

IN THE UNITED STATES BANKRUPTCY COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
CENTRAL DIVISION

IN THE MATTER OF: )  
 ) Case No. 17-42759-drd11  
OSAGE WATER COMPANY, )  
 )  
Debtor. )

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**NOTICE OF AUCTION RESULTS**

Pursuant to Fed. R. Bankr. P. 6004(f), Jill Olsen, the duly appointed Chapter 11 trustee of Osage Water Company (“Trustee”) hereby notifies the Court and all parties in interest of the following:

1. On August 26, 2018, Trustee filed her Motion to Approve (a) Sale of Substantially All of Debtor’s Assets Free and Clear of All Liens, Interests, Claims and Encumbrances, and Related Procedures and Bid Protection Pursuant to 11 U.S.C. § 363, (b) the Potential Assumption and Assignment, or Rejection, of Certain Executory Contracts and Unexpired Leases; and (c) Related Relief Pursuant to 11 U.S.C. §§ 102 and 105 [Docket No. 115] (the “Sale Motion”).

2. In the Sale Motion, among other things, Trustee seeks an order of the Bankruptcy Court (a) authorizing her to sell, pursuant to Bid Procedures attached as Exhibit A to the Sale Motion, outside the ordinary course of business and free and clear of all liens, claims, encumbrances, and interests, all of Debtor’s right, title and interest in the Assets to the Stalking Horse Purchaser,<sup>1</sup> (b) authorizing the Trustee to assume and assign the Desired 365 Contracts, and (c) otherwise granting all necessary and appropriate related relief.

<sup>1</sup> Capitalized terms not defined herein shall have the meanings ascribed to them in the Sale Motion and Bid Procedures.

3. On September 19, 2018, the Bankruptcy Court entered that certain Order Approving Procedures for the Solicitation of Offers for (a) the Sale of Substantially All of Debtor's Assets Free and Clear of Liens, Claims, Encumbrances, and Interests, (b) the Possible Assumption and Assignment, or Rejection, of Certain Executory Contracts and Unexpired Leases, and (c) Related Relief [Docket No. 125] (the "Bid Procedures Order"). The Bid Procedures Order approved certain Bid Procedures and other relief requested in the Sale Motion.

#### **Auction Results**

4. On October 24, 2018, the Auction contemplated in the Sale Motion and Bid Procedures Order was held. Three Qualified Bidders participated in the Auction. The Auction commenced at approximately 9:30 a.m. prevailing Central time, and concluded at approximately 12:40 p.m. prevailing Central time. A copy of the sign-in sheet for the people at the Auction is attached as **Exhibit A**.

5. The Trustee has identified the highest and best bid for the Assets to be a bid of \$800,000 by the Stalking Horse Purchaser. A copy of the revised asset purchase agreement with the Stalking Horse Purchaser is attached hereto as **Exhibit B**.<sup>2</sup>

6. The first Back-up Bidder is a joint bid by Public Water Supply District No. 5 of Camden County, Missouri, Missouri Water Association, Inc., and Lake Area Waste Water Association, Inc. with a bid for the Assets of \$800,000. A copy of the asset purchase agreement for this joint bid is attached hereto as **Exhibit C**.<sup>3</sup>

<sup>2</sup> The attached asset purchase agreement is unexecuted. The Trustee anticipates receiving signatures pages in the near term.

<sup>3</sup> The attached asset purchase agreement is unexecuted. The Trustee anticipates receiving signatures pages in the near term.

7. The second Back-up Bidder is Missouri-American Water Company with a bid for the Assets of \$600,000. A copy of the asset purchase agreement for this joint bid is attached hereto as **Exhibit D**.

**Desired 365 Contracts**

8. At the time this Notice is filed, the only known Desired 365 Contracts are the contracts identified in **Exhibit E**.

Respectfully submitted,

**SPENCER FANE LLP**

By: /s/ Andrea M. Chase

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Andrea M. Chase MO Bar No. 66019

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Kansas City, MO 64106

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COUNSEL FOR TRUSTEE

EXHIBIT A

IN THE UNITED STATES BANKRUPTCY COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
CENTRAL DIVISION

IN THE MATTER OF: )  
 ) Case No. 17-42759-drd11  
OSAGE WATER COMPANY, )  
 )  
Debtor. )

**OCTOBER 24, 2018 AUCTION ATTENDEE LIST**

Company Name	Individual	E-mail Address	Phone Number
CSWR	Joseph Cox	jcox@CSWgroup.com	314-746-2417
MAWC	TIM LUFT	tim.luft@amwater.com	314-996-2279
Ellsworth Hardwick	Aaron Ellsworth	ellsworth@lolaoffice.com	(473) 693-9050
PWSD <sup>PS</sup>	DAVID STONE	LINDYSTONEY@GMAIL.COM	636-262-1512
<del>VEHICLES</del>	<del>DAVID WOOD</del>	DAVE RICE@GMAIL.COM	573-346-5316

**AGREEMENT FOR SALE OF UTILITY SYSTEM**

**THIS AGREEMENT** (“Agreement”) is made and entered into this 24th day of October, 2018 (the “Effective Date”), by and between Central States Water Resources, a Missouri corporation, or its affiliate (“Buyer”), and Jill D. Olsen as Chapter 11 Trustee of Osage Water Company (“Seller”) (collectively, “Parties”).

**WITNESSETH:**

**WHEREAS**, on October 11, 2017, Osage Water Company filed a voluntary petition for relief under Chapter 11 of the U.S. Bankruptcy Code, which case is pending as Case No. 17-42759-drd11 in the U.S. Bankruptcy Court for the Western District of Missouri (“Bankruptcy Court”); and

**WHEREAS**, on October 26, 2017, Jill D. Olsen was appointed as the Chapter 11 Trustee of Osage Water Company; and

**WHEREAS**, Osage Water Company has developed and operates as a regulated *water and sewer* corporation *water and sewer* facilities, in the area more particularly described and depicted in the documents attached hereto as *Exhibit “A,”* situated in Camden County, Missouri (hereinafter the “System”); and

**WHEREAS**, on August 26, 2018, the Seller filed a Motion to Approve (A) the Sale of Substantially All of Debtor’s Assets Free and Clear of All Liens, Interests, Claims, and Encumbrances and Related Procedures and Bid Production Pursuant to 11 U.S.C. § 363, (B) the Potential Assumption and Assignment, or Rejection, of Certain Executory Contracts and Unexpired Leases, and Related Procedures, Pursuant to 11 U.S.C. § 365, and (C) Related Relief Pursuant to 11 U.S.C. §§ 102 and 104 (the “Sale Motion”); and

**EXHIBIT B**

**WHEREAS**, on September 19, 2018, Bankruptcy Court entered an Order Approving the Bidding Procedures (as defined herein); and

**WHEREAS**, Buyer has tendered a deposit in the amount of \$46,500 (the “Deposit”); and

**WHEREAS**, on October 24, 2018, the Seller conducted the Auction and Buyer’s Qualified Bid was determined to be the highest and best and Buyer was declared to be the Prevailing Bidder at the Auction; and

**WHEREAS**, Seller desires to sell, and Buyer desires to purchase, all the assets, property and real estate connected with the System including, but not limited to, all associated improvements for the conveyance of *water and sewer* to each of the customers connected to the service area (defined further below as “Assets”); and

**WHEREAS**, the Parties have reached an understanding with respect to the sale by Seller and the purchase by Buyer of all of the Assets (as hereinafter defined) of the System;

**WHEREAS**, the transactions contemplated by this Agreement are subject to the approval of the Bankruptcy Court and will be consummated only pursuant to a Sale Order and such further orders to be entered by the Bankruptcy Court and applicable provisions of the Bankruptcy Code; and

**WHEREAS**, the transactions contemplated by this Agreement are also subject to approval from the Missouri Public Service Commission (“PSC”).

**NOW, THEREFORE**, it is mutually agreed that:

**1. SALE OF ASSETS.**

For and in consideration of the receipt of the Purchase Price, as set forth below, and the covenants and promises hereinafter set forth, Seller agrees that on the closing date, Seller shall sell, transfer, assign and deliver to Buyer, or Buyer’s designated affiliate, all of Seller’s then

existing assets pertaining to the provision of *water and/or sewer* service in the System located in Camden County, in the State of Missouri, and related properties, including, without limitation, the following:

(a) The land, improvements thereon, easements, rights of way, permits and leases related to the System area depicted in *Exhibit "A"* and/or generally described in *Exhibit "B"* attached hereto;

(b) All of Seller's *water and/or sewer* service facilities, equipment, lines, plant, pipes, manholes and appurtenances;

(c) Any machinery and equipment such as meters, tools, devices, mobile work equipment, and all furniture, fixtures, machinery, supplies and other tangible items, if any, located in Camden County, Missouri, and used or held for use in connection with the System as generally described in *Exhibit "C"* attached hereto;

(d) All of Seller's rights, title and interest in and to any franchise agreements, franchise rights, warranties, contracts, supply contracts, agreements, and customer deposits, if any, pertaining to, allocable to or arising out of the provision of *water and/or sewer* service in Camden County, Missouri as generally described in *Exhibit "D"* attached hereto;

(e) All of Seller's inventory, merchandise, contract rights, supplies, goodwill, and general intangibles including accounts receivable pertaining to the *water and/or sewer* service, except accounts receivable accrued prior to the closing of this sale;

(f) All customer deposits held by Seller (the "Customer Deposits"); and

(g) All assets not described which are located in Camden County, Missouri, and used or useful to operate the System, except for Excluded Assets.

The assets to be sold and delivered, as above described, are hereinafter collectively described as the “Assets.”

Notwithstanding anything herein to the contrary, Seller will not sell, assign, convey, transfer or deliver to Buyer, and Buyer will not purchase, acquire or assume or take assignment or delivery of, Excluded Assets or any and all assets, contracts or rights that are not expressly Purchased Assets. “Excluded Assets” means (i) all deposit accounts, cash on hand and in banks (other than Customer Deposits) and cash equivalents (including marketable securities and short term investments) that relate to the Debtor, that are in possession or control of the Seller or in Seller’s bank accounts as of the closing date; (ii) Excluded Causes of Action; and (iii) all other property or assets not described as Assets. “Excluded Causes of Action” means causes of action or claims (i) that are not assignable under applicable law; (ii) Chapter 5 Causes of Action; (iii) as have or may have been asserted in the case styled *Williams v. Hancock Construction Company, et al.*, Adv. No. 17-02010-drd; (iv) any breach of fiduciary duty or similar claims; or (v) that are not specially identified as Assets above.

## **2. CONVEYANCES OF REAL ESTATE.**

The real estate to be conveyed by Seller will include all facilities described herein and all interest of Seller in any *water and/or sewer* and other utility easements. The real estate will be conveyed by trustee’s deed, in a form satisfactory to Buyer, and will vest marketable title in fact in the Buyer. Easements shall be assigned by written assignment or other means, in a form satisfactory to Buyer.

At Buyer’s expense, Buyer shall obtain, within ten (10) business days of the date hereof, a Commitment to issue an Owner’s Policy of Title Insurance to Buyer in the amount of the Purchase Price issued by a company authorized to issue title insurance in the state of Missouri.



Within twenty (20) days after Buyer's receipt of said title insurance commitment, Buyer shall notify Seller, in writing, of any objections thereto. If there shall be no such notice of objection, then any exceptions in such Commitment or deficiencies in the title to the property noted on such Commitment shall be deemed waived and delivery of a deed in compliance with the terms of the Commitment shall be deemed compliance with the terms of this Agreement. If notice of any objections to defects in the title, as defined above, shall be delivered to Seller, then Seller shall have twenty (20) business days to correct the title and Closing shall be postponed until such time, if necessary. If Seller elects not to, or cannot, correct such defects, then Buyer, at Buyer's option, may waive such defects and proceed to close or may cancel the contract and all obligations hereunder shall be null and void.

**3. REGULATORY APPROVAL.**

Seller and Buyer agree to make application to the PSC for authority to complete the transfer of the Assets. Buyer and Seller agree to assist the other in this process when requested to do so. Buyer and Seller shall act diligently and cooperate with each other in obtaining final approval, if necessary, of the Missouri Department of Natural Resources ("DNR") for transfer of Seller's permits, if any. Other than the Seller's attorney fees, any expenses resulting from such approval shall be borne by the Buyer.

**4. PURCHASE PRICE.**

Buyer agrees to pay to Seller at the Closing **Eight Hundred Thousand Dollars (\$800,000)** for purchase of the Assets ("Purchase Price").

**5. DEPOSIT.**

The Deposit shall be deducted from the Purchase Price due by Buyer at closing. The Deposit is non-refundable regardless of any termination of this agreement; provided, however, if

the transactions hereby are not consummated because Buyer is not the successful purchaser on the account of the Bankruptcy Court denying Buyer's offer because the Bankruptcy Court has accepted a different competing offer, the Deposit shall be promptly returned to Buyer without setoff or deduction of any kind after the entry of the Bankruptcy Court order approving such a return.

**6. CLOSING.**

The closing of the sale shall take place at a mutually agreeable location no later than thirty (30) days after the effective date of any necessary regulatory authority approval, and satisfaction of Seller's Representations and Warranties and Conditions Precedent set forth herein, or at such other time as the Parties hereto may mutually agree. At the closing, Seller shall have delivered to Buyer such deeds, bills of sale, endorsements, assignments and other sufficient instruments of transfer and conveyance as shall be effective to vest in Buyer such title to the Assets to be sold as provided in this Agreement and as set forth in Section 6.D, and Buyer will deliver to Seller the Purchase Price. From time to time, at Buyer's request and expense, whether at or after the closing and without further consideration, Seller shall execute and deliver such other instruments of conveyance and transfer and take such other action as Buyer reasonably may require to more effectively convey and transfer to Buyer any of the Assets to be sold hereunder, and will assist Buyer in the collection or reduction to possession of such Assets. Buyer will pay all sales, transfer and documentary taxes, if any, payable in connection with the sale, transfers and deliveries to be made to Buyer hereunder.

On the date of closing, Buyer shall accept and assume ownership and title to the Assets to be conveyed hereunder and Buyer shall assume liability, and become responsible, for all obligations in connection with the Assets going forward including the Customer Deposits,

excepting responsibility for any liabilities and/or obligations of Seller in connection with the Assets that existed prior to the date of closing other than claims related to the refund of Customer Deposits.

**7. SELLER'S REPRESENTATIONS AND WARRANTIES.**

The Seller represents and warrants as follows:

(a) **Validity of Agreement.**

Subject to any necessary authorization from the Bankruptcy Court, Seller has the full power and authority to execute and deliver any documents necessary to consummate the transactions contemplated hereby and thereby.

(b) **Title to Assets.**

Subject to Bankruptcy Court approval and any approval required by the PSC or DNR, Seller has the power and right to sell, assign and transfer and Seller will sell and deliver to Buyer, the Assets free and clear of all claims and liens, other than customer claims in the Customer Deposits.

(c) **As Is, Where Is.**

Buyer is purchasing the Assets in reliance upon Buyer's personal inspection and knowledge of the Assets and in an "as-is" and "where-is" condition. Seller makes no warranties or representations, express or implied, of any kind or nature, written, oral or otherwise.

**8. BUYER'S REPRESENTATIONS AND WARRANTIES.**

Buyer represents and warrants as follows:

(a) **Organization and Standing of Buyer.**

Buyer is a body corporate organized and existing under the constitution and laws of the State of Missouri, is in good standing, and has the requisite power to purchase the Assets which are to be sold pursuant to the terms of this Agreement.

(b) **Authority.**

The execution and delivery of this Agreement by Buyer and the purchase of the Assets as contemplated hereby have been duly authorized by Buyer, and all necessary action on the part of Buyer has been taken to authorize the execution and delivery of this Agreement and to consummate the sale contemplated hereby.

**9. CONDITIONS PRECEDENT FOR BUYER TO CLOSE.**

All obligations of Buyer under this Agreement are subject to the fulfillment or waiver, prior to or at the closing, of each of the following conditions:

(a) **Regulatory Approval.**

The PSC and DNR shall have, if necessary, authorized or approved the sale, transfer or disposition of the Assets to Buyer from Seller, the proposed financing, and any schedule of compliance for proposed utility improvement projects for regulatory compliance deemed necessary by Buyer, each in form and substance (including without limitation with respect to the terms and conditions contained in such approval) acceptable to Buyer in Buyer's sole and absolute discretion. Both Parties shall diligently pursue the required approvals and authorizations contemplated herein, and Buyer shall submit its application to the PSC by no later than December 17, 2018. In the event the Parties are unable to obtain the required regulatory approval or authorization to complete the transactions contemplated herein, Buyer may terminate this Agreement by providing written notice to Seller at Buyer's sole and absolute discretion. If Buyer fails to submit

the required application to the PSC by December 17, 2018, Seller may terminate this Agreement by providing written notice to Buyer.

(b) **Representations and Warranties True at Closing.**

Seller's representations and warranties contained in this Agreement shall be true at the time of closing as though such representations and warranties were made at such time.

(c) **Performance.**

Seller shall have performed and complied with all agreements and conditions required by this Agreement to be performed or complied with by Seller prior to or at the closing; including the payment of all taxes and assessments, or portions thereof, attributable to periods prior to or ending on the closing date, to include Public Service Commission assessments.

(d) **Inspections.**

Completion of Buyer's examination, testing and inspection of the Assets and the securing of any and all licenses, permits or governmental approvals Buyer deems necessary for Buyer's proposed uses of the Assets, the results thereof to be satisfactory to Buyer, in its sole discretion. For purposes of this Agreement, the period from the date this Agreement is fully executed by both Parties to the date that is twenty (20) days prior to the closing, shall be referred to herein as the "Inspection Period." During the Inspection Period, Buyer, its employees, agents and contractors, shall have the right to enter onto any property owned by Seller that is related to the operation of the System, as it deems necessary or desirable, on reasonable prior notice to Seller to perform and complete architectural, environmental, engineering and/or other surveys, studies,

inspections and tests on the Assets; to review zoning laws and applicable building codes; to obtain all necessary city, county, and state zoning approval, site plan or subdivision approvals, licenses and permits to authorize the uses of the Assets as intended by Buyer.

(e) **No Casualty.**

The Assets shall not have been adversely affected in any material way as a result of any strike, lockout, accident or other casualty or act of God or the public enemy, or any judicial, administrative or governmental proceeding.

(f) **Bankruptcy Court Approval.**

This Agreement is subject to and contingent upon approval by the Bankruptcy Court and entry of an order of the Bankruptcy Court in a form reasonably acceptable to Seller and Buyer (the "Sale Order"). The Sale Order shall (i) approve this Agreement and the transactions contemplated hereby; (ii) approve the sale of the Assets to Buyer free and clear of all liens pursuant to 11 U.S.C. § 363(f); (iii) find that Buyer is a good faith purchaser entitled to the protections of 11 U.S.C. § 363(m); (iv) provide that the provisions of Federal Rule of Bankruptcy Procedure 6004(g) are waived and there will be no stay of execution of the Sale Order under Federal Rule of Civil Procedure 62(a); (iv) retain jurisdiction of the Bankruptcy Court to interpret and enforce the terms and provisions of this Agreement; and (vi) authorize and approve the results of the Auction.

(g) **Correction of Legal Description.**

Osage Water Company obtained a Quit Claim Deed (the "Chelsea Rose Deed") from Hurricane Deck Holding Company for the parcel commonly known as Chelsea Rose ("Chelsea Rose"), which was directed by the judgment in *Osage Water Company, et al. v. Hurricane Deck Holding Company et al.*, Case No. 06CM-CC00014 in Camden County, Missouri. Seller has

discovered a defect in the legal description of the Chelsea Rose Deed. Seller shall obtain a corrected deed, an amended judgment, or other order or judgment conveying Chelsea Rose to Osage Water Company with the correct legal description.

(h) **Buyer's Right to Terminate.**

If Buyer determines, in its sole and absolute discretion, that any of the aforementioned conditions have not been met, Buyer shall have the right to terminate this Agreement at any time prior to closing upon written notice to Seller.

**10. ADDITIONAL AGREEMENTS AND COVENANTS**

(a) Nothing herein shall restrict the Seller from entering into back-up purchase agreements for the sale of the Assets, as contemplated by the Bidding Procedures.

(b) **Definitions.**

1. "Alternative Transaction" shall mean (a) a transaction or series of transactions pursuant to which Seller sells, transfers, leases, or otherwise disposes of all or any material portion of the Assets to a person other than Buyer.

2. "Auction" shall mean the auction conducted by Seller pursuant to the Bidding Procedures Order for the Assets.

3. "Bidding Procedures" shall mean the rules, processes, bidding procedures and other matters approved by the Bidding Procedures Order.

4. "Bidding Procedures Order" shall mean a final order from the Bankruptcy Court, in a form and substance reasonably acceptable to buyer, approving the Bidding Procedures and certain other matters in connection with the potential Auction.

(c) **Buyer as Prevailing Bidder.**

Buyer has been declared the Prevailing Bidder (as defined herein) at the Auction. As such, the Seller shall use her best efforts to consummate the transactions contemplated by this Agreement as soon as possible.

**11. CONDITIONS PRECEDENT FOR SELLER TO CLOSE**

All obligations of Seller under this Agreement are subject to the fulfillment, prior to or at the closing, of each of the following conditions:

(a) **Representations and Warranties True at Closing.**

Buyer's representations and warranties contained in this Agreement shall be true at the time of closing as though such representations and warranties were made at such time.

(b) **Performance.**

Buyer shall have performed and complied with all agreements and conditions required by this Agreement to be performed or complied with by Buyer prior to or at the Closing.

(c) **Bankruptcy Court Approval.**

This Agreement is subject to and contingent upon approval by the Bankruptcy Court and entry of Sale Order approving this Agreement.

**12. INDEMNIFICATION.**

Buyer shall, and hereby does agree to indemnify and hold harmless Seller, at any time after the closing, from and against all damages, penalties, losses, deficiencies, costs, expenses, obligations, fines, expenditures, claims, and liabilities, including reasonable attorneys' fees and



expenses (each a “Loss” and collectively, “Losses”) incurred or suffered by the Seller based upon, arising out of, or otherwise related to the Customer Deposits.

**13. FEES AND COMMISSIONS.**

Each Party represents that it has not retained any broker or finder and is not paying, and is not obligated to pay, any finder’s fee, commission or other transactional fee in connection with the transactions contemplated by this Agreement. Each Party shall pay its own fees for attorneys, accountants, appraisers or others engaged by it in the course of negotiating or executing this Agreement and in closing and completing the transactions hereunder provided. Fees for professional advisors retained jointly by the Parties for their mutual benefit shall be equally divided.

**14. BENEFIT.**

All of the terms of this Agreement shall be binding upon, and inure to the benefit of, and be enforceable by, the respective legal representatives of Seller, its successors and assigns, and the successors and assigns of Buyer.

**15. GOVERNING LAW.**

This Agreement is being delivered and is intended to be performed in the State of Missouri, and shall be construed and enforced in accordance with the laws of such state and any applicable bankruptcy law.

**16. COUNTERPARTS.**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. This Agreement shall not be binding until executed by all Parties.

**17. NO THIRD PARTY BENEFICIARIES.**

This Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns.

**18. ENTIRE AGREEMENT.**

This Agreement (including the documents referred to herein) constitutes the entire agreement between the Parties and supersedes any prior understandings, agreements or representations by or among the Parties, written or oral, to the extent they have related in any way to the subject matter hereof.

**19. SUCCESSION AND ASSIGNMENT.**

This Agreement shall be binding upon and inure to the benefit of the Parties named herein and their respective successors and permitted assigns. No Party may assign either this Agreement or any of its rights, interests or obligations hereunder without the prior written approval of Buyer and Seller, said approval not to be unreasonably withheld.

**20. HEADINGS.**

The 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.

**21. NOTICES.**

All notices, demands, consents, requests or other communications required to or permitted to be given pursuant to this Agreement shall be in writing, shall be given only in accordance with the provisions of this Section 21, shall be addressed to the Parties in the manner set forth below, and shall be conclusively deemed to have been properly delivered: (a) upon receipt when hand delivered during normal business hours (provided that, notices which are hand delivered shall not be effective unless the sending Party obtains a signature of a person at such address that the notice has been received); (b) upon receipt when sent by facsimile if sent

between the hours of 8:00 a.m. and 5:00 p.m. (the recipient's time) on a business day to the number set forth below with written confirmation of a successful transmission by the sender's facsimile machine; (c) when sent by electronic mail if (1) identified in the subject line as a notice under this Agreement, (2) sent between the hours of 8:00 a.m. and 5:00 p.m. on a business day to the e-mail address set forth below, and (3) acknowledged as received by the recipient, by reply or separate e-mail, (d) upon the day of delivery if the notice has been deposited in an authorized receptacle of the United States Postal Service as first-class, registered or certified mail, postage prepaid, with a return receipt requested (provided that, the sender has in its possession the return receipt to prove actual delivery); or (e) one (1) business day after the notice has been deposited with FedEx, United Parcel Service or other reliable overnight courier to be delivered by overnight delivery (provided that, the sending Party receives a confirmation of actual delivery from the courier). The addresses of the Parties to receive notices are as follows:

If to Buyer:

Josiah Cox, President  
Central States Water Resources, Inc.  
500 Northwest Plaza Drive #500  
St. Ann, MO 63074  
Facsimile: (314) 238-7201  
E-mail: jcox@cswrgroup.com

With a Copy to:

James A. Beckemeier  
The Beckemeier Law Firm, LC  
13421 Manchester Road, Suite 103  
St. Louis, MO 63131  
Facsimile: (314) 965-0127  
E-mail: jim@beckemeierlaw.com

If to Seller:

Jill D. Olsen  
The Olsen Law Firm, LLC

118 N. Conistor Ln., Suite B #290  
Liberty, MO 64068  
Facsimile: (816) 278-9493  
E-mail: [trustee@olsenlawkc.com](mailto:trustee@olsenlawkc.com)

With a Copy to:

Andrea M. Chase  
Spencer Fane LLP  
1000 Walnut, Suite 1400  
Kansas City, MO 64106  
Facsimile: (816)-474-3216  
E-mail: [achase@spencerfane.com](mailto:achase@spencerfane.com)

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.

**22. AMENDMENTS AND WAIVERS.**

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

**23. 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.

**24. EXPENSES.**

Buyer and Seller shall each bear their own costs and expenses (including legal and accounting fees and expenses) incurred in connection with the preparation of this Agreement and activities necessary for Closing.

If this Agreement is terminated or if the transactions hereby are not consummated because Buyer is not the successful purchaser on account of the Bankruptcy Court denying Buyer's offer because the Bankruptcy Court has accepted a competing offer, Buyer shall have the right to assert an administrative expense against the Bankruptcy Estate by making proper application with the Court under Section 503(b) of the Bankruptcy Code in an amount equal to all Buyer's costs and out-of-pocket expenses incurred by Buyer in connection with its legal, environmental, accounting, and business due diligence and the preparation and negotiation of this Agreement up to three percent (3%) of the Purchase Price (the "Expense Reimbursement"). The Expense Reimbursement shall be payable by Seller upon the first to occur of (i) Seller's closing of any alternate sale of the Assets to any other person or (ii) Seller's liquidation of assets sufficient to generate proceeds equal to or exceeding the amount of the Expense Reimbursement; provided however, such payment shall not be paid until the Seller's fees and expenses have been fully paid including, without limitation, any tax obligations and professional fees.

**25. CONSTRUCTION.**

The Parties have participated jointly in the negotiation and drafting of this Agreement. 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.

**26. INCORPORATION OF EXHIBITS.**

The Exhibits identified in this Agreement are incorporated herein by reference and made a part hereof.

**27. DEFAULT; ATTORNEY’S FEES.**

If either Party shall default in their performance under this Agreement, which default results in the expenditure of attorneys’ fees to enforce the terms of this Agreement or to recover damages for breach of this contract, then the prevailing Party shall be entitled to receive its reasonable and actually incurred attorneys’ fees and costs in addition to any other damages that the Party is entitled to recover at law or in equity.

**28. AUTHORITY TO EXECUTE.**

Each person whose signature appears hereon represents, warrants and guarantees that he or she has been duly authorized and has full authority to execute this Agreement on behalf of the Party on whose behalf this Agreement is executed, subject to Bankruptcy Court approval.

[SIGNATURE PAGES TO FOLLOW]

**IN WITNESS WHEREOF**, the Parties have duly executed this Agreement as of the day and year first above written.

**SELLER:**

By: \_\_\_\_\_  
Jill D. Olsen, not individually but as Chapter  
11 Trustee of the Osage Water Company  
bankruptcy estate

**BUYER:**

**Central States Water Resources, Inc.**

By: \_\_\_\_\_  
Josiah Cox, President

**EXHIBIT "A"**

**Service Area Description**

**1. CEDAR GLEN CONDOMINIUMS**

- (a) Location: Sunny Slope Drive, Camden County
- (b) Description of Water System: 35,000 gallon hydro tank with deep well
- (c) Description of Wastewater System: Sand filter with lift stations and force

main

**2. CHELSEA ROSE**

- (a) Location: Oak Bend Road, Camden County
- (b) Description of Water System: 600 pressurized storage, deep well
- (c) Description of Wastewater System: Partial force main and gravity

collection to an activated sludge facility

**3. HARBOUR BAY/CIMARRON BAY**

- (a) Location: MM40-Blue Water Bay Road, Camden County
- (b) Description of Water System: 35,000 gallon hydro tank with deep well
- (c) Description of Wastewater System: Force main to sand filter

**4. EAGLE WOODS/KK WASTEWATER**

- (a) Location: Highway KK and Red Barn Road, Camden County
- (b) Description of Water System: 10,000 gallon storage tank to booster pumps

and pressurized tanks

- (c) Description of Wastewater System: Force main and gravity collection

system to a sand filter



**EXHIBIT "B"**

Description of Land, Improvements thereon, Easements, Rights of Way, Permits and Leases  
(The legal description(s) of the Land, Improvements thereon, Easements, Rights of Way shall be determined by  
survey and title commitments, which shall be inserted prior to Closing).

**EXHIBIT "C"**

**Plant and Equipment**

(meters, tools, devices, mobile work equipment, furniture, fixtures, machinery, supplies, and other tangible items)

**EXHIBIT "D"**

Rights Via Agreements, Contracts, Misc.

(franchise agreements, franchise rights, warranties, contracts, supply contracts, agreements, and customer deposits)

**AGREEMENT FOR SALE OF UTILITY SYSTEM**

**THIS AGREEMENT** (“Agreement”) is made and entered into this 24th day of October, 2018 (the “Effective Date”), by and between Public Water Supply District No. 5 of Camden County, Missouri (“PWSD #5), established pursuant to the law of the State of Missouri, Missouri Water Association, Inc., a Missouri non-profit corporation, and Lake Area Waste Water Association, Inc., a Missouri non-profit corporation (collectively, “First Back-up Bidder”), and Jill D. Olsen as Chapter 11 Trustee of Osage Water Company (“Seller”) (collectively, “Parties”).

**WITNESSETH:**

**WHEREAS**, on October 11, 2017, Osage Water Company filed a voluntary petition for relief under Chapter 11 of the U.S. Bankruptcy Code, which case is pending as Case No. 17-42759-drd11 in the U.S. Bankruptcy Court for the Western District of Missouri (“Bankruptcy Court”); and

**WHEREAS**, on October 26, 2017, Jill D. Olsen was appointed as the Chapter 11 Trustee of Osage Water Company; and

**WHEREAS**, Osage Water Company has developed and operates as a regulated *water and sewer* corporation *water and sewer* facilities, in the area more particularly described and depicted in the documents attached hereto as *Exhibit “A,”* situated in Camden County, Missouri (hereinafter the “System”); and

**WHEREAS**, on August 26, 2018, the Seller filed a Motion to Approve (A) the Sale of Substantially All of Debtor’s Assets Free and Clear of All Liens, Interests, Claims, and Encumbrances and Related Procedures and Bid Production Pursuant to 11 U.S.C. § 363, (B) the Potential Assumption and Assignment, or Rejection, of Certain Executory Contracts and

**EXHIBIT C**

Unexpired Leases, and Related Procedures, Pursuant to 11 U.S.C. § 365, and (C) Related Relief Pursuant to 11 U.S.C. §§ 102 and 104 (the “Sale Motion”); and

**WHEREAS**, on September 19, 2018, Bankruptcy Court entered an Order Approving the Bidding Procedures (as defined herein); and

**WHEREAS**, First Back-up Bidder has tendered a deposit in the amount of \$48,000 (the “Deposit”); and

**WHEREAS**, on October 24, 2018, the Seller conducted the Auction and First Back-up Bidder’s Qualified Bid was determined to be the first back-up bidder; and

**WHEREAS**, in the event the Seller is unable to close the Alternative Transaction with the Prevailing Bidder, Seller desires to sell, and First Back-up Bidder desires to purchase, all the assets, property and real estate connected with the System including, but not limited to, all associated improvements for the conveyance of *water and sewer* to each of the customers connected to the service area (defined further below as “Assets”); and

**WHEREAS**, the Parties have reached an understanding with respect to the sale by Seller and the purchase by First Back-up Bidder of all of the Assets (as hereinafter defined) of the System;

**WHEREAS**, the transactions contemplated by this Agreement are subject to the approval of the Bankruptcy Court and will be consummated only pursuant to a Sale Order and such further orders to be entered by the Bankruptcy Court and applicable provisions of the Bankruptcy Code; and

**WHEREAS**, the transactions contemplated by this Agreement are also subject to approval from the Missouri Public Service Commission (“PSC”).

**NOW, THEREFORE**, it is mutually agreed that:

**1. SALE OF ASSETS.**

For and in consideration of the receipt of the Purchase Price, as set forth below, and the conditions, covenants and promises hereinafter set forth, Seller agrees that on the closing date, Seller shall sell, transfer, assign and deliver to First Back-up Bidder, or First Back-up Bidder's designated affiliate, all of Seller's then existing assets pertaining to the provision of *water and/or sewer* service in the System located in Camden County, in the State of Missouri, and related properties, including, without limitation, the following:

(a) The land, improvements thereon, easements, rights of way, permits and leases related to the System area depicted in *Exhibit "A"* and/or generally described in *Exhibit "B"* attached hereto;

(b) All of Seller's *water and/or sewer* service facilities, equipment, lines, plant, pipes, manholes and appurtenances;

(c) Any machinery and equipment such as meters, tools, devices, mobile work equipment, and all furniture, fixtures, machinery, supplies and other tangible items, if any, located in Camden County, Missouri, and used or held for use in connection with the System as generally described in *Exhibit "C"* attached hereto;

(d) All of Seller's rights, title and interest in and to any franchise agreements, franchise rights, warranties, contracts, supply contracts, agreements, and customer deposits, if any, pertaining to, allocable to or arising out of the provision of *water and/or sewer* service in Camden County, Missouri as generally described in *Exhibit "D"* attached hereto;

(e) All of Seller's inventory, merchandise, contract rights, supplies, goodwill, and general intangibles including accounts receivable pertaining to the *water and/or*

*sewer* service, except accounts receivable accrued prior to the closing of this sale;

(f) All customer deposits held by Seller (the “Customer Deposits”); and

(g) All assets not described which are located in Camden County, Missouri,

and used or useful to operate the System, except for Excluded Assets.

The assets to be sold and delivered, as above described, are hereinafter collectively described as the “Assets.”

Notwithstanding anything herein to the contrary, Seller will not sell, assign, convey, transfer or deliver to First Back-up Bidder, and First Back-up Bidder will not purchase, acquire or assume or take assignment or delivery of, Excluded Assets or any and all assets, contracts or rights that are not expressly Purchased Assets. “Excluded Assets” means (i) all deposit accounts, cash on hand and in banks (other than Customer Deposits) and cash equivalents (including marketable securities and short term investments) that relate to the Debtor, that are in possession or control of the Seller or in Seller’s bank accounts as of the closing date; (ii) Excluded Causes of Action; and (iii) all other property or assets not described as Assets. “Excluded Causes of Action” means causes of action or claims (i) that are not assignable under applicable law; (ii) Chapter 5 Causes of Action; (iii) as have or may have been asserted in the case styled *Williams v. Hancock Construction Company, et al.*, Adv. No. 17-02010-drd; (iv) any breach of fiduciary duty or similar claims; or (v) that are not specially identified as Assets above.

## **2. CONVEYANCES OF REAL ESTATE.**

The real estate to be conveyed by Seller will include all facilities described herein and all interest of Seller in any *water and/or sewer* and other utility easements. The real estate will be conveyed by trustee’s deed, in a form satisfactory to First Back-up Bidder, and will vest

marketable title in fact in the First Back-up Bidder. Easements shall be assigned by written assignment or other means, in a form satisfactory to First Back-up Bidder.

At First Back-up Bidder's expense, First Back-up Bidder shall obtain, within ten (10) business days of being notified that it has been deemed the Successful Bidder pursuant to the Bid Procedures related to Back-up Bidders, a Commitment to issue an Owner's Policy of Title Insurance to First Back-up Bidder in the amount of the Purchase Price issued by a company authorized to issue title insurance in the state of Missouri. Within twenty (20) days after First Back-up Bidder's receipt of said title insurance commitment, First Back-up Bidder shall notify Seller, in writing, of any objections thereto. If there shall be no such notice of objection, then any exceptions in such Commitment or deficiencies in the title to the property noted on such Commitment shall be deemed waived and delivery of a deed in compliance with the terms of the Commitment shall be deemed compliance with the terms of this Agreement. If notice of any objections to defects in the title, as defined above, shall be delivered to Seller, then Seller shall have twenty (20) business days to correct the title and Closing shall be postponed until such time, if necessary. If Seller elects not to, or cannot, correct such defects, then First Back-up Bidder, at First Back-up Bidder's option, may waive such defects and proceed to close or may cancel the contract and all obligations hereunder shall be null and void.

**3. REGULATORY APPROVAL.**

Seller and First Back-up Bidder agree to make application to the PSC for authority to complete the transfer of the Assets. First Back-up Bidder and Seller agree to assist the other in this process when requested to do so. First Back-up Bidder and Seller shall act diligently and cooperate with each other in obtaining final approval, if necessary, of the Missouri Department of Natural Resources ("DNR") for transfer of Seller's permits, if any. Other than the Seller's



attorney fees, any expenses resulting from such approval shall be borne by the First Back-up Bidder.

**4. PURCHASE PRICE.**

First Back-up Bidder agrees to pay to Seller at the Closing **Eight Hundred Thousand Dollars (\$800,000)** for purchase of the Assets (“Purchase Price”).

**5. DEPOSIT.**

The Deposit shall be deducted from the Purchase Price due by First Back-up Bidder at closing. The Deposit is non-refundable regardless of any termination of this agreement; provided, however, if the transactions hereby are not consummated because either the Seller consummates a competing offer pursuant to Section 10 or because First Back-up Bidder’s back-up bid is not approved by the Bankruptcy Court the Deposit shall be promptly returned to First Back-up Bidder without setoff or deduction of any kind pursuant to the Bidding Procedures.

**6. CLOSING.**

The closing of the sale shall take place at a mutually agreeable location no later than thirty (30) days after the effective date of any necessary regulatory authority approval, and satisfaction of Seller’s Representations and Warranties and Conditions Precedent set forth herein, or at such other time as the Parties hereto may mutually agree. At the closing, Seller shall have delivered to First Back-up Bidder such deeds, bills of sale, endorsements, assignments and other sufficient instruments of transfer and conveyance as shall be effective to vest in First Back-up Bidder such title to the Assets to be sold as provided in this Agreement and as set forth in Section 6.D, and First Back-up Bidder will deliver to Seller the Purchase Price. From time to time, at First Back-up Bidder’s request and expense, whether at or after the closing and without further consideration, Seller shall execute and deliver such other instruments of conveyance and

transfer and take such other action as First Back-up Bidder reasonably may require to more effectively convey and transfer to First Back-up Bidder any of the Assets to be sold hereunder, and will assist First Back-up Bidder in the collection or reduction to possession of such Assets. First Back-up Bidder will pay all sales, transfer and documentary taxes, if any, payable in connection with the sale, transfers and deliveries to be made to First Back-up Bidder hereunder.

On the date of closing, First Back-up Bidder shall accept and assume ownership and title to the Assets to be conveyed hereunder and First Back-up Bidder shall assume liability, and become responsible, for all obligations in connection with the Assets going forward including the Customer Deposits, excepting responsibility for any liabilities and/or obligations of Seller in connection with the Assets that existed prior to the date of closing other than claims related to the refund of Customer Deposits.

**7. SELLER'S REPRESENTATIONS AND WARRANTIES.**

The Seller represents and warrants as follows:

(a) **Validity of Agreement.**

Subject to any necessary authorization from the Bankruptcy Court, Seller has the full power and authority to execute and deliver any documents necessary to consummate the transactions contemplated hereby and thereby.

(b) **Title to Assets.**

Subject to Bankruptcy Court approval and any approval required by the PSC or DNR, Seller has the power and right to sell, assign and transfer and Seller will sell and deliver to First Back-up Bidder, the Assets free and clear of all claims and liens, other than customer claims in the Customer Deposits.

(c) **As Is, Where Is.**

First Back-up Bidder is purchasing the Assets in reliance upon First Back-up Bidder's personal inspection and knowledge of the Assets and in an "as-is" and "where-is" condition. Seller makes no warranties or representations, express or implied, of any kind or nature, written, oral or otherwise.

**8. BUYER'S REPRESENTATIONS AND WARRANTIES.**

First Back-up Bidder represents and warrants as follows:

(a) **Organization and Standing of First Back-up Bidder.**

First Back-up Bidder is a body corporate organized and existing under the constitution and laws of the State of Missouri, is in good standing, and has the requisite power to purchase the Assets which are to be sold pursuant to the terms of this Agreement.

(b) **Authority.**

The execution and delivery of this Agreement by First Back-up Bidder and the purchase of the Assets as contemplated hereby have been duly authorized by First Back-up Bidder, and all necessary action on the part of First Back-up Bidder has been taken to authorize the execution and delivery of this Agreement and to consummate the sale contemplated hereby.

**9. CONDITIONS PRECEDENT FOR BUYER TO CLOSE.**

All obligations of First Back-up Bidder under this Agreement are subject to the fulfillment or waiver, prior to or at the closing, of each of the following conditions:

(a) **Regulatory Approval.**

The PSC and DNR shall have, if necessary, authorized or approved the sale,

transfer or disposition of the Assets to First Back-up Bidder from Seller, the proposed financing, and any schedule of compliance for proposed utility improvement projects for regulatory compliance deemed necessary by First Back-up Bidder, each in form and substance (including without limitation with respect to the terms and conditions contained in such approval) acceptable to First Back-up Bidder in First Back-up Bidder's sole and absolute discretion. Both Parties shall diligently pursue the required approvals and authorizations contemplated herein, and First Back-up Bidder shall submit its application to the PSC by no later than thirty (30) days after being notified that it has been deemed the Successful Bidder pursuant to the Bid Procedures related to back-up bidders. Further, First back-up Bidder shall complete any necessary annexation by no later than sixty (60) days after being notified that it has been deemed the Successful Bidder. In the event the Parties are unable to obtain the required regulatory approval or authorization to complete the transactions contemplated herein, First Back-up Bidder may terminate this Agreement by providing written notice to Seller at First Back-up Bidder's sole and absolute discretion. If First Back-up Bidder fails to submit the required application to the PSC or complete any necessary annexation within the time required by this section, Seller may terminate this Agreement by providing written notice to First Back-up Bidder.

(b) **Representations and Warranties True at Closing.**

Seller's representations and warranties contained in this Agreement shall be true at the time of closing as though such representations and warranties were made at such time.

(c) **Performance.**

Seller shall have performed and complied with all agreements and conditions required by this Agreement to be performed or complied with by Seller prior to or at the closing; including the payment of all taxes and assessments, or portions thereof, attributable to periods prior to or ending on the closing date, to include Public Service Commission assessments.

(d) **Inspections.**

Completion of First Back-up Bidder's examination, testing and inspection of the Assets and the securing of any and all licenses, permits or governmental approvals First Back-up Bidder deems necessary for First Back-up Bidder's proposed uses of the Assets, the results thereof to be satisfactory to First Back-up Bidder, in its sole discretion. For purposes of this Agreement, the period from the date this Agreement is fully executed by both Parties to the date that is twenty (20) days prior to the closing, shall be referred to herein as the "Inspection Period." During the Inspection Period, First Back-up Bidder, its employees, agents and contractors, shall have the right to enter onto any property owned by Seller that is related to the operation of the System, as it deems necessary or desirable, on reasonable prior notice to Seller to perform and complete architectural, environmental, engineering and/or other surveys, studies, inspections and tests on the Assets; to review zoning laws and applicable building codes; to obtain all necessary city, county, and state zoning approval, site plan or subdivision approvals, licenses and permits to authorize the uses of the Assets as intended by First Back-up Bidder.

(e) **No Casualty.**

The Assets shall not have been adversely affected in any material way as a result of any strike, lockout, accident or other casualty or act of God or the public enemy, or any judicial, administrative or governmental proceeding.

(f) **Bankruptcy Court Approval.**

This Agreement is subject to and contingent upon approval by the Bankruptcy Court and entry of an order of the Bankruptcy Court (the “Sale Order”). The Sale Order shall (i) approve this Agreement and the transactions contemplated hereby; (ii) approve the sale of the Assets to First Back-up Bidder free and clear of all liens pursuant to 11 U.S.C. § 363(f) in the event the Prevailing Bidder is unable to close; (iii) find that First Back-up Bidder is a good faith purchaser entitled to the protections of 11 U.S.C. § 363(m); (iv) provide that the provisions of Federal Rule of Bankruptcy Procedure 6004(g) are waived and there will be no stay of execution of the Sale Order under Federal Rule of Civil Procedure 62(a); (iv) retain jurisdiction of the Bankruptcy Court to interpret and enforce the terms and provisions of this Agreement; and (vi) authorize and approve the results of the Auction.

(g) **Correction of Legal Description.**

Osage Water Company obtained a Quit Claim Deed (the “Chelsea Rose Deed”) from Hurricane Deck Holding Company for the parcel commonly known as Chelsea Rose (“Chelsea Rose”), which was directed by the judgment in *Osage Water Company, et al. v. Hurricane Deck Holding Company et al.*, Case No. 06CM-CC00014 in Camden County, Missouri. Seller has discovered a defect in the legal description of the Chelsea Rose Deed. Seller shall obtain a corrected deed, an amended judgment, or other order or judgment conveying Chelsea Rose to Osage Water Company with the correct legal description.

(h) **First Back-up Bidder's Right to Terminate.**

If First Back-up Bidder determines, in its sole and absolute discretion, that any of the aforementioned conditions have not been met, First Back-up Bidder shall have the right to terminate this Agreement at any time prior to closing upon written notice to Seller.

**10. ADDITIONAL AGREEMENTS AND COVENANTS**

(a) **Definitions.**

1. "Alternative Transaction" shall mean (a) a transaction or series of transactions pursuant to which Seller sells, transfers, leases, or otherwise disposes of all or any material portion of the Assets to a person other than First Back-up Bidder.

2. "Auction" shall mean the auction conducted by Seller pursuant to the Bidding Procedures Order for the Assets.

3. "Bidding Procedures" shall mean the rules, processes, bidding procedures and other matters approved by the Bidding Procedures Order.

4. "Bidding Procedures Order" shall mean a final order from the Bankruptcy Court approving the Bidding Procedures and certain other matters in connection with the potential Auction.

5. "Prevailing Bidder" shall mean the prevailing party at the conclusion of the Auction.

6. "Second Back-up Bidder" shall mean the party who had the third-best bid at the conclusion of the Auction."

(b) **First Back-up Bidder as Back-up Bidder.**

Pursuant to the Bidding Procedures, First Back-up Bidder is required to keep First Back-up Bidder's bid to consummate the transactions contemplated by this Agreement on the terms and conditions set forth in this Agreement (as the same may be improved upon in the Auction) open and irrevocable until one hundred eighty (180) days after the date of the Sale Order (the "Outside Back-up Date"). Following the Sale Hearing and prior to the Outside Back-up Date, if the Prevailing Bidder fails to consummate the Alternative Transaction as a result of a breach or failure to perform on the part of such Prevailing Bidder, the First Back-up Bidder will be deemed to have the new prevailing bid, and Seller shall be required, without further order of the Bankruptcy Court, to consummate the transactions contemplated by this Agreement on the terms and conditions set forth in this Agreement. If Seller consummates the Alternative Transaction with the Prevailing Bidder, this Agreement will be deemed terminated and the Seller will promptly tender the Deposit back to the First Back-up Bidder.

**11. CONDITIONS PRECEDENT FOR SELLER TO CLOSE**

All obligations of Seller under this Agreement are subject to the fulfillment, prior to or at the closing, of each of the following conditions:

(a) **Representations and Warranties True at Closing.**

First Back-up Bidder's representations and warranties contained in this Agreement shall be true at the time of closing as though such representations and warranties were made at such time.

(b) **Performance.**



First Back-up Bidder shall have performed and complied with all agreements and conditions required by this Agreement to be performed or complied with by First Back-up Bidder prior to or at the Closing.

(c) **Bankruptcy Court Approval.**

This Agreement is subject to and contingent upon approval by the Bankruptcy Court and entry of Sale Order approving this Agreement..

**12. INDEMNIFICATION.**

First Back-up Bidder shall, and hereby does agree to indemnify and hold harmless Seller, at any time after the closing, from and against all damages, penalties, losses, deficiencies, costs, expenses, obligations, fines, expenditures, claims, and liabilities, including reasonable attorneys' fees and expenses (each a "Loss" and collectively, "Losses") incurred or suffered by the Seller based upon, arising out of, or otherwise related to the Customer Deposits.

**13. FEES AND COMMISSIONS.**

Each Party represents that it has not retained any broker or finder and is not paying, and is not obligated to pay, any finder's fee, commission or other transactional fee in connection with the transactions contemplated by this Agreement. Each Party shall pay its own fees for attorneys, accountants, appraisers or others engaged by it in the course of negotiating or executing this Agreement and in closing and completing the transactions hereunder provided. Fees for professional advisors retained jointly by the Parties for their mutual benefit shall be equally divided.

**14. BENEFIT.**

All of the terms of this Agreement shall be binding upon, and inure to the benefit of, and be enforceable by, the respective legal representatives of Seller, its successors and assigns, and the successors and assigns of First Back-up Bidder.

**15. GOVERNING LAW.**

This Agreement is being delivered and is intended to be performed in the State of Missouri, and shall be construed and enforced in accordance with the laws of such state and any applicable bankruptcy law.

**16. COUNTERPARTS.**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. This Agreement shall not be binding until executed by all Parties.

**17. NO THIRD PARTY BENEFICIARIES.**

This Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns.

**18. ENTIRE AGREEMENT.**

This Agreement (including the documents referred to herein) constitutes the entire agreement between the Parties and supersedes any prior understandings, agreements or representations by or among the Parties, written or oral, to the extent they have related in any way to the subject matter hereof.

**19. SUCCESSION AND ASSIGNMENT.**

This Agreement shall be binding upon and inure to the benefit of the Parties named herein and their respective successors and permitted assigns. No Party may assign either this Agreement or any of its rights, interests or obligations hereunder without the prior written approval of First Back-up Bidder and Seller, said approval not to be unreasonably withheld.

**20. HEADINGS.**

The 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.

**21. NOTICES.**

All notices, demands, consents, requests or other communications required to or permitted to be given pursuant to this Agreement shall be in writing, shall be given only in

accordance with the provisions of this Section 21, shall be addressed to the Parties in the manner set forth below, and shall be conclusively deemed to have been properly delivered: (a) upon receipt when hand delivered during normal business hours (provided that, notices which are hand delivered shall not be effective unless the sending Party obtains a signature of a person at such address that the notice has been received); (b) upon receipt when sent by facsimile if sent between the hours of 8:00 a.m. and 5:00 p.m. (the recipient's time) on a business day to the number set forth below with written confirmation of a successful transmission by the sender's facsimile machine; (c) when sent by electronic mail if (1) identified in the subject line as a notice under this Agreement, (2) sent between the hours of 8:00 a.m. and 5:00 p.m. on a business day to the e-mail address set forth below, and (3) acknowledged as received by the recipient, by reply or separate e-mail, (d) upon the day of delivery if the notice has been deposited in an authorized receptacle of the United States Postal Service as first-class, registered or certified mail, postage prepaid, with a return receipt requested (provided that, the sender has in its possession the return receipt to prove actual delivery); or (e) one (1) business day after the notice has been deposited with FedEx, United Parcel Service or other reliable overnight courier to be delivered by overnight delivery (provided that, the sending Party receives a confirmation of actual delivery from the courier). The addresses of the Parties to receive notices are as follows:

If to First Back-up Bidder:

Aaron Ellsworth  
Ellsworth & Hardwick  
PO Box 250  
Lake Ozark, MO 65049  
Facsimile: (573) 693-4232  
E-mail: [ellsworth@lolawoffice.com](mailto:ellsworth@lolawoffice.com)

With a Copy to:

Neddie K. Goss, Administrator

Lake Area Waste Water Association, Inc., and Missouri Water Assc. Inc.  
515 Old South 5  
Camdenton, MO 65020  
Facsimile: (573) 346-4411  
Email: cmelyea@pmcwlaw.com

If to Seller:

Jill D. Olsen  
The Olsen Law Firm, LLC  
118 N. Conistor Ln., Suite B #290  
Liberty, MO 64068  
Facsimile: (816) 278-9493  
E-mail: [trustee@olsenlawkc.com](mailto:trustee@olsenlawkc.com)

With a Copy to:

Andrea M. Chase  
Spencer Fane LLP  
1000 Walnut, Suite 1400  
Kansas City, MO 64106  
Facsimile: (816)-474-3216  
E-mail: [achase@spencerfane.com](mailto:achase@spencerfane.com)

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.

**22. AMENDMENTS AND WAIVERS.**

No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by First Back-up Bidder and Seller. No waiver by any Party of any default, misrepresentation or breach of warranty or covenant hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default, misrepresentation or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

**23. 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.

**24. EXPENSES.**

First Back-up Bidder and Seller shall each bear their own costs and expenses (including legal and accounting fees and expenses) incurred in connection with the preparation of this Agreement and activities necessary for Closing.

**25. CONSTRUCTION.**

The Parties have participated jointly in the negotiation and drafting of this Agreement. 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.

**26. INCORPORATION OF EXHIBITS.**

The Exhibits identified in this Agreement are incorporated herein by reference and made a part hereof.

**27. DEFAULT; ATTORNEY’S FEES.**

If either Party shall default in their performance under this Agreement, which default results in the expenditure of attorneys’ fees to enforce the terms of this Agreement or to recover damages for breach of this contract, then the prevailing Party shall be entitled to receive its

reasonable and actually incurred attorneys' fees and costs in addition to any other damages that the Party is entitled to recover at law or in equity.

**28. AUTHORITY TO EXECUTE.**

Each person whose signature appears hereon represents, warrants and guarantees that he or she has been duly authorized and has full authority to execute this Agreement on behalf of the Party on whose behalf this Agreement is executed, subject to Bankruptcy Court approval.

[SIGNATURE PAGE TO FOLLOW]

**IN WITNESS WHEREOF**, the Parties have duly executed this Agreement as of the day and year first above written.

**SELLER:**

By: \_\_\_\_\_  
Jill D. Olsen, not individually but as Chapter  
11 Trustee of the Osage Water Company  
bankruptcy estate

**BUYER:**

**Public Water Supply District No. 5 of  
Camden County, Missouri**

By: \_\_\_\_\_  
Name:  
Title:

**Lake Area Waste Water Assc., Inc.**

By: \_\_\_\_\_  
Name:  
Title:

**Missouri Water Assc., Inc.**

By: \_\_\_\_\_  
Name:  
Title:



**EXHIBIT "A"**

**Service Area Description**

**1. CEDAR GLEN CONDOMINIUMS**

- (a) Location: Sunny Slope Drive, Camden County
- (b) Description of Water System: 35,000 gallon hydro tank with deep well
- (c) Description of Wastewater System: Sand filter with lift stations and force

main

**2. CHELSEA ROSE**

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collection to an activated sludge facility

**3. HARBOUR BAY/CIMARRON BAY**

- (a) Location: MM40-Blue Water Bay Road, Camden County
- (b) Description of Water System: 35,000 gallon hydro tank with deep well
- (c) Description of Wastewater System: Force main to sand filter

**4. EAGLE WOODS/KK WASTEWATER**

- (a) Location: Highway KK and Red Barn Road, Camden County
- (b) Description of Water System: 10,000 gallon storage tank to booster pumps

and pressurized tanks

- (c) Description of Wastewater System: Force main and gravity collection system to a sand filter

**EXHIBIT "B"**

Description of Land, Improvements thereon, Easements, Rights of Way, Permits and Leases  
(The legal description(s) of the Land, Improvements thereon, Easements, Rights of Way shall be determined by  
survey and title commitments, which shall be inserted prior to Closing).

**EXHIBIT "C"**

**Plant and Equipment**

(meters, tools, devices, mobile work equipment, furniture, fixtures, machinery, supplies, and other tangible items)

**EXHIBIT "D"**

Rights Via Agreements, Contracts, Misc.

(franchise agreements, franchise rights, warranties, contracts, supply contracts, agreements, and customer deposits)

**AGREEMENT FOR SALE OF UTILITY SYSTEM**

**THIS AGREEMENT** (“Agreement”) is made and entered into this 29th day of October, 2018 (the “Effective Date”), by and between Missouri-American Water Company, a Missouri corporation, or its affiliate (“Second Back-up Bidder”), and Jill D. Olsen as Chapter 11 Trustee of Osage Water Company (“Seller”) (collectively, “Parties”).

**WITNESSETH:**

**WHEREAS**, on October 11, 2017, Osage Water Company filed a voluntary petition for relief under Chapter 11 of the U.S. Bankruptcy Code, which case is pending as Case No. 17-42759-drd11 in the U.S. Bankruptcy Court for the Western District of Missouri (“Bankruptcy Court”); and

**WHEREAS**, on October 26, 2017, Jill D. Olsen was appointed as the Chapter 11 Trustee of Osage Water Company; and

**WHEREAS**, Osage Water Company has developed and operates as a regulated *water and sewer* corporation *water and sewer* facilities, in the area more particularly described and depicted in the documents attached hereto as *Exhibit “A,”* situated in Camden County, Missouri (hereinafter the “System”); and

**WHEREAS**, on August 26, 2018, the Seller filed a Motion to Approve (A) the Sale of Substantially All of Debtor’s Assets Free and Clear of All Liens, Interests, Claims, and Encumbrances and Related Procedures and Bid Production Pursuant to 11 U.S.C. § 363, (B) the Potential Assumption and Assignment, or Rejection, of Certain Executory Contracts and Unexpired Leases, and Related Procedures, Pursuant to 11 U.S.C. § 365, and (C) Related Relief Pursuant to 11 U.S.C. §§ 102 and 104 (the “Sale Motion”); and

**WHEREAS**, on September 19, 2018, Bankruptcy Court entered an Order Approving the Bidding Procedures (as defined herein); and

**WHEREAS**, Second Back-up Bidder has tendered a deposit in the amount of \$48,000 (the “Deposit”); and

**WHEREAS**, on October 24, 2018, the Seller conducted the Auction and Second Back-up Bidder’s Qualified Bid was determined to be the Second Back-Up Bidder; and

**WHEREAS**, in the event the Seller is unable to close the Alternative Transactions with Prevailing Bidder or the First Back-Up Bidder, Seller desires to sell, and Second Back-up Bidder desires to purchase, all the assets, property and real estate connected with the System including, but not limited to, all associated improvements for the conveyance of *water and sewer* to each of the customers connected to the service area (defined further below as “Assets”);

**WHEREAS**, the Parties have reached an understanding with respect to the sale by Seller and the purchase by Second Back-up Bidder of all of the Assets (as hereinafter defined) of the System;

**WHEREAS**, the transactions contemplated by this Agreement are subject to the approval of the Bankruptcy Court and will be consummated only pursuant to a Sale Order and such further orders to be entered by the Bankruptcy Court and applicable provisions of the Bankruptcy Code; and

**WHEREAS**, the transactions contemplated by this Agreement are also subject to approval from the Missouri Public Service Commission (“PSC”)

**NOW, THEREFORE**, it is mutually agreed that:

**1. SALE OF ASSETS.**

For and in consideration of the receipt of the Purchase Price, as set forth below, and the conditions, covenants and promises hereinafter set forth, Seller agrees that on the closing date, Seller shall sell, transfer, assign and deliver to Second Back-up Bidder, or Second Back-up Bidder's designated affiliate, all of Seller's then existing assets pertaining to the provision of *water and/or sewer* service in the System located in Camden County, in the State of Missouri, and related properties, including, without limitation, the following:

(a) The land, improvements thereon, easements, rights of way, permits and leases related to the System area depicted in *Exhibit "A"* and/or generally described in *Exhibit "B"* attached hereto;

(b) All of Seller's *water and/or sewer* service facilities, equipment, lines, plant, pipes, manholes and appurtenances;

(c) Any machinery and equipment such as meters, tools, devices, mobile work equipment, and all furniture, fixtures, machinery, supplies and other tangible items, if any, located in Camden County, Missouri, and used or held for use in connection with the System as generally described in *Exhibit "C"* attached hereto;

(d) All of Seller's rights, title and interest in and to any franchise agreements, franchise rights, warranties, contracts, supply contracts, agreements, and customer deposits, if any, pertaining to, allocable to or arising out of the provision of *water and/or sewer* service in Camden County, Missouri as generally described in *Exhibit "D"* attached hereto;

(e) All of Seller's inventory, merchandise, contract rights, supplies, goodwill, and general intangibles including accounts receivable pertaining to the *water and/or sewer*

service, except accounts receivable accrued prior to the closing of this sale;

(f) All customer deposits held by Seller (the “Customer Deposits”); and

(g) All assets not described which are located in Camden County, Missouri, and used or useful to operate the System, except for Excluded Assets.

The assets to be sold and delivered, as above described, are hereinafter collectively described as the “Assets.”

Notwithstanding anything herein to the contrary, Seller will not sell, assign, convey, transfer or deliver to Second Back-up Bidder, and Second Back-up Bidder will not purchase, acquire or assume or take assignment or delivery of, Excluded Assets or any and all assets, contracts or rights that are not expressly Purchased Assets. “Excluded Assets” means (i) all deposit accounts, cash on hand and in banks (other than Customer Deposits) and cash equivalents (including marketable securities and short term investments) that relate to the Debtor, that are in possession or control of the Seller or in Seller’s bank accounts as of the closing date; (ii) Excluded Causes of Action; and (iii) all other property or assets not described as Assets. “Excluded Causes of Action” means causes of action or claims (i) that are not assignable under applicable law; (ii) Chapter 5 Causes of Action; (iii) as have or may have been asserted in the case styled *Williams v. Hancock Construction Company, et al.*, Adv. No. 17-02010-drd; (iv) any breach of fiduciary duty or similar claims; or (v) that are not specially identified as Assets above.

## **2. CONVEYANCES OF REAL ESTATE.**

The real estate to be conveyed by Seller will include all facilities described herein and all interest of Seller in any *water and/or sewer* and other utility easements. The real estate will be conveyed by trustee’s deed, in a form satisfactory to Second Back-up Bidder, and will vest



marketable title in fact in the Second Back-up Bidder. Easements shall be assigned by written assignment or other means, in a form satisfactory to Second Back-up Bidder.

At Second Back-up Bidder's expense, Second Back-up Bidder shall obtain, within ten (10) business days of being notified that it has been deemed the Successful Bidder pursuant to the Bid Procedures related to Back-up Bidders, a Commitment to issue an Owner's Policy of Title Insurance to Second Back-up Bidder in the amount of the Purchase Price issued by a company authorized to issue title insurance in the state of Missouri. Within twenty (20) days after Second Back-up Bidder's receipt of said title insurance commitment, Second Back-up Bidder shall notify Seller, in writing, of any objections thereto. If there shall be no such notice of objection, then any exceptions in such Commitment or deficiencies in the title to the property noted on such Commitment shall be deemed waived and delivery of a deed in compliance with the terms of the Commitment shall be deemed compliance with the terms of this Agreement. If notice of any objections to defects in the title, as defined above, shall be delivered to Seller, then Seller shall have twenty (20) business days to correct the title and Closing shall be postponed until such time, if necessary. If Seller elects not to, or cannot, correct such defects, then Second Back-up Bidder, at Second Back-up Bidder's option, may waive such defects and proceed to close or may cancel the contract and all obligations hereunder shall be null and void.

**3. REGULATORY APPROVAL.**

Seller and Second Back-up Bidder agree to make application to the PSC for authority to complete the transfer of the Assets. Second Back-up Bidder and Seller agree to assist the other in this process when requested to do so. Second Back-up Bidder and Seller shall act diligently and cooperate with each other in obtaining final approval, if necessary, of the Missouri Department of

Natural Resources (“DNR”) for transfer of Seller’s permits, if any. Other than the Seller’s attorney fees, any expenses resulting from such approval shall be borne by the Second Back-up Bidder.

**4. PURCHASE PRICE.**

Second Back-up Bidder agrees to pay to Seller at the Closing **Six Hundred Thousand Dollars (\$600,000)** for purchase of the Assets (“Purchase Price”).

**5. DEPOSIT.**

The Deposit shall be deducted from the Purchase Price due by Second Back-up Bidder at closing. The Deposit is non-refundable regardless of any termination of this agreement; provided, however, if the transactions hereby are not consummated because either the Seller consummates a competing offer pursuant to Section 10 or because Second Back-up Bidder’s backup bid is not approved by the Bankruptcy Court, the deposit shall be promptly returned to Second Back-up Bidder without setoff or deduction of any kind pursuant to the Bidding Procedures.

**6. CLOSING.**

The closing of the sale shall take place at a mutually agreeable location no later than thirty (30) days after the effective date of any necessary regulatory authority approval, and satisfaction of Seller’s Representations and Warranties and Conditions Precedent set forth herein, or at such other time as the Parties hereto may mutually agree. At the closing, Seller shall have delivered to Second Back-up Bidder such deeds, bills of sale, endorsements, assignments and other sufficient instruments of transfer and conveyance as shall be effective to vest in Second Back-up Bidder such title to the Assets to be sold as provided in this Agreement and as set forth in Section 6.D, and Second Back-up Bidder will deliver to Seller the Purchase Price. From time to time, at Second Back-up Bidder’s request and expense, whether at or after the closing and without further consideration, Seller shall execute and deliver such other instruments of conveyance and transfer

and take such other action as Second Back-up Bidder reasonably may require to more effectively convey and transfer to Second Back-up Bidder any of the Assets to be sold hereunder, and will assist Second Back-up Bidder in the collection or reduction to possession of such Assets. Second Back-up Bidder will pay all sales, transfer and documentary taxes, if any, payable in connection with the sale, transfers and deliveries to be made to Second Back-up Bidder hereunder.

On the date of closing, Second Back-up Bidder shall accept and assume ownership and title to the Assets to be conveyed hereunder and Second Back-up Bidder shall assume liability, and become responsible, for all obligations in connection with the Assets going forward including the Customer Deposits, excepting responsibility for any liabilities and/or obligations of Seller in connection with the Assets that existed prior to the date of closing other than claims related to the refund of Customer Deposits.

**7. SELLER'S REPRESENTATIONS AND WARRANTIES.**

The Seller represents and warrants as follows:

(a) **Validity of Agreement.**

Subject to any necessary authorization from the Bankruptcy Court, Seller has the full power and authority to execute and deliver any documents necessary to consummate the transactions contemplated hereby and thereby.

(b) **Title to Assets.**

Subject to Bankruptcy Court approval and any approval required by the PSC or DNR, Seller has the power and right to sell, assign and transfer and Seller will sell and deliver to Second Back-up Bidder, the Assets free and clear of all claims and liens, other than customer claims in the Customer Deposits.

(c) **As Is, Where Is.**

Second Back-up Bidder is purchasing the Assets in reliance upon Second Back-up Bidder's personal inspection and knowledge of the Assets and in an "as-is" and "where-is" condition. Seller makes no warranties or representations, express or implied, of any kind or nature, written, oral or otherwise.

**8. BUYER'S REPRESENTATIONS AND WARRANTIES.**

Second Back-up Bidder represents and warrants as follows:

(a) **Organization and Standing of Second Back-up Bidder.**

Second Back-up Bidder is a body corporate organized and existing under the constitution and laws of the State of Missouri, is in good standing, and has the requisite power to purchase the Assets which are to be sold pursuant to the terms of this Agreement.

(b) **Authority.**

The execution and delivery of this Agreement by Second Back-up Bidder and the purchase of the Assets as contemplated hereby have been duly authorized by Second Back-up Bidder, and all necessary action on the part of Second Back-up Bidder has been taken to authorize the execution and delivery of this Agreement and to consummate the sale contemplated hereby.

**9. CONDITIONS PRECEDENT FOR BUYER TO CLOSE.**

All obligations of Second Back-up Bidder under this Agreement are subject to the fulfillment or waiver, prior to or at the closing, of each of the following conditions:

(a) **Regulatory Approval.**

The PSC and DNR shall have, if necessary, authorized or approved the sale, transfer or disposition of the Assets to Second Back-up Bidder from Seller, the proposed financing, and any schedule of compliance for proposed utility improvement projects for regulatory

compliance deemed necessary by Second Back-up Bidder, each in form and substance (including without limitation with respect to the terms and conditions contained in such approval) acceptable to Second Back-up Bidder in Second Back-up Bidder's sole and absolute discretion. Both Parties shall diligently pursue the required approvals and authorizations contemplated herein, and Second Back-up Bidder shall submit its application to the PSC by no later than thirty (30) days after being notified that it has been deemed the Successful Bidder pursuant to the Bid Procedures related to Back-up Bids. In the event the Parties are unable to obtain the required regulatory approval or authorization to complete the transactions contemplated herein, Second Back-up Bidder may terminate this Agreement by providing written notice to Seller at Second Back-up Bidder's sole and absolute discretion. If Second Back-up Bidder fails to submit the required application to the PSC within the time required by this section, Seller may terminate this Agreement by providing written notice to Second Back-up Bidder.

(b) **Representations and Warranties True at Closing.**

Seller's representations and warranties contained in this Agreement shall be true at the time of closing as though such representations and warranties were made at such time.

(c) **Performance.**

Seller shall have performed and complied with all agreements and conditions required by this Agreement to be performed or complied with by Seller prior to or at the closing; including the payment of all taxes and assessments, or portions thereof, attributable to periods prior to or ending on the closing date, to include Public Service Commission assessments.

(d) **Inspections.**

Completion of Second Back-up Bidder's examination, testing and inspection of the Assets and the securing of any and all licenses, permits or governmental approvals Second Back-up Bidder deems necessary for Second Back-up Bidder's proposed uses of the Assets, the results thereof to be satisfactory to Second Back-up Bidder, in its sole discretion. For purposes of this Agreement, the period from the date this Agreement is fully executed by both Parties to the date that is twenty (20) days prior to the closing, shall be referred to herein as the "Inspection Period." During the Inspection Period, Second Back-up Bidder, its employees, agents and contractors, shall have the right to enter onto any property owned by Seller that is related to the operation of the System, as it deems necessary or desirable, on reasonable prior notice to Seller to perform and complete architectural, environmental, engineering and/or other surveys, studies, inspections and tests on the Assets; to review zoning laws and applicable building codes; to obtain all necessary city, county, and state zoning approval, site plan or subdivision approvals, licenses and permits to authorize the uses of the Assets as intended by Second Back-up Bidder.

(e) **No Casualty.**

The Assets shall not have been adversely affected in any material way as a result of any strike, lockout, accident or other casualty or act of God or the public enemy, or any judicial, administrative or governmental proceeding.

(f) **Bankruptcy Court Approval.**

This Agreement is subject to and contingent upon approval by the Bankruptcy Court and entry of an order of the Bankruptcy Court (the "Sale Order"). The Sale Order shall (i) approve this Agreement and the transactions contemplated hereby; (ii) approve the

sale of the Assets to Second Back-up Bidder free and clear of all liens pursuant to 11 U.S.C. § 363(f) in the event the Prevailing Bidder or First Back-up Bidder fails to close; (iii) find that Second Back-up Bidder is a good faith purchaser entitled to the protections of 11 U.S.C. § 363(m); (iv) provide that the provisions of Federal Rule of Bankruptcy Procedure 6004(g) are waived and there will be no stay of execution of the Sale Order under Federal Rule of Civil Procedure 62(a); (iv) retain jurisdiction of the Bankruptcy Court to interpret and enforce the terms and provisions of this Agreement; and (vi) authorize and approve the results of the Auction.

(g) **Correction of Legal Description.**

Osage Water Company obtained a Quit Claim Deed (the "Chelsea Rose Deed") from Hurricane Deck Holding Company for the parcel commonly known as Chelsea Rose ("Chelsea Rose"), which was directed by the judgment in *Osage Water Company, et al. v. Hurricane Deck Holding Company et al.*, Case No. 06CM-CC00014 in Camden County, Missouri. Seller has discovered a defect in the legal description of the Chelsea Rose Deed. Seller shall obtain a corrected deed, an amended judgment, or other order or judgment conveying Chelsea Rose to Osage Water Company with the correct legal description.

(h) **Second Back-up Bidder's Right to Terminate.**

If Second Back-up Bidder determines, in its sole and absolute discretion, that any of the aforementioned conditions have not been met, Second Back-up Bidder shall have the right to terminate this Agreement at any time prior to closing upon written notice to Seller.

**10. ADDITIONAL AGREEMENTS AND COVENANTS**

(a) **Definitions.**

1. “Alternative Transaction” shall mean (a) a transaction or series of transactions pursuant to which Seller sells, transfers, leases, or otherwise disposes of all or any material portion of the Assets to a person other than Second Back-up Bidder.

2. “Auction” shall mean the auction conducted by Seller pursuant to the Bidding Procedures Order for the Assets.

3. “Bidding Procedures” shall mean the rules, processes, bidding procedures and other matters approved by the Bidding Procedures Order.

4. “Bidding Procedures Order” shall mean a final order from the Bankruptcy Court approving the Bidding Procedures and certain other matters in connection with the potential Auction.

5. “Prevailing Bidder” shall mean the prevailing party at the conclusion of the Auction.

6. “First Back-up Bidder” shall mean the party who had the second-best bid at the conclusion of the Auction.

7. “Second Back-up Bidder” shall mean the party who had the third-best bid at the conclusion of the Auction.”

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(b) **Second Back-up Bidder as Back-up Bidder.**

Pursuant to the Bidding Procedures, Second Back-up Bidder is required to keep Second Back-up Bidder's bid to consummate the transactions contemplated by this Agreement on the terms and conditions set forth in this Agreement open and irrevocable until one hundred eighty (180) days after the date of the Sale Order (the "Outside Back-up Date"). Following the Sale Hearing and prior to the Outside Back-up Date, if the Prevailing Bidder or First Back-up Bidder fail to consummate the Alternative Transaction as a result of a breach or failure to perform on the part of such Prevailing Bidder or First Back-up Bidder, the Second Back-up Bidder will be deemed to have the new prevailing bid, and Seller shall be required, without further order of the Bankruptcy Court, to consummate the transactions contemplated by this Agreement on the terms and conditions set forth in this Agreement. If Seller consummates an Alternative Transaction with either the Prevailing Bidder or the First Back-up Bidder, this Agreement will be deemed terminated and the Seller will promptly tender the Deposit back to the Second Back-up Bidder.

11. **CONDITIONS PRECEDENT FOR SELLER TO CLOSE**

All obligations of Seller under this Agreement are subject to the fulfillment, prior to or at the closing, of each of the following conditions:

(a) **Representations and Warranties True at Closing.**

Second Back-up Bidder's representations and warranties contained in this Agreement shall be true at the time of closing as though such representations and warranties were made at such time.

(b) **Performance.**

Second Back-up Bidder shall have performed and complied with all agreements and conditions required by this Agreement to be performed or complied with by Second Back-up Bidder prior to or at the Closing.

(c) **Bankruptcy Court Approval.**

This Agreement is subject to and contingent upon approval by the Bankruptcy Court and entry of Sale Order approving this Agreement.

**12. INDEMNIFICATION.**

Second Back-up Bidder shall, and hereby does agree to indemnify and hold harmless Seller, at any time after the closing, from and against all damages, penalties, losses, deficiencies, costs, expenses, obligations, fines, expenditures, claims, and liabilities, including reasonable attorneys' fees and expenses (each a "Loss" and collectively, "Losses") incurred or suffered by the Seller based upon, arising out of, or otherwise related to the Customer Deposits.

**13. FEES AND COMMISSIONS.**

Each Party represents that it has not retained any broker or finder and is not paying, and is not obligated to pay, any finder's fee, commission or other transactional fee in connection with the transactions contemplated by this Agreement. Each Party shall pay its own fees for attorneys, accountants, appraisers or others engaged by it in the course of negotiating or executing this Agreement and in closing and completing the transactions hereunder provided. Fees for professional advisors retained jointly by the Parties for their mutual benefit shall be equally divided.

**14. BENEFIT.**

All of the terms of this Agreement shall be binding upon, and inure to the benefit of, and be enforceable by, the respective legal representatives of Seller, its successors and assigns, and the

successors and assigns of Second Back-up Bidder.

**15. GOVERNING LAW.**

This Agreement is being delivered and is intended to be performed in the State of Missouri, and shall be construed and enforced in accordance with the laws of such state and any applicable bankruptcy law.

**16. COUNTERPARTS.**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. This Agreement shall not be binding until executed by all Parties.

**17. NO THIRD PARTY BENEFICIARIES.**

This Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns.

**18. ENTIRE AGREEMENT.**

This Agreement (including the documents referred to herein) constitutes the entire agreement between the Parties and supersedes any prior understandings, agreements or representations by or among the Parties, written or oral, to the extent they have related in any way to the subject matter hereof.

**19. SUCCESSION AND ASSIGNMENT.**

This Agreement shall be binding upon and inure to the benefit of the Parties named herein and their respective successors and permitted assigns. No Party may assign either this Agreement or any of its rights, interests or obligations hereunder without the prior written approval of Second Back-up Bidder and Seller, said approval not to be unreasonably withheld.

**20. HEADINGS.**

The 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.

**21. NOTICES.**

All notices, demands, consents, requests or other communications required to or permitted to be given pursuant to this Agreement shall be in writing, shall be given only in accordance with the provisions of this Section 21, shall be addressed to the Parties in the manner set forth below, and shall be conclusively deemed to have been properly delivered: (a) upon receipt when hand delivered during normal business hours (provided that, notices which are hand delivered shall not be effective unless the sending Party obtains a signature of a person at such address that the notice has been received); (b) upon receipt when sent by facsimile if sent between the hours of 8:00 a.m. and 5:00 p.m. (the recipient's time) on a business day to the number set forth below with written confirmation of a successful transmission by the sender's facsimile machine; (c) when sent by electronic mail if (1) identified in the subject line as a notice under this Agreement, (2) sent between the hours of 8:00 a.m. and 5:00 p.m. on a business day to the e-mail address set forth below, and (3) acknowledged as received by the recipient, by reply or separate e-mail, (d) upon the day of delivery if the notice has been deposited in an authorized receptacle of the United States Postal Service as first-class, registered or certified mail, postage prepaid, with a return receipt requested (provided that, the sender has in its possession the return receipt to prove actual delivery); or (e) one (1) business day after the notice has been deposited with FedEx, United Parcel Service or other reliable overnight courier to be delivered by overnight delivery (provided that, the sending Party receives a confirmation of actual delivery from the courier). The addresses of the Parties to receive notices are as follows:

If to Second Back-up Bidder:

Missouri-American Water Company  
727 Craig Road  
St. Louis, Missouri 63141  
Attention: Legal Department

If to Seller:

Jill D. Olsen  
The Olsen Law Firm, LLC  
118 N. Conistor Ln., Suite B #290  
Liberty, MO 64068  
Facsimile: (816) 278-9493  
E-mail: [trustee@olsenlawkc.com](mailto:trustee@olsenlawkc.com)

With a Copy to:

Andrea M. Chase  
Spencer Fane LLP  
1000 Walnut, Suite 1400  
Kansas City, MO 64106  
Facsimile: (816)-474-3216  
E-mail: [achase@spencerfane.com](mailto:achase@spencerfane.com)

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.

**22. AMENDMENTS AND WAIVERS.**

No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by Second Back-up Bidder and Seller. No waiver by any Party of any default, misrepresentation or breach of warranty or covenant hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default, misrepresentation or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

**23. 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.

**24. EXPENSES.**

Second Back-up Bidder and Seller shall each bear their own costs and expenses (including legal and accounting fees and expenses) incurred in connection with the preparation of this Agreement and activities necessary for Closing.

**25. CONSTRUCTION.**

The Parties have participated jointly in the negotiation and drafting of this Agreement. 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.

**26. INCORPORATION OF EXHIBITS.**

The Exhibits identified in this Agreement are incorporated herein by reference and made a part hereof.

**27. DEFAULT; ATTORNEY'S FEES.**

If either Party shall default in their performance under this Agreement, which default results in the expenditure of attorneys' fees to enforce the terms of this Agreement or to recover

damages for breach of this contract, then the prevailing Party shall be entitled to receive its reasonable and actually incurred attorneys' fees and costs in addition to any other damages that the Party is entitled to recover at law or in equity.

**28. AUTHORITY TO EXECUTE.**

Each person whose signature appears hereon represents, warrants and guarantees that he or she has been duly authorized and has full authority to execute this Agreement on behalf of the Party on whose behalf this Agreement is executed, subject to Bankruptcy Court approval.

**IN WITNESS WHEREOF**, the Parties have duly executed this Agreement as of the day and year first above written.

[SIGNATURE PAGES TO FOLLOW]

**SELLER:**

By: \_\_\_\_\_  
Jill D. Olsen, not individually but as Chapter  
11 Trustee of the Osage Water Company  
bankruptcy estate

**SECOND BACK-UP BIDDER:**

**MISSOURI-AMERICAN WATER  
COMPANY**

By: Cheryl Norton  
Name: Cheryl Norton  
Title: President



**EXHIBIT "A"**

**Service Area Description**

**1. CEDAR GLEN CONDOMINIUMS**

- (a) Location: Sunny Slope Drive, Camden County
- (b) Description of Water System: 35,000 gallon hydro tank with deep well
- (c) Description of Wastewater System: Sand filter with lift stations and force main

**2. CHELSEA ROSE**

- (a) Location: Oak Bend Road, Camden County
- (b) Description of Water System: 600 pressurized storage, deep well
- (c) Description of Wastewater System: Partial force main and gravity collection to an activated sludge facility

**3. HARBOUR BAY/CIMARRON BAY**

- (a) Location: MM40-Blue Water Bay Road, Camden County
- (b) Description of Water System: 35,000 gallon hydro tank with deep well
- (c) Description of Wastewater System: Force main to sand filter

**4. EAGLE WOODS/KK WASTEWATER**

- (a) Location: Highway KK and Red Barn Road, Camden County
- (b) Description of Water System: 10,000 gallon storage tank to booster pumps and pressurized tanks
- (c) Description of Wastewater System: Force main and gravity collection system to a sand filter

**EXHIBIT "B"**

Description of Land, Improvements thereon, Easements, Rights of Way, Permits and Leases  
(The legal description(s) of the Land, Improvements thereon, Easements, Rights of Way shall be determined by  
survey and title commitments, which shall be inserted prior to Closing).

**EXHIBIT "C"**

**Plant and Equipment**

(meters, tools, devices, mobile work equipment, furniture, fixtures, machinery, supplies, and other tangible items)

**EXHIBIT "D"**

Rights Via Agreements, Contracts, Misc.

(franchise agreements, franchise rights, warranties, contracts, supply contracts, agreements, and customer deposits)

**EXHIBIT E**

<b>Contracting Party</b>	<b>Notice Address</b>	<b>Contract Description</b>	<b>Cure Amount</b>
Denise Jordan	6507 Red Fox Lane Osage Beach, MO 65065	Lease of well water rights	n/a
Lake of the Ozarks Water & Sewer, Inc.	840 Thunder Mountain Road Camdenton, MO 65020	Operation and Maintenance Agreement	n/a