

AGREEMENT BETWEEN  
THE BOROUGH OF WESTVILLE,  
IN THE COUNTY OF GLOUCESTER, NEW  
JERSEY AND **[BUYER]** FOR SALE OF  
**[AWARDED BID#1, #2, #3 OR #4]**  
SYSTEMS

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IN THE COUNTY OF GLOUCESTER, NEW  
JERSEY AND [BUYER] FOR SALE OF  
[AWARDED BID#1, #2, #3 OR #4] SYSTEMS

THIS AGREEMENT (this "Agreement") is made this \_\_\_ day of , 20\_\_ and between the BOROUGH OF WESTVILLE, a municipal corporation of the State of New Jersey, with its principal office located at 165 Broadway, Westville, New Jersey 08093 County of Gloucester and State of New Jersey (hereinafter referred to as "Seller")

AND

[BUYER], a \_\_\_\_\_ of the State of New Jersey, with its principal office located at \_\_\_\_\_, New Jersey, \_\_\_\_\_, County of \_\_\_\_\_ State of New Jersey (hereinafter referred to as "Buyer").

WITNESSETH:

WHEREAS, Seller is currently the owner of certain **[Water and/or Wastewater Systems and/or Laboratory]** (as further defined herein, collectively, the "Systems") located in the Borough of Westville, County of Gloucester and State of New Jersey; and

WHEREAS, Seller desires to sell and Buyer desires to purchase said Systems; and WHEREAS, Seller prepared, distributed and advertised a Notice of Bid, including certain bid documents in connection with the proposed sale of the Systems, pursuant to the New

Jersey Public Utilities Municipally Owned Act, *N.J.S.A. 40:62-1 et seq.* a copy of which bid documents are attached hereto as Appendix H and made a part hereof; and

**WHEREAS**, on July 6, 2016, Seller received bids from various private water and wastewater utilities; and

**WHEREAS**, Seller has determined that the highest bid was submitted by Buyer and has determined that the best interests of Seller will be met by the sale of the Systems to Buyer in accordance with and subject to the terms of this Agreement.

**NOW, THEREFORE**, and in consideration of the sum of \$\_\_\_\_\_ to be paid and satisfied as stipulated herein and in further consideration of the mutual covenants herein contained, Seller agrees to convey to Buyer the Systems under the terms and conditions hereinafter set forth herein:

#### **ARTICLE I. DEFINITIONS**

**Section 1.0 Specific Definitions.** Certain defined terms shall have the meanings assigned to the terms in the preambles hereof but may nevertheless be referenced below for convenience. When used in this Agreement, the following terms shall have the meanings hereinafter indicated:

**"Administrative Fees"** shall mean \$85,000 paid by Buyer to Seller representing actual and reasonably anticipated expenses incurred by Seller in connection with the sale of the Systems.

**"Act"** shall mean the Public Utilities Municipally Owned Act constituting Chapter 152 of the Pamphlet Laws of New Jersey of 1917, as amended and supplemented (*N.J.S.A. 40:62-1 et seq.*)

**"Agreement"** shall be as defined in the preamble.

**"Authorized Representative"** shall mean, in the case of Buyer, the \_\_\_\_\_,

or such other individual(s) specified in writing, as the representative of Buyer for all purposes of this Agreement and, in the case of Seller, the Borough Administrator or such other representative of Seller designated in writing by Seller.

**"Borough"** shall mean the Borough of Westville, in the County of Gloucester, New

Jersey.

**"BPU"** shall mean the Board of Public Utilities of the State.

**"Closing" or "Closing Date"** shall mean the date and time specified in Section 5.1 of this Agreement.

**"Customer Service Standards"** shall mean the level of type of service customarily received by customers of the Systems, as set forth in Appendix F.

**"Date" or "Effective Date"** shall mean the date of this Agreement, when executed by all parties.

**"DEP"** shall mean the State Department of Environmental Protection.

**"Deposit"** shall mean an amount of money equal to 10% of the Purchase Price paid by Buyer and held by Seller in accordance with the terms of this Agreement.

**"Escrow"** shall be as defined in Section 2.1.

**"Existing Collateral Agreements"** shall mean those agreements relating to the Systems referenced in Appendix C.

**"Final Contingencies"** shall be as defined in Section 4.0.

**"Laboratory"** shall mean the components of the Borough's laboratory system described in the Appendix A but shall not include Personality

**"Initial Contingencies"** shall be as defined in Section 3.0.

**"Municipal Consent"** shall mean Seller's ordinance, when finally

adopted under law, granting the authority to Buyer to provide the services referenced hereunder and conveying the franchise rights to the Systems, in the form as more specifically as set forth Appendix D.

**"Municipal Facilities"** shall be as defined in Section 8.0.

**"Personalty"** shall mean equipment unless otherwise identified, assets, personal property, and other assets not affixed to any structure, and which shall include cash and accounts receivable accrued prior to and including the Closing Date, and any claims or action which Seller may have against any third party in the event of litigation.

**"Public Fire Hydrants"** shall mean fire hydrants located in public streets, public rights of way or easements granted by Seller and specifically excludes fire hydrants located in property not owned by Seller.

**"Fire District Fire Hydrants"** shall mean fire hydrants located in the designated Fire District. List to be provided by the Borough.

**"Purchase Price"** shall be as defined in Section 2.0.

**"Real Property"** shall mean the parcels of real estate, easements and rights of way, described in the Appendix B annexed hereto.

**"State"** shall mean the State of New Jersey.

**"Systems"** shall mean, collectively, the Wastewater System and/or the Water System and/or Laboratory.

**"Water System"** shall mean the components of the Borough's water system described in the Appendix A but shall not include Personalty.

**"Wastewater System"** shall mean the components of the Borough's sewer system described in the Appendix A but shall not include Personalty.

**"Works in Progress"** shall mean any capital improvements currently being undertaken which the Borough shall undertake as part of its ongoing operational requirements and which shall be deemed to be included in the Systems.

**Section 1.1 General References.** Whenever the context may require, any pronoun that is used in this Agreement shall include the corresponding masculine, feminine and neuter forms, and the singular shall include the plural and vice versa. Unless otherwise noted, the words "include," "includes" and "including" when used in this Agreement shall be deemed to be followed by the phrase "without limitation." The words "agree," "agreements," "approval" and "consent" when used in this Agreement shall be deemed to be followed by the phrase "which shall not be unreasonably withheld or unduly delayed," except or unless the context may otherwise specify. The words "hereof," "hereinafter," "hereinbefore," and "herein" refer to this Agreement.

## ARTICLE II. SALE OF SYSTEMS AND PURCHASE PRICE

**Section. 2.0** Sale of Systems and Purchase Price. Subject to the conditions otherwise set forth herein, Seller hereby conveys to Buyer all of its rights, title and interest in the Systems as more specifically set forth in Appendices A and B. The total purchase price or consideration of the sale of the Systems shall be \$\_\_\_\_(the "**Purchase Price**"), plus the sum of \$85,000 (representing actual and reasonably anticipated expenses incurred by Seller in connection with the sale of the Systems), all of which shall be paid by Seller by Buyer in the following manner:

(a) Deposit. Upon approval of the referendum by the voters of the Borough and upon approval of the sale by the governing body as described in Section 3.0(a), Buyer shall submit an amount equal to the Deposit plus the Administrative Fees to Seller, to be held in escrow as hereinafter provided in Section 2.1.

(b) Balance Due at Closing. Upon Closing, the remaining balance of the Purchase Price in the amount of \$\_\_\_\_shall be paid to Seller by Buyer, by certified check, bank cashier's check or wire transfer.

**Section 2.1** Deposit in Escrow. The Deposit shall be deposited by Seller in an interest bearing account at Bank, in the name of Seller in trust for Seller and Buyer as their interests appear hereunder (the "**Escrow**").

**Section 2.2** Interest Earnings on Deposit. Except as set forth in Section 2.4, the interest accrued on the Deposit shall be paid to Seller upon Closing.

**Section 2.3** Payment of Administrative Fees Upon Passage of Referendum. The parties agree that upon the passage of the referendum authorizing the sale of the Systems and upon approval of the sale by the governing body, the

Administrative Fees shall be paid directly to Seller. In the event the BPU fails to approve the rate application for Buyer described in Section 2.5 below for any reason not relating to Buyer's breach, Seller shall reimburse Buyer for the Administrative Fees.

**Section 2.4 Effect of Seller's Breach.** If the Closing does not take place for any reason relating to the fault of Seller, the Deposit and all accrued interest shall be returned to Buyer.

**Section 2.5 Effect of Buyer's Breach on the Deposit.** Seller and Buyer recognize that following adoption of the Municipal Consent by Seller, this Agreement requires the regulatory approval of the BPU. It shall be the responsibility of Buyer to apply for, and pursue diligently, such approval. Buyer acknowledges that its obligations under this Agreement are not contingent on approval by BPU of the inclusion of the Purchase Price in the rate base of Buyer. Buyer agrees to take all steps necessary to submit any reasonable supplements or amendments to its petition to BPU to provide for whatever portion of the Purchase Price is deemed appropriate by the BPU for inclusion in its rate base.

Buyer and Seller agree that subject to the provisions of Section 4.9 of this Agreement, 365 days from the date of adoption of the Municipal Consent is an adequate time to pursue BPU approval. Failure of Buyer to secure BPU approval within such timeframe or any other breach of Buyer to complete the sale will give rise to Seller's right to terminate this Agreement with 30 days written notice to Buyer. Any such termination shall make this Agreement null and void and of no further force or effect. Upon termination for cause pursuant to this Section, 25% of the Deposit and all accrued interest shall be retained by Seller as liquidated damages.

### ARTICLE III. INITIAL CONTINGENCIES

Section 3.0 Initial Contingencies. The performance of this Agreement is contingent upon satisfaction of all the conditions set forth below (collectively, the "**Initial Contingencies**").

(a) Municipal Approval. Seller shall adopt an ordinance pursuant to *N J S.A. 40:62-5* to permit the placing of a question on the ballot for public referendum for voter approval of the sale of the Systems. Upon approval of the referendum by the voters of the Borough and approval by the governing body, Seller shall adopt the Municipal Consent, pursuant to *N J S.A. 40: 19-20*, in substantially the same form as set forth in Appendix D annexed hereto.

(b) Customer List. Seller shall provide Buyer with the last known names and addresses of all water and wastewater service customers connected to the Systems, including water and/or wastewater service customers for which Seller does not bill for such services.

(c) Transfer of Permits. Seller shall make application for the transfer, effective at the Closing, of all water diversion, extension, operating and other water or wastewater system permits and approvals issued to Seller prior to the Closing by the DEP or any other local, State or federal agency.

(d) Bondholders. Seller shall make determinations and execute all documents as necessary to ensure that Buyer shall have no obligation to any bondholders, if applicable, relating to the Systems.

**Section 3.1** Failure of Initial Contingencies. In the event that all the Initial Contingencies are not satisfied within 150 calendar days from the Date of this

Agreement, Buyer may declare this Agreement terminated by giving written notice to Seller, in accordance with Section 9.2 of this Agreement, whereupon this Agreement shall be null and void and of no force or effect in accordance with the provisions of Section 2.4.

Notwithstanding the foregoing, if, at any time, the Initial Contingencies are satisfied prior to Buyer providing notice of termination of this Agreement, Buyer shall be bound by the terms of this Agreement and Buyer's right to terminate under this Section 3.1 shall cease to exist.

## ARTICLE IV. FINAL CONTINGENCIES

**Section 4.0 Final Contingencies.** The performance of this Agreement is further contingent upon satisfaction of all of the conditions set forth below (collectively, the "**Final Contingencies**").

(a) BPU Approval. Buyer shall obtain the final order of the BPU approving the Municipal Consent for Buyer to own and operate the Systems and which is effective for its expressed purposes, in the opinion of counsel for Seller and Buyer, and which has become final in that there are not then pending any: (a) applications for rehearing or reconsideration; (b) applications for stays; and/or (c) litigation seeking injunctive or other similar relief against the sale of the Systems. Such BPU approval contingency shall not include any requirement that BPU include, as part of its approval, the Purchase Price in the rate base of Buyer, such risk being the sole responsibility of Buyer.

(b) Transfer of Permits. Seller shall have received notice or approval of the transfer to Buyer, effective at Closing, of all water diversion, extension, operating and other water or wastewater system permits and approvals issued to Seller prior to Closing by the DEP or any other local, State or federal agency.

(c) Transfer of All Contract Rights for All Existing Collateral Agreements in Connection with the Systems. Seller shall execute appropriate documents to assign or transfer to Buyer all of its rights to all Existing Collateral Agreements.

(d) Other Approvals. Seller makes no warranties that the sale of the Systems is not subject to the approval of any other local, State, or federal agencies. Buyer and Seller shall cooperate in obtaining any other approvals deemed necessary prior to the Closing.

(e) Condition of the Systems. Seller shall operate and maintain the facilities and equipment described on Appendix A for the term of this Agreement such that at the Closing, except for normal wear and tear and the Works in Progress, there will be no significant changes in the physical condition of the Systems other than what was evident on the Date of this Agreement. Seller shall not be liable for any damage, destruction, or diminution in value of the Systems resulting from acts of God, natural disasters or unforeseen circumstances.

(f) Access to the Systems. Buyer, at Buyer's sole cost, shall have reasonable access to the Systems from the Date of this Agreement until the Closing Date for purposes including, but not limited to, examination of customer accounts, ordinances, deeds, contracts, maps and plans; inspections and tests of plant and equipment; and surveys of the Real Property and easements. Buyer hereby agrees to indemnify and hold Seller harmless from any and all claims, demands, suits, actions, damages, liabilities or expenses in respect to or arising from Buyer's access to the Systems during this period. Buyer's rights under this Section shall be exercised during normal business hours, with reasonable notice and shall not interfere with Seller's continuing operation of the Systems.

Buyer is responsible for all costs associated with surveys, certifications and easements necessary for closing and final sale.

(g) Extension of Agreements. Except as may be required for Works in Progress, Seller will not, after the Date of this Agreement, enter into any extension of service agreements for water or wastewater service or in connection with any of the Existing Collateral Agreements without the written consent of Buyer.

**Section 4.1**     Failure of Final Contingencies.     In the event that all Final Contingencies are not satisfied within 365 calendar days from the date of adoption of the Municipal Consent due to the fault of Buyer to reasonably and diligently undertake and pursue the obligations of Buyer hereunder, this Agreement may be terminated by Seller in accordance with the provisions of Section 2.5.

**Section 4.2**     Risk of Loss.     In the event that the condition of the Systems is materially diminished from the Date of this Agreement to the Closing Date by acts of God, natural disasters or unforeseen circumstances, Seller and Buyer may mutually agree, in writing, to a reduction in the Purchase Price or other consideration as compensation for the significant change in the Systems. If Seller and Buyer cannot reach agreement within 60 days of receipt of notice of the event, both parties may agree to submit to binding arbitration in accordance with State Board of Mediation Rules, as to a level of reduction of the Purchase Price. In the event Seller and Buyer cannot reach agreement on the Purchase Price adjustment or whether to commit to binding arbitration, either party has the option to terminate this Agreement with 30 days written notice, in which case the Deposit shall be returned to Buyer and 50% of the accrued interest shall be retained by Seller and 50% shall be returned to Buyer.

**Section 4.3**     Cooperation of Parties.     (a) This Agreement must be submitted to the voters of the Borough for approval and upon such approval the Municipal Consent must also be submitted to the BPU for review and approval. Seller shall be responsible for obtaining voter approval and Buyer shall be responsible for obtaining BPU review and approval. The parties agree to cooperate with each other in obtaining such respective approvals.

(a) After the Closing, Buyer shall provide for a smooth, uninterrupted transition of

service from Seller to Buyer and the parties shall cooperate with each other to facilitate the transition.

## ARTICLE V. CLOSING

**Section 5.0** Closing. The transfer of the Systems from Seller to Buyer shall take place at the Closing which shall occur and be governed by the terms hereof.

**Section 5.1** Closing Date. The Closing hereunder shall take place within 30 days of receipt of BPU approval of the Municipal Consent at the offices of Seller or its attorney, unless changed by written consent of Seller and Buyer, subject to the satisfaction of all contingencies enumerated in Articles III and IV herein.

**Section 5.2** Conditions of Title to Real Property. (a) With the exception of those easements identified on Appendix B attached hereto, which shall be assigned by separate documents, the Real Property, as described in Appendix B attached hereto, shall be conveyed by bargain and sale deed with covenants against Seller's acts. Title shall be good and marketable and shall be deemed so if said title is insurable by a title company licensed to do business in the State. Title shall be subject to the following exceptions: (i) survey exceptions, provided that no survey exceptions shall adversely affect the components of the Systems located on the Real Property; (ii) the exceptions set forth on Appendix E; (iii) the easements, covenants, declaration and restrictions, annexed hereto as Appendix E; and (iv) applicable zoning and government regulations. To the extent that good and marketable title cannot be conveyed, Seller shall use its best efforts to quiet title.

(b) Buyer agrees and acknowledges that Seller shall retain ownership of the real property listed by the Seller for the Seller's ongoing use and operation for municipal functions.

Seller shall provide a permanent access easement to Buyer for its operation of the Systems, which easement shall be granted by an easement agreement in the form agreed to

by the parties.

**Section 5.3** Satisfaction of Liens. If, at Closing, there may be any liens or encumbrances which Seller is obligated to pay and discharge, Seller may use any portion or all of the Purchase Price to satisfy same, provided that Seller shall simultaneously deliver to Buyer, at the time of Closing, instruments in a recordable form and sufficient to discharge such liens and encumbrances of record together with the cost of recording or filing said instruments. If a request is made within a reasonable time prior to the time of Closing, Buyer agrees to provide, at the time of Closing, separate certified checks, if requested, aggregating the amount of the balance of the Purchase Price to facilitate the discharge of any such liens or encumbrances.

**Section 5.4** Realty Adjustments. Taxes, charges for utilities or other assessments, and items identified in Buyer's title report, if applicable, shall be adjusted as of the Closing Date. The State realty transfer taxes, if applicable, shall be paid by Seller. Expenses associated with surveys, inspections, examination of title and title insurance shall be paid by Buyer.

**Section 5.5** Assessments. If, at the time of Closing, the Real Property shall be or shall have been affected by an assessment or assessments which are then payable in full or which are payable in annual installments of which the first installment is then due or has been paid, then, those which are to become due and payable after the delivery of the deed(s), shall be deemed to be due and payable at time of Closing and to be liens upon Real Property and shall be paid and discharged by Seller at or before the time of Closing. Seller represents that it has no knowledge of any existing or potential assessments. For the purpose of this Section only, the term "assessments" shall not include charges for connection to utilities.

**Section 5.6 No Sale of Personalty.** Personalty shall not be conveyed by Seller as part of the sale of the Systems.

**Section 5.7 Effective Date of Adjustments.** Closing adjustments will be effective for billing purposes on the Closing Date. Seller and Buyer shall conduct a joint reading of all meters for all of Seller's customers on or immediately before the Closing Date and Seller shall render final bills to all customers based upon said meter readings. Buyer understands that Seller will pursue collection of past due accounts prior to Closing. Buyer will cooperate in remitting to Seller, any and all payments forwarded to Buyer by customers for services rendered prior to and including the Closing Date. Seller is entitled to revenues for service rendered up to and including the Closing Date and is likewise responsible for all operating expenses up to and including the Closing Date. Buyer is entitled to revenues for services rendered subsequent to the Closing Date and is similarly responsible for operating expenses subsequent to the Closing Date.

**Section 5.8 Operation of the Systems.** Upon Closing, Buyer will operate the Systems at its own cost and expense and in accordance with applicable local, State and federal laws, rules and regulations, including the Customer Service Standards.

**Section 5.9 Post Closing Agreement.** The parties recognize that certain undertakings set forth in this Agreement, exclusive of the Final Contingencies, may not be capable of being fully performed on or before the Closing Date and such items shall be addressed in an agreement to be executed by both parties at Closing, which shall identify such items and the respective responsibilities thereto.

## ARTICLE VI. SELLER'S REPRESENTATIONS

**Section 6.0 Seller's Representations.** Seller represents and warrants to Buyer that: (a) Seller is a municipality properly created under the laws of the State; (b) Seller is the owner of the Systems; and (c) Seller has the full right and authority to execute this Agreement and consummate all of the transactions here contemplated, subject to the contingencies hereunder and all applicable State laws.

**Section 6.1 Indemnification.** Seller represents that Seller will indemnify and save harmless Buyer from any and all claims, demands, suits, actions, damages, liabilities or expenses in respect to or arising out of the operation of the Systems prior to Closing.

**Section 6.2 Title to Assets.** Seller represents that, except as noted on Appendix B attached hereto, title to all assets of the Systems are good and marketable and, at the time of Closing, will be free and clear of all liens and encumbrances, except for those items listed in Appendix E.

**Section 6.3 No Warranties.** Seller represents that the Systems are being sold "as is" and Seller has not made, is not making and will not make any statement, representation or warranty, express or implied, regarding the condition of the Systems.

**Section 6.4 No Complaints.** Seller represents, to the best of Seller's knowledge, that there are no formal complaints and no litigation, either at law or in equity, nor any proceedings before any commission or regulatory body pending, or threatened against Seller, in any way pertaining to the Systems.

**Section 6.5 No Default.** Seller represents, to the best of Seller's knowledge, that Seller is not in default of any provisions of law, character, 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.

**Section 6.6** No Reimbursement Obligations. Seller represents, to the best of Seller's knowledge, that Seller is not a party to any water or wastewater extension agreement or other contract which, if assigned to Buyer, would obligate Buyer by rebate, reimbursement or other payment to return moneys to third party by reason of installation of some portion of the Systems.

**Section 6.7** System Compliance. Seller represents that, except as otherwise disclosed to Buyer, as of the Closing Date the Systems are in compliance with all State, federal and local laws and regulations and there have been no environmental violations of a continuing nature that have not been addressed by Seller.

**Section 6.8** Tariff. Seller represents that the municipal tariff, attached as Appendix G, represents the true rates of the Systems and are in effect as of the Closing Date.

**Section 6.9** Works in Progress. Seller shall use due diligence to complete all Works in Progress prior to the Closing Date

**Section 6.10** Survival. All warranties and representations contained in this Article VI shall survive Closing.

## ARTICLE VII. BUYER'S REPRESENTATIONS

**Section 7.0 Buyer's Representations.** Buyer represents and warrants to Seller that:

(a) Buyer is a duly organized \_\_\_\_\_, validly existing and in good standing under the laws of the State; (b) Buyer has the authority to execute this Agreement and perform Buyer's obligations under this Agreement, has been duly authorized by all necessary corporate action and does not conflict with any provision contained in its charter, rules, regulations or by-laws or in any instrument to which Buyer is a party or by which Buyer is bound; and (c) Buyer will furnish to Seller a certified copy of the resolution of Buyer authorizing Buyer to consummate this Agreement and enter into the transactions provided herein.

**Section 7.1 Indemnification.** Buyer represents that Buyer will indemnify and hold harmless, including paying all attorneys fees, Seller from and against any and all claims, demands, suits, actions, damages, liabilities or expenses in respect to or arising out of operation of the Systems subsequent to the Closing Date.

**Section 7.2 No Warranties.** Buyer represents that Buyer is purchasing the Systems "as is" as represented by Seller in Section 6.3 of this Agreement, and that Buyer will have no recourse against Seller in any respect as to any condition of the Systems that might be discovered after the Closing.

**Section 7.3 Right to Inspect.** Buyer represents that, prior to the Effective Date, Buyer has been afforded the opportunity to inspect and has inspected the Systems to the extent that Buyer deemed necessary and that Buyer has the continuing right to continue such inspections pursuant to Section 4.7 of this Agreement.

**Section 7.4** Other Limitations of Local, State and Federal Laws and Regulations.

Buyer accepts the terms of this Agreement subject to the terms and limitations of all applicable local, State and federal laws, statues, rules and/or regulations.

**Section 7.5** Assumption of Contracts. Buyer agrees to assume all

outstanding contractual obligations of Seller with the Existing Collateral Agreements set forth in Appendix C hereto for the remaining term of such contracts.

**Section 7.6** Customer Service Standards. Buyer covenants and agrees to

provide the customers of the Systems with continuous uninterrupted service including the supply of potable water for at least forty (40) consecutive years and to operate the Systems in a manner at least equivalent to the Customer Service Standards.

**Section 7.7** Land Use Regulation. Buyer agrees that any maintenance or expansion

of the Systems will be done in conformance with existing Borough land use and zoning ordinances, master plan and historic district standards, if applicable.

**Section 7.8** Survival. All warranties and representations contained in this Article VII

shall survive Closing.

## ARTICLE VIII. PUBLIC SERVICE

**Section 8.0** Services to Borough Facilities. Buyer agrees to provide water and wastewater services at no cost to the Borough facilities listed in Appendix I (the "**Municipal Facilities**") at the same volume levels as existed at the time of Closing. To the extent that after Closing any service volumes for the Municipal Facilities exceed those that existed at the time of Closing, the increased volumes shall be charged to Seller at the rates in effect from time to time by Buyer for all other services throughout the Borough.

**Section 8.1** Fire Protection Services. After Closing, Buyer shall provide and Seller agrees to pay for Public Fire Hydrant services for public fire protection services, at rates approved by the BPU. The exception will be those hydrants in the fire district as described in Appendix I where no fee will be paid for the listed hydrants. Public Fire Hydrant services shall be provided at all Public Fire Hydrants conveyed to Buyer in the same volumes and level of service as provided by Seller. Buyer shall maintain the Systems and Public Fire Hydrants in a manner to retain the Borough's Existing Insurance Services Organization rating.

**Section 8.2** Future Facilities. As requested from time to time by Seller, by municipal resolution, Buyer, at its own cost, shall install Public Fire Hydrants at any other locations or remove Public Fire Hydrants from any existing locations within Buyer's Water System that exists or is contemplated at the time the request is made by Seller, and in accordance with Buyer's tariff approved by the BPU.

**ARTICLE IX. ADDITIONAL REPRESENTATIONS AND UNDERSTANDINGS**

**Section 9.0 No Broker.** Buyer and Seller represent to one another that this sale has been effectuated without the aid or assistance of any real estate broker or finder and that no commission or finder's fee is due to anyone by reason of any act on the part of Buyer or Seller.

**Section 9.1 No Recordation.** It is understood and agreed that this Agreement shall not be recorded in the Gloucester County Clerk's Office, or elsewhere; however, the parties acknowledge that all transfers of title to real estate and other interest in properties will be so recorded.

**Section 9.2 Notices.** No notice, request, consent, approval, waiver or other communication under this Agreement shall be effective or deemed to have been given, unless the same is in writing and is personally delivered and acknowledged by signature of addressee, or authorized agent at the office address, or by express mail, or federal express, or telefax (provided the addressee sends a telefax confirmation that the notice has been received), or mailed by certified mail, return receipt requested. All the above should be addressed to the parties at the addresses noted below:

To Seller: Borough of Westville, in the County of Gloucester  
Attention: Borough Administrator, William Bittner  
165 Broadway  
Westville, New Jersey 08093

To Buyer: [BUYER]  
[Address]  
[Attention]

**Section 9.3 Applicable Law.** This Agreement and the performance hereof shall be governed, interpreted, construed and regulated by the laws of the State.

**Section 9.4 Counterparts.** This Agreement may be executed in several counterparts, each of which shall be original, but all of which shall constitute one and the same instrument.

**Section 9.5 No Assignment.** This Agreement may not be assigned by any party without the prior written consent of the other party.

**Section 9.6 Entire Agreement.** This Agreement, together with all Appendices, sets forth all of the promises, agreements, conditions and understandings between the parties hereto relative to the subject matter hereof, and there are no promises, agreements, conditions or understandings, either written or oral, expressed or implied between them other than as herein set forth. Except as herein otherwise specifically provided, no subsequent, alterations, amendments, changes or additions to this Agreement shall be binding upon either party, unless reduced to writing and signed by all parties.

**Section 9.7 Survival.** Only those covenants, agreements, representations and warranties herein made which expressly provide for post-closing survival shall survive the Closing.

**IN WITNESS WHEREOF**, the parties hereto have caused these presents to be signed by their proper corporate officers and their proper corporate seals to be hereto affixed, the day and year first above written.

BUYER:

SELLER:

BOROUGH OF WESTVILLE

By: \_\_\_\_\_

By: \_\_\_\_\_

ATTEST:

BUYER:

[BUYER]

By: \_\_\_\_\_

By: \_\_\_\_\_

## Appendix A

### Description of the Systems



## Appendix C

### Existing Collateral Agreements

**Appendix D**  
**Form of Municipal**  
**Consent**

ORDINANCE OF THE BOROUGH OF WESTVILLE, IN THE COUNTY OF GLOUCESTER, NEW JERSEY GRANTING MUNICIPAL CONSENT TO [BUYER] TO PROVIDE FOR THE OWNERSHIP, CONSTRUCTION, EXPANSION AND MAINTENANCE OF [WATER AND/OR SEWER FACILITIES] ON PUBLIC PROPERTY WITHIN THE BOROUGH.

WHEREAS, the Borough of Westville, in the County of Gloucester (the "Borough") and [BUYER] ("Buyer"), a regulated public corporation of the State of New Jersey, have entered into an agreement (the "Agreement") for the sale of the Borough's water treatment, transmission and distribution system and the Borough's wastewater collection and conveyance systems (collectively, the "Utility Systems"); and

WHEREAS, in connection with the acquisition of the Utility Systems, Buyer has requested the consent of the Borough as required by *N.J. S.A. 48:19-17* and *19-20*, as amended, to lay its pipes beneath such public roads, streets and places within the geographical area of the Borough as Buyer deems necessary for its corporate purposes, free from all charges to be made for said privilege, provided that said pipes shall be laid at least three feet (3.5') below the surface and shall not in any way unnecessarily obstruct or interfere with the public travel or damage public or private property; and

WHEREAS, the Borough desires and permits Buyer to construct and maintain fire hydrants on and along roads, streets and places at locations to be designated by the Borough, for which public hydrants the Borough shall assume financial responsibility to Buyer unless located in the fire district. In which case, no fees will be paid by the Seller to the Buyer for these fire hydrants; and

WHEREAS, it is deemed in the best interest of the citizens of the Borough that this municipal consent be granted subject to the conditions set forth herein;

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of the Borough of Westville, in the County of Gloucester, New Jersey, as follows:

Section 1. The Board of Commissioners hereby grants unto Buyer, free from all charges, the municipal consent required under the provisions of *N.J. S.A. 48:19-17* and *48:19-20*, as amended, which consent may be exercised without further action of the Borough, as the same may be required in order to permit Buyer to add to and extend its water facilities within the Borough to such extent as may be necessary to carry out the corporate purposes of Buyer; provided, however, that said municipal consent shall be conditioned upon the passage of a voter referendum in accordance with *N.J. S.A. 40:62-5*, approval of the Board of Public Utilities and any and all conditions and contingencies required for closing in the Agreement.

Section 2. A certified copy of this Ordinance, upon final passage, shall be sent to Buyer.

Section 3. This Ordinance and the consent contained herein, shall be subject to Buyer otherwise complying with all applicable ordinances, State of New Jersey Statutes and any New Jersey administrative agency rules and regulations.

Section 4. This Ordinance shall supersede all ordinances or parts of ordinances of the Borough which conflict with this Ordinance.

Section 5. To the extent that any part or parts of this Ordinance are repealed or otherwise modified or voided by State statute or case law, the remaining sections of this Ordinance shall remain in full force and effect.

Section 6. This Ordinance shall take effect upon final passage, approval and publication as provided by law.

This is to certify that the foregoing Ordinance was adopted by the Borough of Westville Council at a regular meeting on

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Christine A. Helder, Borough Clerk

## Appendix E

### Permitted Ecumbrances

## Appendix F

### Customer Service

#### Standards

1. Buyer shall maintain Water System service lines 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. 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. Buyer shall operate Systems in a manner to reduce odors, dust, spills and other nuisances. Buyer shall provide appropriate customer service staffing and response times for any complaints about nuisances or service problems.
4. Buyer's employees shall provide a qualified staff and experienced employees and third party contractors who have direct experience in operating similar Systems. Buyer shall maintain the necessary number of employees, staff and third party contractors to operate, maintain and manage the Systems.
5. Buyer shall implement a plan of action protocol for emergency events which shall include notices to the Borough and other regulating entities having jurisdiction and for measures which facilitate coordinated emergency response actions, as needed. Buyer shall maintain a toll-free 24 hour telephone number where users of the Systems can report emergencies.

Appendix G  
Municipal Tariff

Appendix H

Bid

Documents

## Appendix I

### Municipal Facilities

## Appendix J

### Works in Progress

Appendix K

Seller-Retained Properties and  
Easement