

HDW Draft of 6/28/23

AGREEMENT OF SALE

BETWEEN

THE CITY OF SALEM, NEW JERSEY

AND

NEW JERSEY-AMERICAN WATER COMPANY, INC.

TABLE OF CONTENTS

ARTICLE I

DEFINITIONS

ARTICLE II

REPRESENTATIONS AND WARRANTIES OF THE CITY

Section 2.1.	REPRESENTATIONS AND WARRANTIES OF THE CITY	4
Section 2.2.	DISCLAIMER OF OTHER REPRESENTATIONS AND WARRANTIES.....	6
Section 2.3.	SURVIVAL OF REPRESENTATIONS AND WARRANTIES	6

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE BUYER

Section 3.1.	REPRESENTATIONS AND WARRANTIES OF THE BUYER	7
Section 3.2.	SURVIVAL OF REPRESENTATIONS AND WARRANTIES	8

ARTICLE IV

BASIC TRANSACTION

Section 4.1.	PURCHASE AND SALE OF ASSETS	9
Section 4.2.	EXCLUDED ITEMS	9
Section 4.3.	PURCHASE PRICE	9
Section 4.4.	CITY TRANSACTION EXPENSE	9
Section 4.5.	ADDITIONAL OBLIGATIONS.....	9
Section 4.6.	THE CLOSING	10
Section 4.7.	DELIVERIES AT THE CLOSING	10
Section 4.8.	APPORTIONMENTS	11
Section 4.9.	SETTLEMENT STATEMENT	12

ARTICLE V

PRE-CLOSING COVENANTS

Section 5.1.	PRE-CLOSING COVENANTS	13
--------------	-----------------------------	----

ARTICLE VI

TITLE AND CONDITION OF SYSTEMS

Section 6.1.	TITLE	16
--------------	-------------	----

Section 6.2.	PROPERTY INFORMATION MATERIALS	17
Section 6.3.	CONDITION OF THE SYSTEMS	17
Section 6.4.	POST-CLOSING COOPERATION OF THE CITY.....	17

ARTICLE VII

CONDITIONS TO OBLIGATION TO CLOSE

Section 7.1.	CONDITIONS TO OBLIGATION OF THE BUYER.....	18
Section 7.2.	CONDITIONS TO OBLIGATION OF THE CITY	18
Section 7.3.	SCHEDULE FOR CLOSING CONDITIONS	19

ARTICLE VIII

POST-CLOSING OBLIGATIONS OF BUYER

Section 8.1.	CONTINUATION OF SERVICES	20
Section 8.2.	MAINTENANCE, REPAIRS, AND REPLACEMENT	20
Section 8.3.	RATE STABILIZATION COVENANT	20
Section 8.4.	CAPITAL IMPROVEMENTS	20
Section 8.5.	SERVICE TO CITY FACILITIES AND THE FINLAW BUILDING	20
Section 8.6.	CITY EMPLOYEES.....	20
Section 8.7.	PAVING	20
Section 8.8.	SERVICE LINE RESPONSIBILITY	21
Section 8.9.	LICENSE FOR CELL TOWERS.....	21
Section 8.10	FIRE HYDRANTS	21
Section 8.12.	SURVIVAL	21

ARTICLE IX

REMEDIES FOR BREACHES OF THIS AGREEMENT

Section 9.1.	PRE-CLOSING DEFAULT BY THE BUYER	22
Section 9.2.	PRE-CLOSING DEFAULT BY THE CITY	22
Section 9.3.	POST-CLOSING DEFAULTS.....	22

ARTICLE X

ESCROW AGENT

Section 10.1.	ESCROW	23
---------------	--------------	----

ARTICLE XI

NON-BINDING MEDIATION; FORUM FOR DISPUTE RESOLUTION

Section 11.1.	RIGHTS TO REQUEST AND DECLINE NON-BINDING MEDIATION	24
Section 11.2.	PROCEDURE.....	24

Section 11.3. NON-BINDING EFFECT	24
Section 11.4. RELATION TO JUDICIAL LEGAL PROCEEDINGS	24
Section 11.5. FORUM FOR DISPUTE RESOLUTION.....	24

ARTICLE XII

INDEMNIFICATION

Section 12.1. INDEMNIFICATION BY THE BUYER.....	25
Section 12.2. THIRD PARTY CLAIMS	25
Section 12.3. NO OTHER DAMAGES.....	25

ARTICLE XIII

MISCELLANEOUS

Section 13.1. THIRD PARTY BENEFICIARIES.....	26
Section 13.2. ENTIRE AGREEMENT.....	26
Section 13.3. SUCCESSION AND ASSIGNMENT.....	26
Section 13.4. COUNTERPARTS	26
Section 13.5. HEADINGS	26
Section 13.6. NOTICES.....	26
Section 13.7. GOVERNING LAW.....	27
Section 13.8. AMENDMENTS AND WAIVERS	27
Section 13.9. SEVERABILITY	27
Section 13.10. EXPENSES.....	27
Section 13.11. CONSTRUCTION.....	28
Section 13.12. VARIATIONS IN PRONOUNS	28
Section 13.13. INCORPORATION OF EXHIBITS AND SCHEDULES.....	28
Section 13.14. TRANSFER TAXES	28
Section 13.15. TIME IS OF THE ESSENCE.....	28
Section 13.16. REVIEW OR AUDIT BY OFFICE OF THE STATE COMPTROLLER.....	28

LIST OF EXHIBITS

- Exhibit A** Description of the Systems
- Exhibit B** Form of Assignment and Assumption Agreement
- Schedule I to **Exhibit B**
- Exhibit C** Form of Bill of Sale
- Schedule I to **Exhibit C** Included Assets
- Schedule II to **Exhibit C** Excluded Assets
- Exhibit D** 2023 Rates
- Exhibit E** [Reserved]
- Exhibit F** Form of Assignment and Grant of Easements, Rights of Way and other Property
- Schedule I to **Exhibit F** List of Easements Granted to or Obtained by the City
- Exhibit G** Form of General Assignment
- Schedule I to **Exhibit G** List of Assigned Rights
- Exhibit H** Disclosure Schedule to the Agreement of Sale
- Exhibit I** Escrow Agreement
- Exhibit J** Customer Service Standards and Customer Service Plan

AGREEMENT OF SALE

THIS AGREEMENT OF SALE (this "Agreement"), dated [_____] is made and entered into by and between the **CITY OF SALEM**, a public body corporate and politic in Salem County in the State of New Jersey (the "City") and New Jersey-American Water Company, Inc., a New Jersey Public Utility Corporation with principal corporate offices at One Water Street, Camden, N.J. 08102 (the "Buyer"). The Buyer and the City are referred to collectively herein as the "Parties."

WHEREAS, the City currently owns and operates public water and wastewater systems (collectively, the "Systems"), more particularly described herein, located in the City of Salem, New Jersey; and

WHEREAS, in connection with the proposed sale of its Systems, the City prepared, advertised, and made available to all prospective buyers a Request for Bids on May 8, 2023 pursuant to N.J.S.A. 40:62-3 et seq.; and

WHEREAS, two Bids were received in response to the RFB and the City determined that New Jersey-American Water Company, Inc. was the Highest Responsible Bidder; and

WHEREAS, the City and the Buyer have agreed to the terms and conditions set forth in this Agreement, which sets forth the terms upon which sale of the City's Public Water and Wastewater Systems (the "Systems") to the Buyer will take place, provided all conditions of the Closing are satisfied; and

WHEREAS, the City desires to sell and the Buyer desires to purchase the Systems pursuant to the terms of the Agreement; and

NOW, THEREFORE, in consideration of the premises and the mutual promises herein made, and in consideration of the representations, warranties, and covenants herein contained, the Parties agree as follows:

ARTICLE I

DEFINITIONS

"Agreement" shall mean this Agreement of Sale of the Public Water and Wastewater Systems and all exhibits, attachments, and schedules hereto, dated [_____].

"Assumed Liabilities" shall have the meaning set forth in Section 4.5 below.

"BPU" means the New Jersey Board of Public Utilities or any successor agency.

"Buyer" means New Jersey-American Water Company, Inc.

"City" means the City of Salem, New Jersey.

"Closing" has the meaning set forth in Section 4.6 below.

"Closing Date" shall mean the date upon which Closing takes place as more particularly described in Section 4.6 below.

"Deposit" shall mean a payment of money equal to 10% of the Purchase Price, which is payable to the City upon execution of this Agreement, and which shall be held by the Escrow Agent under the Escrow Agreement attached hereto and incorporated herein by reference as **Exhibit I**, and together with the earnings accrued thereon shall be the Deposit.

"Disclosure Schedule" has the meaning set forth in Section 2.1.

"Encumbrances" means any security interest, pledge, mortgage, lien (including, without limitation, environmental and tax liens), charge, encumbrance, adverse claim or restriction on use or transfer.

"Escrow Agent" shall mean [_____].

"Final Approval Order" shall mean an order of the BPU approving Municipal Consent, the approval of which will allow the Buyer and the City to consummate the purchase of assets as contemplated by this Agreement; and as to which the time for filing an appeal as of right has expired, and as to which there are no appeals, petitions for reconsideration, petitions for re-argument, or similar petitions pending.

"Governmental Authority" means any federal, state, regional, or local legislative, executive, judicial or other governmental board, agency, authority, commission, administration, court or other body, or any official thereof having jurisdiction.

"Monetary Liens" shall mean (a) judgment liens and tax liens entered against the City and encumbering any part of the Systems, and (b) mortgages, security interests and other liens granted by the City and encumbering the Systems.

“Municipal Consent” shall mean the municipal consent ordinance that is to be enacted by the City as a condition of the Closing and which grants the authority to the Buyer to provide the services referenced hereunder and conveying the City’s consent to the Buyer for the ownership, construction, expansion and operation of the Systems.

“NJDEP” means the New Jersey Department of Environmental Protection or any successor agency.

“Party” shall mean either the City or the Buyer.

“Parties” shall mean the City and the Buyer.

“Permits” shall mean all permits, certificates, licenses, orders, registrations, franchises, authorizations and other rights and approvals from any governmental authority with respect to the Systems held by the City.

“Permitted Encumbrances” shall have the meaning set forth in Article VI.

“Person” means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, or a governmental entity (or any department, agency, or political subdivision thereof).

“Purchase Price” has the meaning set forth in Section 4.3 below.

“RFB” means the Request for Bids for the sale of the Systems issued by the City on May 8, 2023.

“Transaction Costs Payment” has the meaning set forth in Section 4.4 below.

“Transaction Documents” means collectively this Agreement, the Assignment and Assumption Agreement (the form of which is included as Exhibit B), the Bill of Sale (the form of which is included as Exhibit C), the Assignment and Grant of Easements, Rights of Way and Other Property (the form of which is included as Exhibit F), the General Assignment (the form of which is included as Exhibit G), the Disclosure Schedule to the Agreement of Sale (Exhibit H) and the Escrow Agreement (the form of which is included as Exhibit I. “Water System” shall mean the City’s water system, as described in **Exhibit A**.

“Wastewater System” shall mean the City’s wastewater treatment plant, the wastewater collection system and the eight pumping stations, as described in detail in **Exhibit A**.

ARTICLE II

REPRESENTATIONS AND WARRANTIES OF THE CITY

Section 2.1. REPRESENTATIONS AND WARRANTIES OF THE CITY. Except as set forth in the disclosure schedule accompanying this Agreement and initialed by the Parties (the "Disclosure Schedule"), which is attached as **Exhibit H**, the City represents and warrants to the Buyer that the statements contained in this Article II are correct and complete as of the date of this Agreement. The Disclosure Schedule will be arranged in paragraphs corresponding to the lettered paragraphs contained in this Article II.

- (A) Organization of the City. The City is a public body corporate and politic in Salem County in the State of New Jersey.
- (B) Authorization of Transaction. The City has full right and authority to execute and deliver this Agreement and to perform its obligations hereunder.
- (C) Title. To the best of its knowledge, the City is the sole owner and has good and marketable title of all assets and each fee parcel of real property included in the Systems, and/or has a leasehold interest, license or easement in all real property in the Systems. Upon Closing, Buyer shall be vested with good title in the Systems.
- (D) No Litigation. To the best of the City's knowledge, there is no litigation, either at law or in equity, nor any proceedings before any commission or regulatory body pending, or threatened against the City, in any way that would adversely affect its ability to perform its obligations under the Agreement.
- (E) No Default. To the best of the City's knowledge, the City is not in default of any provisions of law, charter, by-laws, contract, franchise, rules or regulations of any governmental agency or any instrument to which it is a party and which in any way affects the Systems.
- (F) No Reimbursement Obligations. To the best of the City's knowledge, the City is not party to any extension agreement or other contract which, if assigned to the Buyer, would obligate the Buyer by rebate, reimbursement, or other payment to return moneys to third parties by reason of installation of some portion of the Systems.
- (G) Systems Compliance. The Systems are in compliance with all State, federal, and local laws and regulations.
- (H) Rates. The rates, attached as **Exhibit D**, represents the true rates of the Systems as are in effect as of the Contract Date.
- (I) Permits. Schedule I to **Exhibit G** sets forth a complete and accurate list of all Permits held by the City, all of which are in full force and effect and no appeals or other proceedings are pending or threatened with respect to the issuance, terms or conditions of any such Permits. To the best of its knowledge and except as noted

in the Disclosure Schedule set forth in **Exhibit H**, the City has (i) provided to Buyer true and complete copies of all Permits set forth in Schedule I to **Exhibit G**, (ii) the City holds all Permits which are necessary or required under applicable Law for the ownership, operation and maintenance of the Systems and the assets to be conveyed to Buyer as currently or previously operated and maintained, (iii) the City has not received any written notice or other written communication from any Governmental Authority or other Person regarding (1) any actual or alleged violation or failure to comply with any such Permits, or (2) any revocation, withdrawal, non-renewal, suspension, cancellation or termination of any such Permits. With respect to any Permits held by the City that are scheduled to expire within six (6) months following the date of this Agreement, any applications for renewal of such Licenses and Permits have been or will be duly filed by the City with the applicable Governmental Authority within the time frame required under applicable law.

(J) Environmental.

- (i) To the best of its knowledge and except as noted in the Disclosure Schedule set forth in **Exhibit H**, the City is in full compliance with and has not been and is not in violation of or liable under any applicable environmental law. City 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 the Systems.
- (ii) To the best of the City's knowledge and except as noted in the Disclosure Schedule set forth in **Exhibit H**, 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 the Systems.
- (iii) To the best of the City's knowledge and except as noted in the Disclosure Schedule set forth in **Exhibit H**, there are no hazardous materials, except those used in connection with the operation of the Systems present on or in the Systems, 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.
- (iv) To the best of the City's knowledge and except as noted in the Disclosure Schedule set forth in **Exhibit H**, none of the following exists at the Systems: (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) To the best of the City's knowledge, the City has made available to Buyer true and complete copies and results of any reports, studies, analyses, tests or monitoring possessed or initiated by the City pertaining to hazardous materials in, on or under the Systems.

Section 2.2. DISCLAIMER OF OTHER REPRESENTATIONS AND WARRANTIES. Except for representations and warranties as expressly set forth in this Article II, the City makes no other representation or warranty, express or implied, at law or in equity, with respect to the Systems or operations, including with respect to merchantability or fitness for any particular purpose and any such other representations or warranties are hereby expressly disclaimed. The Buyer hereby acknowledges and agrees that, except for the representations and warranties specifically set forth in this Article II, the Buyer is purchasing the Systems on an "as-is, where-is" basis. The Buyer has satisfied itself on all aspects of the Systems, including but not limited to all physical, economic, operational, regulatory, tax and title matters that the Buyer deems relevant, and is not relying on any representation of the City in connection therewith except for the representations and warranties set forth in this Agreement. The City shall not be liable for any latent or patent defects in the Systems.

Section 2.3. SURVIVAL OF REPRESENTATIONS AND WARRANTIES. All of the representations and warranties made by the City are true and correct as of the date of this Agreement and shall be true and correct and deemed repeated as of Closing, subject to the Disclosure Statement as same may be modified by the terms of this Agreement. No claim for a misrepresentation or breach of warranty of the City shall be actionable or payable if the breach in question results from or is based on a condition, state of facts or other matter which was known to the Buyer prior to the Closing.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE BUYER

Section 3.1. REPRESENTATIONS AND WARRANTIES OF THE BUYER. Except as set forth in the Disclosure Schedule, the Buyer represents and warrants to the City that the statements contained in this Article III are correct and complete as of the date of this Agreement. The Disclosure Schedule will be arranged in paragraphs corresponding to the lettered paragraphs contained in this Article III.

- (A) Organization of Buyer. The Buyer is a public utility corporation duly organized, validly existing and in good standing under the law of the State of New Jersey.
- (B) Authorization of Transaction. The Buyer has full right and authority to execute and deliver this Agreement and to perform its obligations hereunder.
- (C) No Litigation. To the best of the Buyer's knowledge, there is no litigation, either at law or in equity, nor any proceedings before any commission or regulatory body pending, or threatened against the Buyer, in any way that would affect its ability to perform its obligations under this Agreement.
- (D) No Warranties. The Buyer is purchasing the Systems "as is", and the Buyer will have no recourse against the City with respect to any condition of the Systems that might be discovered after the Closing.
- (E) Right to Inspect. Prior to the Contract Date, the Buyer has been afforded the opportunity to inspect and has inspected the Systems to the extent that the Buyer deemed necessary and has made such examination of the Systems, the operation, income and expenses thereof and all other matters affecting or relating to this transaction as Buyer deemed necessary. In entering into this Agreement, the Buyer has not been induced by and has not relied upon any representations, warranties or statements, whether express or implied, made by the City or any agent, employee or other representative of the City or by any broker or any other person representing or purporting to represent the City, which are not expressly set forth in this Agreement, whether or not any such representations, warranties or statements were made in writing or verbally.
- (F) Other Limitations of Local, State, and Federal Laws and Regulations. The Buyer accepts the terms of this Agreement subject to the terms and limitations of all applicable local, State, and federal laws, statutes, rules and/or regulations.
- (G) Source of Funds. The funds comprising the Purchase Price to be delivered to the City in accordance with this Agreement are not derived from any illegal activity.
- (H) Not a Blocked Person. The Buyer is not a, and is not acting directly or indirectly for or on behalf of any, person, group, entity or nation named by Executive Order of the United States Treasury Department as a terrorist, "Specifically Designated National and Blocked Person", or other banned or blocked person, entity, nation

or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control and the Buyer is not engaged in this transaction, directly or indirectly, on behalf of, or instigating or facilitating this transaction, directly or indirectly, on behalf of, any such person, group, entity or nation.

- (I) No Obligation of City to Implement Improvements. Neither the Buyer's bid nor the Buyer's obligations herein, are conditioned upon the implementation of any improvements to be made by the City and the Buyer acknowledges and agrees that the City has no obligation to implement any improvements nor is the City precluded from making such improvements.

Section 3.2. SURVIVAL OF REPRESENTATIONS AND WARRANTIES.

All of the representations and warranties made by the Buyer are true and correct as of the date of this Agreement and shall be true and correct and deemed repeated as of Closing, subject to the Disclosure Statement as same may be modified by the terms of this Agreement.

ARTICLE IV

BASIC TRANSACTION

Section 4.1. PURCHASE AND SALE OF ASSETS. Subject to the terms and conditions of this Agreement, at the Closing referred to in Section 4.6, the City will sell to the Buyer, and the Buyer will buy from the City, all of the City's rights, title, and interest in the Systems as further described in **Exhibit A** for the consideration specified below in Section 4.3.

Section 4.2. EXCLUDED ITEMS. Except as specifically described in **Exhibit A**, in no event shall the Systems include personal property, office equipment, office supplies, vehicles, the City's jetter, cash, securities, and the accounts receivable of the City relating to the Systems up to and including the Closing Date.

Section 4.3. PURCHASE PRICE. The Buyer agrees, subject to the terms and conditions set forth in this Agreement, to pay to the City the sum of eighteen million dollars (\$18,000,000) (the "Purchase Price"). Upon the execution of this Agreement, the Buyer shall pay the Deposit to be held by Escrow Agent pursuant to the terms of the Escrow Agreement, with any interest or earnings to follow the Deposit, and which Deposit shall be credited against the Purchase Price. Subject to the terms and conditions of this Agreement, the balance of the Purchase Price less the Deposit, increased or decreased by the items to be apportioned pursuant to Section 4.8 of this Agreement (such sum, before the apportionments referred to herein is referred to as the "Closing Balance" and after such apportionments is referred to as the "Adjusted Closing Balance") shall be paid on the Closing Date by wire transfer in federal funds to a bank account designated in writing by the City at least five (5) business days prior to the Closing Date.

Section 4.4. CITY TRANSACTION EXPENSE. Notwithstanding any obligations of the City set forth in the Agreement to solely bear its expenses and costs in connection herewith, and in addition to the Purchase Price provided for in Section 4.3, the Buyer agrees to pay the City \$200,000 for costs and expenses incurred and reasonably anticipated to be incurred by the City in connection with the sale of the Systems, including, but not limited to, outside attorney, engineering, inspection, and other consultant costs (collectively the "Transaction Costs Payment"). The Buyer agrees to pay the City one-third (\$66,667) of the Transaction Costs Payment upon execution of this Agreement for the sale of the Systems, which amount shall be non-refundable. The Buyer agrees to pay the City the remaining two-thirds \$133,333 of the Transaction Costs Payment upon Closing.

Section 4.5. ADDITIONAL OBLIGATIONS. In addition to the payment of the amounts set forth in Sections 4.3 and 4.4 hereof, the Buyer agrees to:

- (A) assume responsibility for all claims and liabilities relating to the Systems that arise post-Closing;
- (B) assume and meet all contractual commitments of the City on and after the Closing Date in connection with the contracts set forth in **Exhibit E** (collectively, (A) and (B) constitute the "Assumed Liabilities");

- (C) comply with the Rate Stabilization Covenant set forth in Section 8.3;
- (D) provide the customers of the Systems with safe and reliable service in accordance with applicable laws and regulations, and the Buyer's tariff as approved by the BPU;
- (E) maintain or expand the Systems in conformance with existing City land use and zoning ordinances, master plan, and historic district standards, as applicable;
- (F) complete the PFNA filtration project; and
- (G) make application for the transfer, with the reasonable assistance of the City, effective at the Closing, of all Water and Wastewater System permits and approvals issued to the City prior to Closing by the NJDEP or any other local, State or federal agency.

Section 4.6. THE CLOSING. The closing of the transactions contemplated by this Agreement (the "Closing") shall take place at the offices of [] forty-five (45) days after the satisfaction of the last condition to be satisfied pursuant to Article VII herein (the "Closing Date"). The Parties may mutually agree in writing to have the Closing at another time or place.

Section 4.7. DELIVERIES AT THE CLOSING. At the Closing:

- (A) The City will execute, acknowledge (if appropriate), and deliver to the Buyer:
 - (i) a bargain and sale deed associated with the Systems without covenant against grantor's acts, in recordable form, duly executed by City;
 - (ii) an assignment of easements in the form attached hereto as **Exhibit F**, to convey all easement rights associated with the Systems, subject to the Permitted Encumbrances;
 - (iii) a Bill of Sale in the form attached hereto as **Exhibit C**;
 - (iv) an Assignment and Assumption Agreement in the form attached hereto as **Exhibit B**;
 - (v) a General Assignment in the form attached hereto as **Exhibit G**;
 - (vi) a Settlement Statement;
 - (vii) a certified copy of the appropriate City resolution(s) and/or ordinances authorizing the transactions contemplated hereunder;
 - (viii) a signed certification by the City that the warranties and representations in Article II are true and correct as of the Closing Date;

- (ix) originals or copies of all governmental permits and licenses for the Systems, or any component thereof, in the City's possession, to the extent transferable;
 - (x) Any other tax information regarding the City that the Settlement Agent (as that term is used in Section 6045 of the Code) is required to report to the Internal Revenue Service pursuant to the Code;
 - (xi) Such other resolutions, instruments, affidavits and documents as may be reasonably necessary and requested by Buyer to effectuate the transaction
- (B) Buyer will execute, acknowledge (if appropriate) and deliver to City:
- (i) an assignment of easements in the form attached hereto as **Exhibit F**, to convey all easement rights associated with the Systems, subject to the Permitted Encumbrances;
 - (ii) an Assignment and Assumption Agreement in the form attached hereto as **Exhibit B**;
 - (iii) a General Assignment in the form attached hereto as **Exhibit G**;
 - (iv) a Settlement Statement;
 - (v) Certified copy of appropriate corporate resolution(s) authorizing the transactions contemplated hereunder;
 - (vi) a signed certification by Buyer that the warranties and representations in Article III are true and correct as of the Closing Date;
 - (vii) Any tax information regarding Buyer that the Settlement Agent (as that term is used in Section 6045 of the Code) is required to report to the Internal Revenue Service pursuant to the Code;
 - (viii) The Purchase Price;
 - (ix) The balance of the Transaction Costs Payment (\$133,333.33); and
 - (x) Such other documents, resolutions, instruments, affidavits and documents as may be reasonably necessary and requested by the City to effectuate the transaction.

Section 4.8. APPORTIONMENTS. At the Closing, real estate taxes, if any, for the fee parcels constituting Systems assets to be transferred to the Buyer and all other operating expenses and revenues for the Systems allocable to periods before and after the Closing Date, shall be apportioned for the Systems as of 11:59 p.m. on the day preceding the Closing Date.

Section 4.9. SETTLEMENT STATEMENT. At the Closing, the Parties shall jointly execute the Settlement Statement setting forth all adjustments to the Purchase Price and the basis for same. In the event that any adjustments or apportionment cannot be apportioned or adjusted at the Closing by reason of the fact that final amounts have not been ascertained, or are not available as of such date, the Parties hereto agree to apportion or adjust such items on the basis of their best estimates of the amounts known at the Closing and to re-prorate any and all of such amounts promptly when the final amounts are ascertained, which obligation shall survive the Closing.

ARTICLE V

PRE-CLOSING COVENANTS

Section 5.1. PRE-CLOSING COVENANTS. The Parties agree as follows with respect to the period between the execution of this Agreement and the Closing:

- (A) General. Each of the Parties will use its reasonable best efforts to take all actions and to do all things necessary, proper, or advisable in order to consummate and make effective the transactions contemplated by this Agreement and the Transaction Documents.
- (B) Access to Books. Upon reasonable prior notice, the City will give the Buyer, its accountants, engineers, counsel and other representatives full access during normal business hours throughout the period from the date of this Agreement through the Closing Date to all of the City's records, books, and properties with respect to the Systems, including, without limitation, all customer usage data and will furnish the Buyer copies, including in electronic format reasonably acceptable to the Buyer, at the Buyer's expense, of such documents or portions of documents related to the ownership, operation and maintenance of the Systems as the Buyer may reasonably request, provided such documents and electronic media are in the City's possession or in the possession of third parties under contract with the City.
- (C) Permits. Prior to the Closing, the Parties shall cooperate to effect the transfer of all Permits related to the operation of the Systems which were granted to the City by any Governmental Authority, which transfer shall be effective on or after but not before the Closing. The City shall provide reasonable assistance to the Buyer as reasonably requested by the Buyer with respect to such applications.
- (D) Operation of Systems. The City will:
 - (i) use good faith efforts to continue to operate and maintain the Systems in compliance with all local, State and federal rules and regulations;
 - (ii) maintain the Systems in at least as good order and condition as existed on the date of this Agreement, casualty and normal wear and tear excepted; and
 - (iii) timely comply with the provisions of all leases, agreements, and contracts relating to the Systems.
- (E) BPU Approvals. The Buyer shall as soon as reasonably practicable after the execution of this Agreement by both Parties, and the adoption of the Municipal Consent as set forth in Section 5.1(F), at Buyer's sole cost and expense, file or cause to be filed all necessary documentation with the BPU to obtain final order of the BPU approving the Municipal Consent for the Buyer to own and operate the Systems.

- (F) Municipal Consent. The City shall adopt pursuant to applicable law, the Municipal Consent pursuant to N.J.S.A. 48:2-14. The Buyer shall be responsible, at its sole cost and expense, with reasonable assistance from the City, for obtaining BPU approval of the Municipal Consent pursuant to N.J.S.A. 48:2-14.
- (G) Risk of Loss. The Parties agree that the City shall bear the risk of and be responsible for loss with respect to the assets and properties constituting the Systems from the date of this Agreement through the Closing Date. In the event that the condition of the Systems are significantly adversely changed from the date of this Agreement to the Closing Date by virtue of fire, casualty, act of God or condemnation, the City and the Buyer may mutually agree, in writing, to a reduction in Purchase Price or other consideration as compensation for the significant adverse change in the Systems. If the City and the Buyer cannot reach agreement within sixty (60) days of the event despite good faith efforts, either Party has the option to terminate this Agreement upon written notice to the other Party. If the Buyer terminates the Agreement pursuant to this section, the City shall promptly, and in no event later than five (5) business days after such termination, repay to the Buyer, the Deposit, and upon such termination this Agreement shall be deemed canceled, null and void and neither Party shall have any further obligation or liability to the other hereunder.
- (H) Customer List and Information; Final Bills. The City shall provide or cause to be provided to the Buyer a full and complete customer list for the Systems as of the date of the execution of the Agreement by both Parties, together with an electronic data file, in a format reasonably satisfactory to the Buyer, containing such customer information; such list and electronic file are to be updated by the City and provided to the Buyer within 60 days before the Closing or as otherwise agreed to between the Parties. The Parties shall agree no later than 60 days before the Closing to a process and method for the final billing of the Systems' customers and any appropriate adjustment to the Purchase Price pursuant to Section 4.8.
- (I) Publicity. The Parties agree to cooperate on any formal public announcement or statement regarding this Agreement or the transactions contemplated herein. Each Party shall make a good faith effort to provide the other with advance notice of the proposed content of any public announcement or statement.
- (J) Identification of Contracts to be Assigned. As set forth in Section 4.5(C), the Buyer must assume the City's obligations relating to the Systems on and following the Closing Date for those agreements set forth in **Exhibit E**.
- (K) Buyer Access. The City shall provide the Buyer, at the Buyer's sole cost, reasonable access to the Systems from the Contract Date until the Closing Date for purposes including, but not limited to, examination of customer accounts, ordinances, deeds, contracts, maps, and plans; inspection and tests of plant and equipment; and surveys of the real property comprising the Systems and easements. The Buyer hereby agrees to indemnify and hold the City harmless

from any and all claims, demands, suits, actions, damages, liabilities, or expenses with respect to or arising from the Buyer's access to the Systems during this period. The Buyer's rights under this Section shall be exercised during normal business hours, with reasonable notice and shall not interfere with the City's continuing operation of the Systems. The City shall cooperate with the Buyer with respect to such access to ensure a smooth transition in ownership of the Systems.

- (L) Confidentiality. Any information provided by the City to the Buyer regarding the City's customers and the Systems that is not generally available to the public shall remain confidential.
- (M) Cooperation During Transition. Generally, the Parties shall cooperate to facilitate a smooth transition and the Buyer shall not do anything that will interfere with the City's operation and administration of the Systems. The City shall assist the Buyer in supplementing the Property Information Materials, as defined in Section 6.2, to ensure that Buyer has the necessary property rights to own and operate the Systems upon the Closing Date.
- (N) Referendum Education Campaign. The Buyer shall provide reasonable assistance to the City in connection with its public referendum education campaign.
- (O) Mannington and Quinton Municipal Consents. To the extent any consents or approvals are necessary from Mannington and Quinton, the City shall notify those municipalities of the necessity of said consent and shall cooperate with the Buyer in obtaining said consent.
- (P) Watershed Property Review Board. The City will submit an application for review and approval of the transfer of any fee parcels or easements associated with the Systems to the Watershed Property Review Board (WPRB) in accordance with the Watershed Moratorium and Protection Act, P.L. 1988, c.163; P.L., c.19. The Buyer shall prepare the application for submittal by the City.

ARTICLE VI

TITLE AND CONDITION OF SYSTEMS

Section 6.1. TITLE. Seller has good and marketable title to the Systems, including the real property comprising same and/or a valid leasehold interest in or valid easements or licenses to use, all assets constituting the Systems and all of such title, leasehold, easements or licenses shall be conveyed by the City to the Buyer at the Closing free and clear of all Encumbrances, subject only to the Permitted Encumbrances. "Permitted Encumbrances" means any and all:

- (A) matters disclosed by the Property Information Materials (as defined in Section 6.2 hereof);
- (B) matters that become Permitted Encumbrances in accordance with the provisions of this Article VI;
- (C) matters that would be revealed by a complete and accurate survey, of the real property comprising the Systems;
- (D) rights of way and easements that do not materially interfere with the existing use of the real property comprising the Systems;
- (E) zoning and other governmental restrictions; and
- (F) taxes, assessments and other public charges on real property comprising the Systems not due as of the Closing Date, provided, however, in no event shall Permitted Encumbrances include Monetary Liens. With respect to the real property comprising the Systems, Buyer may within thirty (30) business days of execution of this Agreement apply for an owner's title insurance policy or policies from a reputable title insurance company licensed to do business in New Jersey (the "Commitment"). Within ten (10) business days after receipt of the Commitment, the Buyer shall notify the City of any objections, other than the Permitted Encumbrances. Any matters set forth on the Commitment and not objected to by the Buyer within said ten (10) day period shall become Permitted Encumbrances hereunder. The City may elect to cure any title defect by so notifying the Buyer. If the City does not so elect within twenty (20) days after notice of the objection, or if after so electing, the City fails to cure the defect(s) prior to the Closing, then the Buyer may at its choice, (i) continue to close provided the parties reach a mutually agreeable solution for (a) curing any title defects, and (b) obtaining easements necessary for the operation of the Systems that are missing or that Seller is unable to deliver; or (ii) terminate this Agreement upon notice to the City, said notice to be delivered within ten (10) business days of the City's failure to so elect or, if the City elects to cure but does not, to be delivered at the Closing. If the Buyer terminates the Agreement pursuant to this section, the City shall promptly, and in no event later than ten (10) business days after such termination, repay to the Buyer the Deposit, and upon such termination

this Agreement shall be deemed canceled, null and void and neither Party shall have any further obligation or liability to the other hereunder.

Section 6.2. PROPERTY INFORMATION MATERIALS. Subject to Section 2.1(c), the Buyer acknowledges that prior to the Buyer's execution of this Agreement, the City delivered or made available to the Buyer and the Buyer reviewed the materials and information concerning the Systems provided or made available as part of the RFB (collectively, "Property Information Materials"). The Buyer acknowledges and understands that the Property Information Materials may have been prepared by parties other than the City and that the City makes no representation or warranty whatsoever, express or implied, as to the content, completeness, or accuracy of the Property Information Materials. The Buyer specifically releases the City from all claims, demands, causes of action, judgments, losses, damages, liabilities, costs and expenses (including attorney's fees whether suit is instituted or not), whether known or unknown, liquidated or contingent (collectively, "Claims"), asserted against or incurred by the Buyer by reason of the information contained in, or that should have been contained in, the Property Information Materials or any inconsistency between such information and any representation or warranty of the City contained in this Agreement. However, the foregoing release shall not apply to any Claims resulting from any intentional misstatements or willful misconduct on the part of the City.

Section 6.3. CONDITION OF THE SYSTEMS. Subject to the terms and conditions of this Agreement, and the representations and warranties contained in the other Transaction Documents, the Buyer has agreed to purchase the Systems in their "AS-IS" condition, including their environmental condition, operating condition, and condition of repair. The Buyer acknowledges that the Buyer has had and/or has been given pursuant to the RFB, an adequate opportunity to make such legal, factual, and other inquiries and investigation as the Buyer deems necessary, desirable, or appropriate with respect to the Systems. The Buyer has satisfied itself on all aspects, without limitation, of the Systems and is not relying on any representation of the City in connection therewith except for the representations and warranties contained in this Agreement and the other Transaction Documents. Notwithstanding the above, the City will make good faith efforts to operate the Systems through to the Closing Date in compliance with all local, state and federal rules and regulations and shall be responsible for any and all fines, damages, claims and liability arising out of the City's operation of the Systems that have accrued and been identified to the City prior to Closing.

Section 6.4. POST-CLOSING COOPERATION OF THE CITY. On or after the Closing Date, the City shall, upon reasonable request, reasonably cooperate with the Buyer to implement a proper transition.

ARTICLE VII

CONDITIONS TO OBLIGATION TO CLOSE

Section 7.1. CONDITIONS TO OBLIGATION OF THE BUYER. The obligation of the Buyer to perform its obligations in connection with the Closing is subject to the satisfaction or waiver by the Buyer of the following conditions:

- (A) the representations and warranties set forth in Article II of this Agreement and the other Transaction Documents shall be true and correct in all material respects as of the Closing Date;
- (B) the City shall have performed and complied with all of its covenants hereunder in all material respects through the Closing;
- (C) there shall not be any injunction, judgment, order, decree, ruling, or charge in effect preventing consummation of any of the transactions contemplated by this Agreement and the Transaction Documents;
- (D) the Buyer shall have secured from the City, the BPU, NJDEP, and all other applicable Governmental Authorities and quasi-governmental entities, all authorizations and Permits required for the transfer of the Systems to the Buyer, including but not limited to the NJDEP Permits, if necessary (the "Approvals"). The Parties shall use all reasonable efforts to obtain the Approvals and to do so as expeditiously as reasonably possible. In connection with the Approvals, the Buyer shall deliver to the City or cause to be delivered to the City, through addition(s) to the applicable service list(s), copies of all correspondences to and from the bodies with whom the applications have been filed or will be filed. The City covenants to cooperate with the Buyer, at the Buyer's cost and expense, in the Buyer's efforts to obtain the Approvals and to promptly consent, when required by law, to all applications for the Approvals filed by the Buyer. The Buyer shall immediately notify the City in writing of any determinations made by any authority considering any application; and
- (E) the City shall have obtained any required written approval or waiver from the Watershed Property Review Board in accordance with applicable law.

Section 7.2. CONDITIONS TO OBLIGATION OF THE CITY. The obligation of the City to perform its obligations in connection with the Closing is subject to satisfaction or waiver by the City of the following conditions:

- (A) the representations and warranties set forth in Article III of this Agreement and in the other Transaction Documents shall be true and correct in all material respects as of the Closing Date;
- (B) the Buyer shall have performed and complied with all of its covenants hereunder in all material respects through the Closing;

- (C) there shall not be any injunction, judgment, order, decree, ruling, or charge in effect preventing consummation of any of the transactions contemplated by this Agreement or the Transaction Documents;
- (D) the Buyer shall have secured from the City, the BPU, NJDEP, and all other applicable governmental and quasi-governmental entities, all authorizations and approvals required for the transfer of the Systems to the Buyer, including but not limited to the NJDEP Permits, if necessary (the "Approvals"). The Parties shall use all reasonable efforts to obtain the Approvals and to do so as expeditiously as reasonably possible. In connection with the Approvals, the Buyer shall deliver to the City or cause to be delivered to the City, through addition(s) to the applicable service list(s), copies of all correspondences to and from the bodies with whom the applications have been filed or will be filed. The City covenants to cooperate with the Buyer, at the Buyer's cost and expense, in the Buyer's efforts to obtain the Approvals and to promptly consent, when required by law, to all applications for the Approvals filed by the Buyer. The Buyer shall immediately notify the City in writing of any determinations made by any authority considering any application; and
- (E) the City shall have obtained any necessary consents and releases for the assignment and assumption of the assumed liabilities as defined in **Exhibit B**.

Section 7.3. SCHEDULE FOR CLOSING CONDITIONS. The Buyer shall promptly initiate and complete its conditions of Closing set forth in Section 7.1, provided, however, that all such conditions must be met no later than the date that is twelve (12) months following the date of this Agreement or the adoption of the Municipal Consent, whichever is later. In the event that all such Closing conditions are not completed by such date notwithstanding the Company's good faith efforts, the City shall have the right to terminate this Agreement and keep the Deposit and the (\$66,666.67) portion of the Transaction Costs Payment that had been paid to the City upon execution of this Agreement.

ARTICLE VIII

POST-CLOSING OBLIGATIONS OF BUYER

Section 8.1. CONTINUATION OF SERVICES. The Buyer shall continue to provide services in accordance with the Customer Service Standards and the Customer Service Plan described in **Exhibit J** and shall guarantee the collection, conveyance, and treatment of water and wastewater to the customers of the Systems in a manner that meets all local, state, and federal laws and regulations relating thereto and shall operate and maintain the Systems to provide safe, reliable and adequate service.

Section 8.2. MAINTENANCE, REPAIRS, AND REPLACEMENT. The Buyer shall perform, at its own expense, all maintenance, repair, and replacement of the machinery, equipment, structures, improvements, and all other property and components constituting the Systems. The Buyer shall provide or make provisions for all labor, materials, supplies, equipment, spare parts, and services which are necessary for the normal and ordinary maintenance of the Systems and shall conduct predictive, preventive, and corrective maintenance of the Systems as required by applicable law.

Section 8.3. RATE STABILIZATION COVENANT. On and after the Closing Date, the Buyer shall adopt and charge rates and charges to City customers in accordance with the 2023 rates and charges as set forth in **Exhibit D-1**. Such rates will not be increased for at least two (2) years from the Closing and rates will not be raised more than 9% in total over the three (3) years after that. Any future base rate increases shall be included in Buyer's base rate cases periodically filed with the BPU. The Buyer shall use good faith efforts to minimize rate increases to City customers.

Section 8.4. CAPITAL IMPROVEMENTS. The Buyer shall complete the capital improvements and schedule as set forth in Exhibit L.

Section 8.5. SERVICE TO CITY FACILITIES AND THE FINLAW BUILDING. The Buyer shall provide water and wastewater service to City-owned facilities as well as the Finlaw Building at no cost to the City for two (2) years after Closing at the same volume levels that existed for each month during the year prior to the Closing Date.

Section 8.6. CITY EMPLOYEES. The Buyer shall offer employment to the City's seven existing water and wastewater system employees. The employee must be offered a position of similar job duties along with equal or better salary and benefits consistent with the Buyer's standard wage and benefit package and in the geographic vicinity of the City of Salem. Employment shall be offered subject to the employee satisfying the pre-employment physical screening requirements of the Buyer. The Buyer shall offer full-time employment for a minimum period of six months from the commencement of services date as long as the employee performs the services in a reasonably satisfactory manner.

Section 8.7. PAVING. The Buyer shall pave curb to curb on streets where sewer replacements are being performed. The Buyer shall coordinate its paving schedule with other City construction projects.

Section 8.8. SERVICE LINE RESPONSIBILITY. For purposes of this Agreement, the term "Service Line" shall mean the lateral service line that connects the wastewater collection system to a customer's premise. The Buyer shall be responsible for maintaining and repairing that portion of the Service Line from the curb to the wastewater and/or water connection.

Section 8.9. LICENSE FOR CELL TOWERS. As of the Closing Date, the Buyer shall grant the City a temporary license to continue utilizing the portions of the property where certain cell equipment is located pursuant to existing agreements between the City and cell tower companies.

Section 8.10. FIRE HYDRANTS. Following the Closing Date, the Buyer shall bring the City onto the Buyer's Tariff M-8 for standby public fire service at a rate of \$37.80 per hydrant per month. This fixed monthly rate is all the City will be required to pay for fire protection services. The actual quantities of water utilized for fighting fires, testing fire hydrants or training by the fire department will not be billed volumetric rates. The City shall via an ordinance adopt this fire service rate prior to the Closing Date such that it is effective as of the Closing Date and Buyer shall in turn adopt and apply this rate post-Closing.

Section 8.11. HARVEST POINT FIRE SPRINKLER SERVICE. The Buyer shall be required to continue to provide free fire sprinkler service to the Harvest Point Apartment complex through the earlier of the expiration of the 2008 PILOT Agreement between the City and Whispering Waters, or December 31, 2041.

Section 8.12. SURVIVAL. The obligations set forth in this Article VIII shall survive Closing.

ARTICLE IX

REMEDIES FOR BREACHES OF THIS AGREEMENT

Section 9.1. PRE-CLOSING DEFAULT BY THE BUYER. In the event that the Buyer materially breaches or defaults under this Agreement before the Closing hereunder, and such material breach or default continues for ten (10) business days after written notice from the City to the Buyer specifying such material breach or default, the City shall have the right as its sole remedy to terminate this Agreement and retain the Deposit and the (\$66,666.67) portion of the Transaction Costs Reimbursement paid to the City upon execution of this Agreement as liquidated damages. The City's rights and remedies pursuant to this Section 9.1 shall survive any termination of this Agreement by the City as a result of the Buyer's default.

Section 9.2. PRE-CLOSING DEFAULT BY THE CITY. In the event that the City materially breaches or defaults under this Agreement before Closing and such material breach or default continues for ten (10) business days after written notice from the Buyer to the City specifying such material breach or default the Buyer shall have the right as its sole remedy to either seek to enforce this Agreement by an action for specific performance (but not an action for damages) or to terminate this Agreement and have the Deposit returned. The Buyer's rights and remedies pursuant to this Section shall survive any termination of this Agreement by the Buyer as a result of the City's default.

Section 9.3. POST-CLOSING DEFAULTS. In the event that either Party materially breaches or defaults under this Agreement or the Transaction Documents after the Closing, and such material breach or default continues for ten (10) business days after written notice from the non-defaulting Party to the defaulting Party specifying such material breach or default, the non-defaulting Party shall have the right to seek any available remedies at law or equity.

ARTICLE X

ESCROW AGENT

Section 10.1. ESCROW. The Deposit shall be held by the Escrow Agent, in trust, for the benefit of the Parties as their interests appear hereunder under the Escrow Agreement attached hereto and incorporated herein by reference as **Exhibit I**.

ARTICLE XI

NON-BINDING MEDIATION; FORUM FOR DISPUTE RESOLUTION

Section 11.1. RIGHTS TO REQUEST AND DECLINE NON-BINDING MEDIATION. Either Party may request non-binding mediation of any dispute arising under this Agreement. The non-requesting Party may decline the request in its sole discretion. If there is concurrence that any particular matter shall be mediated, the provisions of this Article shall apply. The costs of such non-binding mediation shall be divided equally between the City and the Buyer.

Section 11.2. PROCEDURE. The mediator shall be a professional engineer, attorney or other professional mutually acceptable to the parties who has no current or on-going relationship to either Party. The mediator shall have full discretion as to the conduct of the mediation. Each Party shall participate in the mediator's program to resolve the dispute until and unless the Parties reach agreement with respect to the disputed matter or one Party determines in its sole discretion that its interests are not being served by the mediation.

Section 11.3. NON-BINDING EFFECT. Mediation is intended to assist the Parties in resolving disputes over the correct interpretation of this Agreement. No mediator shall be empowered to render a binding decision.

Section 11.4. RELATION TO JUDICIAL LEGAL PROCEEDINGS. Nothing in this Article shall operate to limit, interfere with, or delay the right of either Party under this Article to commence judicial legal proceedings upon a breach of this Agreement by the other Party, whether in lieu of, concurrently with, or at the conclusion of any non-binding mediation.

Section 11.5. FORUM FOR DISPUTE RESOLUTION. It is the express intention of the Parties that all legal proceedings related to this Agreement or to the Systems or to any rights or any relationship between the Parties arising therefrom shall be initiated and maintained in the applicable State courts located in Salem County, New Jersey or the federal district court located in Camden County, New Jersey, as applicable.

ARTICLE XII

INDEMNIFICATION

Section 12.1. INDEMNIFICATION BY THE BUYER. The Buyer shall indemnify, defend and hold harmless, including paying all attorneys' fees, the City, and its elected officials, employees, representatives and agents (each, a "City Indemnitee"), from and against any and all third-party claims, demands, suits, actions, damages, liabilities or expenses arising from (or alleged to arise from or in connection with): (1) any material breach of any representation or warranty; (2) the operation of the Systems subsequent to the Closing Date; (3) any failure by the Buyer to perform its obligations under this Agreement; and (4) the negligent acts, errors or omissions or willful misconduct of the Buyer or any of its officers, directors, employees, agents, representatives or subcontractors in connection with this Agreement.

Section 12.2. THIRD PARTY CLAIMS. An Indemnitee shall give the Indemnitor notice of any matter which an Indemnitee has determined has given or could give rise to a right of indemnification under this Agreement (an "Indemnified Claim") within sixty (60) days of such determination, stating the amount of the Losses, if known, the method of computation thereof, and containing a reference to the provisions of this Agreement from which such right of indemnification is claimed or arises. If the Indemnitor acknowledges in writing that its obligation to indemnify the Indemnitee hereunder against any Losses that may result from such Indemnified Claim, then the Indemnitor shall be entitled to assume and control the defense of such Indemnified Claim at its expense and through counsel of its choice if it gives notice of its intention to do so to the Indemnitee within five (5) days of the receipt of such notice from the Indemnitee. In the event the Indemnitor exercises the right to undertake any such defense against any such Indemnified Claim as provided above, the Indemnitee shall cooperate with the Indemnitor in such defense and make available to the Indemnitor, at the Indemnitor's expense, all witnesses, pertinent records, materials and information in the Indemnitee's possession or under the Indemnitee's control relating thereto as is reasonably required by the Indemnitor. Similarly, in the event the Indemnitee is, directly or indirectly, conducting the defense against any such Indemnified Claim, the Indemnitor shall cooperate with the Indemnitee in such defense and make available to the Indemnitee, at the Indemnitor's expense, all such witnesses, records, materials and information in the Indemnitor's possession or under the Indemnitor's control relating thereto as is reasonably required by the Indemnitee. No such Indemnified Claim may be settled by the Indemnitor without the prior written consent of the Indemnitee which shall not be unreasonably withheld. If the Indemnitor fails to acknowledge its indemnity obligation within the time period provided above then the Indemnitee may undertake its own defense without waiving its right to seek indemnity hereunder, including reimbursement of any defense costs incurred.

Section 12.3. NO OTHER DAMAGES. Other than in connection with third party claims, in no event shall either Party be liable to the other for any reason under this Agreement or any other Transaction Document for any form of special, incidental, indirect, consequential, or punitive damages of any kind (whether or not foreseeable), even if informed in advance of the possibility of such damages, and whether arising in contract, tort (including negligence), or otherwise.

ARTICLE XIII

MISCELLANEOUS

Section 13.1. THIRD PARTY BENEFICIARIES. Neither this Agreement nor any Transaction Document shall confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns.

Section 13.2. ENTIRE AGREEMENT. This Agreement (including the other Transaction Documents), constitutes the entire agreement between the Parties and supersedes any prior understandings, agreements, or representations by or between the Parties, written or oral, to the extent they related in any way to the subject matter of any such agreement or document.

Section 13.3. SUCCESSION AND ASSIGNMENT. This Agreement and each Transaction Documents shall be binding upon and inure to the benefit of the Parties named herein and their respective successors and permitted assigns. Neither Party shall assign this Agreement to any Person without the other Party's prior written consent.

Section 13.4. COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together will constitute one and the same instrument.

Section 13.5. HEADINGS. The article and section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 13.6. NOTICES. All notices, requests, demands, claims, and other communications hereunder will be in writing. Any notice, request, demand, claim, or other communication hereunder shall be deemed duly given if it is sent by registered or certified mail, return receipt requested, postage prepaid, and addressed to the intended recipient as set forth below:

If to City:

City Clerk
City of Salem
17 New Market Street
Salem, NJ 08079

Copy to:

Andrea Rhea, Esq.
Chance & McCann LLC
201 West Commerce Street
Bridgeton, NJ 08302

If to Buyer:

Vice President of Operations
New Jersey-American Water Company, Inc.
1 Water Street
Camden, New Jersey 08102

Copy to:

General Counsel
New Jersey-American Water Company, Inc.
1 Water Street
Camden, New Jersey 08102

Any Party may send any notice, request, demand, claim, or other communication hereunder to the intended recipient at the address set forth above using any other means (including personal delivery, expedited courier, messenger service, telecopy, telex, ordinary mail, or electronic mail), but no such notice, request, demand, claim, or other communication shall be deemed to have been duly given unless and until it is actually received by the intended recipient. Any Party may change the address to which notices, requests, demands, claims, and other communications hereunder are to be delivered by giving the other Party notice in the manner herein set forth.

Section 13.7. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the domestic laws of the State of New Jersey without giving effect to any choice or conflict of law provision or rule (whether of the State of New Jersey or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of New Jersey.

Section 13.8. AMENDMENTS AND WAIVERS. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by the Buyer and the City. No waiver by any Party of any default, misrepresentation, breach of warranty, or breach of covenant hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default, misrepresentation, breach of warranty, or breach of covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

Section 13.9. SEVERABILITY. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

Section 13.10. EXPENSES. Subject to the City's retention of the (\$66,666.67) portion of the Transaction Costs Payment paid to the City upon execution of this Agreement (except as provided in Section 6.1), in the event the Closing does not occur, other than by reason of a material default by one of the Parties, each Party shall bear its own costs and expenses (including legal fees and expenses) incurred in connection with this Agreement and the transactions contemplated hereby.

Section 13.11. CONSTRUCTION. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement. Any reference to any federal, state, local, or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. The word "including" shall mean including without limitation.

Section 13.12. VARIATIONS IN PRONOUNS. All pronouns and any variations thereof refer to the masculine, feminine or neuter, singular or plural, as the identity of the person or persons may require.

Section 13.13. INCORPORATION OF EXHIBITS AND SCHEDULES. The Exhibits and Schedules identified in this Agreement are incorporated herein by reference and made a part hereof.

Section 13.14. TRANSFER TAXES. The Buyer shall be responsible for all transfer taxes or other taxes applicable to the transaction, if any.

Section 13.15. TIME IS OF THE ESSENCE. Time is of the essence with regard to all dates and time periods set forth or referred to in this Agreement.

Section 13.16. REVIEW OR AUDIT BY OFFICE OF THE STATE COMPTROLLER. In accordance with N.J.S.A. 52:15C-14(d), Buyer shall maintain all documentation related to products, transactions or services under this Agreement for a period of five years from the Closing Date. Such records shall be made available to the New Jersey Office of the State Comptroller upon request.

(Signature Page Follows)

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement of the date first above written.

CITY OF SALEM

By: _____
Name:
Title:

**NEW JERSEY-AMERICAN WATER
COMPANY, INC.**

By: _____
Name:
Title:

EXHIBIT A
DESCRIPTION OF THE SYSTEMS

Salem City Water and Wastewater Systems Descriptions

The following is a summarized description of the City's water and wastewater systems. A more comprehensive description of the City's systems is included in the Remington & Vernick Evaluation Report.

A. Water Supply, Treatment, Storage and Distribution

The existing water supply, treatment and distribution system consists of four (4) actively permitted water supply wells, two (2) surface water intakes, one (1) water treatment plant, one (1) elevated water storage tank, one (1) standpipe and a water distribution system. The age of the water system infrastructure ranges from 1880 to more recent improvements completed as recent as 2014. All four (4) water supply wells are constructed into the Wenonah-Mt. Laurel (WML) Aquifer system. The two (2) water surface water intakes are located at Elkinton Pond and Laurel Lake in neighboring Quinton Township. The wells and surface water supply sources are all piped to a common Water Treatment Plant located on the southerly end of the City corporate limits on Grieves Parkway. The Water Treatment Plant was constructed in 2012 for the treatment of both surface water and well water. Prior to its construction, the wells were treated at each well site and pumped directly to the water distribution system. The surface water had been pumped to the previous water treatment plant, located on the same site, and then pumped into the water distribution system. The new Water Treatment Plant is comprised of an enhanced coagulation pre-treatment system including slow and rapid mix aeration zones, followed by a main treatment system including four (4) low pressure ultrafiltration membrane trains, and two ultraviolet (UV) units for disinfection. The treatment system also includes the addition of sodium hydroxide and sulfuric acid for pH adjustment, aluminum chlorohydrate for coagulation, powdered activated carbon for taste and odor control, a phosphate feed system for sequestration and sodium hypochlorite for post chlorination. A clearwell and set of high service pumps at the plant effluent provide for the appropriate chlorine contact time and distribute the treated water. The plant is designed to treat 2 MGD of both surface and groundwater and is also designed for future expansion up to 3 MGD. The new Water Treatment Plant building is constructed of a pre-engineered steel structure supported by a reinforced concrete foundation. There are also office and storage space located in the new Water Treatment Plant.

The old water treatment facility, which is out of commission, but still on site, consists of

the following:

- One original brick main treatment building with an addition and four (4) horizontal filters partially in the building

- Two (2) steel clarifier tanks
- One (1) masonry block garage
- Various structures used as part of former treatment process

Water storage for the City water supply includes a 1 MG bolted steel standpipe and 1 MG elevated, multi-column (leg supported) steel water storage tank.

The City provides water service to the residents of the City of Salem as well as portions of Quinton Township and Mannington Township. The City owns and operates the infrastructure in the outlying service area including the responsibility of responding to emergency calls.

The water distribution system consists of approximately 21 miles of water main that provides water service to a population size of approximately 5,000 via 2,309 residential water service connections. The distribution infrastructure that the City owns consists of mostly cast or ductile iron pipe with pipe diameters ranging in sizes from 4" up to 12". The City does not have any emergency interconnections with either public or private purveyors that are adjacent to the City limits.

B. Wastewater Facilities

The existing wastewater system includes a collection and pumping system consisting of three (3) sanitary lift stations and associated force mains, and gravity sewer mains. In addition, the City owns and operates its own Wastewater Treatment Plant for the treatment of the sanitary sewerage. The Wastewater Treatment Plant is near the intersection of Grieves Parkway and West Front Street. The Wastewater Treatment Plant is permitted for up to 1.4 MGD. The age of most of the major treatment components are estimated to be 40 years old.

The Wastewater Treatment Plant consists of the following:

- Screw Pumps with screen system
- Orbal Tank
- Clarifiers
- Digester Tanks
- Effluent Tank

The Wastewater Treatment Plant effluent, after treatment, outfalls to the Salem River.

The wastewater discharge limits are included in the City's New Jersey Pollutant Discharge Elimination System (NJPDES) Permit No. NJ0024856.

Similar to the water distribution system, the wastewater collection system is a mixture of newer and older components, ranging in pipe diameter sizes from 6" to 8". The existing sanitary system is estimated at fifteen (15) miles of gravity main and approximately two (2) miles of force main associated with the lift stations. The age and materials used in the system is mostly unknown at this time.

The City does not own any of the sanitary laterals from the main to the residences. The City is responsible only for main repairs and property owners are responsible for the sewer lateral up to the main. The City also accepts flow from Quinton Township and maintains the lift stations pumping from Quinton Township into the City.

EXHIBIT B

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (the "Assignment and Assumption Agreement") is made and entered into on [] by and between the City of Salem, a public body corporate and politic in Salem County in the State of New Jersey (the "Assignor") and New Jersey Water Company, Inc., a New Jersey Public Utility Corporation with principal corporate offices at 1 Water Street, Camden, NJ 08102 (the "Assignee"). Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Agreement of Sale (as defined below).

WHEREAS, Assignor and Assignee are parties to a certain Agreement of Sale, dated [] (the "Agreement"), providing for the sale by the Assignor of the assets constituting the Systems to the Assignee; and

WHEREAS, the Assignor and the Assignee have agreed that on or prior to the Closing, the Assignor shall assign, and Assignee shall assume, the Assumed Liabilities, as more fully described herein.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants contained herein, and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

Section 1. **ASSIGNMENT AND ASSUMPTION**. Subject to the terms and conditions of the Agreement of Sale, the Assignor hereby assigns, sells, transfers, and sets over (collectively, the "Assignment") to the Assignee all of Assignor's rights, obligations, and liabilities relating to the Assumed Liabilities as more particularly set forth on Schedule I attached hereto and made a part hereof. Subject to the terms and conditions of the Agreement, the Assignee hereby accepts the Assignment and will assume, observe, and perform all of the duties, obligations, terms, provisions, and covenants contained therein. The Assignee shall also pay and discharge all of the obligations and liabilities of the Assignor to be observed, performed, paid, or discharged in connection with the Assumed Liabilities. To the extent that the Assignment contemplated by this Section 1 constitutes or would be deemed to constitute a grant, sale, assignment, transfer, conveyance, or delivery, or an attempted grant, sale, assignment, transfer, conveyance, or delivery to the Assignee of any Assumed Liabilities, and such transaction would be prohibited by any applicable law or would require any governmental or third party authorizations, approvals, consents, or waivers, and such authorizations, approvals, consents, or waivers have not been obtained prior to the date hereof, this Assignment and Assumption Agreement shall not constitute a grant, sale, assignment, transfer, conveyance, or delivery, or an attempted grant, sale, assignment, transfer, conveyance, or delivery thereof. Following the date hereof, the parties shall cooperate and use commercially reasonable best efforts to obtain promptly such authorizations, approvals, consents, or waivers, and to obtain novations or other agreements if appropriate and, after obtaining such, to complete the transactions contemplated hereby. Pending such authorization, approval, novation, consent, or waiver, the parties shall cooperate with each other in any reasonable and lawful arrangement designed to provide the economic costs and benefits of the Assumed Liabilities to the Assignee. To the extent possible,

performance obligations of Assignor with respect to any such Assumed Liabilities shall be deemed to be subcontracted to the Assignee.

Section 2. FURTHER ASSURANCES. The Assignor and the Assignee each covenants and agrees to execute and deliver, at the request and expense of the other party hereto, such further instruments of transfer and assignment and to take such other action as such the other party may reasonably request to more effectively consummate the assignments and assumptions contemplated by this Assignment and Assumption Agreement.

Section 3. MISCELLANEOUS. This Assignment and Assumption Agreement constitutes an agreement solely among the parties hereto and is not intended to and shall not confer any rights, remedies, obligations, or liabilities, legal or equitable, on any person other than the parties hereto and their respective successors, assigns, and legal representatives, nor shall person other such person otherwise constitute a third party beneficiary under or by reason hereof. This Assignment and Assumption Agreement may be executed in one or more counterparts, each of which shall be deemed an original agreement, but all of which together shall constitute one and the same instrument. This Assignment and Assumption Agreement shall be governed by and construed in accordance with the internal laws of the State of New Jersey without reference to choice of law principles thereof. This Assignment and Assumption Agreement may only be amended or modified in writing, signed by the party against whom enforcement of such amendment or modification is sought. In the event that the Closing does not occur, this Assignment and Assumption Agreement shall become null and void and the Assumed Liabilities shall remain the sole obligation of Assignor.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

CITY OF SALEM

By: _____
Name:
Title:

NEW JERSEY-AMERICAN WATER
COMPANY, INC.

By: _____
Name:
Title:

SCHEDULE I TO EXHIBIT B

All obligations relating to the Systems accruing and arising on or after the Closing Date, including, but not limited to all obligations accruing or arising out of the Municipal Consent.

All contractual commitments of the City contained in the assumed contracts listed in **Exhibit E** accruing and arising after the Closing Date.

EXHIBIT C

FORM OF BILL OF SALE

THIS BILL OF SALE dated as [] from the City of Salem, a public body corporate and politic in Salem County in the State of New Jersey (the "City") and New Jersey Water Company, Inc. (the "Buyer").

WITNESSETH

WHEREAS, by an Agreement of Sale, dated [] (the "Agreement"), between the City and the Buyer, the City has agreed to convey to the Buyer certain assets, properties, and rights defined, described, and referred to in the Agreement (collectively, the "SystemS") which include those assets listed on the document attached hereto as Schedule I to **Exhibit C**, with the exception of those items expressly set forth on the document attached hereto as Schedule II to **Exhibit C**; and

WHEREAS, pursuant to due authorization, the City is presently executing and delivering this Bill of Sale to the Buyer for the purpose of selling and assigning to and vesting in the Buyer all of the right, title, and interest currently held by the City in and to the Systems;

NOW THEREFORE, in consideration of the purchase price provided in the Agreement and other good and valuable consideration, and intending to be legally bound, the City hereby grunts, sells, conveys, assigns, transfers, sets over to, and vests in the Buyer, its successors and assigns, all of its right, title and interest, legal and equitable, in and to the Systems.

TO HAVE AND TO HOLD the same, including the appurtenances thereof, unto the Buyer, its successors and assigns, forever, to its and their own proper use and behoove.

Section 1. **SALE OF SYSTEMS AS IS**. Except as specifically set forth in the Agreement, the Systems are being transferred "**AS IS**", "**WHERE IS**", and "**WITH ALL FAULTS**" as of the date of this Bill of Sale, without any representation or warranty whatsoever as to its condition, fitness for any particular purpose merchantability or any other warranty, express or implied. Except as specifically set forth in the Agreement, the City specifically disclaims and Buyer waives any warranty, guaranty or representation, oral or written, past or present, express or implied, concerning the Systems. The Buyer is hereby thus acquiring the Systems based solely upon the Buyer's own independent investigations and inspections of that property and not in reliance upon any information provided by the City or the City's agents or contractors. The City has made no agreement to alter, repair, or improve any portion of the Systems.

Section 2. **APPLICABLE LAW**. This instrument shall be governed by and enforced in accordance with the laws of the State of New Jersey.

IN WITNESS WHEREOF, the City has caused this Bill of Sale to be duly executed as of the date first above written.

City of Salem, a public body corporate and politic in
Salem County in the State of New Jersey

By: _____

RECEIPT OF THE FOREGOING

BILL OF SALE

ACKNOWLEDGED AS OF

[____], 2023.

NEW JERSEY-AMERICAN WATER COMPANY, INC.

By: _____

SCHEDULE I TO EXHIBIT C

INCLUDED ASSETS

All assets that comprise the Systems as described in **Exhibit A**. The Included Assets shall not include the Excluded Assets set forth in Schedule II to **Exhibit C**.

SCHEDULE II TO EXHIBIT C

EXCLUDED ASSETS

Personal property

Office equipment

Office supplies

Vehicles

Jetter

Cash, securities, bank accounts and the accounts receivable of the City relating to the Systems up to and including the Closing Date.

EXHIBIT D-1

RATES

**CITY OF SALEM
ORDINANCE 23-07**

**AN ORDINANCE AMENDING WATER & SEWER RATES SET FORTH IN CHAPTER
230 OF THE MUNICIPAL CODE OF THE CITY OF SALEM**

WHEREAS, the Common Council of the City of Salem has undergone an extensive review of its budget and has determined that it is necessary to increase the sewer and water service rates, effective July 1, 2023, in order to meet its fiscal and legal responsibilities.

NOW THEREFORE BE IT ORDAINED by the Common Council of the City of Salem, in the County of Salem and State of New Jersey that Section 43 of Chapter 230 of the Municipal Code, Waters and Sewers be amended as follows:

§230-45 entitled "Sanitary Sewer Rates" is hereby amended to read as follows:

A. The rate fixed and the amount to be paid for the use of the sanitary sewer shall be in accordance with N.J.S.A. 40A:26A-10 and the following schedule and classification (those properties which are subject to monthly water charges to be billed on a prorated monthly basis.):

Type of Property	Service Charge	Present	Effective July 1 st , 2023
Residential (for each Single-family unit)	Semi-annual	\$273.01	\$341.26
Commercial, institutional And industrial		\$8.85 per 1,000 gallons, \$341.26	
		Minimum charge per unit July 1, 2023	
	Quarterly	\$8.85 per 1,000 gallons, \$170.63	
		Minimum charge per unit July 1, 2023	
	Monthly	\$8.85 per 1,000 gallons, \$56.88	
		Minimum charge per unit June 1, 2023	

B. Surcharge. For residential, commercial, institutional and industrial customers whose wastewater BOD₅ or suspended solids as follows:

Item	Additional Cost (effective July 1, 2023)
(1) Per pound of BOD ₅	\$0.26
(2) Per pound of suspended solids	\$0.1600
(3) Septage rates per gallon	\$0.0800

C. \$230-48 entitled "Water Rates" is hereby amended to read as follows:

Section 48 Water Rates.

A. The price to be paid for use of water furnished by the City, effective July 1, 2023 shall be as follows:

<u>Type</u>	<u>Amount</u>
Flat rate per single family unit per annum not connected to a water meter	\$425.00
Metered	
Residential and light commercial	
Minimum semiannual rate for metered water	
5/8 inch meter, first 15,000 gallons	\$185.21
¾ inch meter, first 30,000 gallons	\$368.46
1 inch meter, first 54,000 gallons	\$660.90
1 ¼ inch meter to 1 ½ meter, first 120,000 gallons	\$1,469.95
2 inch meter, first 210,000 gallons	\$2,575.34
Excess semiannual use charge for water consumed beyond minimum amounts listed above	
Up to 1,000,000 gallons (per 1,000 gallons)	\$8.46
Over 1,000,000 gallons (per 1,000 gallons)	\$10.13
Institutional, heavy commercial, and industrial	
Minimum monthly rate for metered water	
5/8 inch meter, first 2500 gallons	\$30.98
¾ inch meter, first 5,000 gallons	\$62.85
1 inch meter, first 9,000 gallons	\$110.30
1 ¼ inch meter to 1 ½ meter, first 20,000 gallons	\$245.25
2 inch meter, first 35,000 gallons	\$429.26
3 inch meter, first 50,000 gallons	\$614.10
4 inch meter, first 100,000 gallons	\$1,226.25
6 inch meter, first 150,000 gallons	\$1,837.25
8 inch meter, first 300,000 gallons	\$3,571.63
Excess semiannual use charge for water consumed beyond minimum amounts listed above	
Up to 167,000 gallons (per 1,000 gallons)	\$8.46
Over 167,000 gallons (per 1,000 gallons)	\$10.13

B. Fire Service. (Note: Fire service lines shall be installed with an approved backflow prevention device as approved by the Public Works Superintendent or Sewer Superintendent)

<u>Type</u>	<u>Amount</u>
Public fire service per month, for each hydrant	\$62.04 effective July 1, 2023
Private fire service per month effective July 1, 2020	
2 inch service line	\$53.01
4 inch service line	\$249.06
6 inch service line	\$438.86
8 inch service line	\$619.14
10 inch service line	\$805.36

For each sprinkler head installed and not metered by
An approved fire line meter
Per Month

\$0.36

C. Purchase of bulk rate water (tanker trucks) shall be \$19.96 per 1,000 gallons effective July 1, 2023

BE IT FURTHER ORDAINED that all ordinances or parts of ordinances of the City of Salem heretofore adopted that are inconsistent with any of the terms and provisions of this Ordinance are hereby repealed to the extent of any inconsistency.

BE IT FURTHER ORDAINED that this ordinance shall take as provided by law.

ATTEST:

Ben Angeli, RMC

CITY OF SALEM

Earl Gage, Council President

COUNCIL	MOVED	SECONDED	Y	N	ABSTAIN	ABSENT
S. Cline						
R. Davis						
T. Gregory						
V. Groce						
S. Kellum						
G. Slaughter						
C. Smith						
E. Gage						

I, Ben Angeli, City Clerk of the City of Salem, in the County of Salem, do hereby certify the foregoing to be a true and correct copy of an Ordinance introduced by the Common Council of the City of Salem on March 20, 2023. Public Hearing shall take place on April 17, 2023.

Date

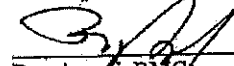
Ben Angeli, RMC

COUNCIL	MOVED	SECONDED	Y	N	ABSTAIN	ABSENT
S. Cline						
R. Davis						
T. Gregory						
V. Groce						
S. Kellum						
G. Slaughter						
C. Smith						
E. Gage						

COUNCIL	MOVED	SECONDED	Y	N	ABSTAIN	ABSENT
S. Cline			X			
R. Davis			X			
T. Gregory	X		X			
V. Groce			X			
S. Kellum		X	X			
G. Slaughter			X			
C. Smith			X			
E. Gage			X			

I, Ben Angeli, City Clerk of the City of Salem, in the County of Salem, do hereby certify the foregoing to be a true and correct copy of an Ordinance introduced by the Common Council of the City of Salem on February 21, 2023. Public Hearing shall take place on March 20, 2023.

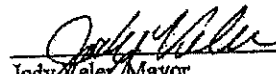
2-21-23
Date


Ben Angeli, RMC

ORDINANCE 23-06 was tabled after the public hearing on march 20, 2023.

COUNCIL	MOVED	SECONDED	Y	N	ABSTAIN	ABSENT
S. Cline			X			
R. Davis			X			
T. Gregory	X		X			
V. Groce			X			
S. Kellum		X	X			
G. Slaughter			X			
C. Smith			X			
E. Gage			X			

4-17-23
Date


Jody Miller, Mayor

I, Ben Angeli, Municipal Clerk of the City of Salem, in the County of Salem, do hereby certify the foregoing to be a true and correct copy of an Ordinance that had a second reading, a public hearing and then was tabled on March 20, 2023. Said Ordinance was moved at a meeting on April 17, 2023 and finally adopted by the Common Council of the City of Salem at the same meeting.

4-17-23
Date


Ben Angeli, RMC

EXHIBIT E

LIST OF WRITTEN CONTRACTS TO BE ASSUMED

City agreements with Mannington and Quinton to provide water and sewer service

Cell Tower Agreement

EXHIBIT F

FORM OF ASSIGNMENT AND GRANT OF EASEMENTS, RIGHTS OF WAY, AND OTHER PROPERTY

THIS ASSIGNMENT is made this day of [____], [____] between the **CITY OF SALEM**, a public body corporate and politic in Salem County in the State of New Jersey (the "Grantor"), and **NEW JERSEY WATER COMPANY, INC.**, a New Jersey Public Utility Corporation (the "Grantee"), having an address at 1 Water Street, Camden, NJ 08102.

WHEREAS, pursuant to an Agreement of Sale (the "Agreement") dated [____] and a Bill of Sale contemporaneously herewith, the Grantor has granted, sold, conveyed, assigned, transferred, set over, and vested in Grantee, its successors, and its assigns, all of the Grantor's right, title, and interest in the Systems as defined in the Agreement.

WITNESSETH, that Grantor for and in consideration of the sum of One Dollar (\$1.00) lawful money of the United States of America, and other valuable consideration, unto it well and truly paid by Grantee at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has assigned, granted, bargained, sold, aliened, enfeoffed, released, and confirmed, and by these presents does assign, grant, bargain, sell, alien, enfeoff, release, and confirm unto Grantee, its successors and assigns:

ALL Grantor's right, title and interest in and to any and all: (a) those certain rights of way, easements, licenses, and other rights and interests created or evidenced by those instruments listed in **Schedule I to Exhibit F** and made a part hereof, as well as any and all other easements and rights of way owned by Grantor which are rights in real property related to the provisions of wastewater service (collectively, the "Easements"); (b) any rights of way or easements that may be located in private property without written instruments where rights may have arisen from the passage of time, the operation of law, or otherwise; (c) all rights of Grantor to easements that may be shown on subdivision or development plans; and (d) all rights, liberties, privileges, hereditaments, and appurtenances whatsoever thereunto belonging, or in and otherwise appertaining, and the reversions, remainders, rents, issues and profits thereof; and all the estate, right, title, interest, property, claim, and demand whatsoever in and to the same and every part thereof (all of the foregoing being herein referred to as the "**Premises**");

TOGETHER WITH all of Grantor's occupancy rights and privileges to use, maintain, replace, and repair all water mains and appurtenant facilities located in the public rights-of-way of State highways and City roads.

TOGETHER WITH all of Grantor's rights of ingress, egress, and regress to and from said Easements, mains and appurtenances, at any and all times for the purpose of operating the Systems and laying, relaying, installing, operating, inspecting, maintaining, repairing, altering, removing, renewing, and replacing the Systems and their appurtenances;

TO HAVE AND TO HOLD the Easements and Premises hereby granted, or mentioned and intended so to be, with the appurtenances, unto the Grantee, its successors and assigns, to and for the only proper use and behoove of the Grantee, its successors and assigns, forever.

This Grant and all of the covenants herein contained shall inure to the benefit of and shall be binding upon Grantor, its successors and assigns, and Grantee, its successors or assigns.

The Grantee accepts and assumes any and all obligations under and arising in connection with the Easements and shall indemnify the City in connection with the Grantee's failure or improper performance of such obligations.

IN WITNESS WHEREOF the Grantor has caused this Assignment and Grant to be duly executed the day and year first above written.

[SEAL]

CITY OF SALEM, a public body
corporate and politic in Salem County in
the State of New Jersey

Attest: _____

By: _____
Name
Title:

STATE OF NEW JERSEY)
 : SS.:
SALEM)

On this, the ____ day of [____], before me, a Notary Public in and for said County, personally appeared _____, who acknowledged himself to be the _____ of the City of Salem, a public body corporate and politic in Salem County in the State of New Jersey, and that he, as such _____, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of _____ by himself as _____.

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

Notary Public
My Commission Expires:
[SEAL]

SCHEDULE I TO EXHIBIT F

**LIST OF EASEMENTS GRANTED TO OR
OBTAINED BY THE CITY**

Easements granted to or obtained by the City of Salem herewith as described herein.

[NOTE: Prior to Closing, list of easements to be assigned to be included].

EXHIBIT G

FORM OF GENERAL ASSIGNMENT

THIS GENERAL ASSIGNMENT, dated [____], by and between the **CITY OF SALEM**, a public body corporate and politic in Salem County in the State of New Jersey (the "Assignor") and **NEW JERSEY WATER COMPANY, INC.** (the "Assignee").

WHEREAS, Assignor and Assignee entered into an Agreement of Sale dated [____] (the "Agreement") for the sale and purchase of the Systems (as defined in the Agreement); and

WHEREAS, in connection with such sale and purchase, and as provided in the Agreement, Assignor desires to assign, transfer, set over, and deliver to Assignee all of Assignor's right, title, and interest in and to all assignable permits, licenses, plans, warranties, and guarantees benefiting the Systems (each issuer of any such permit, license, plan, warranty, or guarantee is hereinafter referred to as an "Issuer"), including, without limitation, items described on **Schedule I to Exhibit G** attached hereto (the "Assigned Rights"), and

WHEREAS, Assignee desires to accept the Assigned Rights.

NOW, THEREFORE, in accordance with the Agreement and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties do hereby covenant and agree as follows:

Section 1. **ASSIGNMENT**. Assignor does hereby assign, transfer, set over, and deliver unto Assignee all of the Assignor's right, title, and interest in and to the Assigned Rights. Assignor agrees that upon Assignee's request, it shall, without charge, execute such further reasonable documents as any Issuer may require to evidence this assignment, provided that no such document imposes any obligation or liability upon Assignor for any obligations or liabilities accruing on or after the date of this Assignment.

Section 2. **BINDING ASSIGNMENT**. This Assignment shall be: (i) binding upon, and inure to the benefit of the parties to this Assignment and their respective heirs, legal representatives, successors and assigns and (ii) construed in accordance with the laws of the State of New Jersey without regard to the application of choice of law principles.

Section 3. **COUNTERPARTS**. This Assignment may be executed in counterparts, all of which together shall constitute one agreement binding on all of the parties hereto, notwithstanding that all such parties are not signatories to the original or the same counterpart.

IN WITNESS WHEREOF, this General Assignment has been signed, sealed and delivered by the parties as of the date first above written.

WITNESS:

ASSIGNOR:

CITY OF SALEM, a public body
corporate and politic in Salem County in
the State of New Jersey

Accepted this ____ day of _____, 20__.

By: _____
Name
Title:

WITNESS:

ASSIGNEE:

**NEW JERSEY-AMERICAN WATER
COMPANY, INC.**

By: _____

By: _____
Name
Title:

SCHEDULE I TO EXHIBIT G

LIST OF ASSIGNED RIGHTS

PERMITS:

New Jersey Pollutant Discharge Elimination System Discharge to Surface Water Permit –
NJDEP Permit No. NJG0035742

Water Allocation Permit No. 5290

Water Treatment Plant Permit No. WCP07001 / PWSID No. NJ 1712001

[NOTE: Two separate Excel files to be attached]

EXHIBIT H

DISCLOSURE SCHEDULE TO THE AGREEMENT OF SALE

[NOTE: Disclosures to be reflected in this Exhibit prior to execution of Agreement.]

BETWEEN CITY OF SALEM AND NEW JERSEY-AMERICAN WATER COMPANY, INC.

These schedules are to be read in their entirety. Nothing in these schedules is intended to broaden the scope of any representation or warranty contained in the Agreement of Sale (the "Agreement"). The disclosure of any item, explanation, exception, or qualification in these schedules is disclosure of that item for all purposes for which disclosure is required under the Agreement, and is disclosed in all appropriate schedules irrespective of whether any cross-reference is made or whether no schedule is provided with respect to any representation or warranty. Capitalized terms used and not otherwise defined in these schedules shall have the meanings ascribed to them in the Agreement.

Section 2.1(A)

Organization of City

N.A.

Section 2.1(B)

Authorization of Transaction

N.A.

Section 2.1(C)

Title

Section 2.1(D)

Litigation

Section 2.1(E)

Default

N.A.

Section 2.1(F)

Reimbursement Obligation

N.A.

Section 2.1(G)

System Compliance

Section 2.1(H)

Rates

N.A.

Section 2.1 (I)

Permits

Section 2.1 (J)

Environmental

Section 3.1(A)

Organization of Buyer

N.A.

Section 3.1(B)

Authorization of Transaction

N.A.

Section 3.1(C)

Litigation

N.A.

Section 3.1(D)

Warranties

N.A.

Section 3.1(E)

Right to Inspect

N.A.

Section 3.1(F)

Other Limitations of Local, State, and Federal Laws and Regulations

N.A.

Section 3.1(G)

Source of Funds

N.A.

Section 3.1(H)

Blocked Person

N.A.

Section 3.1(I)

Scheduled Improvements

N.A.

EXHIBIT I

ESCROW AGREEMENT

THIS ESCROW AGREEMENT, dated as of [] (this "Escrow Agreement"), by and among **CITY OF SALEM**, a public body corporate and politic in Salem County in the State of New Jersey (the "City"), New Jersey-American Water Company, Inc. (the "Buyer"), and [] (the "Escrow Agent").

WITNESSETH

WHEREAS, the Buyer has executed and delivered to the City an Asset Agreement of Sale, dated as of [] (the "Agreement"), pursuant to which the Buyer will purchase from the City, and the City will sell to the Buyer, the Systems as defined in the Agreement;

WHEREAS, it is contemplated under the Agreement that the Buyer will deposit or cause to be deposited into escrow the sum of 10% of the Purchase Price (the "Escrow Amount") in cash upon its execution of the Agreement, to be held and disbursed by the Escrow Agent in accordance with the terms herein; and

WHEREAS, Escrow Agent is willing to act as the Escrow Agent hereunder.

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements contained herein and in the Agreement, and intending to be legally bound hereby, the parties hereby agree as follows:

Section 1. APPOINTMENT AND AGREEMENT OF ESCROW AGENT. The Buyer and the City hereby appoint the Escrow Agent to serve as, and the Escrow Agent hereby agrees to act as the escrow agent upon the terms and conditions of this Agreement.

Section 2. ESTABLISHMENT OF THE ESCROW FUND. Pursuant to Section 2.4 of the Agreement, the Buyer shall deliver to the Escrow Agent on the date hereof the Escrow Amount. The Escrow Agent shall hold the Escrow Amount and all interest and other amounts earned and/or accrued thereon (the "Escrow Fund") in escrow pursuant to the terms of this Escrow Agreement and the Agreement.

Section 3. PURPOSE OF THE ESCROW FUND. The Escrow Amount will be held by the Escrow Agent as a deposit made by the Buyer to be credited against the Purchase Price to the City pursuant to Section 2.4 of the Agreement.

Section 4. PAYMENTS FROM THE ESCROW FUND.

(A) At the Closing, upon written request of the Buyer and the City, the Escrow Agent shall pay in full to the City in immediately available funds all such amounts in the Escrow Fund. The Buyer and City agree that such amount shall be credited against the Purchase Price in favor of the Buyer at the Closing.

(B) In the event that the Agreement is terminated as described in Section 9.2 of the Agreement of Sale, the Buyer shall provide written notice to the Escrow Agent of such termination specifying in reasonable detail the nature and basis for such termination. The Escrow Agent shall, upon receipt of such notice, deliver a copy of such notice to the City's Representative. If within ten (10) Business Days after delivery of such notice, the Escrow Agent has not received a written objection from the City or the City's Representative, the Escrow Agent shall promptly transfer the Escrow Fund to the Buyer, by wire transfer in immediately available funds. If the Escrow Agent has received an objection within the stated time period, then Escrow Agent will proceed as described in Section 5 below.

(C) In the event that the Agreement is terminated as described in Section 9.1 of the Agreement, the City shall provide written notice to the Escrow Agent of such termination specifying in reasonable detail the nature and basis for such termination. The Escrow Agent shall, upon receipt of such notice, deliver a copy of such notice to the Buyer. If within ten (10) Business Days after delivery of such notice, the Escrow Agent has not received a written objection from the Buyer, the Escrow Agent shall promptly transfer the Escrow Fund to the City by wire transfer in immediately available funds. If the Escrow Agent has received an objection with the stated time period, then Escrow Agent will proceed as described in Section 5 below.

Section 5. OBJECTION TO A TERMINATION NOTICE. Either party, after receipt of a notice from the Escrow Agent that the other party is claiming a right to payment of the Escrow Fund pursuant to a termination right under the Agreement, may at any time within the ten (10) Business Days after receipt of said notice object by delivering to the Escrow Agent a writing specifying in reasonable detail the nature and basis for such objection. Upon receipt of such an objection, the Escrow Agent shall deliver a copy of such objection to the party seeking payment of the Escrow Fund. Unless the Escrow Agent thereafter receives, a statement from the objecting party that it is withdrawing its objection or if for any other reason the Escrow Agent in good faith shall elect not to make such payment, the Escrow Fund shall be held by the Escrow Agent and shall not be released except in accordance with either: (i) written instructions jointly executed by an authorized officer of the Buyer and the City's Representative or (ii) the final non-appealable judgment of a court.

Section 6. MAINTENANCE OF THE ESCROW FUND; TERMINATION OF THE ESCROW FUND.

(A) The Escrow Agent shall maintain the Escrow Fund in a non-interest bearing account in Bank of America until the earlier of:

- (i) the time at which there shall be no funds in the Escrow Fund; or
- (ii) the termination of this Escrow Agreement.

(B) Notwithstanding any other provision of this Escrow Agreement to the contrary, at any time prior to the termination of the Escrow Fund, the Escrow Agent shall, if so instructed in a writing jointly signed by the Buyer and the City's Representative, pay from the Escrow Fund, as instructed, to the City or the Buyer, as directed in such writing, the amount of cash so instructed.

(C) Escrowee shall not be responsible for any interest on the Deposit except as is actually earned, or for the loss of any interest resulting from the withdrawal of the Deposit prior to the date interest is posted thereon or for any loss caused by the failure, suspension, bankruptcy or dissolution of the institution in which the Deposit is deposited.

(D) In the event that the Escrow Agent is uncertain as to its duties or rights hereunder or receives instructions from any party hereto with respect to the Escrow Fund which, in its reasonable opinion, are in conflict with any of the provisions of this Escrow Agreement or any instructions received from one of the other parties to this Escrow Agreement, the Escrow Agent shall be entitled to refrain from taking any action other than to keep the Escrow Fund in question until: (i) such time as there has been a "Final Determination" (as defined herein) with respect to the Escrow Fund or (ii) deposit the Escrow Fund in escrow into any Court of competent jurisdiction at any time and thereafter shall have no further obligations or liabilities to anyone under this Escrow Agreement. For purposes of this Section, there shall be deemed to have been a "Final Determination" of the rights of the applicable parties with respect to the Escrow Fund at such time as any of the applicable parties shall file with the Escrow Agent: (i) an official certified copy of a court order, together with an opinion of counsel of the party filing the foregoing, in form and substance acceptable to the Escrow Agent and its counsel, stating that the court order is a final determination (and not subject to appeal in a federal or state court of competent jurisdiction) of the rights of the parties hereto with respect to the Escrow Fund, that the time to appeal from said court order has expired, and that said court order is binding upon the applicable parties or (ii) a fully executed agreement or consent by and among the applicable parties which provides for disposition of the Escrow Fund in accordance with Article XII of the Agreement.

Section 7. ASSIGNMENT OF RIGHTS TO THE ESCROW FUND; ASSIGNMENT OF OBLIGATIONS; SUCCESSORS. This Agreement may not be assigned by operation of law or otherwise without the express written consent of each of the parties hereto (which consent may be granted or withheld in the sole discretion of such parties); provided, however, that the Buyer may assign this Escrow Agreement to an Affiliate of the Buyer without the consent of the other parties. This Agreement shall be binding upon and inure solely to the benefit of the parties hereto and their permitted assigns.

Section 8. ESCROW AGENT.

(A) Except as expressly contemplated by this Agreement or by joint written instructions from the Buyer and the City, the Escrow Agent shall not sell, transfer, or otherwise dispose of all or any portion of the Escrow Fund in any manner, except pursuant to an order of a court of competent jurisdiction.

(B) The duties and obligations of the Escrow Agent shall be determined solely by this Escrow Agreement, and the Escrow Agent shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Escrow Agreement.

(C) In the performance of its duties hereunder, the Escrow Agent shall be entitled to rely upon any document, instrument, or signature believed by it in good faith to be genuine and signed by any party hereto or an authorized officer or agent thereof (specifically

including the City's Representative), and shall not be required to investigate the truth or accuracy of any statement contained in any such document or instrument. The Escrow Agent may assume that any person purporting to give any notice on behalf of a party hereto in accordance with the provisions of this Agreement has been duly authorized to do so.

(D) The Buyer and the City acknowledge that Escrow Agent is acting solely as a stakeholder at the request of, and as an accommodation to, the parties to this Agreement. Escrow Agent shall not be deemed to be the agent of the City or the Buyer and shall not be liable to either of the parties hereto for any act or omission hereunder or any matter or thing arising out of its conduct hereunder, except for Escrow Agent's willful disregard of this Agreement or gross negligence. The Escrow Agent may consult with counsel of its own choice (including any member of its firm) and shall have full and complete authorization and protection for any action taken or suffered by it hereunder in good faith and in accordance with the opinion of such counsel.

(E) The Escrow Agent shall have no duty as to the collection or protection of the Escrow Fund or income thereon, nor to preserve any rights pertaining thereto beyond the safe custody of any such funds actually in its possession.

(F) As compensation for its services to be rendered under this Agreement, Escrow Agent shall be reimbursed upon request for all expenses, disbursements, and advances, including reasonable fees of outside counsel, if any, incurred or made by it in connection with the preparation of this Escrow Agreement and the carrying out of its duties under this Escrow Agreement. All such expenses shall be the joint and several responsibility of the City and the Buyer.

(G) The Buyer and the City shall reimburse and indemnify the Escrow Agent for and hold it harmless against any loss, liability, or expense, including, without limitation, reasonable attorney's fees incurred except in connection with gross negligence, bad faith, or willful misconduct on the part of the Escrow Agent arising out of, or in connection with the acceptance or performance of its duties and obligations under this Escrow Agreement.

(H) The Escrow Agent may resign at any time by giving twenty (20) Business Days' prior written notice of resignation to the City's Representative and the Buyer. The City and the Buyer may remove the Escrow Agent at any time by jointly giving the Escrow Agent ten (10) Business Days' written notice signed by each of them. If the Escrow Agent is to resign or be removed, a successor Escrow Agent shall be appointed by the Buyer by written instrument executed by the City's Representative and the Buyer. Such instrument shall be delivered to the Escrow Agent and to such successor Escrow Agent and, thereupon, the resignation or removal of the predecessor Escrow Agent shall become effective and such successor Escrow Agent, without any further act, deed or conveyance, shall become vested with all right, title, and interest to all cash and property held hereunder of such predecessor Escrow Agent. Such predecessor Escrow Agent shall, on the written request of the City's Representative, the Buyer, or the successor Escrow Agent, execute and deliver to such successor Escrow Agent all the right, title, and interest hereunder in and to the Escrow Fund of such predecessor Escrow Agent and all other rights hereunder of such predecessor Escrow Agent. If no successor Escrow Agent is appointed within twenty (20) Business Days of a notice of resignation by the Escrow Agent, the Escrow

Agent's sole responsibility shall thereafter be to hold the Escrow Fund until the earlier of its receipt of designation of a successor Escrow Agent, a joint written instruction by the City's Representative and the Buyer, or termination of this Escrow Agreement in accordance with its terms.

(I) The Escrow Agent is acting as a stakeholder only with respect to the Escrow Fund. Upon making delivery of the Escrow Fund in the manner herein provided, the Escrow Agent shall have no further liability hereunder.

(J) The City and the Buyer acknowledge that the Escrow Agent has represented the City in connection with, among others things, the Agreement and the matters giving rise to this Escrow Agreement and will continue to represent the City in connection with such matters and any other matters. Each of the parties to this Agreement waives any right it now has or may have in the future to any claim of conflict as a result of the Escrow Agent's execution, delivery, and performance of this Agreement or the transactions contemplated hereby and the Escrow Agent's representation of the City in any matter including, without limitation, any action, litigation, or representation relating to the Agreement, this Escrow Agreement, and the matters giving rise to each of them.

(K) Escrow Agent shall not be bound in any way by any contract or understanding between the parties hereto other than this Agreement, whether or not Escrow Agent has knowledge thereof or consents thereto unless Escrow Agent consents to being so bound in writing.

(L) Escrow Agent shall not be liable for any action taken or omitted by Escrow Agent in good faith and reasonably believed by Escrow Agent to be authorized or within its rights or powers conferred upon it by this Agreement, except for damage caused by the gross negligence or willful misconduct of Escrow Agent.

(M) Escrow Agent shall not have any liability or obligation for loss of all or any portion of the Escrow Amount by reason of the insolvency or failure of the Escrow depository, or any other occurrence or circumstance affecting the Escrow depository.

Section 9. TERMINATION. This Escrow Agreement shall terminate on the earlier of: (i) the date on which there are no funds remaining in the Escrow Fund or (ii) the date on which the Escrow Agreement receives a signed notice from the City and the Buyer that the Escrow Agreement is terminated, including instruction to the Escrow Agent on the disbursement of the Escrow Fund.

Section 10. NOTICES. All notices, requests, claims, demands, and other communications hereunder shall be in writing and shall be given or made (and shall be deemed to have been duly given or made upon receipt) by delivery in person, by courier service, by cable, by telecopy, by telegram, by telex, or by registered or certified mail (postage prepaid, return receipt requested) to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 10):

If to the Buyer:

Vice President of Operations
New Jersey-American Water Company, Inc.
1 Water Street
Camden, New Jersey 08102

Copy to:

General Counsel
New Jersey-American Water Company, Inc.
1 Water Street
Camden, New Jersey 08102

If to the City:

City Clerk
City of Salem
17 New Market Street
Salem, NJ 08079

Copy to:

Andrea Rhea, Esq.
Chance & McCann LLC
201 West Commerce Street
Bridgeton, NJ 08302

Section 11. GOVERNING LAW. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New Jersey applicable to contracts executed and to be performed entirely within that State.

Section 12. AMENDMENTS. This Agreement may not be amended or modified except: (i) by an instrument in writing signed by, or on behalf of, the City, the Buyer, and the Escrow Agent or (ii) by a waiver in accordance with this Agreement.

Section 13. WAIVER. Any party hereto may: (i) extend the time for the performance of any obligation or other act of any other party hereto or (ii) waive compliance with any agreement or condition contained herein. Any such extension or waiver shall be valid only if set forth in an instrument in writing signed by the party or parties to be bound thereby. Any waiver of any term or condition shall not be construed as a waiver of any subsequent breach or a subsequent waiver of the same term or condition or a waiver of any other terms or conditions of this Agreement. The failure of any party to assert any of its rights hereunder shall not constitute a waiver of any of such rights.

Section 14. SEVERABILITY. If any term or other provision of this Agreement is invalid, illegal, or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect as

long as the economic and legal substance of the transactions contemplated by this Escrow Agreement is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal, or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner so that the transactions contemplated by this Agreement be consummated as originally contemplated to the fullest extent possible.

Section 15. ENTIRE AGREEMENT. This Escrow Agreement and the Agreement constitute the entire agreement of the parties hereto with respect to the subject matter hereof and supersede all prior agreements and undertakings, both written and oral, among the City, the Buyer, and the Escrow Agent with respect to the subject matter hereof

Section 16. NO THIRD PARTY BENEFICIARIES. This Escrow Agreement is for the sole benefit of the parties hereto and their permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Escrow Agreement.

Section 17. HEADINGS. The descriptive headings contained in this Escrow Agreement are included for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 18. COUNTERPARTS. This Agreement may be executed in one or more counterparts, and by different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which when taken together shall constitute one and the same agreement.

Section 19. CITY'S REPRESENTATIVE. The City hereby appoints its City Administrator as its representative (the "City's Representative") and agrees that such appointment give the City's Representative full legal power and authority to take any action or decline to take any action on behalf of the City.

Section 20. DEFINITIONS. Terms defined in the Agreement and not otherwise defined herein may be used herein as defined in the Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Escrow Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

CITY OF SALEM

**NEW JERSEY-AMERICAN WATER
COMPANY, INC.**

By: _____
Name
Title:

By: _____
Name
Title:

ESCROW AGENT

[_____]

By: _____
Name
Title:

EXHIBIT J

CUSTOMER SERVICE STANDARDS AND CUSTOMER SERVICE PLAN

1. The Buyer shall maintain the Systems laterals from mains to curb line of property and shall undertake all necessary capital improvements, maintenance, repairs, and replacement to the Systems as shall be required from time to time. Such undertaking shall be made in accordance with prudent industry standards.
2. The Buyer shall maintain buildings and property in a neat and orderly appearance consistent with community standards and shall undertake reasonable measures to protect the health, safety, and welfare of the public with respect to the Systems.
3. The Buyer shall operate the Systems in a manner to minimize odors, dust, spills, and other nuisances. The Buyer shall provide appropriate customer service staffing and response times for any complaints about nuisances or service problems.
4. The Buyer shall provide a qualified staff and experienced employees and third party contractors who have direct experience in operating similar systems. The Buyer shall maintain the necessary number of employees, staff, and third party contractors to operate, maintain, and manage the Systems.
5. The Buyer shall implement a plan of action protocol for emergency events which shall include notices to the City and other regulating entities having jurisdiction and for measures which facilitate coordinated emergency response actions, as needed. The Buyer shall maintain a toll-free 24-hour telephone number where users of the Systems can report emergencies.
6. The Buyer shall abide by New Jersey regulations in providing safe and reliable service.
7. Comply with the following customer service commitments as outlined in Buyer's bid:
 - Comply with the Buyer's standard terms and conditions and customer service standards for providing regulated utility service, as outlined in its 'Tariff for Water and Wastewater Service' which is located on its website –<http://www.newjerseyamwater.com>– under the Customer Service and Billing tab.
 - Delivering excellent, cost-effective customer services including:
 - First-Contact Resolution – Timely response to customer inquiries improves satisfaction and reduces customer effort.
 - Timely and Accurate Billing – Accuracy is our primary focus. Quality assurance measures help ensure we deliver accurate billing and avoid customer confusion.
 - Outstanding Collection Performance – We work with customers to manage their account balances and have proven processes to assist customers in identifying payment solutions including payment assistance programs, budget billing, and installment plans as well as establishing low-income discount tariffs.

- Language Translation Options (Spanish and 200+ additional) – We offer language translation as well as ADA-compliant services to better accommodate our diverse customer base.
 - Technology Advancements – We strive to expand our technical tools to provide the best experience for our customers. Recently implemented features include a virtual assistant for handling frequently asked questions, a customer call scheduling tool, and our upgraded customer website.
 - Leveraging Customer Feedback –Customer feedback and internal reviews help us identify and focus on the right opportunities to improve customer experience.
- Providing a self-service customer portal, allowing customers to manage their account 24/7/365. Customers can utilize the portal to:
 - View and pay their bill.
 - Turn service on or off or make additional service requests.
 - Manage their communication and billing preferences, including signing up for paperless billing and auto-pay, as well as customer notifications for non-emergency work.
 - Apply for customer payment assistance programs (i.e., Budget billing, assistance grants, etc.).
 - View water use history and request leak adjustments.
 - Report an emergency.
- Our customer care agents offer around-the-clock service that includes:
 - Emergency assistance (24/7)
 - Customer service support (Monday thru Friday, 7am-7pm local time), including:
 - Field service requests
 - Water and wastewater billing and collection inquiries
 - Payment processing and reporting
 - Additional non-emergency customer service requests
- Responding to emergencies. In the event of a complaint, concern, or emergency, residents can call the company's toll-free number or login to our customer portal to report the situation. Customer Service representatives are available 24 hours a day, 7 days a week for emergencies. The representatives route information directly to the crew in the field who then investigate, secure the area, and call in the necessary resources to address the concern. Wastewater emergencies are given the highest priority because of the potential health risk exposure to customers, environmental contamination, or damage to residents' property.
- Customer billing that implements the following billing structure for City of Salem customers, while maintaining the rate stabilization covenant. New Jersey American Water would provide customers with one monthly bill that clearly identifies the charges associated with water service and the charges associated with wastewater service. For water service, the billing structure would primarily include a meter charge based on meter size, a flat rate, and a volumetric rate based on monthly water consumption, plus possible inclusion of NJBPU approved recovery surcharges. For wastewater service, billing structure would primarily include a flat rate plus a volumetric rate calculated from the monthly water usage, plus possible inclusion of NJBPU approved recovery surcharges. This billing plan will alter the frequency of which City residents pay for water and wastewater service to monthly.

- Convenient payment options, including by mail, in-person, by phone or online. For those customers who prefer to make their payments in-person, American Water partners with established payment centers to offer this option, including retail grocery stores and other established sites, such as Walmart, and will do so to offer this service within the City of Salem. To give customers the flexibility to pay how they prefer, payments are also accepted electronically with a credit card or through direct debit, so there are no checks to write, and no stamps required.

EXHIBIT K

[RESERVED]

EXHIBIT L

REQUIRED CAPITAL IMPROVEMENTS

New Jersey American Water has significant financial resources that are deployed via prudent capital investments into the water and wastewater systems that the company owns, operates, and maintains. New Jersey American Water's mission of serving the community, providing customers with excellent service, and acting as a steward of the environment drives every decision. Prudent investment planning supports the continued delivery of reliable water and wastewater service.

New Jersey American Water's approach to capital planning includes a comprehensive planning study program typically conducted by in-house engineering staff on a five-year schedule. Through these studies, the company regularly analyzes the systems' capacity needs, regulatory impacts, service adequacy, and reliability scenarios. System needs are identified, and project costs, alternatives, and risks are assessed. By conducting comprehensive studies of the company's water and wastewater assets on a regular basis, New Jersey American Water has a clear and objective view of long-term system needs. This allows for prioritization and systematic planning of capital investments to avoid reactive investments which could cost customers more in the long run.

Based on the information provided during the RFB process for the City of Salem, New Jersey American Water anticipates executing a capital improvement plan that includes:

1. Completion of installation of Granular Activated Carbon treatment initiated by the City of Salem to remove PFAS from the drinking water supply, as outlined in the Remedial Measures Report provided in Addendum No. 3, to deliver safe, reliable drinking water service to City customers that meets all federal, state and local drinking water standards (see additional details below).
2. Repairs and upgrades to the Wastewater Treatment Plant to deliver reliable service that is compliant with all regulations.
3. Rehabilitation of the Elkinton Dam to reduce risk associated with this infrastructure, which has been previously classified by NJDEP as a Class 1 High Hazard Structure.
4. Upgrades to pump stations and wells to secure reliable water supply.

5. Inspection and replacement of lead service lines to comply with NJDEP lead service line replacement requirements and improve water service quality for City residents.

6. Timely replacement of aging water and sewer mains throughout the water and wastewater systems.

7. A robust, comprehensive analysis of the entire water and wastewater systems to inform future capital investment needs. Based on the site visit and materials provided during the RFB process, New Jersey American Water anticipates that the City of Salem systems could require more than \$50 million of capital over 10 years. The comprehensive analysis of the systems would further inform this anticipated investment.

Further, New Jersey American Water will obtain GPS coordinates on all existing above-ground or at-grade assets such as hydrants, manholes, valves, and clean outs. These coordinates will be used to build a GIS mapping database to upload into the company's online work management system.

New Jersey American Water will collaborate with the city to evaluate the condition of any water and sewer main that falls within the limits of a road reconstruction project initiated by the City. If the company elects to replace or rehabilitate the water or wastewater assets, the work would be coordinated with the City ahead of the planned road reconstruction project.

PLAN TO ADDRESS PFAS

New Jersey American Water proposes the following plan to address the presence of PFAS in the City of Salem's water supply. Details of this proposed plan are based on information provided by the City during the RFB process, specifically the Remedial Measures Report Form provided with Addendum No. 3.

To address the presence of PFAS in the City of Salem's source water, New Jersey American Water commits to completing the installation of Granular Activated Carbon treatment initiated by the City of Salem to remove PFAS, as outlined in the Remedial Measures Report. New Jersey American Water would see the permitted design through completion, as well as utilize best practices to systematically assess the source of detection and address any additional treatment needs of the system.

The company has experience in implementing PFAS treatment through the following steps:

1. Evaluate all groundwater wells and surface water sources for detections of PFAS above NJDEP MCLs, as well as the U.S. EPA's proposed limits;

2. Immediately shut down, if not shut down already, any supply source exceeding the NJDEP MCLs;
3. Maximize flow from any supply source that are below the NJDEP MCLs;
4. Design, permit and deploy the appropriate treatment technology, such as a Granular Activated Carbon filtration system.

As demonstrated by the City prior to Closing, water demand can be met with supply sources not impacted by the presence of PFAS above the NJDEP MCL. New Jersey American Water would continue to keep any impacted supply offline while treatment is installed.

Based on the Remedial Measures Report provided by the City and the milestones and proposed completion date, New Jersey American Water assumes that design and permitting for PFAS treatment at the Water Treatment Plant will be complete upon an anticipated Closing in June 2024, and New Jersey American Water is prepared to finalize construction of the designed and permitted project upon taking ownership.