning the compliance of all such Regulated Industrial Users with applicable industrial pretreatment program regulations and permits.

(j) Rates. Prior to the Closing, Seller shall adopt the wastewater base rates reflected in **Schedule 6.7** (the “**Closing Base Rate**”), which adopted rates shall become effective on or before the Closing Date. Seller shall provide to WVAWC a copy of the Resolution adopting the Closing Base Rate, certified by a proper representative of Seller.

(k) Customer Advances. Prior to the Closing Date, Seller shall complete the construction of all mains and facilities for which Seller has received customer advances and return all unexpended customer advances to the appropriate depositor. Provided, however, that for projects acceptable to and approved in writing by WVAWC, Seller may pay over to WVAWC the unexpended, non-refundable customer advances, and WVAWC shall assume all of the responsibility of Seller as to those unexpired customer advances and shall be bound by the terms and conditions contained in the Extension Deposit Agreements. WVAWC shall not assume any responsibility for any unexpired customer advances received by Seller, or for any Extension Deposit Agreements to which Seller becomes a party, except as specifically agreed to in writing.

(l) Updating of Information. Between the date of this Agreement and the Closing Date, Seller will deliver revised or supplementary Schedules to this Agreement, containing accurate information as of the Closing Date, in order to enable WVAWC to confirm the accuracy of Seller’s representations and warranties and otherwise effectuate the provisions of this Agreement. The receipt by WVAWC of any revised or supplementary Schedules to this Agreement shall in no way prejudice WVAWC’s right to terminate this Agreement based upon the failure of any condition to be satisfied under **Section 9.2** hereof or seek indemnification under **Section 10.2**. Seller will promptly inform WVAWC, in writing, of the occurrence or failure of any action or event that would violate Seller’s representations and warranties under this Agreement or render them inaccurate as of the date hereof or the Closing Date or that would constitute a breach of any covenant of Seller under this Agreement or a failure of any condition to the obligations of either Seller or WVAWC under this Agreement. Each month prior to Closing, Seller will notify WVAWC regarding any changes to information previously provided to WVAWC related to the System or this Agreement.

(m) Retention of Records. Seller shall preserve any books and records relating to the System and the business that are not delivered to WVAWC hereunder for a period no less than seven (7) years after the Closing Date (or such longer period as shall be required by Applicable Law), and Seller shall make available such books and records for review and copying to WVAWC and its authorized representatives following the Closing at WVAWC's expense upon reasonable notice during normal business hours. During such period, Seller shall permit, to the extent permitted by Applicable Law and upon request of WVAWC, QVAWC and any of its agents, representatives, advisors or consultants reasonable access to all properties, books, contracts, and records of Seller related to the System and employees of or servicing the business for information related to periods up to and including the Closing.

6.3 Title Information. Within thirty (30) days following the execution of this Agreement, Seller shall deliver to WVAWC true, correct, and complete copies of all existing title policies, surveys, leases, deeds, instruments, and agreements in Seller's possession relating to title to the real estate and easements constituting part of the Assets, as well as any amendments thereto through to Closing. Thereafter, WVAWC and Seller shall conduct an abstract of such title information to determine whether Seller has sufficient real estate rights and continuous rights-of-way to permit WVAWC, upon Closing, to operate a continuous wastewater system, including lines, facilities fittings, and appurtenances necessary to operate such system, and that such rights are represented by legal instruments in appropriate form, duly recorded. Upon notification by WVAWC that such legal rights for the System are not sufficient for the operation of the System, Seller shall, at its sole expense, secure such additional legal rights as WVAWC may request.

6.4 Storm Water Facilities. Seller shall retain ownership of any and all storm water system facilities within the public right-of-way or otherwise dedicated to Seller by offer and acceptance, plan, or other action. Seller shall retain and enforce, and shall cause all municipalities or entities with collection systems that discharge into the System to adopt, maintain, and enforce, ordinances that prohibit storm water facilities from being connected to or from causing storm water infiltration into the System. Such ordinances shall be no less restrictive with regard to storm water discharges into or infiltrating the System after Closing than they were prior to Closing, to the extent permitted by law. If WVAWC identifies municipal storm water facilities connected to the System, at the direction of WVAWC, Seller or applicable municipality shall, at its expense, disconnect such storm water facilities from the System and tie them into the municipal storm water system.

6.5 Further Assurances. Each party to this Agreement shall cooperate and deliver such instruments and take such action as may be reasonably requested by the other party in order to carry out the provisions and purposes of this Agreement and the transactions contemplated hereby. After the Closing, each party shall take such other actions and execute such other documents, instruments certifications, and further assurances as Seller or WVAWC, as the case may be, may reasonably require in order to make effective the transactions contemplated hereby (including to transfer to WVAWC or to put WVAWC more fully in possession of any of the Assets).

6.6 Cooperation. Subject to the terms and conditions of this Agreement, the parties shall cooperate fully with each other and their respective counsel and accountants in connection with, and take or cause to be taken and do or cause to be done, any actions required to be taken under Applicable Law to make effective the contemplated transactions as promptly as practicable. Prior to the Closing, the parties shall proceed expeditiously and in good faith to make such filings and take such other actions as may be reasonably necessary to satisfy the conditions to Closing set forth herein. Any and all filing fees in respect of such filings shall be paid by Seller, with the exception of those fees implemented by the PSC, which

shall be paid by WVAWC. On or after the Closing Date, the parties shall, on request, cooperate with one another by furnishing any additional information, executing, and delivering any additional documents and instruments, including contract assignments not obtained prior to Closing, and doing any and all such other things as may be reasonably required by the parties or their counsel to consummate or otherwise implement the transactions contemplated by this Agreement. Seller hereby agrees to cooperate with WVAWC to ensure a proper transition of all customers with respect to billing and customer service activities, including assisting WVAWC to place all customer information in a format reasonably requested by WVAWC.

6.7 Rate Plan. Effective upon Closing, WVAWC shall (1) implement the Closing Base Rates set forth in **Schedule 6.7** (which Base Rates shall have been adopted by Seller as provided in **Section 6.2(j)**) as WVAWC's effective wastewater base rates applicable to Seller's customers, and (2) apply WVAWC's then existing miscellaneous fees and charges, rules and regulations for wastewater service as set forth in WVAWC's PSC-approved Tariff, including WVAWC's industrial pretreatment program and associated fees related thereto. Subject to PSC approval, Seller and WVAWC agree to a two-step rate implementation schedule as more fully set forth on Schedule 6.7 that anticipates Union PSD customers paying \_\_\_% of WVAWC rates at Closing and full WVAWC rates twelve (12) months from Closing (the "**Rate Plan**"). The Base Rates established in **Schedule 6.7** shall remain in place until the effective date of new rates approved by the PSC as the result of a base rate case proceeding before the PSC.

## **ARTICLE 7**

### **EMPLOYEE MATTERS**

#### 7.2 Employee Matters.

(a) Subject to the obligations of Seller under Applicable Law and WVAWC's rights and obligations set forth in this **ARTICLE 7**, WVAWC shall offer employment effective on the Closing Date, to certain active Personnel set forth in **Schedule 7.1** who are employed by Seller in operating the System as of the Closing Date and who are available to commence work on the Closing Date, subject to WVAWC's existing standard hiring policies and procedures applicable to new employees (including but not limited to, a criminal background check and drug screening and written acknowledgment of WVAWC's Code of Conduct and other employment policies, if applicable, from all Personnel), except with respect to benefits as otherwise provided in **ARTICLE 7**. **Schedule 7.1** shall not be amended after the date this Agreement is executed without the prior written consent of WVAWC. For purposes of clarity, nothing contained in this **ARTICLE 7** limits, restricts or prohibits WVAWC from interviewing the Personnel for informational purposes only in connection with the transfer of employment of the Personnel to WVAWC as provided in this **ARTICLE 7**.

(b) Subject to the obligations of Seller under Applicable Law, Transferred Personnel, if any, shall be employees-at-will of WVAWC. WVAWC shall provide each of Transferred Personnel with compensation and benefits which are substantially comparable in the aggregate to the compensation and benefits then provided to similarly situated employees of WVAWC. Nothing in this Agreement shall require WVAWC to provide any particular form or type of employee benefit program, plan, or policy to any Transferred Personnel as a result of the transaction contemplated by this Agreement.

(c) Subject to the obligations of Seller under Applicable Law, WVAWC's rights and obligations set forth in this **ARTICLE 7**, and WVAWC's applicable employee benefit plan documents, with respect to employee benefit plans maintained by WVAWC for the benefit of its employees (i.e., paid vacation leave, WVAWC's 401k Savings Plan), effective as of the Closing, WVAWC shall recognize the Transferred Personnel's length of service with Seller as if such service were with WVAWC for eligibility and vesting under WVAWC's employee benefit plans and programs (except where doing so would result in a duplication of benefits). WVAWC's pension plans and retiree medical plans are excluded from the foregoing sentence.

(d) This **ARTICLE 7** shall be binding upon and inure solely to the benefit of each of the parties to this Agreement, and nothing in this **ARTICLE 7**, express or implied, shall confer upon any other person any rights or remedies of any nature whatsoever under or by reason of this **ARTICLE 7**. The parties acknowledge and agree that the terms set forth in this **ARTICLE 7** shall not create any right in any Transferred Personnel or any other person to any continued employment with WVAWC or compensation or benefits of any nature or kind whatsoever, and shall not be deemed to restrict WVAWC in the exercise of its independent business judgment in establishing or modifying any terms or conditions of the employment of the Transferred Personnel. Nothing contained in this **ARTICLE 7** shall constitute an amendment of, or an undertaking to amend, any employee benefit plan, program or arrangement maintained by WVAWC or is intended to prevent WVAWC from amending or terminating any such employee benefit plan, program or arrangement in accordance with its terms.

(e) Subject to Applicable Law and WVAWC's rights and obligations set forth in this **ARTICLE 7**, it is expressly understood that WVAWC will not acquire any asset, or assume any liability or obligation in connection with the transactions contemplated by this Agreement relating to any of Seller's Plans, Seller's Benefit Obligations, or any employment agreement. Seller shall be solely responsible for any liability, funding obligation, claim or expense arising from Seller's Plans, Seller's Benefit Obligations, or any employment agreements, both prior to and after the Closing Date.

(f) No later than the Closing Date, Seller shall transfer all records pertaining to the employment of the Transferred Personnel to WVAWC including all Personnel and human resources files and records.

## **ARTICLE 8**

### **WEST VIRGINIA PUBLIC SERVICE COMMISSION APPROVAL**

8.2 West Virginia PSC Approval. The obligation of WVAWC to consummate the transactions contemplated by this Agreement is conditioned upon WVAWC receiving the approvals of the PSC. WVAWC covenants and agrees to initiate, and use commercially reasonable efforts to prosecute the necessary proceedings to obtain the approval of the PSC for: (a) this Agreement and the transactions contemplated hereby which require approval by the PSC, including the transfer by sale of the Assets to WVAWC and the Assignment of Contracts Agreement; (b) the right of WVAWC to provide wastewater service to the public primarily in the service area presently being served by Seller's System; (c) the right of WVAWC to apply after Closing WVAWC's existing rules and regulations for service as set forth in WVAWC's Tariff for the service area presently being served by Seller's System; (d) the right to adopt the Closing Base Rate in the area to be served at the time of Closing consistent with **Section 6.2(j)** and the approval of the Rate Plan; (f) recognizes the rate base components specified in the application in

WVAWC's rate base for ratemaking purposes; and (g) any other approval as may be appropriate to consummate the transactions contemplated by this Agreement. Seller, by this Agreement, covenants and agrees to provide such information, documents and assistance as may be reasonably requested by WVAWC in connection with any such proceedings and to otherwise cooperate in the initiation and prosecution of any such proceeding.

## ARTICLE 9

### CONDITIONS PRECEDENT

9.2 Conditions Precedent to WVAWC's Obligations. The obligation of WVAWC to consummate the transactions contemplated hereby are subject to the satisfaction, on or prior to the Closing, of each of the following conditions (any one or more of which may be waived in writing in whole or in part by WVAWC in its sole discretion):

(a) Representations and Warranties. Seller's representations and warranties set forth in this Agreement or in any Schedule, list, certificate or document delivered pursuant to this Agreement shall be true, correct and accurate as of the date made and at and as of the time of the Closing with the same force and effect as though such representations and warranties were made at and as of the Closing Date (without giving effect to any supplement to the Schedules), and WVAWC shall have received from a proper representative of Seller a certificate to such effect, in form and substance reasonably satisfactory to WVAWC.

(b) Performance of Covenants and Agreements. Seller shall have performed and complied with in all material respects all covenants, agreements and conditions required by this Agreement to be performed or complied with by it prior to or at the Closing, and WVAWC shall have received from a proper representative of Seller a certificate to such effect, in form and substance reasonably satisfactory to WVAWC.

(c) Adverse Change. There shall not have been a material adverse change, occurrence, or casualty, financial or otherwise, to the System or the Assets (including a material loss of customers or Contracts), whether covered by insurance or not.

(d) Release of Liens. All necessary action shall have been taken to cause the release, cancellation and discharge of any and all Encumbrances so that as of the Closing, the Assets shall be free and clear of any and all Encumbrances, and Seller shall have provided WVAWC with such opinions, instruments or documents as WVAWC may reasonably request, and in form and substance satisfactory to WVAWC, evidencing the release, cancellation and discharge of any and all Encumbrances and that the Assets are not subject to any liens or Encumbrances.

(e) Other Regulatory Consents. Seller shall have obtained the written, final and unappealable approvals, authorizations, and consents (including consents for Permit transfers) that are required to consummate the transactions contemplated by this Agreement and for WVAWC to operate the System and the Assets after the Closing, including but not limited to the approval of an appropriate NPDES Permit from the DEP and every regulatory agency of federal, state or local government that may be required in WVAWC's opinion, each in form and substance (including with respect to the terms and conditions contained in any such approval) acceptable to WVAWC in its sole and absolute discretion, and

all waiting periods under existing laws, and all extensions thereof, the passing of which is necessary to consummate the contemplated transactions and finalize a Closing, shall have expired.

(f) Opinion of Counsel and Resolution. Seller shall have delivered to WVAWC a written Opinion of Seller's Counsel, dated as of the Closing Date and addressed to WVAWC, in the form set forth in **Exhibit C**, along with a copy of the Resolutions, certified by their proper representatives, approving the execution, delivery and performance of this Agreement by Seller, together with the certificate of its proper representatives that the Resolutions are in full force and effect and were duly adopted.

(g) Contractual Consent. Seller shall have obtained written approvals, authorizations, and consents of transfer to all Assigned Contracts and Permits, to the extent specifically required by the terms of such Assigned Contracts and Permits, on terms reasonably satisfactory to WVAWC.

(h) Certification of Financial Information. Seller shall have delivered to WVAWC a certificate, in substantially the form set forth in **Exhibit D**, executed by its authorized representative in the form and substance satisfactory to WVAWC, listing (i) the amount of its net outstanding long-term debt or notes, if any, related to the System (ii) all unexpired customer advances for construction and unexpired contributions in aid of construction as of the Closing Date, and (iii) any and all additions or retirements to the System during the period from the date of execution of this Agreement to the Closing Date, together with the cost thereof.

(i) Closing Deliveries. Seller shall have delivered all documents required to be delivered by it pursuant to **Section 3.3(a)**.

(j) Proceedings. No provision of any law or order shall be in effect, and no proceeding by any person shall be threatened or pending before any Governmental Authority, or before any arbitrator, that would: (i) prevent consummation of the contemplated transactions; (ii) have a likelihood of causing the contemplated transactions to be rescinded following consummation; (iii) adversely affect the right of WVAWC to own any of the Assets or operate the System; or (iv) adversely affect the System prospects or the value or condition of any of the Assets or the System.

(k) Due Diligence. WVAWC shall have completed and be satisfied, in its sole and absolute discretion, with the results of its due diligence review of the System, the Assets and Seller, including with the results of any environmental assessment performed with respect to any real property or the Assets or chain of title search, all material contracts and operating Permits and licenses of the System, and Seller's operations, contracts, employment practices, compliance, accounting and other items as WVAWC deems necessary, as each of the foregoing items relate to the System or the Assets.

(l) Authorization of Contemplated Transactions. WVAWC shall have obtained all necessary corporate approvals to consummate the contemplated transactions, including the approval of its Board of Directors.

(m) PSC Approval. The PSC shall have entered an order (or orders) providing the approvals set forth in **Section 8.2**, and such order(s) shall not be subject to appeal, challenge, supersedeas or injunction.

(n) Implementation of Industrial Pretreatment Program (“IPP”). Seller shall conduct a complete inspection of industrial user and implement an IPP.

(o) Grant Repayment and Forgiveness. Seller shall be responsible for any grant repayment requirements or obtaining related approvals.

9.3 Conditions Precedent to Seller’s Obligations. The obligation of Seller to consummate the transactions contemplated hereby are subject to the satisfaction, on or prior to the Closing, of each of the following conditions (any one or more of which may be waived in writing in whole or in part by Seller in its sole discretion):

(a) Representations and Warranties. WVAWC’s representations and warranties contained in this Agreement or in any Schedule, list, certificate or document delivered pursuant this Agreement shall be true, correct and accurate as of the date made and at and as of the time of the Closing, with the same force and effect as though such representations and warranties were made at and as of the Closing Date (without giving effect to any supplement to the Schedules), and Seller shall have received from an officer of WVAWC a certificate to such effect, in form and substance reasonably satisfactory to Seller.

(b) Performance of Agreements. WVAWC shall have performed and complied, in all material respects, with all covenants, agreements and conditions required by this Agreement to be performed or complied with by it prior to or at the Closing, and Seller shall have received from an officer of WVAWC a certificate to such effect, in form and substance reasonably satisfactory to Seller.

(c) Closing Deliveries. WVAWC shall have delivered the Purchase Price and all documents required to be delivered by it pursuant to **Section 3.3(b)**.

## ARTICLE 10

### INDEMNIFICATION

10.2 Indemnification by Seller. Seller shall fully pay, protect, defend, indemnify and hold harmless WVAWC and its affiliates and their respective officers, directors and agents and representatives (“**WVAWC Indemnified Parties**”) from any and all Claims or Damages arising out of, resulting from, relating to or caused by: (i) a misrepresentation, inaccuracy in or breach of (or any claim by any third party alleging or constituting a misrepresentation, inaccuracy in, or breach of) any representation or warranty of, or any failure to perform or nonfulfillment of any provision or covenant contained in this Agreement or any other transaction document, by Seller; (ii) any and all liabilities of Seller of any nature (including the retained liabilities in **Section 1.3(a)**), whether due or to become due, whether accrued, absolute, contingent or otherwise, whether accruing prior to or after the Closing Date, or arising out of any transaction entered into, any state of facts existing or any event occurring on or prior to such date, and any Encumbrance affecting the Assets or the System; (iii) assessments, charges and other similar claims due or owing, directly or indirectly, by Seller or otherwise as a result of or on account of the Assets or the System at any time on or prior to the Closing Date; (iv) the ownership and/or operation of any of the Assets or the System on or prior to the Closing Date; (v) any proceeding now existing or hereafter arising and relating to the Assets or the System and arising from events or matters occurring on or prior to the Closing Date, regardless of when realized; (vi) any liabilities arising from or related to assets, properties and rights of Seller excluded from

the Assets; (vii) any and all liabilities relating to the employees, agents and independent contractors of Seller who performed services for Seller or related to the System or the Assets, regardless of whether such liabilities arose from events occurring prior to or after the Closing; (viii) the failure to comply with the provisions of any so-called bulk transfer or bulk sale law of any jurisdiction in connection with the sale of the System and the Assets to WVAWC, and (ix) transaction costs and expenses incurred by or on behalf of Seller in connection with this Agreement or the contemplated transactions.

No information or knowledge acquired, or investigations conducted, by WVAWC or its representatives, of Seller, the Assets, the System or otherwise, shall in any way limit, or constitute a waiver of, or a defense to, any claim for indemnification by WVAWC Indemnified Parties under this Agreement.

10.3 Indemnification by WVAWC. WVAWC agrees to fully pay, protect, defend, indemnify and hold harmless Seller and its affiliates and their respective officers, directors and agents at all times after the date of this Agreement, from, against and in respect of any and all Claims or Damages resulting from (i) a misrepresentation, an inaccuracy in or breach of (or any claim by any third party alleging or constituting a misrepresentation, an inaccuracy in, or breach of) any representation or warranty of, or any failure to perform or nonfulfillment of any provision or covenant contained in this Agreement or any other transaction document, by WVAWC, and (ii) any and all liabilities of WVAWC of any nature related to WVAWC's operation of the System and the Assets and occurring after the Closing Date.

10.4 Survival of Representations and Warranties. All representations, warranties, covenants, and agreements made by the parties in this Agreement or in any agreement, document, statement, or certificate furnished hereunder or in connection with the negotiation, execution and performance of this Agreement shall survive the Closing. Notwithstanding any investigation or audit conducted before or after the Closing Date, or the decision of any party to complete the Closing, each party shall be entitled to rely upon the representations, warranties, covenants, and agreements set forth herein and therein. Notwithstanding anything contained herein or elsewhere to the contrary, all "material" and "material adverse effect" or similar materiality type qualifications contained in the representations and warranties set forth in this Agreement shall be ignored and not given any effect for purposes of the indemnification provisions hereof, including for purposes of determining the amount of any Claims or Damages.

10.5 Establishment of Escrow. WVAWC and Seller acknowledge and agree that, as of Closing, the costs of obtaining the Missing Easements and any Claims or Damages that WVAWC may suffer may not yet be known and therefore, at Closing, Seller shall deposit with a reputable banking institution (the "**Escrow Agent**"), funds as contemplated in subsections 10.5(a), and 10.5(b) below, as follows:

(a) Missing Easement Escrow. Seller shall deposit with Escrow Agent pursuant to an escrow agreement in the form of **Exhibit B**, as agreed upon by the parties hereto and Escrow Agent prior to the Closing (the "**Escrow Agreement**"), the sum of \$20,000.00 per Missing Easement (the "**Missing Easement Escrow**") for the purpose of covering the costs of preparing, negotiating, and finalizing, and recording any Missing Easements (the "**Missing Easement Work**"). Seller shall diligently pursue the Missing Easements after the Closing. Following the completion of the Missing Easement Work, then the funds remaining in the Missing Easement Escrow shall be released promptly (but in no event later than thirty (30) days after the later of the dates set forth above) to Seller; provided, however, that if Seller is unable to complete the Missing Easement Work within two (2) years following the Closing Date, then WVAWC shall release the portion of the Missing Easement Escrow to Seller that compensates Seller for



the Missing Easements obtained after Closing, and the balance, which should compensate WVAWC for the Missing Easements not obtained after Closing, shall be released promptly to WVAWC.

(b) General Indemnity Escrow. In light of the fact that Seller plans to dissolve on or shortly after the Closing, Seller shall also deposit with Escrow Agent pursuant to the Escrow Agreement, the sum of \$2,000,000.00 (the “**Indemnity Escrow**”) for the purpose of covering any Claims or Damages of any WVAWC Indemnified Parties that would be subject to indemnification by Seller under this Agreement for a period of up to two (2) years after the Closing. Following the date that is two (2) year(s) after the Closing, then to the extent of any funds remaining in the Indemnity Escrow, any such funds remaining in the Indemnity Escrow shall be released promptly (but in no event later than thirty (30) days after the date set forth above) to the County of Kanawha (as successor). If WVAWC suffers any Claims or Damages that would be subject to indemnification from Seller as provided in this Agreement, WVAWC shall submit to Escrow Agent and Seller (or the successor to Seller) a written request for disbursement, accompanied by reasonable supporting documentation therefore (a “**Request for Disbursement**”). Seller shall have five (5) days in which to review and verify the information submitted in the Request for Disbursement, and unless Seller (or the successor to Seller) objects in writing within five (5) days after the Request for Disbursement, the Request for Disbursement shall be deemed approved. If Seller objects, in the time set forth above, to a Request for Disbursement, then any portion of the Request for Disbursement to which Seller (or the successor to Seller) does not object shall nonetheless be released to WVAWC. To the extent of any disputed portion of a Request for Disbursement, the dispute resolution procedures of the Escrow Agreement shall apply.

10.6 Notice of Claim. If either party seeks indemnification on behalf of an indemnified person, such party seeking indemnification (the “**Indemnified Party**”) shall give reasonably prompt written notice to the party from whom it seeks indemnification (the “**Indemnifying Party**”) specifying the facts constituting the basis for such claim and the amount, to the extent known, of the claim asserted; provided, however, that the right of a person or entity to be indemnified hereunder shall not be adversely affected by a failure to give such notice unless, and then only to the extent that, an Indemnifying Party is actually irrevocably and materially prejudiced thereby. Subject to the terms hereof, the Indemnifying Party shall pay the amount of any valid claim not more than ten (10) days after the Indemnified Party provides notice to the Indemnifying Party of such amount.

## ARTICLE 11

### TERMINATION

11.2 Termination. This Agreement may be terminated at any time prior to the Closing only (a) by mutual written consent of Seller and WVAWC; (b) by Seller or WVAWC upon written notice to the other, if the Closing shall not have occurred on or prior to June 30, 2025; provided, however, that the right to terminate this Agreement under this **Section 11.2** shall not be available to any party whose breach under this Agreement has caused or resulted in the failure of the Closing to occur on or before such date; (c) by WVAWC, if WVAWC is not in material breach of any of its representations, warranties, covenants and agreements under this Agreement and there has been a breach of a representation, warranty, covenant or agreement contained in this Agreement on the part of Seller and Seller has not cured such breach within five (5) business days after receipt of notice of such breach (provided, however, that, no cure period shall be required for a breach which by its nature cannot be cured); (d) by WVAWC, if, at any time before Closing, WVAWC is not satisfied (in its sole and absolute discretion) with the results of its due diligence

review of the System and the Assets or the prospects of obtaining all regulatory consents and approvals; (e) by Seller, if Seller is not in material breach of any of its representations, warranties, covenants and agreements under this Agreement and there has been a material breach of any representation, warranty, covenant or agreement contained in this Agreement on the part of WVAWC and WVAWC has not cured such breach within five (5) business days after receipt of notice of such breach (provided, however, that, no cure period shall be required for a breach which by its nature cannot be cured); (f) by Seller or WVAWC upon written notice to the other, if any court of competent jurisdiction or other competent governmental entity shall have issued a statute, rule, regulation, order, decree or injunction or taken any other action permanently restraining, enjoining or otherwise prohibiting the contemplated transactions, and such statute, rule, regulation, order, decree or injunction or other action shall have become final and non-appealable; (g) by WVAWC, if all necessary regulatory approvals contemplated hereby or otherwise necessary to close the contemplated transactions have not been obtained within two hundred seventy (270) days of the date hereof; or (h) by WVAWC, if any necessary regulatory approval is subject to an appeal in any court of competent jurisdiction that remains pending more than six (6) months after approval by the PSC.

**11.3 Effect of Termination.** The right of each party to terminate this Agreement under **Section 11.2** is in addition to any other rights such party may have under this Agreement or otherwise, and the exercise of a right of termination will not be an election of remedies. If this Agreement is terminated pursuant to **Section 11.2**, all further obligations of the parties under this Agreement will terminate, except that the obligations set forth in this **Section 11.3** (Effect of Termination) and **ARTICLE 12** (Miscellaneous) will survive; provided, however, that if this Agreement is terminated by a party because of the breach of the Agreement by another party or because one or more of the conditions to the terminating party's obligations under this Agreement is not satisfied as a result of the other party's failure to comply with its obligations under this Agreement, the terminating party's right to pursue all legal remedies will survive such termination unimpaired.

## **ARTICLE 12**

### **MISCELLANEOUS**

**12.2 Contents of Agreement.** This Agreement sets forth the entire understanding of the parties hereto with respect to the transactions contemplated hereby. It shall not be amended or modified except by written instrument duly executed by each of the parties hereto. Any and all previous agreements and understandings between or among any or all of the parties regarding the subject matter hereof, whether written or oral, are superseded by this Agreement.

**12.3 Successors and Assigns.** Except as otherwise set forth herein, neither Seller nor WVAWC shall assign this Agreement or any rights and obligations hereunder without the prior written consent of the other party, and any attempted assignment or delegation without such prior written consent shall be void and of no force or effect.

**12.4 Binding Effect.** All of the terms and provisions of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the legal representatives, and permitted assigns and successor of Seller or WVAWC.

**12.5 Waiver.** Any term or provision of this Agreement may be waived at any time by the party or parties entitled to the benefit thereof by a written instrument executed by such party or parties.

12.6 Transfer Taxes. Any transfer taxes imposed on the conveyance or transfer of any real property pursuant to this Agreement shall be split equally by WVAWC and Seller (i.e., each pay 50% of such taxes).

12.7 Notices. Any notice, request, demand, waiver, consent, approval, or other communication that is required or permitted hereunder shall be in writing and shall be deemed given only if delivered personally, by facsimile (if followed by overnight courier on the same date) or sent by nationally recognized overnight courier, as follows:

If to WVAWC:

West Virginia-American Water Company  
1600 Pennsylvania Ave.  
Charleston, WV 25302  
Attention: Vice President – Legal  
Email: Robert.Passmore@amwater.com

With a required copy to:

If to Union:

Union Public Service District  
5110 Washington Street West  
Cross Lanes, WV 25313  
Attention:  
Email:

With a required copy to:

or to such other address as the addressee may have specified in a written notice duly given to the sender as provided herein. Such notice, request, demand, waiver, consent, approval, or other communication will be deemed to have been given as of the date so delivered.

12.8 Law to Govern. This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the State of West Virginia without giving effect to any conflicts of law's provisions.

12.9 No Benefit to Others. The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the parties hereto, and their legal representatives, successors, and assigns, and they shall not be construed as conferring any rights on any other persons.

12.10 Interpretation. All section headings contained in this Agreement are for convenience of reference only, do not form a part of this Agreement, and shall not affect in any way the meaning or interpretation of this Agreement. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender,

masculine, feminine or neuter, as the context requires. Unless otherwise indicated, the words “including”, “includes”, “included” and “include”, when used, are deemed to be followed by the words “without limitation.”

12.11 Schedules. All Schedules referred to herein are intended to be and hereby are specifically made a part of this Agreement.

12.12 Severability. Any provision of this Agreement that is invalid or unenforceable in any jurisdiction or under any circumstance shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions hereof, and any such invalidity or unenforceability in any jurisdiction or under any circumstance shall not invalidate or render unenforceable such provision in any other jurisdiction or under any other circumstance, unless, in either event, the involved or unenforceable provision causes this Agreement to fail of its essential purpose.

12.13 Risk of Loss. Seller assumes risk of loss in connection with the Assets prior to Closing, including risk of loss from fire and other casualty. In the event of any loss or damage to any of the Assets, WVAWC at its option, prior to or at Closing shall have the right to (i) request that the damaged asset be replaced or restored to substantially the same condition of the asset as of the date of this Agreement; (ii) request an adjustment to the Purchase Price as can be agreed upon by the parties, or (iii) request the insurance proceeds of Seller and/or other moneys to enable WVAWC to make a proper restoration of the damaged asset.

12.14 Environmental Assessment. Without limiting the parties rights and obligations under this Agreement (including **Sections 6.2(g), 9.2(k) and 10.2**), after the date of this Agreement and until the Closing Date, WVAWC shall have the reasonable right to enter upon the property and facilities constituting the System, after making reasonable prior arrangement with Seller, for the purposes of conducting an environmental assessment of the System. WVAWC shall notify Seller in writing if the environmental assessment reveals the presence of oil or petroleum products or any hazardous or toxic wastes or materials or storage of fuel tanks or any other environmental hazard or contamination. Within fifteen (15) days of the date of such notice, Seller shall advise WVAWC in writing as to whether Seller can cure the environmental hazard or contamination and, if so, what remediation actions Seller will take to cure. In connection with such environmental assessment, WVAWC shall have the right, in WVAWC’s sole discretion, to terminate this Agreement upon written notice to Seller.

12.15 Specific Performance and Injunctive Relief; Remedies. The parties hereto recognize that if either of them fails to perform, observe, or discharge any of their respective obligations under this Agreement, a remedy at law may not provide adequate relief to the other party. Therefore, in addition to any other remedy provided for in this Agreement or under Applicable Law, a party hereto may demand specific performance of this Agreement, and such party shall be entitled to temporary and permanent injunctive relief, in a court of competent jurisdiction at any time if the other party fails to comply with any of the provisions of this Agreement applicable to such party. To the extent permitted by Applicable Law, the parties hereby irrevocably waive any defense based on the adequacy of a remedy at law that might be asserted as a bar to such party’s remedy of specific performance or injunctive relief. Except as otherwise provided herein, all rights and remedies of the parties under this Agreement are cumulative and without prejudice to any other rights or remedies under law. Nothing contained herein shall be construed as limiting the parties’ rights to redress for fraud.

12.16 Counterparts. This Agreement may be executed by facsimile, electronically or by exchange of documents in PDF format, and in several counterparts, each of which shall be deemed an original instrument and all of which together shall constitute a single agreement. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages.

**[SIGNATURES TO FOLLOW]**

**IN WITNESS WHEREOF**, intending to be legally bound, the parties hereto have duly executed this Agreement on the date first written.

**UNION PUBLIC SERVICE DISTRICT**

By: \_\_\_\_\_  
Name:  
Its:

**WEST VIRGINIA-AMERICAN WATER  
COMPANY**

By: \_\_\_\_\_  
Name:  
Its:

### **List of Exhibits**

Exhibit A – Assignment of Contracts Agreement

Exhibit B – Form of Escrow Agreement

Exhibit C – Form of Opinion of Seller’s Counsel

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### **List of Appendices**

Appendix 1 – Definitions

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Schedule 6.7 – Seller’s Rates

Schedule 7.1 – Transferred Personnel



## **APPENDIX 1** **DEFINITIONS**

“**Agreement**” has the meaning provided in the Introduction.

“**Applicable Law**” means (1) any federal, state or local law, code or regulation; (2) any formally adopted and generally applicable rule, requirement, determination, standard, policy, or implementation schedule of any Governmental Authority having jurisdiction; (3) any established interpretation of law or regulation utilized by a Governmental Authority if such interpretation is documented by such Governmental Authority and generally applicable; (4) any Permit; and (5) any order; in each case having the force of law and applicable to the design, improvement, operation, maintenance, repair or performance of the System and the management of residuals.

“**Assets**” means all of the assets, properties, and rights of Seller (whether tangible, intangible, real, personal or mixed) that are held or used in connection with the System, excluding the Excluded Assets.

“**Assigned Contracts**” has the meaning provided in **Section 5.2(c)**.

“**Assignment of Contracts Agreement**” has the meaning provided in **Section 3.3(a)(i)**.

“**Base Rate**” has the meaning provided in **Section 6.2(j)**.

“**Claims or Damages**” means any loss, demand, claim, suit, action, assessment, damage, liability, cost, expense, fine, penalty, judgment, award or settlement, whether or not involving a Governmental Authority or third party claim, including related fees and costs, interest, and any amounts paid in investigation, defense or settlement of any of the foregoing. Except as specifically provided in this Agreement, “Claims or Damages” does not include, and neither party will be liable for, any loss of profit and any other incidental, consequential, exemplary, or punitive damages, including, without limitation, lost profits, lost productions, or lost revenues, except to the extent such damages are awarded and actually paid to a third party.

“**Closing**” has the meaning provided **Section 3.2**.

“**Closing Date**” has the meaning provided **Section 3.2**.

“**Code**” means the Internal Revenue Code, 26 U.S.C. § 1 et seq.

“**Combined Sewer System**” means a sewer system that collects rainwater runoff, domestic sewage, and commercial and industrial wastewater into one pipe.

“**Contract**” has the meaning provided in **Section 4.2(k)**.

“**Customer Sewer Laterals**” has the meaning provided in **Section 0**.

“**DEP**” means the West Virginia Department of Environmental Protection or any successor agency thereto.

“**Effective Date**” has the meaning provided in the Introduction.

“**Encumbrances**” has the meaning provided in **Section 1.1**.

“**Environmental Laws**” means all federal, state, and local laws and regulations relating to protection of the environment or natural resources, including the Clean Water Act, also known as the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq. (“**CWA**”), the Federal Clean Air Act, 42 U.S.C. § 7401 et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136 et seq., the Safe Drinking Water Act, 42 U.S.C. §§ 300(f) et seq., the Surface Mining Control and Reclamation Act, 30 U.S.C. §§ 1201 et. seq., the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et. seq., the Superfund Amendment and Reauthorization Act of 1986, Public Law 99-499, 100 Stat. 1613, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 (“**RCRA**”), the Atomic Energy Act of August 30, 1954, Ch. 1073, 68 Stat. 919 (codified as amended in scattered sections of 5 U.S.C. and 42 U.S.C.), counterpart state laws, and the regulations adopted pursuant thereto. Any reference to a legislative act or regulation shall be deemed to include all amendments thereto and all regulations, orders, decrees, judgments, opinions directives or notices issued thereunder.

“**Escrow Agent**” has the meaning provided in **Section 10.5**.

“**Escrow Agreement**” has the meaning provided in **Section 10.5(a)**.

“**Excluded Assets**” has the meaning provided in **Section 1.4**.

“**Extension Deposit Agreement**” has the meaning provided in **Section** Error! Reference source not found..

“**GAAP**” means generally accepted accounting principles consistently applied.

“**Governmental Authority**” means as any federal, state, county, municipal, or regional legislative, executive, judicial or other governmental board, agency, authority, commission, administration, court or other body, or any official thereof, having jurisdiction.

“**Hazardous Waste**” means any hazardous waste as defined under the federal Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*, and 40 C.F.R. Part 261.

“**Indemnified Party**” has the meaning provided in **Section 10.6**.

“**Indemnifying Party**” has the meaning provided in **Section 10.6**.

“**Indemnity Escrow**” has the meaning provided in **Section 10.5(b)**.

“**Missing Easement**” has the meaning provided in **Section 4.2(l)(vii)**.

“**Missing Easement Escrow**” has the meaning provided in **Section 10.5(a)**.

“**Missing Easement Work**” has the meaning provided in **Section 10.5(a)**.

“**NPDES**” means the National Pollutant Discharge Elimination System.

“**NPDES Permit**” has the meaning provided in the Recitals.

**“Outstanding Indebtedness”** has the meaning provided in **Section 2.4**.

**“WVAWC”** has the meaning provided in the Introduction.

**“WVAWC Indemnified Parties”** has the meaning provided in **Section 10.2**.

**“Permits”** has the meaning provided in **Section 4.2(q)**.

**“Personnel”** means the personnel who are currently employed by the Seller that perform work relating to the System.

**“PSC”** means the West Virginia Public Service Commission or any successor agency thereto.

**“Purchase Price”** has the meaning provided in **Section 2.2**.

**“Regulated Industrial Users”** has the meaning provided in **Section 6.2(i)**.

**“Request for Disbursement”** has the meaning provided in **Section 10.5(b)**.

**“Resolutions”** has the meaning provided in **Section 3.3(b)(ii)**.

**“Retained Accounts Receivable”** has the meaning provided in **Section 4.2(g)**.

**“Sanitary Sewer System”** means a sewer system that collects only domestic sewage and commercial and industrial wastewater (but not stormwater, except for infiltration and inflow from groundwater or stormwater that is not excessive).

**“Seller”** has the meaning provided in the Introduction.

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

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

**“System”** has the meaning provided in the Recitals.

**“Tariff”** has the meaning provided in the Recitals.

**“Transferred Personnel”** means the personnel who accept WVAWC’s offer of employment and commence employment on the Closing Date.