

### Purchase Agreement for Wastewater Systems

This **Purchase Agreement for Wastewater System** (the "Agreement") is made and entered into on the 14 day of July, 2020 by and between **Missouri-American Water Company**, a Missouri corporation ("Buyer"), and the **City of Hallsville**, a municipal corporation, located in Boone County, Missouri ("Seller"). Hereinafter, Buyer and Seller may be referred to individually as a "Party" or together as the "Parties".

#### RECITALS:

A. Seller currently owns and operates a sewer treatment and collection system (collectively, the "System") in Boone County Missouri which includes approximately 664 wastewater connections.

B. Seller desires to sell substantially all of the assets that constitute or are used in furtherance of the System to Buyer pursuant to the terms and conditions of this Agreement.

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

#### **ARTICLE 1** **Definitions and Related Matters**

For purposes of this Agreement, the capitalized terms used herein shall have the meanings assigned to them herein or in the attached Exhibit 1 and, for purposes of this Agreement and all other documents executed in connection herewith, the rules of construction set forth in Exhibit 1 shall govern.

#### **ARTICLE 2** **Purchase and Sale of Assets; Closing**

##### **2.1 Transfer of Assets**

. On and subject to the terms and conditions of this Agreement, at the Closing on the Closing Date and effective as of the Effective Time, Buyer shall purchase, acquire and accept from Seller, and Seller shall sell, convey, transfer, assign and deliver to Buyer, free and clear of all Encumbrances, the Acquired Assets. Notwithstanding anything to the contrary contained in this Section 2.1 or elsewhere in this Agreement, the Excluded Assets are not part of the sale and purchase contemplated hereunder, are excluded from the Acquired Assets, and shall remain the exclusive property of Seller subsequent to the Closing.

##### **2.2 Consideration.**

(a) The consideration for the System and the Acquired Assets shall consist of the Purchase Price. At Closing, Buyer shall pay to the Seller and such other payees set forth on Schedule 2.2, in accordance with wire transfer instructions to be provided by the Seller to Buyer at least ten (10) Business Days prior to the Closing Date, in immediately available funds, an aggregate amount equal to the Purchase Price.

(b) Buyer shall deliver the Statement to Seller at least three (3) Business Days prior to the Closing Date. Seller shall provide Buyer and its representatives reasonable access, during normal business hours of Seller, to all personnel, books, and records of or related to the System or the Business within Seller's direction or control as reasonably requested by Buyer to assist it in its preparation of the Statement. Buyer shall deliver to Seller a copy of the work papers prepared or used in connection with the Statement's preparation as reasonably requested by Seller to assist in its review of the Statement, and Seller shall have an opportunity, prior to the Closing Date, to review with representatives of Buyer and object to all or any part of the Statement, such review to be reasonable and in good faith. Buyer shall consider such objections, if any, in good faith but Buyer's reasonable, good faith determination with respect to the Adjustment Amount shall be final and binding for the purpose of calculating the Purchase Price.

(c) Buyer shall prepare the Allocation, which Allocation shall be binding upon Seller. The Parties shall report, act, and file Tax Returns in all respects and for all Tax purposes consistent with the Allocation. No Party shall take any Tax position (whether in audits, Tax Returns, or otherwise) that is inconsistent with or contrary to the Allocation. In the event that the Allocation is disputed by any Governmental Authority, the Party receiving notice of such dispute will promptly notify the other Party, and the Parties will consult in good faith as to how to resolve such dispute in a manner consistent with the Allocation.

(d) Payments. Buyer shall allow for a variety of ways customers can pay their bills including by mail, on-line, by phone, and in person.

(e) Economic Development. Buyer shall be supportive of economic development in the City of Hallsville.

**2.3 No Assumption of Liabilities.** Any and all Liabilities of Seller, whether or not incurred in connection with the operation of the System, shall remain the sole responsibility of and shall be retained, paid, performed and discharged solely by Seller, provided however that any specific liabilities which are not the result of a contractual obligation of the Seller and which are disclosed to the Buyer in Schedule 2.3 shall not be retained by the Seller but shall become the responsibility of the Buyer.

**2.4 Closing.** Unless this Agreement is first terminated pursuant to Article 8 hereof, and subject to the satisfaction or, if permissible, waiver of each of the conditions set forth in Article 5 hereof, the Closing will take place at a mutually agreeable location in the City of Hallsville or such other place or by such other means (e.g., e-mail/PDF or facsimile and overnight delivery of original execution documents) as is agreed to by the

Parties at 10:00 A.M., Central Time, on (a) such date as is three (3) Business Days after the date on which all of the conditions set forth in Article 5 hereof shall have been satisfied or (to the extent permissible) waived (other than those conditions which, by their nature are to be satisfied or waived at Closing but subject to their satisfaction or waiver at Closing) or, if Buyer shall so elect, the final day of Seller's billing period of which such date is a part or (b) such other date as the Parties hereto may agree upon in writing. In any event, the Closing shall be effective as of the Effective Time.

## **2.5 Closing Obligations.**

In addition to any other documents to be delivered under other provisions of this Agreement, at Closing:

(a) Seller shall deliver or cause to be delivered to Buyer, , filing or recording thereof, the following documents:

(i) the Bill of Sale, duly executed by Seller;

(ii) the Intangible Assignment, duly executed by Seller;

(iii) To the extent that Seller has the ability to do so, all Consents and approvals from Governmental Authorities, and third parties under Contracts, necessary to ensure that Buyer will continue to have the same full rights with respect to the Acquired Assets as Seller had immediately prior to the consummation of the Contemplated Transactions, including the written Consents, in form and substance reasonably acceptable to Buyer, of the Governmental Authorities and third parties set forth in Schedule 2.5(a)(iii) but excluding any permission from the Missouri Public Service Commission which will be the responsibility of Buyer;

(iv) a payoff letter from each lender from which Seller has incurred indebtedness for borrowed money which is outstanding, if any, and from each person or entity listed on Schedule 2.2, and a release of all Encumbrances relating to the Acquired Assets executed, filed and/or recorded by the holder of or parties to each such Encumbrance, if any, in each case in substance and form reasonably satisfactory to Buyer and its counsel;

(v) for each interest in Real Property and each easement and/or right-of-way affecting any Real Property or Acquired Asset, whether or not identified on Schedule 3.4, a recordable special warranty deed or such other appropriate document or instrument of transfer or approval, as the case may require, each in form and substance reasonably satisfactory to Buyer;

(vi) such other deeds, bills of sale, assignments, certificates of title, documents and other instruments of transfer and conveyance as may reasonably be requested by Buyer, each in form and substance reasonably satisfactory to Buyer;

(vii) a copy of each permit, license, easement, land-right and other necessary authority for the operation of the System and the Acquired Assets, in each case validly issued in the name of the Seller and in full force and effect;

(viii) the certificate contemplated by Section 5.1(d);

(ix) a legal opinion of Seller's legal counsel, affirmatively opining to the due authorization and execution of this Agreement by Seller and the enforceability thereof;

(x) a copy, of an ordinance of the City, compliant with § 432.070 authorizing the Mayor and such other personnel as may be necessary to execute the documents necessary to sell the Acquired Assets to the Buyer;

(xi) to the extent such transfer is requested by Buyer, evidence satisfactory to Buyer of the transfer of all utilities with respect to the System from Seller to Buyer; and

(xii) all other documents, instruments and writings required or reasonably requested by Buyer to be delivered at or prior to the Closing pursuant to this Agreement or otherwise required in connection herewith.

(b) At or prior to the Closing, Buyer shall deliver the following:

(i) to the Seller and such other payees set forth on Schedule 2.2, in accordance with wire transfer instructions to be provided by the Seller to Buyer at least ten (10) Business Days prior to the Closing Date, in immediately available funds, an aggregate amount equal to the Purchase Price;

(ii) to the Seller, the Intangible Assignments, duly executed by Buyer; and

(iii) to the Seller, all other documents, instruments and writings required or reasonably requested by Seller to be delivered at or prior to the Closing pursuant to this Agreement or otherwise required in connection herewith.

### **ARTICLE 3**

#### **Representations and Warranties of Seller**

Seller hereby makes the following representations and warranties to Buyer, each of which is true and correct on the date hereof, will be true and correct at Closing and shall survive the Closing and the Contemplated Transactions hereby to the extent set forth herein:

**3.1 Power and Authority.** Seller has full power and authority to conduct the Business and the System as they are now being conducted and to own, lease and operate the System and the Acquired Assets.

### **3.2 Enforcement; Authority; No Conflict.**

(a) This Agreement constitutes the legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms except as such enforcement may be limited by bankruptcy, insolvency or other similar Laws affecting the rights of creditors generally and by general principles of equity. Seller has the absolute and unrestricted right, power and authority to execute and deliver this Agreement and the Transaction Documents and to consummate the Contemplated Transactions. The City of Hallsville has duly authorized the execution, delivery, and performance of this Agreement by Seller and no other proceeding on the part of Seller is necessary to authorize the execution, delivery and performance of this Agreement.

(b) This Agreement has been, and the Transaction Documents will be, duly executed and delivered by Seller.

(c) Neither the execution, delivery or performance by Seller of this Agreement or the Transaction Documents nor the consummation by it of the Contemplated Transactions will (i) contravene, conflict with or result in a violation of any provisions of the governing documents of Seller, (ii) contravene, conflict with or result in a violation of or give any Governmental Authority or other Person the right to challenge any of the Contemplated Transactions or to exercise any remedy or obtain any relief under any Laws or any Order to which Seller or any of the Acquired Assets may be subject, (iii) contravene, conflict with or result in a violation of any of the terms or requirements of or give any Governmental Authority the right to revoke, withdraw, suspend, cancel, terminate or modify any Permit or other authorization by a Governmental Authority that is held by Seller or that otherwise relates to the System or any of the Acquired Assets, (iv) contravene, conflict with or result in a violation or breach of any provision of, require the Consent of any Person under, or give any Person the right to declare a default or exercise any remedy under or to accelerate the maturity or performance of or to cancel, terminate or modify any Contract, indenture, mortgage, note, lease or other instrument or document to which Seller is a party or by which any of the Acquired Assets are bound or (v) result in the imposition or creation of any Encumbrance upon or with respect to any of the Acquired Assets.

(d) No filings or registrations with, notifications to, or authorizations, Consents or approvals of, a Governmental Authority or third party are required to be obtained or made by Seller in connection with the execution, delivery or performance by Seller of this Agreement or the Transaction Documents or the consummation by Seller of the Contemplated Transactions except related to the MoPSC approval. Neither the Contemplated Transactions nor the Transaction Documents will result in the creation of any Encumbrance against any of the Acquired Assets.

**3.3 Assets.** Seller has clear, good, and marketable title to, or a valid leasehold interest in, all of the Acquired Assets, free and clear of all Encumbrances. None of the Acquired Assets are leased or on loan by Seller to any third party. The Acquired Assets constitute all of the assets and property that, together with the rights granted or conveyed under the Transaction Documents, are necessary for the operation

of the System, the Business and the Acquired Assets as conducted as of the date hereof. Upon the Closing, Buyer shall continue to be vested with good title or a valid leasehold interest in the System and all of the Acquired Assets. The Business constitutes all of the business conducted by any Person in connection with the System.

### **3.4 Real Property; Easements.**

(a) Seller owns and has good and marketable title to the Real Property, free and clear of all options, leases, covenants, conditions, easements, agreements, claims, and other Encumbrances of every kind and there exists no restriction on the use or transfer of such property, in each case except as set forth on Schedule 3.4(b)(i) or Schedule 3.4(b)(ii). Set forth on Schedule 3.4(a) is a complete and accurate listing of all Real Property. Seller is not the lessor or lessee of any real property, and there are no outstanding options, rights of first refusal or rights of first offer to purchase any of the Real Property or any portion thereof or interest therein. Seller has made available to Buyer copies of all title reports, surveys, title policies and appraisals relating to the Real Property. At and after the Closing, Buyer shall have the right to maintain or use the Real Property, including the space, facilities or appurtenances outside the building lines, whether on, over or under the ground, and to conduct such activities thereon as maintained, used or conducted by Seller on the date hereof and such right is not subject to revocation. At and after the Closing, Buyer shall have all rights, easements and agreements necessary for the use and maintenance of water, sewer or other utility pipelines, poles, wires, conduits or other like facilities, and appurtenances thereto, over, across and under the Real Property.

(b) The Real Property is properly classified under applicable zoning Laws, ordinances, and regulations for the current and continued operation of the System on the Real Property. No Proceeding is pending or threatened which could adversely affect the zoning classification of the Real Property. There are sufficient parking spaces, loading docks and other facilities at such Real Property to comply with such zoning Laws, ordinances, and regulations and Seller's use or occupancy of the Real Property is not dependent on any permitted non-conforming use or similar variance, exemption, or approval from any Governmental Authority. Seller's current use and occupancy of the Real Property and its operation of the System thereon does not violate any easement, covenant, condition, restriction or similar provision in any instrument of record or other unrecorded agreement affecting such Real Property. The present use and operation of the Real Property does not constitute a non-conforming use and is not subject to a variance. Seller has not received any notice of violation of any easements, covenants, restrictions or similar instruments and there is no basis for the issuance of any such notice or the taking of any action for such violation. Set forth on Schedule 3.4(b)(i) hereto is a true, correct and complete list of all easements relating to the Real Property or the Acquired Assets. All of such easements are valid and will be transferred to Buyer and remain in full force as of the Closing. Set forth on Schedule 3.4(b)(ii) hereto is a true, correct and complete list of all rights of way relating to the Real Property or the Acquired Assets. All of such rights of way are valid and will be transferred to Buyer and remain in full force as of the Closing. All Improvements located on, and the use presently being made of, the Real Property comply with all

applicable zoning and building codes, ordinances and regulations and all applicable fire, environmental, occupational safety and health standards and similar standards established by Law and the same use thereof by Buyer following Closing will not result in any violation of any such code, ordinance, regulation or standard. There is no proposed, pending or threatened change in any such code, ordinance, regulation or standard which would adversely affect the Business, the System or the Acquired Assets.

(c) No Improvements encroach on any land that is not included in the Real Property or on any easements affecting such Real Property, or violate any building lines or set-back lines, and there are no encroachments onto the Real Property, or any portion thereof, which would interfere with the use or occupancy of such real Property or the continued operation of the System as currently conducted.

(d) There is no unpaid property Tax, levy or assessment against the Real Property (except for Encumbrances relating to Taxes not yet due and payable), nor is there pending or threatened any condemnation Proceeding against the Real Property or any portion thereof.

(e) Except as set forth in Schedule 3.4(e), there is no condition affecting the Real Property or the Improvements located thereon which requires repair or correction to restore the same to reasonable operating condition.

**3.5 Personal Property.** Set forth on Schedule 3.5(a) is a complete and accurate listing of all Acquired Assets which are personal property. Except as set forth in Schedule 3.5(b): (i) no Acquired Asset which is personal property is in the possession of others (other than immaterial items temporarily in the possession of others for maintenance or repair), (ii) neither Seller nor any of its Affiliates holds any such property on consignment, and (iii) each item of such Acquired Assets has been maintained in accordance with normal industry practice, is in good operating condition and repair (subject to normal wear and tear). The foregoing notwithstanding, all personal property is sold "as is." Seller has made no warranties that the property is fit for any particular purpose.

**3.6 No Undisclosed Liabilities.** Seller does not have any subsidiaries and does not directly or indirectly own or have any capital stock or other equity interest in any Person. Except (a) to the extent and for the amount reflected as a Liability on the balance sheet included in the Unaudited Financial Statements, (b) Liabilities incurred in the Ordinary Course of Business since the date of the balance sheet included in the Unaudited Financial Statements (none of which will or may reasonably be expected to have an adverse effect upon the Business), or (c) as set forth on Schedule 3.6, Seller does not have any Liabilities whatsoever, known or unknown, asserted or unasserted, liquidated or unliquidated, accrued, absolute, contingent, or otherwise, there is no basis for any claim against Seller, the System or any of the Acquired Assets for any such Liability and there is no basis for any such Liability to become the Liability of Buyer from and after the Closing.

### **3.7 Tax Matters.**

(a) Seller has timely and properly filed all Tax Returns that it was required to file. All such Tax Returns were complete and correct in all respects and were prepared in compliance with all applicable Laws. All Taxes owed by Seller have been paid. Seller is not the beneficiary of any extensions of time within which to file any Tax Return. No claim has ever been made by an authority in a jurisdiction where Seller does not file Tax Returns that Seller is or may be subject to taxation by that jurisdiction. There are no Encumbrances on any of the Acquired Assets that arose in connection with any failure (or alleged failure) to pay any Tax.

(b) Seller has withheld and paid all Taxes required to have been withheld and paid in connection with any amounts paid or owing to any employee, independent contractor, creditor, member, stockholder, or other third party. Forms W-2 and 1099 required with respect thereto have been properly completed and timely filed.

(c) There are no audits or examinations of any Tax Returns pending or threatened that relate to Seller's operation of the System or the Acquired Assets. Seller is not a party to any action or Proceeding by any Governmental Authority for the assessment or collection of Taxes relating to the operation of the System or Acquired Assets, nor has such event been asserted or threatened. There is no waiver or tolling of any statute of limitations in effect with respect to any Tax Returns relating to Seller's operation of the System or the Acquired Assets.

(d) None of the Acquired Assets (i) has been or could be treated as a partnership or corporation for United States federal income Tax purposes or (ii) is property that is required to be treated for Tax purposes as being owned by any other Person (other than those Acquired Assets that are leased).

(e) None of the Acquired Assets represent property or obligations of Seller, including but not limited to uncashed checks to vendors, customers or employees, non-refunded overpayments or unclaimed subscription balances, that is escheatable to any Governmental Authority under any applicable escheatment Laws as of the date hereof or that may at any time after the date hereof become escheatable to any Governmental Authority under any applicable escheatment Law.

**3.8 Contracts.** Set forth on Schedule 3.8 is a complete and correct list of all Contracts related to the System to which Seller is a party or is otherwise bound. Seller has delivered or caused to be delivered to Buyer correct and complete copies of each such Contract (including any and all amendments), a description of the terms of each such Contract which is not in writing, if any, and all documents affecting the rights or obligations of any party thereto.

### **3.9 Environmental Matters.**

(a) To the best of its Knowledge, Seller is and at all times has been in full compliance with and has not been and is not in violation of or liable under any applicable Environmental Law. Seller has no basis to expect nor has it received any



actual or threatened Order, notice or other communication from any Governmental Authority or other Person of any actual or potential violation or failure to comply with any Environmental Law or of any actual or threatened obligation to undertake or bear the cost of any Environmental, Health and Safety Liabilities with respect to the Real Property or any other properties or assets (whether real, personal or mixed) in which Seller has or has had an interest or with respect to the Real Property or any other real property at or to which Hazardous Materials were generated, manufactured, refined, transferred, imported, used or processed by Seller or any other Person for whose conduct it is or may be held responsible, or from which Hazardous Materials have been transported, treated, stored, handled, transferred, disposed, recycled or received.

(b) There are no pending or threatened claims, Encumbrances or other restrictions of any nature, resulting from any Environmental, Health and Safety Liabilities or arising under or pursuant to any Environmental Law with respect to or affecting the Real Property or any other properties and assets (whether real, personal or mixed) in which Seller has or had an interest.

(c) To the best of its Knowledge, neither Seller nor any other Person for whose conduct it is or may be held to be responsible has any Environmental, Health and Safety Liabilities with respect to the Real Property or with respect to any other properties and assets (whether real, personal or mixed) in which Seller (or any predecessor) has or has had an interest or at any property geologically or hydrologically adjoining the Real Property or any such other property or assets that could reasonably be expected to have a material adverse effect thereon.

(d) To the best of its Knowledge, there are no Hazardous Materials, except those used in connection with the operation of the System and set forth in the list on Schedule 3.9(d), present on or in the Environment at the Real Property or at any geologically or hydrologically adjoining property, including any Hazardous Materials contained in barrels, above or underground storage tanks, landfills, land deposits, dumps, equipment (whether moveable or fixed) or other containers, either temporary or permanent and deposited or located in land, water, sumps or any other part of the Real Property or such adjoining property or incorporated into any structure therein or thereon. Neither Seller nor any other Person for whose conduct it is or may be held to be responsible has permitted or conducted, or is aware of, any Hazardous Activity conducted with respect to the Real Property or any other properties or assets (whether real, personal or mixed) in which Seller has or has had an interest except in material compliance with all applicable Environmental Laws. There has been no Release or threat of Release, of any Hazardous Materials at or from the Real Property or from or by any other properties and assets (whether real, personal or mixed) in which Seller has or has had an interest, or any geologically or hydrologically adjoining property, whether by Seller or any other Person.

(e) Except as set forth in Schedule 3.9(e), none of the following exists at the System or on the Real Property: (1) underground storage tanks; (2) asbestos-containing material in any form; (3) materials or equipment containing polychlorinated

biphenyl; (4) groundwater monitoring wells; or (5) landfills, surface impoundments, or disposal areas.

(f) Except as set forth in Schedule 3.9(f) neither Seller nor any of its Affiliates is obligated to provide financial assurance in consideration of the System under Environmental Law.

(g) Seller has delivered to Buyer true and complete copies and results of any reports, studies, analyses, tests or monitoring possessed or initiated by Seller or its predecessors pertaining to Hazardous Materials or Hazardous Activities in, on or under the Real Property, or concerning compliance by Seller, its predecessors, or any other Person for whose conduct Seller is or may be held to be responsible, with Environmental Laws, said reports, studies, etc. to include without limitation, any and all Phase I environmental reports now or hereafter in the possession or control of Seller.

**3.10 Permits.** Set forth on Schedule 3.10 is a complete and correct list of all Permits used by Seller in the continuing operation of the System. Such Permits constitute all those necessary for the continuing operation of the System and are all valid and subsisting and in full force and effect. No fact or circumstance exists which is reasonably likely to cause any such Permit to be revoked or materially altered subsequent to the execution of this Agreement and the Closing Date. Neither the execution of this Agreement nor the Closing do or will constitute or result in a default under or violation of any such Permit.

**3.11 Insurance.** Seller maintains and has maintained appropriate insurance necessary for the full protection of all of its assets, properties, the System, operations, products and services. All such policies are in full force and effect and Seller will use commercially reasonable efforts to cause such policies to be outstanding and in full force and effect as of Closing and immediately following the execution of this Agreement and the consummation of the Contemplated Transactions. There are no pending Proceedings arising out of, based upon or with respect to any of such policies of insurance and, to Seller's Knowledge, no basis for any such Proceedings exists. Seller is not in default with respect to any provisions contained in any such insurance policies and no insurance provider is in default with respect to such insurance policies. Set forth in Schedule 3.11 is a true and accurate list of all such insurance policies Seller maintains, and the premiums therefor have been paid in full as they have become due and payable.

**3.12 Absence of Certain Changes.** There has not been any occurrence or event which, individually or in the aggregate, has had or is reasonably expected to have any Material Adverse Effect. Seller has continually operated the System and the Business only in the Ordinary Course of Business. Without limitation of the foregoing, Seller has not entered into, amended, terminated or received notice of termination of any Permit necessary for the continued operation of the System. In addition, Seller has not taken any action in connection with the System or the Business which, if taken on or after the date hereof, would have required the prior written Consent of Buyer pursuant to Section 6.6 hereof.

**3.13 Litigation and Proceedings.** There are no Proceedings, either pending or threatened, anticipated or contemplated, against Seller or involving the operation of the System, any of the Acquired Assets, or any of Seller's agents or other personnel in their capacity as such, which could directly affect any of the Acquired Assets or the System. Seller has not been charged with, nor is it under investigation with respect to, any charge which has not been resolved to its favor concerning any violation of any applicable Law with respect to any of the Acquired Assets or the System and there is no valid basis for any such charge or investigation. Neither Seller nor any of its Affiliates has been subject to or threatened to be subject to any Proceeding or Order relating to personal injury, death or property or economic damage arising from products sold, licensed or leased and services performed by Seller or any of its Affiliates with respect to the System or the Business. No judgment, Order, writ, injunction, decree, assessment or other command of any Governmental Authority affecting Seller or any of the Acquired Assets or the System has been entered which is presently in effect. There is no Proceeding pending or, to Seller's Knowledge, threatened which challenges the validity of this Agreement or the Contemplated Transactions or otherwise seeks to prevent, directly or indirectly, the consummation of the Contemplated Transactions, nor is there any valid basis for any such Proceeding.

**3.14 Compliance with Laws.** To the best of its Knowledge, Seller is in compliance with all Laws, Permits, Orders, ordinances, rules and regulations, whether civil or criminal, of any federal, state, local or foreign governmental authority applicable to the System or the Business and has not committed any violation of any Law or any provision of its [articles of incorporation or bylaws (or equivalent] governing documents[]) applicable to the Acquired Assets and/or the operation of the System. Except as set forth in Schedule 3.14 neither Seller nor any of its Affiliates has received any notice alleging such default, breach or violation.

**3.15 Financial Statements.** Attached as Schedule 3.15 are the Financial Statements. The Financial Statements have been prepared in accordance with GAAP and the Accounting Methodologies, subject in the case of the Unaudited Financial Statements to normal year-end adjustments and the absence of footnotes. The Financial Statements were derived from the books and records of Seller, are true, correct and complete in all material respects and present fairly in all material respects the financial condition, operating results and cash flows of Seller as of the dates and during the periods indicated therein (subject, in the case of the Unaudited Financial Statements, to normal year-end adjustments and the absence of footnotes).

**3.16 Transactions with Related Parties.** Except as set forth on Schedule 3.16, no city employee has any financial interest, direct or indirect, in any supplier or customer of, or other business which has any transactions or other business relationship with, Seller. Without limiting the generality of the foregoing, neither Seller nor any of its Affiliates nor any executive officer of Seller, any of its Affiliates or the Business owns, directly or indirectly, any interest in or is an owner, sole proprietor, member, stockholder, partner, director, officer, employee, consultant or agent of any Person which is a lessor, lessee, customer, licensee, or supplier of the Business and none of the employees of or servicing the Business owns, directly or indirectly, in whole

or in part, any tangible property, patent, trademark, service mark, trade name, copyright, franchise, invention, Permit or license which was developed by or is used and necessary for the operation of the Business

**3.17 Customer Advances.** Set forth on Schedule 3.16 is a complete and accurate list of all unexpired Extension Deposit Agreements (or similar agreements) to which Seller is a party (each an "Extension Deposit Agreement") and which contain unexpired obligations of Seller to provide for the payment of periodic refunds to parties making advances for the construction of facilities for water service. Seller will provide to Buyer within 15 days of the execution of this Agreement (to be updated at Closing), true and complete copies of each such Extension Deposit Agreement. All records of Seller relating to each Extension Deposit Agreement is complete and accurate in all material respects and, together with the relevant Extension Deposit Agreement, is all the information reasonably required to determine Seller's, and, consequently, Buyer's obligations to each party to the Extension Deposit Agreements; and there are no disputes or disagreements with any party to an Extension Deposit Agreement relating to the amount due under that agreement or the method of calculating that amount. Schedule 3.16 may be updated at Closing only with the mutual consent of the parties.

**3.18 Accounts Receivable.** Set forth on Schedule 3.18 is a list of all the accounts receivable of Seller with respect to the System and an aging schedule related thereto, as of December 31, 2019. Such accounts receivable, together with any such accounts receivable arising between such date and the Closing Date (collectively, the "Accounts Receivable"), are (to the extent not yet paid in full) valid, genuine and existing and arose or will have arisen from bona fide sales of products or services actually made in the Ordinary Course of Business. The Accounts Receivable are not subject to, and Seller has received no notice of, any counterclaim, set-off, defense or Encumbrance with respect to the Accounts Receivable. Except to the extent paid prior to Closing, the Accounts Receivable are and will be current and fully collectible. No agreement for deduction, free goods, discount or deferred price or quantity adjustment has been made with respect to any Accounts Receivable.

**3.19 Brokers, Finders.** Except as set forth in Schedule 3.19, no finder, broker, agent or other intermediary, acting on behalf of Seller or any of Seller's Affiliates, is entitled to a commission, fee or other compensation in connection with the negotiation or consummation of this Agreement or any of the transactions contemplated hereby.

**3.20 Sewer Utility Account Deposits.** Buyer will not be acquiring any utility account deposits, and all such deposits shall be returned to customers prior to closing.

#### **ARTICLE 4**

#### **Representations and Warranties of Buyer**

Buyer hereby makes the following representations and warranties to Seller:

**4.1 Organization.** Buyer is a duly organized and validly existing corporation in good standing under the Laws of Missouri and has the power and authority to own, lease and operate its assets and properties.

**4.2 Enforcement; Authority; No Conflict.**

(a) This Agreement constitutes the legal, valid and binding obligation of Buyer and is enforceable against Buyer in accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency or other similar Laws affecting the rights of creditors generally and by general principles of equity. Buyer has the absolute and unrestricted right, power and authority to execute and deliver this Agreement and the Transaction Documents to which it is a party and to perform its obligations hereunder and thereunder.

(b) Neither the execution or delivery of this Agreement nor the consummation of the Contemplated Transactions shall result in: (i) a violation of or a conflict with any provision of the articles of incorporation or the bylaws of Buyer; (ii) a material breach of or default under any term, condition or provision of any Contract to which Buyer is a party, or an event which, with the giving of notice, lapse of time, or both, would result in any such breach or default; or (iii) a material violation of any applicable Law, Order, judgment, writ, injunction, decree or award or any event which, with the giving of notice, lapse of time, or both, would result in any such violation.

**4.3 Brokers, Finders.** No finder, broker, agent or other intermediary, acting on behalf of Buyer or any of Buyer's Affiliates, is entitled to a commission, fee or other compensation in connection with the negotiation or consummation of this Agreement or any of the transactions contemplated hereby.

**ARTICLE 5**  
**Conditions Precedent to Closing**

**5.1 Conditions Precedent to the Obligations of Buyer.** Buyer's obligations to consummate the Contemplated Transactions are subject to the satisfaction in full, unless expressly waived in writing by Buyer, of each of the following conditions:

(a) Authorization of Contemplated Transactions. Buyer shall have obtained all necessary corporate approvals to consummate the Contemplated Transactions, including but not limited to the approval of its Board of Directors;

(b) Representations and Warranties. Each of the representations and warranties of Seller contained in this Agreement or in any Transaction Document shall have been true, correct and accurate in all respects on and as of the date hereof and shall also be true, correct and accurate in all material respects (other than Section 3.5 and representations and warranties qualified as to materiality, which shall have been true, correct and accurate in all respects) on and as of the Closing Date with the same force and effect as though made by Seller on and as of the Closing Date (except to the extent that any such representation or warranty is made solely as of the date hereof or

as of another date earlier than the Closing Date, which shall be accurate as of such date);

(c) Covenants. Seller shall have performed, observed and complied in all material respects with all of its obligations, covenants, undertakings and agreements contained in this Agreement or any Transaction Document and required to be performed, observed or complied with by Seller prior to or at the Closing;

(d) Certificates. Seller shall have delivered to Buyer a certificate, dated as of the Closing Date and executed by an officer or other duly authorized representative of Seller, to the effect that the conditions set forth in Sections 5.1(b), (c) and (i) have been satisfied;

(e) Proceedings. No provision of any Law or Order shall be in effect, and no Proceeding by any Person shall be threatened or pending before any Governmental Authority, or before any arbitrator, which would: (i) prevent consummation of the Contemplated Transactions; (ii) have a likelihood of causing the Contemplated Transactions to be rescinded following consummation; (iii) adversely affect the right of Buyer to own any of the Acquired Assets; or (iv) adversely affect the System prospects or the value or condition of any of the Acquired Assets or the System;

(f) Closing Deliverables. Seller shall have delivered or caused to be delivered to Buyer each of the items set forth in Section 2.5(a);

(g) Governmental and Third Party Approvals. (i) Buyer shall have obtained a certificate of convenience and necessity and all necessary regulatory approvals by the MoPSC, or any other applicable regulatory body, and all other applicable Consents and approvals from Governmental Authorities and other third parties which are required in connection with the Contemplated Transactions, each in form and substance (including without limitation with respect to the terms and conditions contained in any such approval) acceptable to Buyer in its sole and absolute discretion, and (ii) any waiting periods under existing Laws, and all extensions thereof, the passing of which is necessary to consummate the Contemplated Transactions, shall have expired;

(h) Due Diligence. Buyer shall have completed and be satisfied, in its sole and absolute discretion, with the results of its due diligence review of the Acquired Assets and Seller, including without limitation with the results of any Phase I Environmental Site Assessment or other environmental assessment performed with respect to the Real Property or the Acquired Assets or chain of title search, all material contracts and operating permits and licenses of the System, and the Seller's operations, contracts, employment practices, compliance, accounting and other items as Buyer deems necessary, as each of the foregoing items relate to the System or the Acquired Assets; and

(i) No Material Adverse Effect. Buyer shall have determined that there shall not have occurred any event or circumstance which, individually or in the aggregate, has had or could reasonably be expected to have a Material Adverse Effect.

**5.2 Conditions Precedent to Obligations of Seller.** Seller's obligation to consummate the Contemplated Transactions is subject to the satisfaction in full, unless expressly waived in writing by Seller, of each of the following conditions:

(a) **Representations and Warranties.** Each of the representations and warranties of Buyer contained in this Agreement or in any Transaction Document shall have been true, correct and accurate in all respects on and as of the date hereof and shall also be true, correct and accurate in all material respects (other than representations and warranties qualified as to materiality, which shall have been true, correct and accurate in all respects) on and as of the Closing Date with the same force and effect as though made by Buyer on and as of the Closing Date (except to the extent that any such representation or warranty is made solely as of the date hereof or as of another date earlier than the Closing Date, which shall be accurate as of such date);

(b) **Covenants.** Buyer shall have performed, observed and complied in all material respects with all of its obligations, covenants, undertakings and agreements contained in this Agreement or any Transaction Document and required to be performed, observed or complied with by Buyer prior to or at the Closing;

(c) **Proceedings.** No provision of any Law or Order shall be in effect which would prevent the consummation of the Contemplated Transactions; and

(d) **Closing Deliverables.** Buyer shall have delivered or caused to be delivered to Seller each of the items set forth in Section 2.5(b).

(e) **Public Vote.** Parties agree that prior to the Closing Date there must be a public vote pursuant to the provisions of Section 88.770 RSMo. Seller will make diligent efforts to place the matter on the ballot as soon as practicable unless otherwise agreed by the Parties. In the event the proposition fails to receive the required approval at such an election, this Agreement will terminate immediately upon the certification of such election, without any further actions of the parties being required, and be of no further effect.

## **ARTICLE 6 Covenants and Special Agreements**

### **6.1 Access to Information; Confidentiality**

(a) **Access.** Between the date of this Agreement and the Closing Date, Buyer may, directly and through its representatives, make such confirmatory investigation of the System and the Acquired Assets as each deems necessary or advisable. In furtherance of the foregoing, Buyer and its representatives shall have reasonable access, upon reasonable notice during normal business hours, to all employees, properties, books, Contracts, customer lists, commitments and records of the Business, and Seller shall furnish and cause to be furnished to Buyer and its representatives such financial and operating data and other information as may from time to time be reasonably requested relating to the System, shall permit Buyer or its

representatives to conduct such physical inspections and environmental audits of the Real Property as requested by Buyer and shall permit Buyer or its representatives to conduct interviews of employees of or servicing the Business. Seller and the management, employees, accountants and attorneys of or servicing the Business shall cooperate fully with Buyer and its representatives in connection with such investigation.

(b) Confidentiality.

(i) Prior to Closing, each Party shall ensure that all Confidential Information which such Party or any of its respective officers, directors, employees, counsel, agents, or accountants may have obtained, or may hereafter obtain, from the other Party (or create using any such information) relating to the financial condition, results of operations, System, properties, assets, Liabilities or future prospects of the other Party, any Related Person of the other Party or any customer or supplier of such other Party or any such Related Person shall not be published, disclosed or made accessible by any of them to any other Person at any time or used by any of them, in each case without the prior written Consent of the other Party; provided, however, that the restrictions of this sentence shall not apply (i) as may otherwise be required by Law, including but not limited to the provisions of Chapter 610 RSMo, commonly known as the Sunshine Law, (ii) to the extent such Confidential Information shall have otherwise become publicly available, and (iii) as to Buyer, to disclosure by or on its behalf to regulatory authorities or other third parties whose Consent or approval may be required to consummate the Contemplated Transactions and to its lenders and professionals for the purpose of obtaining financing of such transactions. Following Closing, Seller shall ensure that all Confidential Information relating to the financial condition, results of operations, System, properties, assets, Liabilities or future prospects of the Buyer, any Related Person of the Buyer or any customer or supplier of the Buyer or any such Related Person shall not be published, disclosed or made accessible by any of them to any other Person at any time or used by any of them, in each case without the prior written Consent of the Buyer; provided, however, that the restrictions of this sentence shall not apply (i) as may otherwise be required by Law, (ii) to the extent such Confidential Information shall have otherwise become publicly available, and (iii) as to Buyer, to disclosure by or on its behalf to regulatory authorities or other third parties whose Consent or approval may be required to consummate the Contemplated Transactions and to its lenders and professionals for the purpose of obtaining financing of such transactions.

(ii) In the event of termination of negotiations or failure of the Contemplated Transactions to close for any reason whatsoever, each Party promptly will destroy or deliver to the other Party and will not retain any documents, work papers and other material (and any reproductions thereof) obtained by each Party or on its behalf from such other Party or its subsidiaries as a result of this proposal or in connection therewith, whether so obtained before or after the execution hereof, and will not use any information so obtained and will cause any information so obtained to be kept confidential and not used in any way detrimental to such other Party.



**6.2 Publicity; Announcements.** Until after the Closing, no press release concerning this Agreement or the transactions contemplated hereby shall be issued or made without the prior approval of the parties hereto, except as required by applicable law.

**6.3 Cooperation.** Subject to the terms and conditions of this Agreement, the Parties shall cooperate fully with each other and their respective counsel and accountants in connection with, and take or cause to be taken and do or cause to be done, any actions required to be taken under applicable Law to make effective the Contemplated Transactions as promptly as practicable. Prior to the Closing, the parties shall proceed expeditiously and in good faith to make such filings and take such other actions as may be reasonably necessary to satisfy the conditions to Closing set forth in Section 5.1(g). Any and all filing fees in respect of such filings shall be paid by Seller. From and after the Closing, the parties shall do such acts and execute such documents and instruments as may be reasonably required to make effective the transactions contemplated hereby. On or after the Closing Date, the parties shall, on request, cooperate with one another by furnishing any additional information, executing and delivering any additional documents and instruments, including contract assignments, and doing any and all such other things as may be reasonably required by the parties or their counsel to consummate or otherwise implement the transactions contemplated by this Agreement. Should Seller, in its reasonable discretion, determine after the Closing that books, records or other materials constituting Acquired Assets are still in the possession of Seller, Seller shall promptly deliver them to Buyer at no cost to Buyer. Seller hereby agrees to cooperate with Buyer to ensure a proper transition of all customers with respect to billing and customer service activities. Buyer shall take the lead in obtaining MoPSC approval with respect to the Contemplated Transactions.

**6.4 Exclusivity.** Seller will not and will not permit its affiliates, officers, directors, employees or other agents or representatives to, at any time prior to the termination of this Agreement, directly or indirectly, (i) take any action to solicit, initiate or encourage the making of any Acquisition Proposal, or (ii) discuss or engage in negotiations concerning any Acquisition Proposal with, or further disclose any non-public information relating to Seller to, any person or entity in connection with an Acquisition Proposal, in each case, other than Buyer and its representatives.

**6.5 No Inconsistent Action.** Prior to the Closing Date, no Party shall take any action, and each Party will use its commercially reasonable efforts to prevent the occurrence of any event (but excluding events which occur in the Ordinary Course of Business and events over which such Party has no control), which would result in any of its representations, warranties or covenants contained in this Agreement or in any Transaction Document not to be true and correct, or not to be performed as contemplated, at and as of the time immediately after the occurrence of such action or event. If at any time prior to the Closing Date, a Party obtains knowledge of any facts, circumstances or situation which constitutes a breach, or will with the passage of time or the giving of notice constitute a breach, of any representation, warranty or covenant of such Party under this Agreement or any Transaction Document or will result in the failure of any of the conditions contained in Article 5 to be satisfied, such Party shall

give the other Party prompt written notice thereof; provided, however, that no such notice shall cure any breach of any representation, warranty or covenant contained herein or therein or will relieve any such Party of any obligations hereunder or thereunder unless specifically agreed to in writing by the other Party.

**6.6 Conduct of Business.** Between the date of this Agreement and the Closing Date, Seller shall carry on the operation of the System, the Business and the Acquired Assets in the Ordinary Course of Business and in compliance with Law, not introduce any materially new method of management or operation, use reasonable best efforts to preserve the System, the Business and the Acquired Assets, conserve the goodwill and relationships of its customers, suppliers, Governmental Authorities and others having business relations with it, maintain in full force and effect all policies of insurance now in effect for the benefit of Seller, maintain supplies at a level which is sufficient to operate the System in accordance with past practice and maintain the Acquired Assets in substantially the condition currently existing, normal wear and tear excepted. By way of illustration and not limitation, Seller will not, between the date hereof and the Closing Date, directly or indirectly do, or prepare to do, any of the following without the prior written Consent of Buyer, (a) sell, lease, transfer or otherwise dispose of, or license, mortgage or otherwise encumber, or give a security interest in or subject to any Encumbrances, any of the Acquired Assets, (b) merge or consolidate with or acquire, or agree to merge or consolidate with or acquire (by merging or consolidating with, or by purchasing a substantial portion of the stock or assets of, or by any other manner), any business or corporation, partnership, joint venture, association or other business organization or division thereof or otherwise change the overall character of the Business in any material way, (c) enter into any Contract other than in the Ordinary Course of Business, (d) abandon, sell, license, transfer, convey, assign, fail to maintain or otherwise dispose of any item of the transferred intellectual property, (e) make any change in any of its present accounting methods and practices, (f) make any new Tax election, or change or revoke any existing Tax election, or settle or compromise any Tax liability or file any income Tax Return prior to the last day (including extensions) prescribed by Law, in the case of any of the foregoing, material to the business, financial condition or results of operations of Seller, (g) engage in any transactions with any Related Person which would survive Closing, (h) pay, discharge, settle or satisfy any material claims or Liabilities (absolute, accrued, asserted or unasserted, contingent or otherwise), other than the payment, discharge or satisfaction, in the Ordinary Course of Business or in accordance with their terms, of Liabilities reflected or reserved against in the Financial Statements (or the notes thereto), or not required by GAAP to be so reflected or reserved, or incurred since December 31, 2019 in the Ordinary Course of Business, or waive any material benefits of, or agree to modify any material confidentiality, standstill, non-solicitation or similar agreement with respect to the Business to which Seller or any of its Affiliates is a party, (i) engage in any activity with the purpose or intent of (A) accelerating the collection of accounts receivable or (B) delaying the payment of the accounts payable, (j) enter into commitments for new capital expenditures in excess of \$25,000 in the aggregate, (k) create or issue or grant an option or other right to subscribe, purchase or redeem any of its securities or other equity interests (other than with Buyer), (l) adopt a plan of complete or partial liquidation or resolutions providing for or authorizing such a

liquidation or dissolution, merger, consolidation, restructuring, recapitalization or reorganization or (m) enter into any agreement (conditional or otherwise) to do any of the foregoing.

**6.7 No Transfer at Odds with Law.** Notwithstanding anything to the contrary contained herein, nothing in this Agreement shall be deemed to require the conveyance, assignment or transfer of any Acquired Asset that by operation of applicable Law cannot be conveyed, assigned, transferred or assumed. Each Party shall continue to use reasonable best efforts to obtain at the earliest practicable date all unobtained Consents or approvals required to be obtained by it in connection with the transfer of the Acquired Assets or performance of any Transaction Document. If and when any such Consents or approvals shall be obtained, then Seller shall promptly, and hereby does, assign its rights and obligations thereunder to Buyer without payment of consideration and Buyer shall, and hereby does, without the payment of any consideration therefor, (i) assume such rights and obligations or (ii) perform (or agree to perform) under such Transaction Document, as applicable. Each Party shall execute such good and sufficient instruments as may be necessary to evidence such assignment and assumption. The entire beneficial interest in and to, and the risk of loss with respect to, the Acquired Assets shall, regardless of when legal title thereto shall be transferred to Buyer, pass to Buyer at Closing as of the Effective Time, and Seller shall, without consideration therefor, pay, assign and remit to Buyer all monies, rights and other consideration received in respect of such performance. To the extent permitted by Law, Seller shall exercise or exploit its rights in respect of such Acquired Assets only as directed by Buyer.

**6.8 Release of Encumbrances.** Seller promptly shall take such actions as shall be requested by Buyer to secure the release of all Encumbrances relating to the Acquired Assets, in each case in substance and form reasonably satisfactory to Buyer and its counsel.

**6.9 Retention of Records.** Subject to applicable Law and, subject to any applicable restrictions as to confidentiality (as to which Buyer does not provide indemnification, or the waiver of which Seller shall not have obtained after using reasonable best efforts), Seller shall preserve any books and records relating to the System or the Business that are not delivered to Buyer hereunder for a period no less than seven (7) years after the Closing Date (or such longer period as shall be required by applicable Law), and Seller shall make available such books and records for review and copying to Buyer and its authorized representatives following the Closing at Buyer's expense upon reasonable notice during normal business hours. During such period, Seller shall permit, to the extent permitted by applicable Law and upon request of Buyer, Buyer and any of its agents, representatives, advisors or consultants reasonable access to employees of or servicing the Business for information related to periods up to and including the Closing.

**6.10 Tax Covenants.**

(a) Seller shall pay all Taxes of Seller, the System and the Acquired Assets for any Tax year or period (or portion thereof) ending at or before the Closing. For the purposes of this Section 6.10(a), the portion of such personal property or similar ad valorem Tax that relates to the Tax period ending as of the Closing shall be deemed to be the amount of such Tax for the entire Tax period multiplied by a fraction, the numerator of which is the number of days in the Tax period ending as of the Closing and the denominator of which is the number of days in the entire Tax period. For purpose of this Section 6.10(a), the portion of all other Taxes that relates to the Tax period ending as of the Closing shall be determined on the basis of an interim closing of the books.

(b) Each Party agrees to furnish or cause to be furnished to the other Party, upon request, as promptly as practical, such information (including reasonable access to books and records, Tax Returns and Tax filings) and assistance as is reasonably necessary for the filing of any Tax Return, the conduct of any Tax audit, and for the prosecution or defense of any claim, suit or Proceeding relating to any Tax matter. The Parties shall cooperate with each other in the conduct of any Tax audit or other Tax Proceedings and each shall execute and deliver such powers of attorney and other documents as are necessary to carry out the intent of this Section 6.10(b).

## **ARTICLE 7 Indemnification**

### **7.1 Survival of Representations and Warranties and Covenants.**

(a) All of the representations and warranties made by Seller in this Agreement, its Schedules, or any certificates or documents delivered hereunder shall survive the Closing Date and consummation of the Contemplated Transactions for a period of three (3) years; provided, however, that the representations and warranties contained in Sections 3.1, 3.2, 3.3, 3.5, 3.6, 3.7, 3.9 and 3.19 shall survive indefinitely.

#### **1.1 Indemnification and Payment of Damages by Seller.**

(b) From and after Closing and subject to the other provisions of this Article 7, Seller shall, to the extent permitted by law, indemnify and hold harmless Buyer, its Representatives, affiliates, successors and assigns (collectively, the "Buyer Indemnitees") from and against any and all Losses arising out of or resulting from:

(i) any representations and warranties made by Seller in or pursuant to this Agreement not being true and correct when made or when required by this Agreement to be true and correct, or any breach or default by Seller in the performance of its covenants, agreements, or obligations under this Agreement required to be performed prior to Closing;

(ii) any breach or default by Seller in the performance of its covenants, agreements, or obligations under this Agreement or any Related Document delivered pursuant hereto required to be performed on or after Closing; and

(iii) any Retained Liabilities.

(c) Provided further, that in no event shall the Seller be liable to Buyer for any consequential damages or damages representing lost profits.

**7.2 Indemnification By Buyer.** Buyer hereby agrees to fully pay, protect, defend, indemnify and hold harmless Seller and its respective successors and assigns, from any and all Damages incurred by any of them arising out of, resulting from, relating to or caused by (i) any inaccuracy in or breach of any representation or warranty of, or any failure to perform or nonfulfillment of any provision or covenant contained in this Agreement or any other Transaction Document by, Buyer or (ii) transaction costs and expenses incurred by or on behalf of Buyer in connection with this Agreement or the Contemplated Transactions.

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

**7.4 Right to Contest Claims of Third Persons.** If an Indemnified Party is entitled to indemnification hereunder because of a claim asserted by any Third Person, the Indemnified Party shall give the Indemnifying Party reasonably prompt notice thereof after such assertion is actually known to the Indemnified Party; provided, however, that the right of a Person to be indemnified hereunder in respect of claims made by a Third Person shall not be adversely affected by a failure to give such notice unless, and then only to the extent that, an Indemnifying Party is actually irrevocably and materially prejudiced thereby. Buyer shall have the right, upon written notice to Seller, to investigate, contest or settle the Third Person Claim. Seller may thereafter participate in (but not control) the defense of any such Third Person Claim with its own counsel at its own expense. If Seller thereafter seeks to question the manner in which Buyer defended such Third Person Claim or the amount or nature of any such settlement, Seller shall have the burden to prove by clear and convincing evidence that conduct of Buyer in the defense and/or settlement of such Third Person Claim constituted gross negligence or willful misconduct. The Parties shall make available to each other all relevant information in their possession relating to any such Third Person Claim and shall cooperate in the defense thereof, provided that Buyer shall control the defense thereof. Promptly (and in any event within 10 days) following the resolution of any Third Person Claim, Seller shall pay to Buyer any amount to which Buyer is entitled pursuant to this Article 7 with respect to such Third Person Claim.

**7.5 Certain Indemnification Matters.**

(a) Notwithstanding anything contained herein or elsewhere to the contrary, all "material" and "Material Adverse Effect" or similar materiality type qualifications contained in the representations and warranties set forth in this Agreement shall be ignored and not given any effect for purposes of the indemnification provisions hereof, including, without limitation, for purposes of determining whether or not a breach of a representation or warranty has occurred and/or determining the amount of any Damages.

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

## **ARTICLE 8 Termination**

**8.1 Termination.** This Agreement may be terminated at any time prior to the Closing only (a) by mutual written Consent of Seller and Buyer, (b) by Buyer, if the Seller is unable to obtain the assignment contemplated in section 2.5(xii) within a reasonable amount of time, (c) by Buyer, if Buyer is not in material breach of any of its representations, warranties, covenants and agreements under this Agreement and there has been a material breach of any representation, warranty, covenant or agreement contained in this Agreement on the part of Seller and Seller has not cured such breach within five (5) Business Days after receipt of notice of such breach (provided, however, that, no cure period shall be required for a breach which by its nature cannot be cured), (d) by Buyer, if, at any time before Closing, Buyer is not satisfied with the results of its due diligence review of the System and the Acquired Assets, (e) by Seller if Seller is not in material breach of any of its representations, warranties, covenants and agreements under this Agreement and there has been a material breach of any representation, warranty, covenant or agreement contained in this Agreement on the part of Buyer and Buyer has not cured such breach within five (5) Business Days after receipt of notice of such breach (provided, however, that, no cure period shall be required for a breach which by its nature cannot be cured), (f) by Seller or Buyer upon written notice to the other, if any court of competent jurisdiction or other competent Governmental Entity shall have issued a statute, rule, regulation, Order, decree or injunction or taken any other action permanently restraining, enjoining or otherwise prohibiting the Contemplated Transactions, and such statute, rule, regulation, Order, decree or injunction or other action shall have become final and non-appealable, (g) by Buyer, if all necessary regulatory approvals (including rate treatment, refunds and setting of rate base and all approvals described in Section 5.1(g)) contemplated hereby or otherwise necessary to close the Contemplated Transactions have not been obtained within 270 days of the date hereof, or (h) by Buyer if any Material Adverse Effect shall have occurred or, in the reasonable judgment of Buyer, shall be reasonably likely to occur.

**8.2 Effect of Termination.** The right of each Party to terminate this Agreement under Section 8.1 is in addition to any other rights such Party may have

under this Agreement or otherwise, and the exercise of a right of termination will not be an election of remedies. If this Agreement is terminated pursuant to Section 8.1, all further obligations of the Parties under this Agreement will terminate, except that the obligations set forth in the Confidentiality Agreement, Section 6.1(b) ("Confidentiality"), Section 6.2 ("Publicity; Announcements"), this Section 8.2 ("Effect of Termination") or Article 9 ("General Provisions") will survive; provided, however, that if this Agreement is terminated by a Party because of the breach of the Agreement by another Party or because one or more of the conditions to the terminating Party's obligations under this Agreement is not satisfied as a result of the other Party's failure to comply with its obligations under this Agreement, the terminating Party's right to pursue all legal remedies will survive such termination unimpaired.

**1.2 Right of First Refusal.** Buyer hereby acknowledges and agrees that for a period of ten (10) years following the Closing Date, the Seller shall have a right of first refusal with respect to a Sale Transaction, as set forth in this section.

(a) Upon receipt of a bona fide Proposal by Buyer, the Buyer shall provide a written notice of such Proposal (the "Proposal Notice") to Seller no later than one Business Day after receipt of such Proposal. The Proposal Notice shall include (i) a true and correct copy of the Proposal, including all schedules, exhibits and ancillary documents related thereto and (ii) the expected date of consummation of the Sale Transaction. Immediately after delivering the Proposal Notice to Seller, Buyer shall provide Seller and its representative's access to, and, if requested, copies of, the information and other diligence materials that have been supplied to any third party or any third party's representatives in connection with the Sale Transaction. Upon receipt of a Proposal Notice, Seller shall have the irrevocable and exclusive option, at its sole discretion, to become the purchaser with respect to the Sale Transaction on substantially the same financial terms as provided in the Proposal. If Seller elects to become, or to have any of its Affiliates or designee become, the purchaser, Seller shall deliver a written notice (the "Seller Proposal Notice") to Buyer of such election within ninety Business Days of its receipt of the Proposal Notice (such ninety Business Day period, the "Sale Proposal Review Period"). Upon receipt by the Buyer of a Seller Proposal Notice, Buyer shall not enter into or agree to the Proposal and shall enter into an agreement with Seller or any of its Affiliates (as designated by Seller) on substantially the same financial terms and containing substantially the same representations and warranties, exclusivity (including any no-shop or other similar provisions) and indemnities in favor of Seller or any of its Affiliates (as designated by Seller) as provided in the Proposal.

(b) With respect to each Proposal for which Buyer received a Proposal Notice and for which Buyer complied with all of the applicable procedures and requirements of this section (the "Noticed Proposal"), in the event that Seller does not deliver a Seller Proposal Notice to Buyer prior to the expiration of the applicable Sale Proposal Review Period, then, and only then, Buyer and Buyer's Affiliates, as applicable, shall be free, for a period of 60 days following expiration of the applicable Sale Proposal Review Period (the "Noticed Proposal Period"), to enter into a definitive agreement with respect to the Sale Transaction contemplated in such Noticed Proposal

with the Person or Persons subject of such Noticed Proposal on terms and conditions substantially similar to, and in any event not more favorable in any material respect to such Person or Persons than, the terms and conditions described in the Noticed Proposal; provided, however, that no such definitive agreement shall provide for the payment of any fees and expenses, including any termination or break-up fees, or any similar provisions with any Person with respect to Seller's rights hereunder with respect to a new Proposal resulting from a material change.

(c) If, during a Sale Proposal Review Period or a Noticed Proposal Period, any change or amendment to the applicable Proposal or Noticed Proposal is made that individually or in the aggregate with any other changes or amendments, are more favorable in any material respect to the purchaser or purchasers, then such Proposal or Noticed Proposal as changed or amended shall constitute a new Proposal subject to the terms and conditions of this section.

## ARTICLE 9 General Provisions

**9.1 Amendment and Modification.** No amendment, modification or supplement of any provision of this Agreement will be effective unless the same is in writing and is signed by the Parties.

**9.2 Assignments.** Seller may not assign or transfer any of its rights or obligations under this Agreement to any other Person without the prior written Consent of Buyer. Buyer may not assign its rights and obligations under this Agreement to any third party, without the prior written Consent of Seller, but may assign its rights and obligations under this Agreement to any Related Person or successor in interest without the Consent of Seller. Subject to this Section 9.2, all provisions of this Agreement are binding upon, inure to the benefit of and are enforceable by or against the Parties hereto and their respective heirs, executors, administrators or other legal representatives and permitted successors and assigns.

**9.3 Captions; Construction.** Captions contained in this Agreement and any table of contents preceding this Agreement have been inserted herein only as a matter of convenience and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision hereof. In the event of 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 provisions of this Agreement.

**9.4 Counterparts; Facsimile.** This Agreement may be executed by the Parties hereto on any number of separate counterparts, and all such counterparts so executed constitute one agreement binding on all the Parties hereto notwithstanding that all the Parties hereto are not signatories to the same counterpart. For purposes of this Agreement, a document (or signature page thereto) signed and transmitted by e-mail, facsimile machine or telecopier is to be treated as an original document.



**9.5 Entire Agreement.** This Agreement and the other Transaction Documents constitute the entire agreement among the Parties hereto pertaining to the subject matter hereof and supersede all prior agreements, letters of intent, understandings, negotiations and discussions of the Parties hereto, whether oral or written, executed by the Parties pertaining to the subject matter hereof. All of the Exhibits and Schedules attached to this Agreement are deemed incorporated herein by reference.

**9.6 Governing Law.** This Agreement and the rights and obligations of the Parties hereunder are to be governed by and construed and interpreted in accordance with the Laws of the State of Missouri applicable to Contracts made and to be performed wholly within Missouri, without regard to choice or conflict of laws rules.

**9.7 Legal Fees, Costs.** Except as provided herein, all legal, consulting and advisory fees and other costs and expenses incurred in connection with this Agreement and the Contemplated Transactions are to be paid by the Buyer.

**9.8 Notices.** All notices, Consents, requests, demands and other communications hereunder are to be in writing and are deemed to have been duly given, made or delivered: (i) when delivered in person or by e-mail, (ii) three (3) Business Days after deposited in the United States mail, first-class postage prepaid, or (iii) in the case of telegraph or overnight courier services, one (1) Business Day after delivery to the telegraph company or overnight courier service with payment provided, in each case addressed as follows:

(a) if to Seller, (i) to City of Hallsville City Hall, Attention: Mayor Logan Carter with a copy to Mr. Nathan Nickolaus, at 308 E. High, Suite 106, Jefferson City, Missouri 65101 ([nnickolaus@laubermunicipal.com](mailto:nnickolaus@laubermunicipal.com)) or

(b) if to Buyer, (i) to Missouri-American Water Company, 727 Craig Road, St. Louis, Missouri 63141, Attn: Ms. Deborah Dewey, President ([Deborah.Dewey@amwater.com](mailto:Deborah.Dewey@amwater.com)), (ii) with a copy to Missouri-American Water Company, 727 Craig Road, St. Louis, Missouri 63141, Attn: Legal Department ([tim.luft@amwater.com](mailto:tim.luft@amwater.com)) or to such other address as any Party hereto may designate by notice to the other Parties in accordance with the terms of this Section.

**9.9 Severability.** This Agreement shall be deemed severable; the invalidity or unenforceability of any term or provision of this Agreement shall not affect the validity or enforceability of this Agreement or of any other term hereof, which shall remain in full force and effect, for so long as the economic or legal substance of the Contemplated Transactions is not affected in any manner materially adverse to any Party.

**9.10 Specific Performance and Injunctive Relief; Remedies.** The Parties hereto recognize that if any or all of them fail to perform, observe or discharge any of their respective obligations under this Agreement, a remedy at law may not provide adequate relief to the other Parties hereto. Therefore, in addition to any other remedy provided for in this Agreement or under applicable Law, any Party hereto may demand

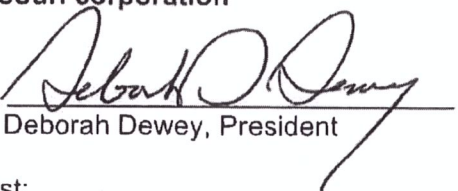
specific performance of this Agreement, and such Party shall be entitled to temporary and permanent injunctive relief, in a court of competent jurisdiction at any time when any of the other Parties hereto fail to comply with any of the provisions of this Agreement applicable to such Party. To the extent permitted by applicable Law, all Parties hereto hereby irrevocably waive any defense based on the adequacy of a remedy at law which might be asserted as a bar to such Party's remedy of specific performance or injunctive relief. Except as otherwise provided herein, all rights and remedies of the parties under this Agreement are cumulative and without prejudice to any other rights or remedies under Law. Nothing contained herein shall be construed as limiting the Parties' rights to redress for fraud.

**9.11 No Third-Party Beneficiary.** This Agreement is solely for the benefit of the Parties hereto and their respective successors and permitted assigns (and those Persons entitled to recover under the indemnity provisions hereof), and no other Person (other than those Persons entitled to recover under the indemnity provisions hereof) has any right, title, priority or interest under this Agreement or the existence of this Agreement.

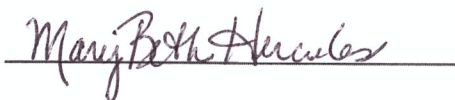
**9.12 Waiver of Compliance; Consents.** Any failure of a Party to comply with any obligation, covenant, agreement or condition herein may be waived by the other Party only by a written instrument signed by the Party granting such waiver, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure. Whenever this Agreement requires or permits Consent by or on behalf of any Party hereto, such Consent shall be given in writing in a manner consistent with the requirements for a waiver of compliance as set forth in this Section 9.12.

**IN WITNESS WHEREOF**, the Parties have executed this Asset Purchase Agreement as of the date first set forth above:

**Missouri-American Water Company, a Missouri corporation**

By:   
Deborah Dewey, President

Attest:



**City of Hallsville**

By:   
Logan Carter, Mayor

Attest:

