



March 29, 2023

**VIA ELECTRONIC MAIL**

Sherri L. Golden  
Secretary of the Board  
South Clinton Avenue, 1st Floor  
Post Office Box 350  
Trenton, NJ 08625-0350

**Re: In the Matter of the Petition of New Jersey-American Water Company, Inc.  
for Approval of a Municipal Consent Granted by the Borough of Somerville,  
Somerset County**

Dear Secretary Golden:

Enclosed please find a Petition filed on behalf of New Jersey-American Water Company, Inc. in connection with the above-referenced matter.

Kindly file the Petition and advise of the docket number assigned to this case.

Very truly yours,

A handwritten signature in blue ink that reads "Christopher M. Arfaa".

Christopher M. Arfaa

CFA:dlc

Enc.

cc: Attached service list (via email, w/enc.)

**I/M/O the Petition of New Jersey American Water Company, Inc. for  
Approval of a Municipal Consent Granted by the Borough of Somerville, Somerset County  
BPU Docket No. WE2303\_\_\_\_\_**

**Service List**

Mike Kammer, Director  
Division of Water and Wastewater  
Board of Public Utilities  
44 South Clinton Avenue  
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[Mike.Kammer@bpu.nj.gov](mailto:Mike.Kammer@bpu.nj.gov)

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Susan McClure, Esq.  
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Donna Carney  
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Farmingdale, NJ 07727  
[Donna.Carney@amwater.com](mailto:Donna.Carney@amwater.com)

Christopher M. Arfaa, Esq.  
Director, Corporate Counsel  
New Jersey American Water  
1 Water Street  
Camden, NJ 08102  
[chris.arfaa@amwater.com](mailto:chris.arfaa@amwater.com)

BEFORE THE  
STATE OF NEW JERSEY  
BOARD OF PUBLIC UTILITIES

IN THE MATTER OF THE PETITION OF	:	<b>PETITION</b>
NEW JERSEY-AMERICAN WATER	:	
COMPANY, INC. FOR APPROVAL OF A	:	
MUNICIPAL CONSENT GRANTED BY THE	:	BPU DOCKET NO. WE23 _____
BOROUGH OF SOMERVILLE, COUNTY OF	:	
SOMERSET	:	
	:	

TO: THE HONORABLE BOARD OF PUBLIC UTILITIES

Petitioner, New Jersey-American Water Company, Inc. (“NJAWC”, “Company”, or “Petitioner”), a duly organized and existing public utility corporation of the State of New Jersey, with its principal office at 1 Water Street, Camden, New Jersey 08102, hereby petitions the Board of Public Utilities (“Board”) for approval, pursuant to N.J.S.A. 48:2-14 and N.J.A.C. 14:1-5.5, and such other regulations and statutes as may be deemed applicable and appropriate by the Board, of a municipal consent ordinance (the “Municipal Consent”) adopted by the Borough of Somerville, County of Somerset (the “Borough”). The Borough’s Municipal Consent was adopted after a sale process was conducted pursuant to the procedures set forth in N.J.S.A. 40:62-3 through 40:62-6 and approved by the voters of the Borough. In furtherance of this Petition, NJAWC states as follows:

1. NJAWC is a regulated public utility corporation engaged in the production, treatment and distribution of water and collection of sewage within its defined service territory within the State of New Jersey. Said service territory includes portions of the following counties: Atlantic, Bergen, Burlington, Camden, Cape May, Essex, Gloucester, Hunterdon, Mercer, Middlesex, Monmouth, Morris, Ocean, Passaic, Salem, Somerset, Union and Warren.

2. By this Petition, NJAWC is seeking approval of the Municipal Consent (Ordinance No. #2694-23-0221) adopted by the Borough on March 6, 2023. The Municipal Consent was introduced and adopted pursuant to N.J.S.A. 48:3-11 to 15, and N.J.S.A. 48:13-11 to permit Petitioner to construct, lay, maintain, and operate the necessary wastewater mains, pipes and appurtenances throughout the geographical area of the Borough (the “Proposed Franchise Area”) and to provide wastewater services to the Borough and its residents, businesses and government buildings. A copy of the Municipal Consent is attached hereto as Exhibit A and incorporated into this Petition by reference.

3. The Municipal Consent adopted by the Borough was part of a sale process conducted in compliance with and pursuant to the procedures set forth in N.J.S.A. 40:62-3 through 40:62-6, in which the Borough sought public bids for the sale of its wastewater system (the “System”). After review and analysis of the bid submitted by NJAWC, the Borough awarded the contract to NJAWC, subject to the approval of the voters and the approval of the Board.

4. Thus, the governing body of the Borough has decided that it is in the public interest for the System to be owned and operated by the Petitioner. As a result of the acquisition, the governing body realizes that the System will be operated by a company that is part of the largest provider of regulated water and wastewater services in the United States. The System will benefit from the industry practices followed by Petitioner and its parent organization, Petitioner’s provision of high-quality and reliable service, and Petitioner’s access to financial resources to maintain and improve the System.

5. In addition to the Municipal Consent, the Borough adopted Ordinance No. #2678-22-0718 approving the agreement of sale between the Borough and NJAWC and authorizing the placement of the proposed sale of the System on the ballot for consideration by the voters in the next general

election. A copy of Ordinance No. #2678-22-0718 is hereto as Exhibit B. In pertinent part, Ordinance No. #2678-22-0718 provides as follows:

**WHEREAS**, the Borough of Somerville, in the County of Somerset, New Jersey (the "Borough") currently owns and operates a wastewater collection system servicing the residents and property owners (the "Customers") within the geographic boundaries of the Borough and a portion of Bridgewater Township (the "System"); and

**WHEREAS**, the Borough has determined that it is in the best interest of such Customers to sell the System to an entity with experience and expertise in owning and operating such systems in order to meet all necessary demands associated with such System including all present and future requirements of various state and federal regulatory agencies and to make necessary capital improvements to the System; and

**WHEREAS**, the Borough prepared and distributed a Request for Bids for the Sale of the Wastewater Collection System (the "RFB") dated May 3, 2022 requesting bids for the purchase of the System pursuant to N.J.S.A. 40:62-1 et seq. (the "Public Utilities Law"); and

**WHEREAS**, on June 22, 2022 the Borough received two bids from two regulated utilities, New Jersey American Water Company, Inc., and Aqua New Jersey to purchase the Borough's System; and

**WHEREAS**, based on the review of the above referenced bids, the Borough has determined that the bid submitted by New Jersey American Water Company Inc. in the amount of \$7,000,000 was the highest responsible bid; and

**WHEREAS**, under the terms of the RFB, the Borough would sell all of the Borough's rights and interests in the land and improvements comprising the System, provided that any purchaser of the System would continue to provide wastewater collection services to the Customers in accordance with all applicable state and local standards, make all capital improvements as required by the RFB, and meet other requirements set forth in the RFB; and

**WHEREAS**, the Borough and New Jersey American Water Company Inc. have agreed to the terms of the sale of the System; and

**WHEREAS**, the Public Utilities Law requires that in addition to the approval of the Borough, the legal voters of the Borough must also

approve the sale of the System; and

**WHEREAS**, the Public Utilities Law, specifically N.J.S.A. 40:62-5, authorizes the Borough to request that the clerk of the County of Somerset place the question of the sale of the System on the ballot used at the next general election in the Borough, which is scheduled for November 8, 2022; and

**WHEREAS**, the Borough desires to enter into the Agreement of Sale, subject to the approval of the voters of the Borough as set forth in N.J.S.A. 40:62-5 and any other regulatory approvals set forth in the Public Utilities Law.

**NOW, THEREFORE, BE IT ORDAINED** by the Mayor and Council of the Borough of Somerville, County of Somerset, State of New Jersey, as follows:

#### **SECTION I**

The recitals are hereby incorporated as if set forth in full herein.

#### **SECTION II**

The Borough hereby approves the sale of the System to New Jersey American Water Company Inc. for \$7,000,000 in accordance with its bid and in accordance with the terms and conditions of the RFB and the Agreement of Sale, subject to the approval of the voters of the Borough as set forth in N.J.S.A. 40:62-5.

6. Pursuant to N.J.S.A. 40:62-5, on November 8, 2022, the Borough held a referendum on whether to approve the acquisition of the System by Petitioner. The referendum resulted in an approval of said acquisition, by a vote of 2,375 YES to 793 NO, or 75% to 25%.<sup>1</sup>

7. The Borough encompasses approximately 2.4 square miles and has a population of approximately 12,599 people.

8. The Borough currently owns and operates the System servicing the residents and property owners within the Proposed Franchise Area. The system serves approximately 3,800 connections,

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<sup>1</sup> See “N.J. election results 2022: Somerset County,” *NJ.com* (Nov. 8, 2022) (available at <https://www.nj.com/somerset/2022/11/nj-election-results-2022-somerset-county.html>).

including approximately 40 connections in Bridgewater Township<sup>2</sup>, most of whom already receive water service from NJAWC.

9. By this Petition, NJAWC is only seeking approval by the Board of the Municipal Consent. The Company is not, at this time, seeking any ratemaking treatment relative to the System. Rather, in a separate docket, NJAWC will seek ratemaking recognition for the System, as part of its general base rate proceeding.

10. NJAWC and the Borough have executed an Asset Purchase Agreement (the “Agreement”) for the sale and purchase of the System. The Agreement provides for the purchase of the System, subject to various contingencies, including the approval by the Board of the Municipal Consent, but is not contingent on the rate treatment granted by the Board. A copy of the Agreement is attached hereto as Exhibit C. Upon approval by the Board of the Municipal Consent, the Borough and NJAWC will complete the transaction.

11. Approval of the Municipal Consent submitted to the Board with this Petition will serve the public interest by permitting NJAWC to provide wastewater utility service within the Borough, and to leverage its experience, expertise, and economies of scale to benefit the customers of the Borough and of NJAWC. NJAWC’s significant resources will support more efficient service as well as provide additional system reliability to the Borough.

12. For the reasons stated above, including the approval of the acquisition of the System by the governing body of the Borough and by the residents of the Borough, the privileges granted by the Municipal Consent are necessary and proper for the public convenience and properly conserve the public interests as required by N.J.S.A. 48:2-14. Therefore, the Board should approve the

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<sup>2</sup> Bridgewater is in the process of providing NJAWC with a municipal consent to serve the wastewater customers who are currently customers of the Borough. It is contemplated that these customers will become customers of NJAWC as part of this transaction, and NJAWC will file a petition for approval of the Bridgewater municipal consent upon passage by Bridgewater.

Municipal Consent, and leave any ratemaking issues to be addressed in a base rate case to be filed by Petitioner.

13. The Petitioner has not yet commenced wastewater service within the service area of the Borough covered by the Municipal Consent.

WHEREFORE, Petitioner respectfully requests that the Board approve Ordinance No. #2694-23-0221 of the Borough of Somerville, County of Somerset, and grant such other and further relief as the Board may deem reasonable and appropriate under the circumstances.

Respectfully submitted,

NEW JERSEY-AMERICAN WATER COMPANY, INC.

Dated: March 29, 2023

By:   
Christopher M. Arfaa, Esquire

Communications addressed to the Petitioner in this case are to be sent to:

Christopher M. Arfaa, Esq.  
Corporate Counsel  
New Jersey-American Water Company, Inc.  
1 Water Street  
Camden, NJ 08102  
856.955.4116  
chris.arfaa@amwater.com

VERIFICATION

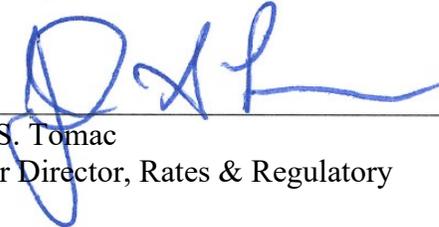
STATE OF NEW JERSEY

ss.

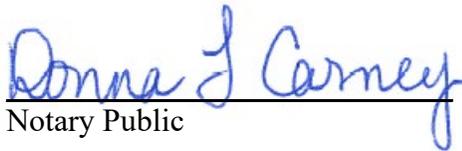
COUNTY OF CAMDEN

I, JOHN S. TOMAC, of full age, being duly sworn according to law, upon my oath depose and say:

1. I am the Senior Director of Rates and Regulatory of New Jersey-American Water Company, Inc., the Petitioner herein, and am authorized to make this verification on behalf of said Petitioner.
2. I have read the contents of the foregoing Petition as to New Jersey-American Water Company, Inc. and hereby verify that the statements therein contained are true and accurate to the best of my knowledge and belief.

  
\_\_\_\_\_  
John S. Tomac  
Senior Director, Rates & Regulatory

Sworn to and subscribed before  
me this 29<sup>th</sup> day of March, 2023.

  
\_\_\_\_\_  
Notary Public

Donna Carney  
Notary Public  
State of New Jersey  
My Commission Expires May 24, 2023



## Borough of Somerville

Mayor: Dennis Sullivan

**Council President:** Rand Pitts **Clerk Administrator:** Kevin Sluka

**Borough Council:** Granville Brady ♦ Tom Mitchell ♦ Gina Stravic  
Roger A. Vroom III ♦ Fred Wied V

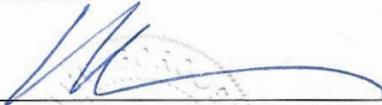
### CERTIFICATION OF COMPLIANCE WITH N.J.S.A. 48:3-13 BOROUGH OF SOMERVILLE

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I, Kevin Sluka, Borough Clerk of the Borough of Somerville certify that I personally arranged for the advertisement of the public notice attached hereto as **Exhibit A** (the "Public Notice") in the newspaper as evidenced by the Affidavits of Publication attached hereto as **Exhibit B** and posted the Public Notice in the following locations within the Borough of Somerville consistent with the requirements N.J.S.A. 48:3-13:

The public bulletin board at Borough Hall  
The public bulletin board at Somerville Public Library  
The public bulletin board at Somerset County, 20 Grove Street, Somerville, NJ  
The community bulletin board on Main Street  
The display window at Council Chambers/Police Headquarters

Further, I directed Borough personnel to post the Public Notice on the Somerville Borough Website.

  
Kevin Sluka  
Borough Clerk-Administrator  
Borough of Somerville

3/20/2023  
Date



Municipal Offices ♦ 25 West End Avenue ♦ Somerville, New Jersey 08876  
Phone (908) 725-2300 ♦ Fax (908) 725-2859 [www.somervillenj.org](http://www.somervillenj.org)  
Follow Somerville Borough on Twitter @SomervilleClerk  
Come visit Somerset County's Main Street

**Exhibit "A"**

**ORDINANCE #2694-23-0221**

**AN ORDINANCE GRANTING CONSENT AND PERMISSION TO NEW JERSEY AMERICAN WATER, INC. TO FURNISH WASTEWATER COLLECTION AND CONVEYANCE SERVICE IN THE BOROUGH OF SOMERVILLE, NEW JERSEY**

**WHEREAS**, the Borough of Somerville, County of Somerset and State of New Jersey (the "Borough"), hereby grants consent and permission to New Jersey American Water, Inc. ("NJAW"), a New Jersey Corporation to furnish wastewater collection and conveyance service within the Borough; and

**WHEREAS**, NJAW is in the process of acquiring the wastewater system (the "System") currently owned and operated by the Borough, which has been approved by the voters of the Borough on November 8, 2022, pursuant to N.J.S.A. 40:62-5; and

**WHEREAS**, the Borough is desirous of having NJAW acquire the System; and

**WHEREAS**, NJAW is a regulated public utility corporation of the State of New Jersey presently seeking the municipal consent of the Borough to permit NJAW to provide wastewater collection and conveyance service through the System; and

**WHEREAS**, NJAW has requested the consent of the Borough as required by N.J.S.A. 48:19-17 and 48:19-20, as amended, to lay its pipes beneath and restore such public roads, streets and places as it may deem necessary for its corporate purposes, free from all charges to be made for said privilege (except that fees for road opening permits shall be paid), provided that all said pipes installed after the date of this ordinance shall be laid at least three feet (3') below the surface and shall not in any way unnecessarily obstruct or interfere with the public travel or cause or permit other than temporary damage to public or private property; and

**WHEREAS**, it is deemed to be in the best interests of the citizens of the Borough to provide this consent; and

**WHEREAS**, notice of this Ordinance was published in accordance with the requirements of N.J.S.A. 48:3-13 and N.J.S.A. 48:3-14; and

**WHEREAS**, the Mayor and Council of the Borough have concluded that granting of said consent shall enhance the health, safety and welfare of the citizens of the Borough.

**NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE BOROUGH AS FOLLOWS:**

Section 1. That exclusive and perpetual consent and permission to furnish wastewater collection and conveyance to the Borough and all residents, businesses and government buildings therein is hereby given and granted to NJAW, its successors and assigns for the maximum duration permitted by law, subject to the permission by the Board of Public Utilities of the State of New Jersey.

Section 2. That exclusive consent and permission is given to NJAW, its successors and assigns, under the provisions of N.J.S.A. 48:19-17 and N.J.S.A. 48:19-20, as amended, without charge therefore, (except fees for road opening permits which shall be paid) as the same may be required in order to permit NJAW to own and operate the System, add to, extend, replace, operate and maintain said System in the public property described herein in order to provide said wastewater collection and conveyance service. This shall include permission to lay pipes beneath the public roads, streets, public property and public places.

Section 3. That a certified copy of this Ordinance, upon final passage, shall be sent to NJAW, the New Jersey Department of Environmental Protection and the Board of Public Utilities of the State of New Jersey.

Section 4. That the consent granted herein shall be subject to NJAW complying with all applicable laws of the Borough and/or the State of New Jersey including, but not limited to, any and all applicable statutes and administrative agency rules and/or regulations and contingent upon the Borough and NJAW executing the *Agreement of Sale Between the Borough of Somerville and New Jersey American Water, Inc.*, as the same may be amended from time to time.

Section 5. The Mayor and the Administrator of the Borough are authorized to execute the documents and agreements necessary to effectuate this municipal consent.

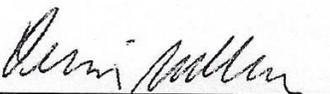
Section 5. Each section, subsection, sentence, clause and phrase of this Ordinance is declared to be an independent section, subsection, sentence, clause and phrase, and the finding or holding of any such portion of this Ordinance to be unconstitutional, void, or ineffective for any cause, or reason, shall not affect any other portion of this Ordinance.

Section 6. All ordinances or parts of ordinances inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.

**BE IT FURTHER ORDAINED**, that if any portion of this Ordinance shall be declared invalid as a matter of law, such declaration shall not affect the remainder of said Ordinance; and

**BE IT FURTHER ORDAINED**, that this Ordinance shall take effect upon passage and publication.

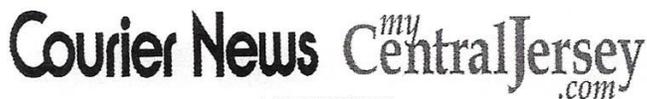
Introduction: February 21, 2023  
First Publication: February 24, 2023  
Adoption: March 6, 2023  
Final Publication: March 10, 2023

  
Dennis Sullivan, Mayor

  
Kevin Sluka, Clerk/Administrator



# Exhibit "B"



A GANNETT COMPANY

### Classified Ad Receipt (For Info Only - NOT A BILL)

**Customer:** SOMERVILLE BOROUGH - COMM. DEV

**Ad No.:** 0005583364

**Address:** 25 W END AVE  
SOMERVILLE NJ 08876  
USA

**Pymt Method** Invoice  
**Net Amount** \$190.32

**Run Times:** 2

**No. of Affidavits:** 0

**Run Dates:** 02/06/23, 02/13/23

**Text of Ad:**

**BOROUGH OF SOMERVILLE  
SOMERSET COUNTY  
NOTICE OF INTENT TO CONSIDER MUNICIPAL CONSENT ORDINANCE  
REQUESTED BY NEW JERSEY AMERICAN WATER, INC.**

NOTICE IS HEREBY GIVEN that, in accordance with N.J.S.A. 48:3-13 and N.J.S.A. 48:3-14, that the following Ordinance will be introduced by the for first reading at a meeting of the Borough Council of the Borough of Somerville, in the County of Somerset, State of New Jersey, to be held on the 21st day of February, 2023, at 7:00 PM and that, if passed on first reading, said Ordinance will be taken up for further consideration for final passage at a meeting of the Borough Council to be held on March 6, 2023 at 7:00 PM.

The Municipal Consent Ordinance was requested by New Jersey American Water, Inc ("NJAW") following NJAW and the Borough executing an agreement for the sale of the Borough's wastewater system. NJAW is requesting the Municipal Consent to provide wastewater collection and conveyance service through the system for the maximum duration permitted by law.

A copy of this notice has also been posted in the Borough Hall, on the Borough's website, the Somerville Public Library, Police Headquarters/Council Chambers, West Main Street Bulletin Board and Somerset County Administration Building.

**BOROUGH OF SOMERVILLE  
ORDINANCE #2694-23-0221  
AN ORDINANCE GRANTING CONSENT AND PERMISSION TO NEW JERSEY AMERICAN WATER, INC. TO FURNISH WASTEWATER COLLECTION AND CONVEYANCE SERVICE IN THE BOROUGH OF SOMERVILLE, NEW JERSEY**

WHEREAS, the Borough of Somerville, County of Somerset and State of New Jersey (the "Borough"), hereby grants consent and permission to New Jersey American Water, Inc. ("NJAW"), a New Jersey Corporation to furnish wastewater collection and conveyance service within the Borough; and

WHEREAS, NJAW is in the process of acquiring the wastewater system (the "System") currently owned and operated by the Borough, which has been approved by the voters of the Borough on November 8, 2022, pursuant to N.J.S.A. 40:62-5; and

WHEREAS, the Borough is desirous of having NJAW acquire the System; and

WHEREAS, NJAW is a regulated public utility corporation of the State of New Jersey presently seeking the municipal consent of the Borough to permit NJAW to provide wastewater collection and conveyance service through the System; and

WHEREAS, NJAW has requested the consent of the Borough as required by N.J.S.A. 48:19-17 and 48:19-20, as amended, to lay its pipes beneath and restore such public roads, streets and places as it may deem necessary for its corporate purposes, free from all charges to be made for said privilege (except that fees for road opening permits shall be paid), provided that all said pipes installed after the date of this ordinance shall be laid at least three feet (3') below the surface and shall not in any way unnecessarily obstruct or interfere with the public travel or cause or permit other than temporary damage to public or private property; and

WHEREAS, it is deemed to be in the best interests of the citizens of the Borough to provide this consent; and

WHEREAS, notice of this Ordinance was published in accordance with the requirements of N.J.S.A. 48:3-13 and N.J.S.A. 48:3-14; and

WHEREAS, the Mayor and Council of the Borough have concluded that granting of said consent shall enhance the health, safety and welfare of the citizens of the Borough.

**NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE BOROUGH AS FOLLOWS:**

Section 1. That exclusive and perpetual consent and permission to furnish wastewater collection and conveyance to the Borough and all residents, businesses and government buildings therein is hereby given and granted to NJAW, its successors and assigns for the maximum duration permitted by law, subject to the permission by the Board of Public Utilities of the State of New Jersey.

Section 2. That exclusive consent and permission is given to NJAW

3600 Highway 66, Neptune, NJ 07753

Section 2. That executive consent and permission is given to NJAW, its successors and assigns, under the provisions of N.J.S.A. 48:19-17 and N.J.S.A. 48:19-20, as amended, without charge therefore, (except fees for road opening permits which shall be paid) as the same may be required in order to permit NJAW to own and operate the System, add to, extend, replace, operate and maintain said System in the public property described herein in order to provide said wastewater collection and conveyance service. This shall include permission to lay pipes beneath the public roads, streets, public property and public places.

Section 3. That a certified copy of this Ordinance, upon final passage, shall be sent to NJAW, the New Jersey Department of Environmental Protection and the Board of Public Utilities of the State of New Jersey.

Section 4. That the consent granted herein shall be subject to NJAW complying with all applicable laws of the Borough and/or the State of New Jersey including, but not limited to, any and all applicable statutes and administrative agency rules and/or regulations and contingent upon the Borough and NJAW executing the Agreement of Sale Between the Borough of Somerville and New Jersey American Water, Inc, as the same may be amended from time to time.

Section 5. The Mayor and the Administrator of the Borough are authorized to execute the documents and agreements necessary to effectuate this municipal consent.

Section 5. Each section, subsection, sentence, clause and phrase of this Ordinance is declared to be an independent section, subsection, sentence, clause and phrase, and the finding or holding of any such portion of this Ordinance to be unconstitutional, void, or ineffective for any cause, or reason, shall not affect any other portion of this Ordinance.

Section 6. All ordinances or parts of ordinances inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.

BE IT FURTHER ORDAINED, that if any portion of this Ordinance shall be declared invalid as a matter of law, such declaration shall not affect the remainder of said Ordinance; and

BE IT FURTHER ORDAINED, that this Ordinance shall take effect upon passage and publication.

Kevin Sluka, Clerk/Administrator  
(\$190.32)

0005583364-01

# Borough of Somerville

Mayor: Dennis Sullivan

**Council President:** Rand Pitts **Clerk Administrator:** Kevin Sluka  
**Borough Council:** Granville Brady ♦ Tom Mitchell ♦ Gina Stravic  
Roger A. Vroom III ♦ Fred Wied V

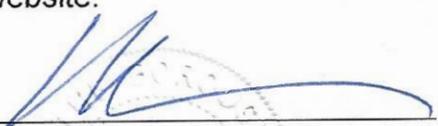
## CERTIFICATION OF COMPLIANCE WITH N.J.S.A. 48:3-13 BOROUGH OF SOMERVILLE

---

I, Kevin Sluka, Borough Clerk of the Borough of Somerville certify that I personally arranged for the advertisement of the public notice attached hereto as **Exhibit A** (the "Public Notice") in the newspaper as evidenced by the Affidavits of Publication attached hereto as **Exhibit B** and posted the Public Notice in the following locations within the Borough of Somerville consistent with the requirements N.J.S.A. 48:3-13:

The public bulletin board at Borough Hall  
The public bulletin board at Somerville Public Library  
The public bulletin board at Somerset County, 20 Grove Street, Somerville, NJ  
The community bulletin board on Main Street  
The display window at Council Chambers/Police Headquarters

Further, I directed Borough personnel to post the Public Notice on the Somerville Borough Website.

  
\_\_\_\_\_  
Kevin Sluka  
Borough Clerk-Administrator  
Borough of Somerville

3/20/2023  
\_\_\_\_\_  
Date



Municipal Offices ♦ 25 West End Avenue ♦ Somerville, New Jersey 08876  
Phone (908) 725-2300 ♦ Fax (908) 725-2859 [www.somervillenj.org](http://www.somervillenj.org)  
Follow Somerville Borough on Twitter @SomervilleClerk  
Come visit Somerset County's Main Street

**Exhibit "A"**

**ORDINANCE #2694-23-0221**

**AN ORDINANCE GRANTING CONSENT AND PERMISSION TO NEW JERSEY AMERICAN WATER, INC. TO FURNISH WASTEWATER COLLECTION AND CONVEYANCE SERVICE IN THE BOROUGH OF SOMERVILLE, NEW JERSEY**

**WHEREAS**, the Borough of Somerville, County of Somerset and State of New Jersey (the "Borough"), hereby grants consent and permission to New Jersey American Water, Inc. ("NJAW"), a New Jersey Corporation to furnish wastewater collection and conveyance service within the Borough; and

**WHEREAS**, NJAW is in the process of acquiring the wastewater system (the "System") currently owned and operated by the Borough, which has been approved by the voters of the Borough on November 8, 2022, pursuant to N.J.S.A. 40:62-5; and

**WHEREAS**, the Borough is desirous of having NJAW acquire the System; and

**WHEREAS**, NJAW is a regulated public utility corporation of the State of New Jersey presently seeking the municipal consent of the Borough to permit NJAW to provide wastewater collection and conveyance service through the System; and

**WHEREAS**, NJAW has requested the consent of the Borough as required by N.J.S.A. 48:19-17 and 48:19-20, as amended, to lay its pipes beneath and restore such public roads, streets and places as it may deem necessary for its corporate purposes, free from all charges to be made for said privilege (except that fees for road opening permits shall be paid), provided that all said pipes installed after the date of this ordinance shall be laid at least three feet (3') below the surface and shall not in any way unnecessarily obstruct or interfere with the public travel or cause or permit other than temporary damage to public or private property; and

**WHEREAS**, it is deemed to be in the best interests of the citizens of the Borough to provide this consent; and

**WHEREAS**, notice of this Ordinance was published in accordance with the requirements of N.J.S.A. 48:3-13 and N.J.S.A. 48:3-14; and

**WHEREAS**, the Mayor and Council of the Borough have concluded that granting of said consent shall enhance the health, safety and welfare of the citizens of the Borough.

**NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE BOROUGH AS FOLLOWS:**

Section 1. That exclusive and perpetual consent and permission to furnish wastewater collection and conveyance to the Borough and all residents, businesses and government buildings therein is hereby given and granted to NJAW, its successors and assigns for the maximum duration permitted by law, subject to the permission by the Board of Public Utilities of the State of New Jersey.

Section 2. That exclusive consent and permission is given to NJAW, its successors and assigns, under the provisions of N.J.S.A. 48:19-17 and N.J.S.A. 48:19-20, as amended, without charge therefore, (except fees for road opening permits which shall be paid) as the same may be required in order to permit NJAW to own and operate the System, add to, extend, replace, operate and maintain said System in the public property described herein in order to provide said wastewater collection and conveyance service. This shall include permission to lay pipes beneath the public roads, streets, public property and public places.

Section 3. That a certified copy of this Ordinance, upon final passage, shall be sent to NJAW, the New Jersey Department of Environmental Protection and the Board of Public Utilities of the State of New Jersey.

Section 4. That the consent granted herein shall be subject to NJAW complying with all applicable laws of the Borough and/or the State of New Jersey including, but not limited to, any and all applicable statutes and administrative agency rules and/or regulations and contingent upon the Borough and NJAW executing the *Agreement of Sale Between the Borough of Somerville and New Jersey American Water, Inc*, as the same may be amended from time to time.

Section 5. The Mayor and the Administrator of the Borough are authorized to execute the documents and agreements necessary to effectuate this municipal consent.

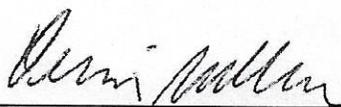
Section 5. Each section, subsection, sentence, clause and phrase of this Ordinance is declared to be an independent section, subsection, sentence, clause and phrase, and the finding or holding of any such portion of this Ordinance to be unconstitutional, void, or ineffective for any cause, or reason, shall not affect any other portion of this Ordinance.

Section 6. All ordinances or parts of ordinances inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.

**BE IT FURTHER ORDAINED**, that if any portion of this Ordinance shall be declared invalid as a matter of law, such declaration shall not affect the remainder of said Ordinance; and

**BE IT FURTHER ORDAINED**, that this Ordinance shall take effect upon passage and publication.

Introduction: February 21, 2023  
First Publication: February 24, 2023  
Adoption: March 6, 2023  
Final Publication: March 10, 2023

  
\_\_\_\_\_  
Dennis Sullivan, Mayor

  
\_\_\_\_\_  
Kevin Sluka, Clerk/Administrator



# Courier News <sup>my</sup> Central Jersey .com

A GANNETT COMPANY

**Classified Ad Receipt**  
**(For Info Only - NOT A BILL)**

**Customer:** SOMERVILLE BOROUGH - COMM. DEV  
**Address:** 25 W END AVE  
SOMERVILLE NJ 08876  
USA

**Ad No.:** 0005583364  
**Pymt Method** Invoice  
**Net Amount** \$190.32

**Run Times:** 2

**No. of Affidavits:** 0

**Run Dates:** 02/06/23, 02/13/23

**Text of Ad:**

**BOROUGH OF SOMERVILLE  
SOMERSET COUNTY  
NOTICE OF INTENT TO CONSIDER MUNICIPAL CONSENT ORDINANCE  
REQUESTED BY NEW JERSEY AMERICAN WATER, INC.**

NOTICE IS HEREBY GIVEN that, in accordance with N.J.S.A. 48:3-13 and N.J.S.A. 48:3-14, that the following Ordinance will be introduced by the for first reading at a meeting of the Borough Council of the Borough of Somerville, in the County of Somerset, State of New Jersey, to be held on the 21st day of February, 2023, at 7:00 PM and that, if passed on first reading, said Ordinance will be taken up for further consideration for final passage at a meeting of the Borough Council to be held on March 6, 2023 at 7:00 PM.

The Municipal Consent Ordinance was requested by New Jersey American Water, Inc ("NJAW") following NJAW and the Borough executing an agreement for the sale of the Borough's wastewater system. NJAW is requesting the Municipal Consent to provide wastewater collection and conveyance service through the system for the maximum duration permitted by law.

A copy of this notice has also been posted in the Borough Hall, on the Borough's website, the Somerville Public Library, Police Headquarters/Council Chambers, West Main Street Bulletin Board and Somerset County Administration Building.

**BOROUGH OF SOMERVILLE  
ORDINANCE #2694-23-0221  
AN ORDINANCE GRANTING CONSENT AND PERMISSION TO NEW JERSEY AMERICAN WATER, INC. TO FURNISH WASTEWATER COLLECTION AND CONVEYANCE SERVICE IN THE BOROUGH OF SOMERVILLE, NEW JERSEY**

WHEREAS, the Borough of Somerville, County of Somerset and State of New Jersey (the "Borough"), hereby grants consent and permission to New Jersey American Water, Inc. ("NJAW"), a New Jersey Corporation to furnish wastewater collection and conveyance service within the Borough; and

WHEREAS, NJAW is in the process of acquiring the wastewater system (the "System") currently owned and operated by the Borough, which has been approved by the voters of the Borough on November 8, 2022, pursuant to N.J.S.A. 40:62-5; and

WHEREAS, the Borough is desirous of having NJAW acquire the System; and

WHEREAS, NJAW is a regulated public utility corporation of the State of New Jersey presently seeking the municipal consent of the Borough to permit NJAW to provide wastewater collection and conveyance service through the System; and

WHEREAS, NJAW has requested the consent of the Borough as required by N.J.S.A. 48:19-17 and 48:19-20, as amended, to lay its pipes beneath and restore such public roads, streets and places as it may deem necessary for its corporate purposes, free from all charges to be made for said privilege (except that fees for road opening permits shall be paid), provided that all said pipes installed after the date of this ordinance shall be laid at least three feet (3') below the surface and shall not in any way unnecessarily obstruct or interfere with the public travel or cause or permit other than temporary damage to public or private property; and

WHEREAS, it is deemed to be in the best interests of the citizens of the Borough to provide this consent; and  
WHEREAS, notice of this Ordinance was published in accordance with the requirements of N.J.S.A. 48:3-13 and N.J.S.A. 48:3-14; and  
WHEREAS, the Mayor and Council of the Borough have concluded that granting of said consent shall enhance the health, safety and welfare of the citizens of the Borough.

**NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE BOROUGH AS FOLLOWS:**

Section 1. That exclusive and perpetual consent and permission to furnish wastewater collection and conveyance to the Borough and all residents, businesses and government buildings therein is hereby given and granted to NJAW, its successors and assigns for the maximum duration permitted by law, subject to the permission by the Board of Public Utilities of the State of New Jersey.

Section 2. That exclusive consent and permission is given to NJAW

3600 Highway 66, Neptune, NJ 07753

Section 2. That exclusive consent and permission is given to NJAW, its successors and assigns, under the provisions of N.J.S.A. 48:19-17 and N.J.S.A. 48:19-20, as amended, without charge therefore, (except fees for road opening permits which shall be paid) as the same may be required in order to permit NJAW to own and operate the System, add to, extend, replace, operate and maintain said System in the public property described herein in order to provide said wastewater collection and conveyance service. This shall include permission to lay pipes beneath the public roads, streets, public property and public places.

Section 3. That a certified copy of this Ordinance, upon final passage, shall be sent to NJAW, the New Jersey Department of Environmental Protection and the Board of Public Utilities of the State of New Jersey.

Section 4. That the consent granted herein shall be subject to NJAW complying with all applicable laws of the Borough and/or the State of New Jersey including, but not limited to, any and all applicable statutes and administrative agency rules and/or regulations and contingent upon the Borough and NJAW executing the Agreement of Sale Between the Borough of Somerville and New Jersey American Water, Inc, as the same may be amended from time to time.

Section 5. The Mayor and the Administrator of the Borough are authorized to execute the documents and agreements necessary to effectuate this municipal consent.

Section 5. Each section, subsection, sentence, clause and phrase of this Ordinance is declared to be an independent section, subsection, sentence, clause and phrase, and the finding or holding of any such portion of this Ordinance to be unconstitutional, void, or ineffective for any cause, or reason, shall not affect any other portion of this Ordinance.

Section 6. All ordinances or parts of ordinances inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.

BE IT FURTHER ORDAINED, that if any portion of this Ordinance shall be declared invalid as a matter of law, such declaration shall not affect the remainder of said Ordinance; and

BE IT FURTHER ORDAINED, that this Ordinance shall take effect upon passage and publication.

Kevin Sluka, Clerk/Administrator  
(\$190.32)

0005583364-01

**AGREEMENT OF SALE BETWEEN**

**THE BOROUGH OF SOMERVILLE, NEW JERSEY**

**AND**

**New Jersey-American Water Company, Inc.**

**February 7, 2023**

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**LIST OF EXHIBITS**

Exhibit A.	Description of the Wastewater System
Exhibit B	Form of Assignment and Assumption Agreement
Exhibit C	Form of Bill of Sale
Exhibit D	Tariff
Exhibit E	List of Written Contracts to Which Borough is a Party which Relate to the Wastewater System
Exhibit F	Form of Assignment and Grant of Easements, Rights of Way and other Property
Exhibit G	Form of General Assignment
Exhibit H	Disclosure Schedule to the Agreement of Sale
Exhibit I	Escrow Agreement
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Exhibit K	Capital Improvements
Exhibit L	Form of Borough Consent
Exhibit M	Reserved
Exhibit N	List of Borough Facilities
Exhibit O	SRVSA Service Fee Payment Process
Exhibit P	Access and Flow Indemnification Agreement

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## AGREEMENT OF SALE

**THIS AGREEMENT OF SALE** (this “Agreement”), dated February 7, 2023 is made and entered into by and between the **BOROUGH OF SOMERVILLE**, a public body corporate and politic in Somerset County in the State of New Jersey, 25 West End Ave, Somerville (the “Borough”) and **NEW JERSEY-AMERICAN WATER COMPANY, INC.**, a corporation of the State of New Jersey with principal corporate offices at One Water Street, Camden New Jersey 08102 (the “Buyer”). The Buyer and the Borough are referred to collectively herein as the “Parties.”

**WHEREAS**, the Borough currently owns and operates a wastewater collection system (the “Wastewater System”), more particularly described herein, located in the Borough of Somerville, New Jersey; and

**WHEREAS**, in connection with the proposed sale of its Wastewater System and pursuant N.J.S.A. 40:62-1, the Borough prepared, advertised, and made available to all prospective buyers a Request for Bids on May 31, 2022; and

**WHEREAS**, on June 22, 2022, the Borough received two (2) bids in response to the RFB; and

**WHEREAS**, after review and clarifications of the Bid(s) received, the Borough determined that the Buyer had submitted the highest responsible Bid; and

**WHEREAS**, the Borough and the Buyer have agreed to the terms and conditions set forth in this Agreement, which sets forth the terms upon which sale of the Borough’s Wastewater System to the Buyer will take place, provided all conditions of the Closing are satisfied; and

**WHEREAS**, the Borough desires to sell and the Buyer desires to purchase the Wastewater System pursuant to the terms of the Agreement; and

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

### ARTICLE I DEFINITIONS

“Agreement” shall mean this Agreement of Sale of the Wastewater System and all exhibits, attachments, and schedules hereto, dated January \_\_, 2023. It is anticipated that the Agreement will be executed by the parties following a successful referendum process.

“Assumed Liabilities” shall have the meaning set forth in Section 4.5 below. “BPU” means the New Jersey Board of Public Utilities or any successor agency. “Buyer” means New Jersey-American Water Company, Inc.

“Borough” means the Borough of Somerville, New Jersey.

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“Borough Consent” shall mean the municipal consent ordinance that is to be enacted by the Borough as a condition of the Closing and which grants the authority to Buyer to provide wastewater services in the Borough and granting Buyer the right to utilize the roads, streets, alleys, byways and public places within the Borough and conveying the franchise rights to the Wastewater System, when approved by the BPU; the Borough Consent will be in the form attached hereto as **Exhibit L**.

“Closing” has the meaning set forth in Section 4.6 below.

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

“Deposit” shall mean a payment of money equal to 5% of the Purchase Price, which is payable to the Borough upon execution of this Agreement, following a successful referendum process, and which shall be held by the Escrow Agent under the Escrow Agreement attached hereto and incorporated herein by reference as **Exhibit I**, and together with the earnings accrued thereon shall be the Deposit.

“Disclosure Schedule” has the meaning set forth in Section 2.1.

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

“Escrow Agent” shall mean Coastal Title Agency 2 Paragon Way, Suite 400B Freehold, NJ 07728.

“Final Approval Order” shall mean an order of the BPU approving the Borough Consent on terms and conditions satisfactory to the Buyer in its sole discretion, which will allow the Buyer and the Borough to consummate the purchase of assets as contemplated by this Agreement; and as to which the time for filing an appeal as of right has expired, and as to which there are no appeals, petitions for reconsideration, petitions for re-argument, or similar petitions pending.

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

“Monetary Liens” shall mean (a) judgment liens and tax liens entered against the Borough and encumbering any part of the Wastewater System, and (b) mortgages, security interests and other liens granted by the Borough and encumbering the Wastewater System.

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

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

“Parties” shall mean the Borough and the Buyer.

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

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

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

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

“RFB” means the Request for Bids for the sale of the Wastewater System issued by the Borough on May 31, 2022 and responded to by the Buyer.

“Wastewater System” shall mean the Borough’s wastewater collection system, as described in detail in **Exhibit A**.

“Transaction Documents” means collectively this Agreement and all agreements, documents, and certificates required by this Agreement.

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

**ARTICLE II  
REPRESENTATIONS AND WARRANTIES OF THE BOROUGH**

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

- (A) Organization of the Borough. The Borough is a public body corporate and politic in Somerset County in the State of New Jersey.
- (B) Authorization of Transaction. The Borough has full right and authority to execute and deliver this Agreement and to perform its obligations hereunder.
- (C) Title to Real Property. The Borough is the sole owner and has good and marketable title to each fee parcel of real property included in the Wastewater System, and leasehold interest, license or easement in all other real property necessary for ownership and operation of the Wastewater System. A detailed listing of all such interests in real property is set forth on Schedule I to Exhibit F.
- (D) Assets. The Borough has clear, good and marketable title to all of the assets comprising the Wastewater System, free and clear of all encumbrances. None of the assets are leased or on loan by the Borough to a third party. The Wastewater

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System constitutes all of the assets and property that, together with the rights granted in the Transaction Documents, are necessary for the ownership and operation of the Wastewater System. Upon Closing, Buyer shall continue to be vested with good title in the Wastewater System

- (E) No Litigation. To the best of the Borough's knowledge, there is no litigation, either at law or in equity, nor any proceedings before any commission or regulatory body pending, or threatened against the Borough, in any way that would adversely affect its ability to perform its obligations under the Agreement.
- (F) No Default. To the best of the Borough's knowledge, the Borough is not in default of any provisions of law, charter, by-laws, contract, franchise, rules or regulations of any governmental agency or any instrument to which it is a party and which in any way affects the Wastewater System.
- (G) No Reimbursement Obligations. To the best of the Borough's knowledge, the Borough is not party to any wastewater extension agreement or other contract which, if assigned to the Buyer, would obligate the Buyer by rebate, reimbursement, or other payment to return moneys to third parties by reason of installation of some portion of the Wastewater System.
- (H) System Compliance. The Wastewater System is in compliance with all State, federal, and local laws and regulations.
- (I) Tariff. The tariff, attached as **Exhibit D**, represents the true rates of the Wastewater System and are in effect as of the Contract Date.
- (J) Permits. **Exhibit G** sets forth a complete and accurate list of all Permits held by the Borough, all of which are in full force and effect and no appeals or other proceedings are pending or threatened with respect to the issuance, terms or conditions of any such Permits. The Borough has provided to Buyer true and complete copies of all Permits set forth on **Exhibit G**. Except as set forth on **Exhibit G**, (i) the Borough holds all Permits which are necessary or required under applicable Law for the ownership, operation and maintenance of the Wastewater System and the assets to be conveyed to Buyer as currently or previously operated and maintained, (ii) the Borough is, and for the past five (5) years has been, in compliance in all material respects with all terms, conditions and requirements of all Permits held by it (whether or not set forth on **Exhibit G**) and all applicable Laws relating thereto, and (iii) the Borough has not received any written notice or other written communication from any Governmental Authority or other Person regarding (1) any actual or alleged violation or failure to comply with any such Permits, or (2) any revocation, withdrawal, non-renewal, suspension, cancellation or termination of any such Permits. With respect to any Permits held by the Borough that are scheduled to expire within six (6) months following the date of this Agreement, any applications for renewal of such Licenses and Permits have been or will be duly filed by the Borough with the applicable Governmental Authority within the time frame required under applicable law.

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- (K) Environmental. To the best of the Borough's knowledge, the Borough 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. The Borough 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 Wastewater System.
- (i) To the best of the Borough's knowledge, 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 Wastewater System.
  - (ii) To the best of the Borough's knowledge, there are no hazardous materials, except those used in connection with the operation of the Wastewater System present on or in the Wastewater System, 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.
  - (iii) To the best of the Borough's knowledge, none of the following exists at the Wastewater System: (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.
  - (iv) The Borough has delivered to Buyer true and complete copies and results of any reports, studies, analyses, tests or monitoring possessed or initiated by the Borough pertaining to hazardous materials in, on or under the Wastewater System, or concerning compliance by the Borough with environmental laws..

Section 2.2 DISCLAIMER OF OTHER REPRESENTATIONS AND WARRANTIES.

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

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

**ARTICLE III  
REPRESENTATIONS AND WARRANTIES OF THE BUYER**

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

- (A) Organization of Buyer. The Buyer is a corporation duly organized, validly existing and in good standing under the law of the State of New Jersey.
- (B) Authorization of Transaction. The Buyer has full right and authority to execute and deliver this Agreement and to perform its obligations hereunder.
- (C) No Litigation. To the best of the Buyer's knowledge, there is no litigation, either at law or in equity, nor any proceedings before any commission or regulatory body pending, or threatened against the Buyer, in any way that would affect its ability to perform its obligations under this Agreement.
- (D) No Warranties. Except for the representations and warranties set forth in this Agreement, the Buyer is purchasing the Wastewater System "as is", and that the Buyer will have no recourse against the Borough with respect to any condition of the Wastewater System that might be discovered after the Closing, except for conditions and liabilities arising from the Borough's operation of the System prior to Closing.
- (E) Right to Inspect. Prior to the Contract Date, the Buyer has been afforded the opportunity to inspect and has inspected the Wastewater System to the extent that the Buyer deemed necessary and has made such examination of the Wastewater System, the operation, income and expenses thereof and all other matters affecting or relating to this transaction as Buyer deemed necessary. In entering into this Contract, the Buyer has not been induced by and has not relied upon any representations, warranties or statements, whether express or implied, made by the Borough or any agent, employee or other representative of the Borough or by any broker or any other person representing or purporting to represent the Borough, which are not expressly set forth in this Contract, whether or not any such representations, warranties or statements were made in writing or verbally.

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- (F) Other Limitations of Local, State, and Federal Laws and Regulations. The Buyer accepts the terms of this Agreement subject to the terms and limitations of all applicable local, State, and federal laws, statutes, rules and/or regulations.
- (G) Source of Funds. The funds comprising the Purchase Price to be delivered to the Borough in accordance with this Contract are not derived from any illegal activity.
- (H) Not a Blocked Person. The Buyer is not a, and is not acting directly or indirectly for or on behalf of any, person, group, entity or nation named by Executive Order of the United States Treasury Department as a terrorist, “Specifically Designated National and Blocked Person,” or other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control and the Buyer is not engaged in this transaction, directly or indirectly, on behalf of, or instigating or facilitating this transaction, directly or indirectly, on behalf of any such person, group, entity or nation.

Section 3.2 SURVIVAL OF REPRESENTATIONS AND WARRANTIES. All of the representations and warranties made by the Buyer are true and correct as of the date of this Agreement and shall be true and correct and deemed repeated as of Closing, subject to the Disclosure Statement as same may be modified by the terms of this Agreement.

**ARTICLE IV  
BASIC TRANSACTION**

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

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

Section 4.3 PURCHASE PRICE. The Buyer agrees, subject to the terms and conditions set forth in this Agreement, to pay to the Borough, at the Closing referred to in Section 4.6, the sum of SEVEN MILLION DOLLARS (\$7,000,000) (the “Purchase Price”). Upon the execution of this Agreement the Buyer shall pay the Deposit to be held by Escrow Agent pursuant to the terms of the Escrow Agreement, with any interest or earnings to follow the Deposit, and which Deposit shall be credited against the Purchase Price. Subject to the terms and conditions of this Agreement, the balance of the Purchase Price less the Deposit, increased or decreased by the items to be apportioned pursuant to Section 4.8 of this Agreement (such sum, before the apportionments referred to herein is referred to as the “Closing Balance” and after such apportionments is referred to as the “Adjusted Closing Balance”) shall be paid on the Closing Date by wire transfer in federal funds to a bank account designated in writing by the Borough at least five (5) business days prior to the Closing Date.

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Section 4.4 BOROUGH TRANSACTION EXPENSE. Notwithstanding any obligations of the Borough set forth in the Agreement to solely bear its expenses and costs in connection herewith, and in addition to the Purchase Price provided for in Section 4.3, the Buyer agrees to pay the Borough up to one-hundred and fifty thousand dollars (\$150,000) for costs and expenses incurred and reasonably anticipated to be incurred by the Borough in connection with the sale of the Wastewater System, including, but not limited to, outside attorney, engineering, inspection, and other consultant costs (collectively the "Transaction Costs Payment"). The Buyer agrees to pay the Borough one-third (\$50,000) of the Transaction Costs Payment upon the passing of the Borough's Ordinance approving the sale of the Wastewater System, which amount shall be non-refundable. The Buyer agrees to pay the Borough the remaining portion of the Transaction Costs Payment up to a total of \$100,000 upon Closing; provided however, prior to Closing the Borough shall provide to the Buyer reasonable documentation of all transaction expenses for review and approval prior to the Buyer's payment of the balance of the Transaction Cost Payment at Closing.

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

- (A) assume responsibility for all claims and liabilities arising out of the Buyer's operation of the Wastewater System subsequent to Closing;
- (B) assume and meet all contractual commitments of the Borough on and after the Closing Date in connection with the contracts set forth in **Exhibit E** (collectively, (A) and (B) constitute the "Assumed Liabilities");
- (C) comply with the Rate Stabilization Covenant set forth in Section 8.3;
- (D) provide the customers of the Wastewater System with safe and reliable service in accordance with applicable laws and regulations, and the Buyer's tariff as approved by the BPU;
- (E) maintain or expand the Wastewater System in conformance with existing Borough land use and zoning ordinances, master plan, and historic district standards, as applicable;
- (F) make the required capital improvements pursuant to Section 8.4; and
- (G) make application, with the assistance of the Borough, for the transfer, effective at the Closing, of all wastewater system permits and approvals issued to the Borough prior to Closing by the NJDEP or any other local, State or federal agency.

Section 4.6 THE CLOSING. The closing of the transactions contemplated by this Agreement (the "Closing") shall take place at the offices of DeCotiis, FitzPatrick, Cole & Giblin, LLP, located at 61 South Paramus Road, Suite 250, Paramus, New Jersey 07652 forty-five (45) days after the satisfaction of the last condition to be satisfied pursuant to Article VII herein (the "Closing Date"). The Parties may mutually agree in writing to have the Closing at another time or place or to conduct the Closing via electronic document execution and transfer.

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Section 4.7 DELIVERIES AT THE CLOSING. At the Closing:

- (A) The Borough will execute, acknowledge (if appropriate), and deliver to the Buyer:
- (i) a bargain and sale deed associated with the Wastewater System without covenant against grantor's acts, in recordable form, duly executed by the Borough;
  - (ii) an assignment of easements in the form attached hereto as **Exhibit F**, to convey all easement rights associated with the Wastewater System, which to the extent possible shall be listed, subject to the Permitted Encumbrances;
  - (iii) a Bill of Sale in the form attached hereto as **Exhibit C**;
  - (iv) an Assignment and Assumption Agreement in the form attached hereto as **Exhibit B**;
  - (v) a General Assignment in the form attached hereto as **Exhibit G**;
  - (vi) a Settlement Statement;
  - (vii) a certified copy of the appropriate Borough resolution(s) and/or ordinances authorizing the transactions contemplated hereunder;
  - (viii) a signed certification by the Borough that the warranties and representations in Article II are true and correct as of the Closing Date;
  - (ix) originals or copies of all governmental permits and licenses for the Wastewater System, or any component thereof, in the Borough's possession, to the extent transferable;
  - (x) Any other tax information regarding the Borough that the Settlement Agent (as that term is used in Section 6045 of the Code) is required to report to the Internal Revenue Service pursuant to the Code;
  - (xi) Such other resolutions, instruments, affidavits and documents as may be reasonably necessary to effectuate the transaction;
  - (xii) Access and Flow Indemnification Agreement in the form attached hereto as **Exhibit P**; and
  - (xiii) Such other documents necessary to satisfy the requirements of Section 7.2(F).
- (B) Buyer will execute, acknowledge (if appropriate) and deliver to the Borough:
- (i) an assignment of easements in the form attached hereto as **Exhibit F**, to convey all easement rights associated with the Wastewater System, which to the extent possible shall be listed, subject to the Permitted Encumbrances;

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- (ii) an Assignment and Assumption Agreement in the form attached hereto as **Exhibit B**;
- (iii) a General Assignment in the form attached hereto as **Exhibit G**;
- (iv) a Settlement Statement;
- (v) Certified copy of appropriate corporate resolution(s) authorizing the transactions contemplated hereunder;
- (vi) a signed certification by Buyer that the warranties and representations in Article III are true and correct as of the Closing Date;
- (vii) Any tax information regarding Buyer that the Settlement Agent (as that term is used in Section 6045 of the Code) is required to report to the Internal Revenue Service pursuant to the Code;
- (viii) The Purchase Price;
- (ix) The balance of the Transaction Costs Payment (an amount up to \$100,000);
- (x) Such other documents, resolutions, instruments, affidavits and documents as may be reasonably necessary to effectuate the transaction; and
- (xi) The Access and Flow Indemnification Agreement.

Section 4.8 APPORTIONMENTS. At the Closing, real estate taxes, if any, for the fee parcels constituting Wastewater System assets to be transferred to the Buyer and all other operating expenses for the Wastewater System allocable to periods before and after the Closing Date, including adjustments necessary pursuant to Section 5.1.I, shall be apportioned for the Wastewater System as of 11:59 p.m. on the day preceding the Closing Date.

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

**ARTICLE V**  
**PRE-CLOSING COVENANTS AND CONTINGENCIES**

Section 5.1 PRE-CLOSING COVENANTS AND CONTINGENCIES. The performance of this Agreement is contingent upon the satisfaction of all the conditions set forth below. In that regard, the Parties agree as follows with respect to the period between the execution of this Agreement and the Closing:

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

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from the Borough, for obtaining BPU approval of the Borough Consent pursuant to N.J.S.A. 48:2-14.

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

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equipment; and surveys of the real property comprising the Wastewater System and easements. The Buyer hereby agrees to indemnify and hold the Borough harmless from any and all claims, demands, suits, actions, damages, liabilities, or expenses with respect to or arising from the Buyer's access to the Wastewater System during this period. The Buyer's rights under this Section shall be exercised during normal business hours, with reasonable notice and shall not interfere with the Borough's continuing operation of the Wastewater System. The Borough shall cooperate with the Buyer with respect to such access to ensure a smooth transition in ownership of the Wastewater System.

- (M) Confidentiality. Any information provided by the Borough to the Buyer regarding the Borough's customers and the Wastewater System that is not generally available to the public shall remain confidential.
- (N) Cooperation During Transition. Generally, the parties shall cooperate to facilitate a smooth transition and the Buyer shall not do anything that will interfere with the Borough's operation and administration of the Wastewater System. The Borough shall assist the Buyer in supplementing the Property Information Materials, as defined in Section 6.2, to ensure that Buyer has the necessary property rights to own and operate the Wastewater System upon the Closing Date, and shall assist in those activities described in Section 8.13.
- (N) Referendum Education Campaign. The Buyer shall provide reasonable assistance to the Borough in connection with its public referendum education campaign.
- (O) Bridgewater Consent. The municipality of Bridgewater Township ("Bridgewater") shall have granted its consent for Buyer to provide wastewater service to those residents in its municipality that are currently served by the Borough via a municipal consent ordinance in form and substance reasonably acceptable to Buyer. The Borough shall notify Bridgewater of the necessity of said consent and shall cooperate with Buyer in obtaining the municipal consent from Bridgewater as soon as reasonably possible, but no later than prior to the Closing Date.

**ARTICLE VI**  
**TITLE AND CONDITION OF SYSTEMS**

Section 6.1 TITLE. Good and marketable title to the Wastewater System, including the real property comprising same, including valid licenses and/or easements necessary to own, operate and access all assets constituting the Wastewater System shall be conveyed by the Borough to the Buyer at the Closing free and clear of all Encumbrances, subject only to the Permitted Encumbrances. "Permitted Encumbrances" means any and all:

- (A) matters disclosed by the Property Information Materials (as defined in Section 6.2 hereof);
- (B) matters that become Permitted Encumbrances in accordance with the provisions of this Article VI;

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- (C) matters that would be revealed by a physical inspection of or a complete and accurate survey, of the real property comprising the Wastewater System;
- (D) rights of way and easements that do not materially interfere with the existing use of the real property comprising the Wastewater System;
- (E) zoning and other governmental restrictions; and
- (F) Intentionally omitted.
- (G) taxes, assessments and other public charges on real property comprising the Wastewater System not due as of the Closing Date, provided, however, in no event shall Permitted Encumbrances include Monetary Liens.

With respect to the real property comprising the Wastewater System, Buyer may within thirty (30) days of execution of this Agreement apply for an owner's title insurance policy or policies from a reputable title insurance company licensed to do business in New Jersey (the "Commitment"). Within ten (10) business days after receipt of the Commitment, the Buyer shall notify the Borough of any objections, other than the Permitted Encumbrances. Any matters set forth on the Commitment and not objected to by the Buyer within said ten (10) day period shall become Permitted Encumbrances hereunder. The Borough may elect to cure any title defect by so notifying the Buyer. If the Borough does not so elect within twenty (20) days after notice of the objection, or if after so electing, the Borough fails to cure the defect(s) prior to the Closing, then the Buyer may at its choice, (i) continue to close with a corresponding reduction in the Purchase Price equivalent to Buyer's costs for curing any title defects; or (ii) terminate this Agreement upon notice to the Borough, said notice to be delivered within seven (7) days of the Borough's failure to so elect or, if the Borough elects to cure but does not, to be delivered at the Closing. If the Buyer terminates the Agreement pursuant to this section, the Borough shall promptly, and in no event later than ten (10) business days after such termination, repay to the Buyer the Deposit, and upon such termination this Agreement shall be deemed canceled, null and void and neither Party shall have any further obligation or liability to the other hereunder.

If the Borough is unable to deliver easements necessary for the ownership and operation of the Wastewater System prior to Closing, then the Borough may choose to either (i) delay Closing until such time that the Borough can deliver said easements; (ii) continue to close with a mutually agreed upon portion of the purchase price equivalent to the amount necessary to obtain said easements placed in escrow for the Borough or the Buyer to draw upon for costs associated in obtaining said easements; or (iii) continue to close with Buyer taking responsibility for the missing easements with a mutually agreed upon purchase price adjustment equivalent to the cost of obtaining said easements.

Section 6.2 PROPERTY INFORMATION MATERIALS. Subject to Section 2.1 ( c), the Buyer acknowledges that prior to the Buyer's execution of this Agreement, the Borough delivered to the Buyer and the Buyer reviewed the materials and information concerning the Wastewater System provided as part of the RFB (collectively, "Property Information Materials"). The Buyer acknowledges and understands that the Property Information Materials may have been

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prepared by parties other than the Borough and that the Borough makes no representation or warranty whatsoever, express or implied, as to the content, completeness, or accuracy of the Property Information Materials. The Buyer specifically releases the Borough from all claims, demands, causes of action, judgments, losses, damages, liabilities, costs and expenses (including attorney's fees whether suit is instituted or not) – whether known or unknown, liquidated or contingent (collectively, "Claims"), asserted against or incurred by the Buyer by reason of the information contained in, or that should have been contained in, the Property Information Materials or any inconsistency between such information and any representation or warranty of the Borough contained in this Contract. However, the foregoing release shall not apply to any Claims resulting from any intentional misstatements or willful misconduct on the part of the Borough. Provided however, nothing in this Section 6.2 shall affect nor relieve the Borough of its obligations pursuant to Section 6.1.

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

## ARTICLE VII CONDITIONS TO OBLIGATION TO CLOSE

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

- (A) the representations and warranties set forth in Article II of this Agreement and the other Transaction Documents shall be true and correct in all material respects as of the Closing Date;
- (B) the Borough shall have performed and complied with all of its covenants hereunder in all material respects through the Closing;
- (C) there shall not be any injunction, judgment, order, decree, ruling, or charge in effect preventing consummation of any of the transactions contemplated by this Agreement and the Transaction Documents;

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- (D) the Buyer shall have secured from the Borough, the BPU, NJDEP, and all other applicable Governmental Authorities and quasi-governmental entities, all authorizations and approvals required for the transfer of the Wastewater System to the Buyer, including but not limited to the NJDEP Permits, if necessary (the "Approvals"), and all such Approvals (i) shall be in form and substance and subject to terms and conditions reasonably satisfactory to the Buyer, (ii) shall not be subject to the satisfaction of any condition that has not been satisfied or waived in order for such Approval to be effective, (iii) shall be in full force and effect, with any periods for appeal having expired, and (iv) all terminations or expirations of waiting periods imposed any Governmental Authority necessary for the consummation of the transaction shall have occurred. The Parties shall use all reasonable efforts to obtain the Approvals and to do so as expeditiously as reasonably possible. In connection with the Approvals, the Buyer shall deliver to the Borough or cause to be delivered to the Borough, through addition(s) to the applicable service list(s), copies of all correspondences to and from the bodies with whom the applications have been filed or will be filed. The Borough covenants to cooperate with the Buyer, at the Buyer's cost and expense, in the Buyer's efforts to obtain the Approvals and to promptly consent, when required by law, to all applications for the Approvals filed by the Buyer. The Buyer shall immediately notify the Borough in writing of any determinations made by any authority considering any application.

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

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

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applications for the Approvals filed by the Buyer. The Buyer shall immediately notify the Borough in writing of any determinations made by any authority considering any application; and

- (E) the Borough shall have obtained any necessary consents and releases for the assignment and assumption of the assumed liabilities as defined in **Exhibit B**.
- (F) the Borough shall approve a resolution that provides for: (A) the defeasance and redemption of any outstanding debt/bonds issued by the Borough on the Wastewater System (which debt/ bonds principal amount is \$960,000 as of November 1, 2022 through October 31, 2023, and any interest and redemption premium thereon) and reimburse any other capital expenditure in connection with the Wastewater System; and (B) the repayment of all grants issued to the Borough related to the Wastewater System that must be repaid due to the sale of the Wastewater System (the amount of which is estimated to be \$407,000 as of December 31, 2022). At Closing, the Borough shall provide (A) a written confirmation that it has created a separate escrow account wherein a portion of the Purchase Price will be deposited in an amount sufficient to satisfy items (A) and (B) above, (B) a sufficiency report or verification report certifying that the portion of the Purchase Price deposited in said escrow account will be sufficient to satisfy items (A) and (B) above, and (C) an opinion of the Borough's bond counsel addressed to the Borough and the Buyer that based solely on the sufficiency report or verification report that item (A) will be "deemed paid" as of the date of closing. (For the avoidance of all doubt the parties acknowledge that the obligations set forth in items (A) and (B) above are the sole legal responsibility of the Borough. Based upon the Borough's actions described here, the Buyer shall acquire title to the Wastewater System without any liens or claims against it arising from the debt/bonds and any grant of the Borough as set forth in (A) and (B) above. For avoidance of doubt, no debt or obligation referenced in this Section 7.2(F) shall be considered a Permitted Encumbrance.

Section 7.3 SCHEDULE FOR CLOSING CONDITIONS. The Buyer shall promptly initiate and complete its conditions of Closing set forth in Section 7.1, provided, however, that all such conditions must be met no later than the date that is twelve (12) months following the date of this Agreement, or the adoption of the Township Consent, whichever is later. In the event that all such Closing conditions are not completed by such date notwithstanding the Company's good faith efforts, the Borough shall have the right to terminate this Agreement and retain the \$50,000 of the Transaction Costs Payment that had been paid to the Borough upon the passing of the Borough Ordinance approving the sale.

**ARTICLE VIII**  
**POST-CLOSING OBLIGATIONS OF BUYER AND BOROUGH**

Subject to the approvals of the BPU, the Buyer shall be responsible for the following post-Closing obligations.

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Section 8.1 CONTINUATION OF WASTEWATER SERVICES. The Buyer shall continue to provide services in accordance with the Customer Service Standards and the Customer Service Plan described in **Exhibit J** and shall provide for the collection and conveyance of wastewater to the customers of the Wastewater System in a manner that meets the requirements of Buyer's tariff and all local, state, and federal laws and regulations relating to the collection and conveyance of wastewater and shall operate and maintain the Wastewater System to provide safe, reliable and adequate service.

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

Section 8.3 RATE STABILIZATION COVENANT. Upon Closing, the Buyer shall adopt the Borough's sewer rates as defined in the Borough's Code, and as set forth in **Exhibit D**, which Exhibit details the specific sections of the Borough's Code that will be adopted by the Buyer. Subject to the Borough's representation in Section 8.12 below, the Buyer shall hold said rates for a minimum of Two (2) years. Thereafter, the sewer rates for the customers within the Borough shall increase by an average of no more than three percent (3%), compounded annually, for the next three (3) years. Thereafter the sewer rates for the customers within the Borough shall increase by an average of nor more than four percent (4%) per year, compounded annually, for the next two (2) years. Thereafter, any future base rate increases shall be included in Buyer's base rate cases periodically filed with the BPU. The Buyer shall use good faith efforts to minimize rate increases to Borough customers by spreading costs of the Wastewater System across its statewide customer base and phasing rates into the Buyer's existing tariff rates over the course of several base rate cases, all to the extent permitted by law. Charges associated with sewer treatment by the Somerset Raritan Valley Sewerage Authority ("SRVSA"), referenced in Section 8.12, will be treated as pass-through charges for customers and nit subject to this rate stabilization covenant. Other than the sewer rates as described above, all other fees as provided in Buyer's tariff, as well as the terms and conditions of Buyer's tariff, shall apply as of the Closing Date.

Section 8.4 REQUIRED CAPITAL IMPROVEMENTS. The Buyer agrees to invest at least NINE-MILLION FIVE HUNDRED THOUSAND DOLLARS (\$9,500,000) in capital improvements to the system within ten (10) years of the Closing, FOUR-MILLION FIVE HUNDRED THOUSAND DOLLARS (\$4,500,000) of which the Buyer covenants to invest within the first five (5) years. **Exhibit K** contains a listing of potential capital improvements identified by the Buyer in its Bid submission in response to the RFB. This list may be subject to revision based upon further due diligence conducted by the Buyer post execution of this Agreement.

Section 8.5 SERVICE TO BOROUGH FACILITIES. The Buyer shall propose to the BPU that it will provide wastewater service to those Borough-owned facilities listed in **Exhibit N** to this Agreement at no cost to the Borough for a period of seven (7) years from the Closing Date, at the same volume levels as existed as of the Closing Date; provided however the period of no

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cost service the Borough-owned facilities shall be determined by the BPU and the Buyer shall commence charging for the service at the applicable rates at the end of the approved period.

Section 8.6 SERVICE LINE RESPONSIBILITY. The term "Service Line" shall mean the lateral service line that connects the Wastewater System to a customer's premise. The Buyer shall be responsible for that portion of the Service Line within any public street right of way or sewer easement, or if there is no public street right of way or sewer easement, that portion of the Service Line that is five feet from the point of connection to the Wastewater System, or to the clean-out, whichever is closer. The customer shall be responsible for maintaining and repairing the remainder of the Service Line.

Section 8.7 POST-CLOSING COOPERATION OF THE BOROUGH. On or after the Closing Date, the Borough shall, on request, cooperate with the Buyer by furnishing any additional information, executing and delivering any additional documents and instruments, including contract assignments or easements, 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 the Buyer, in its reasonable discretion, determine after the Closing that books, records or other materials constituting acquired assets are still in the possession of the Borough, the Borough shall promptly deliver them to the Buyer at no cost to the Buyer. The Borough hereby agrees to cooperate with the Buyer to ensure a proper transition of all customers with respect to billing and customer service activities.

Section 8.8 RESERVED.

Section 8.9 RESERVED.

Section 8.10 BOROUGH PUBLIC WORKS COMMITTEE. The Buyer shall agree to meet at the discretion of the Borough's Public Works Committee which shall act as an advisory panel for customer service and other Wastewater System related issues.

Section 8.11 PAVING. The Buyer shall temporarily and permanently pave Borough roads in accordance with the Borough's road opening ordinances and specifications and in coordination with other Borough road construction projects. The Company will provide curb-to-curb pavement restoration for all Company initiated work where the water and wastewater mains in a roadway are replaced in their entirety either between two connecting manholes or between two connecting roadway intersections. Buyer shall evaluate the condition of any wastewater main that falls within the limits of a road reconstruction project initiated by the Borough. Should the Buyer elect to replace or rehabilitate sewer assets, the work would be coordinated with the Borough ahead of the planned road reconstruction project.

Section 8.12 SERVICE AGREEMENT BETWEEN THE BOROUGH AND THE SRVSA, DATED JANUARY 1, 1958. The Parties acknowledge that the Borough is in contract with the SRVSA, pursuant to the Services Agreement between the Borough and SRVSA, dated January 1, 1958 (the "Services Agreement") and that the provisions of this Agreement require that the Borough, even post sale of the System, must remain a party to the Services Agreement. As an inducement to the Buyer to fulfill the Borough's obligations under the Services Agreement the Borough represents that there are no other financial obligations owed by the Borough to the

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SRVSA other than as represented by and included in the Annual Charge assessed by the SRVSA. In order to address this requirement and effectuate the sale of the System to the Buyer, the Parties agree as follows:

- (A) Post-closing, the Services Agreement shall remain between the Borough and the SRVSA;
- (B) Every year post-closing, the Buyer shall be responsible for paying the Annual Charge (as defined in the Services Agreement) to the Borough in accordance with the procedure for payments more specifically set forth in **Exhibit O**;
- (C) The Borough nominates two (2) representatives to the SRVSA Board of Commissioners. The Borough's current SRVSA representatives' terms will expire in February 2023 and on February 7, 2027, respectively. Upon expiration of these terms, and all subsequent terms, the Borough agrees to consult with and will consider the input of the Buyer, as the owner and operator of the Wastewater System, concerning the appointment of the representatives. The Borough's obligation to consider the input of Buyer shall apply to the February 2023 appointment. Although for the avoidance of all doubt, the Borough shall make the ultimate appointment of the two SRVSA Board representatives,
- (D) The Borough agrees to formalize a process via a resolution of the Mayor and Council through which it will regularly meet with the Buyer to discuss issues and matters related to SRVSA fees, financial decisions, operations issues and capital improvements with the intent to generate a uniform opinion concerning such matters that will be conveyed by the Borough to the Borough's representatives to the SRVSA Board.
- (E) Post-closing, subject to the affirmative representations made by the Borough in this Section 8.12 with respect to; the lack of any other existing monetary obligations of the Borough to the SRVSA other than as set forth in the Service Agreement and subject to the Borough's indemnity obligations as set forth in Section 12.2 herein Buyer agrees to fully indemnify and defend the Borough for all obligations, requirements, terms and conditions, including but not limited to all financial obligations, requirement, terms and conditions, limited to those specifically set forth in the Services Agreement. While operating and maintaining the System

Section 8.13 ACCESS AND FLOW LIMITATION AGREEMENT BY AND BETWEEN THE SRVSA AND THE BOROUGH, DATED SEPTEMBER 4, 2018. The Parties acknowledge that the Borough is in contract with the SRVSA in connection with the operation of the 27" sewer line (the "Access and Flow Agreement"). At Closing, the Borough and the Buyer agree to enter into an Access and Flow Indemnification Agreement, a copy of which is attached hereto as **Exhibit P**, which mirrors rights and obligations of the Access and Flow Agreement whereby the Buyer shall stand in the Borough's position under said agreement. As part of the consideration for entering into an Access and Flow Agreement, the Borough shall cooperate with and assist the Buyer in meeting the obligations of the Access and Flow Agreement. Such activities

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may occur preclosing and may include the Buyer conducting inflow and infiltration (I&I) studies and meetings with the NJDEP to discuss mitigation plans in the event of excess flow.

**ARTICLE IX  
REMEDIES FOR BREACHES OF THIS AGREEMENT**

Section 9.1 PRE-CLOSING DEFAULT BY THE BUYER. In the event that the Buyer materially breaches or defaults under this Agreement before the Closing hereunder, and such material breach or default continues for ten (10) business days after written notice from the Borough to the Buyer specifying such material breach or default, the Borough shall have the right as its sole remedy to terminate this Agreement and retain twenty-five percent (25%) of the Deposit and \$50,000 of the Transaction Costs Reimbursement paid to the Borough upon the passing of the Ordinance approving the sale as liquidated damages. The Borough's rights and remedies pursuant to this Section 9.1 shall survive any termination of this Agreement by the Borough as a result of the Buyer's default.

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

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

**ARTICLE X  
ESCROW AGENT**

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

**ARTICLE XI  
NON-BINDING MEDIATION; FORUM FOR DISPUTE RESOLUTION**

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

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

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

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

Section 11.5 FORUM FOR DISPUTE RESOLUTION. It is the express intention of the Parties that all legal proceedings related to this Agreement or to the Wastewater System or to any rights or any relationship between the Parties arising therefrom shall be solely and exclusively initiated and maintained in the applicable State courts located in Somerset County, New Jersey.

**ARTICLE XII  
INDEMNIFICATION**

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

Section 12.2 INDEMNIFICATION BY THE BOROUGH. To the extent permitted by law, the Borough shall indemnify, defend and hold harmless the Buyer from and against any and all third-party claims, demands, suits, actions, damages, liabilities or expenses arising from (or alleged to arise from or in connection with: (1) any inaccuracy in or breach of or any claim by any third party alleging or constituting an inaccuracy 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 the Borough; (2) all liabilities and/or duties of the Borough, whether accruing prior to or after the Closing Date; (3) the ownership and/or operation of the Wastewater System prior to the Closing Date; and (4) the willful misconduct of the Borough in connection with this Agreement.

Section 12.3 THIRD PARTY CLAIMS. An Indemnitee shall give the Indemnitor notice of any matter which an Indemnitee has determined has given or could give rise to a right of indemnification under this Agreement (an "Indemnified Claim") within sixty (60) days of such

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

Section 12.4 NO OTHER DAMAGES. Other than in connection with third party claims, or as set forth herein, in no event shall either Party be liable to the other for any reason under this Agreement or any other Transaction Document for any form of special, incidental, indirect, consequential, or punitive damages of any kind (whether or not foreseeable), even if informed in advance of the possibility of such damages, and whether arising in contract, tort (including negligence), or otherwise.

**ARTICLE XIII  
MISCELLANEOUS**

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

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

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

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

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

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

If to Borough:

Business Administrator  
Borough of Somerville  
25 West End Ave  
Somerville, New Jersey 08876  
(908) 725-2300

Copy to:

Ryan J. Scerbo, Esq.  
DeCotiis, FitzPatrick, Cole & Giblin  
61 South Paramus Road  
Suite 250  
Paramus, New Jersey 07652  
Fax: (201) 928-0588

If to Buyer:

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

Copy to:

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

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

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

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

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

Section 13.10 EXPENSES. Subject to the Borough's retention of the \$50,000 portion of the Transaction Costs Payment paid to the Borough upon the passing of the Ordinance approving the sale (except as provided in Section 6.1), in the event the Closing does not occur, other than by reason of a material default by one of the Parties, each Party shall bear its own costs and expenses (including legal fees and expenses) incurred in connection with this Agreement and the transactions contemplated hereby.

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

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

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

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

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

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

**(Signature Page Follows)**

EXECUTION VERSION

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

**BOROUGH OF SOMERVILLE**

By: *Dennis Sullivan*  
Name: DENNIS SULLIVAN  
Title: MAYOR

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

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

EXECUTION VERSION

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

**BOROUGH OF SOMERVILLE**

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

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

By: Mark K. McDonough  
Name: Mark K. McDonough  
Title: President, NJAW

EXECUTION VERSION

**EXHIBIT A**

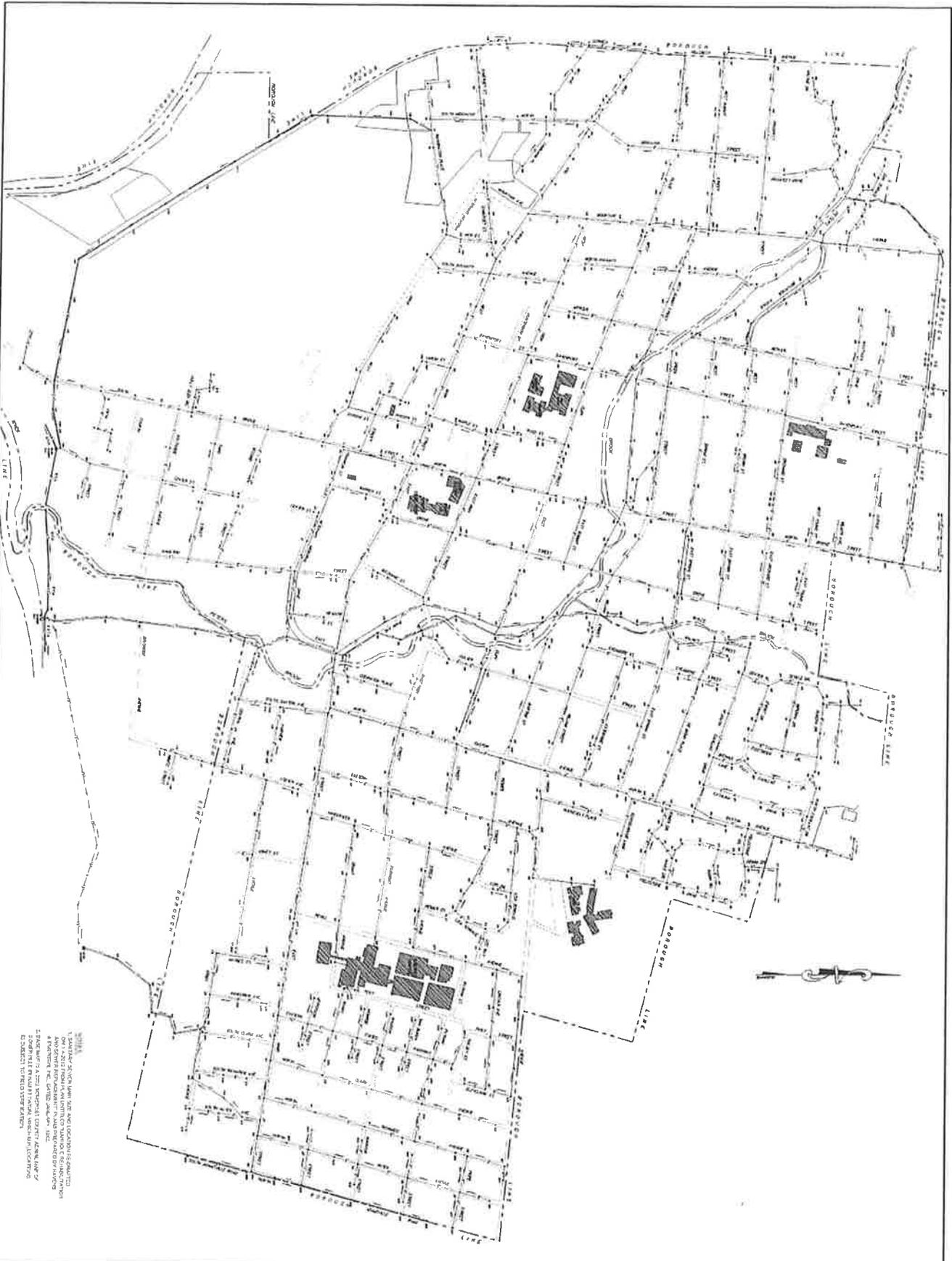
**DESCRIPTION OF THE WASTEWATER SYSTEM**

The Borough owned system provides wastewater collection services to approximately 3,812 customer connections, approximately 3,769 of which are physically located in the Borough with the remainder (approx. 43) being physically located in the Borough of Bridgewater. The Borough owns the assets of the system physically located in the Borough limits, as well as the sewer mains and appurtenances located in Bridgewater that serve the approximately 43 customers.

The Borough owned collection system is comprised of approximately 35 miles of pipe ranging in size from 6" to 15", and 600 appurtenant facilities (i.e. manholes). It is assumed that approximately 50 percent of the mains is clay pipe. The collection system empties into 4 interceptors of 20-inch, 21-inch, 24-inch and 27-inch. The interceptors pass through several RVSA meter chambers, numbers 3,4 and 5, on the way to the SRVSA Treatment Plant. There is approximately 4,000 linear feet of 8-inch main in Bridgewater Township and approximately 1,000 linear feet of the 24-inch and 2,000 linear feet of the 27-inch also in Bridgewater Township.

All wastewater flow from the Borough flow, is metered at the SVRSA Metering station before being transmitted to the SVRSA regional wastewater treatment plant for ultimate treatment and disposal.

See attached map of the collection system and diagram of the wastewater basins schematic.



1. SANITARY SEWER MAIN SIZE AND LOCATION RESULTS  
 ARE BASED ON A VISUAL INSPECTION OF THE SANITARY SEWER  
 MAINS AND MANHOLES IN THE BOKER HILL BOROUGH  
 AREA. THE RESULTS OF THIS VISUAL INSPECTION  
 ARE SUBJECT TO CHANGE AS MORE INFORMATION  
 IS OBTAINED FROM THE FIELD. THE RESULTS  
 OF THIS VISUAL INSPECTION ARE NOT TO BE  
 USED AS A BASIS FOR ANY OTHER PURPOSES.

**SANITARY SEWER MAIN SIZE AND LOCATION**  
 BOKER HILL BOROUGH  
 SOMERSET COUNTY, NEW JERSEY

**Cole & Associates, LLC**  
 3985 Princeton Pike, Lawrenceville, NJ 08548  
 PHONE: (609) 396-9777 FAX: (609) 396-9744

Michael J. Cole  
 PROJECT ENGINEER



DATE:	08/14/18		
SCALE:	1" = 300'		
DESIGNED BY:	MJC		
CHECKED BY:	SK		
JOB NO:		REVISIONS:	DATE: DATE:

EXECUTION VERSION

**EXHIBIT B**

**FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT**

**THIS ASSIGNMENT AND ASSUMPTION AGREEMENT** (the “Assignment and Assumption Agreement”) is made and entered into on [ ] by and between the Borough of Somerville, a public body corporate and politic in Somerset County in the State of New Jersey (the “Assignor”) and \_\_\_\_\_, a \_\_\_\_\_ Corporation with principal corporate offices at \_\_\_\_\_ (the “Assignee”). Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Agreement of Sale (as defined below).

**WHEREAS**, Assignor and Assignee are parties to a certain Agreement of Sale, dated \_\_\_\_\_, 2022 (the “Agreement”), providing for the sale by the Assignor of the assets constituting the Wastewater System to the Assignee; and

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

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

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

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

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

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

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

**BOROUGH OF SOMERVILLE**

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

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

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

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**SCHEDULE I**  
**TO ASSIGNMENT AND ASSUMPTION AGREEMENT**

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

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

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**EXHIBIT C**

**FORM OF BILL OF SALE**

**THIS BILL OF SALE** dated as \_\_\_\_\_, 2022 from the Borough of Somerville, a public body corporate and politic in Somerset County in the State of New Jersey (the "Borough") and \_\_\_\_\_, a \_\_\_\_\_ Corporation with principal corporate offices at \_\_\_\_\_ (the "Buyer").

**WITNESSETH**

**WHEREAS**, by an Agreement of Sale, dated \_\_\_\_\_, 2022 (the "Agreement"), between the Borough and the Buyer, the Borough has agreed to convey to the Buyer certain assets, properties, and rights defined, described, and referred to in the Agreement (collectively, the "Wastewater System") which include those assets listed on the document attached hereto as **Schedule I to Exhibit C**, with the exception of those items expressly set forth on the document attached hereto as **Schedule II to Exhibit C**; and

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

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

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

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

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

EXECUTION VERSION

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

**Borough of Somerville**, a public body corporate and politic in Somerset County in the State of New Jersey

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

**RECEIPT OF THE  
FOREGOING BILL OF SALE**

**ACKNOWLEDGED AS OF**

[     ], 2022.

**[BUYER]**

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

EXECUTION VERSION

**SCHEDULE I**  
**TO EXHIBIT C INCLUDED ASSETS**

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

EXECUTION VERSION

**SCHEDULE II TO EXHIBIT C**

**EXCLUDED ASSETS**

Personal property

Office equipment

Office supplies

Vehicles

Cash, securities, bank accounts and the accounts receivable of the Borough relating to the Wastewater System up to and including the Closing Date.

EXECUTION VERSION

**EXHIBIT D**

**TARIFF**

**ORDINANCE #2602-20-0101**

**AMENDING ORDINANCE 2459-14-1101 CHAPTER 141 OF THE BOROUGH  
CODE - SEWER SERVICE CHARGES**

**BE IT ORDAINED** by the Mayor and Council of the Borough of Somerville, County of Somerset, State of New Jersey that Ordinances Nos. 827, 1063, 1155, 1166, 1175, 1177, 2252 & 2318 & 2426 & 2459 as codified in Chapter 141, Article 1 of the Code of the Borough of Somerville, be amended in the following manner:

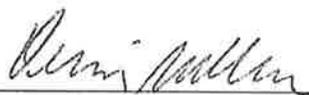
RATE CODE	RATE DEFINITION	NEW RATE	NEW MINIMUM
NB	Non-Somerville Business Metered	7.50	75
NR	Non-Somerville Residential Metered	7.50	75
NW	Somerville Unmetered Well-Out of Town	flat	160
SA	Somerville Apartment Metered	6.50	65
SB	Somerville Business Metered	6.50	65
SR	Somerville Residential Metered	6.50	65
SW	Somerville Unmetered Well	flat	135

The new minimum shall be for consumptions shall be from 0 to 9 (900 cubic feet)

**BE IT FURTHER ORDAINED** as follows:

- 1) That all ordinances or parts of ordinances inconsistent herewith are repealed to the extent of such inconsistency.
- 2) This ordinance shall effect upon final publication and adoption in the manner provided by law.

Introduction: January 1, 2020  
First Publication: January 7, 2020  
Adoption: January 21, 2020  
Final Publication: January 24, 2020

  
\_\_\_\_\_  
Dennis Sullivan, Mayor

  
\_\_\_\_\_  
Kevin Sluka, Clerk/Administrator

EXECUTION VERSION

**EXHIBIT E**

**LIST OF WRITTEN CONTRACTS TO WHICH  
THE BOROUGH IS A PARTY WHICH RELATE TO THE SYSTEM**

None; however, the Borough is a party to the Services Agreement between the Borough and Somerset Raritan Valley Sewerage Authority, dated January 1, 1958; and the Access and Flow Agreement by and between the Somerset Raritan Valley Sewerage Authority and the Borough, dated September 4, 2018, neither of which are being assigned but both of which related to the Wastewater System and are addressed in detail in this Agreement.

EXECUTION VERSION

**EXHIBIT F**  
**FORM OF ASSIGNMENT AND GRANT OF EASEMENTS,**  
**RIGHTS OF WAY, AND OTHER PROPERTY**

**THIS ASSIGNMENT** is made this day of \_\_\_\_\_, 2022 between the **BOROUGH OF SOMERVILLE**, a public body corporate and politic in Somerset County in the State of New Jersey (the "Grantor"), and \_\_\_\_\_, a \_\_\_\_\_ Corporation (the "Grantee"), having an address at \_\_\_\_\_.

**WHEREAS**, pursuant to an Agreement of Sale (the "Agreement") dated \_\_\_\_\_, 2022 and a Bill of Sale contemporaneously herewith, the Grantor has granted, sold, conveyed, assigned, transferred, set over, and vested in Grantee, its successors, and its assigns, all of the Grantor's right, title, and interest in the Wastewater System as defined in the Agreement.

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

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

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

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

EXECUTION VERSION

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

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

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

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

[SEAL]

**BOROUGH OF SOMERVILLE**, a public body corporate and politic in Somerset County in the State of New Jersey

Attest: \_\_\_\_\_

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

EXECUTION VERSION

STATE OF NEW JERSEY    )  
  : ss.  
COUNTY OF SOMERSET    )

On this, the \_\_\_\_ day of \_\_\_\_\_ 2022, before me, a Notary Public in and for said County, personally appeared \_\_\_\_\_, who acknowledged himself to be the \_\_\_\_\_ of the Borough of Somerville, a public body corporate and politic in Somerset County in the State of New Jersey, and that he, as such \_\_\_\_\_, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of \_\_\_\_\_ by himself as \_\_\_\_\_.

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

\_\_\_\_\_  
Notary Public  
My Commission Expires:  
[SEAL]

EXECUTION VERSION

**SCHEDULE I TO EXHIBIT F**

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

Easements granted to or obtained by the Borough of Somerville. The Borough and the Buyer agree to work cooperatively to identify all easements necessary for the Buyer to own and operate the Wastewater System and transfer same to the Buyer. A list of said easements will be agreed to by the parties and attached hereto post execution of this Agreement.

EXECUTION VERSION

**EXHIBIT G**

**FORM OF GENERAL ASSIGNMENT**

**GENERAL ASSIGNMENT**

**THIS GENERAL ASSIGNMENT**, dated \_\_\_\_\_, 2022, by and between the **BOROUGH OF SOMERVILLE**, a public body corporate and politic in Somerset County in the State of New Jersey (the "Assignor") and \_\_\_\_\_, a \_\_\_\_\_ corporation having a mailing address at \_\_\_\_\_ (the "Assignee").

**WHEREAS**, Assignor and Assignee entered into an Agreement of Sale dated \_\_\_\_\_, 2022 (the "Agreement") for the sale and purchase of the Wastewater System (as defined in the Agreement); and

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

**WHEREAS**, Assignee desires to accept the Assigned Rights.

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

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

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

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

EXECUTION VERSION

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

Witness

**ASSIGNOR:**

**BOROUGH OF SOMERVILLE**, a public body corporate and politic in Somerset County in the State of New Jersey

Accepted this \_\_\_\_ day of \_\_\_\_\_, 2022

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

Witness

**ASSIGNEE:**

NEW JERSEY-AMERICAN WATER COMPANY, INC.

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

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

EXECUTION VERSION

**SCHEDULE I TO EXHIBIT G**

**LIST OF ASSIGNED RIGHTS**

**PERMITS:NONE**

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**EXHIBIT H**

**DISCLOSURE SCHEDULE TO THE AGREEMENT OF SALE**

**BETWEEN THE BOROUGH OF SOMERVILLE AND NEW JERSEY AMERICAN WATER COMPANY, INC.**

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

**Schedule 2.1(A)**

**Organization of Borough**

**None**

**Schedule 2.1(B)**

**Authorization of Transaction**

**None**

**Schedule 2.1(C)**

**Title**

**None**

**Schedule 2.1(D)**

**Assets**

**None**

**Schedule 2.1(E)**

**Litigation**

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**None**

**Schedule 2.1(F)**

**Default**

**None**

**Reimbursement Obligation**

**None**

**Schedule 2.1(G)**

**System Compliance**

**None**

**Schedule 2.1(H)**

**Tariff**

**None**

**Schedule 3.1(A)**

**Organization of Buyer**

**None**

**Schedule 3.1(B)**

**Authorization of Transaction**

**None**

**Schedule 3.1(C)**

**Litigation**

**None**

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**Schedule 3.1(D)**

**Warranties**

**None**

**Schedule 3.1(E)**

**Right to Inspect**

**None**

**Schedule 3.1(F)**

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

**None**

**Schedule 3.1(G)**

**Source of Funds**

**None**

**Schedule 3.1(H)**

**Blocked Person**

**None**

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**EXHIBIT I**  
**ESCROW AGREEMENT**

THIS ESCROW AGREEMENT, dated as of \_\_\_\_\_, 2022 (this "Escrow Agreement"), by and among **BOROUGH OF SOMERVILLE**, a public body corporate and politic in Somerset County in the State of New Jersey (the "Borough"), \_\_\_\_\_, a \_\_\_\_\_ corporation ("Buyer"), and \_\_\_\_\_ (the "Escrow Agent").

**WITNESSETH**

WHEREAS, the Buyer has executed and delivered to the Borough an Asset Agreement of Sale, dated as of \_\_\_\_\_, 2022 (the "Agreement"), pursuant to which the Buyer will purchase from the Borough, and the Borough will sell to the Buyer, the Wastewater System as defined in the Agreement;

WHEREAS, it is contemplated under the Agreement that the Buyer will deposit or cause to be deposited into escrow the sum of 5% of the Purchase Price (the "Escrow Amount") in cash upon its execution of the Agreement, to be held and disbursed by the Escrow Agent in accordance with the terms herein; and

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

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

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

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

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

Section 4. PAYMENTS FROM THE ESCROW FUND.

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

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- (B) In the event that the Agreement is terminated as described in Section 9.2 of the Agreement of Sale, the Buyer shall provide written notice to the Escrow Agent of such termination specifying in reasonable detail the nature and basis for such termination. The Escrow Agent shall, upon receipt of such notice, deliver a copy of such notice to the Borough's Representative. If within ten (10) Business Days after delivery of such notice, the Escrow Agent has not received a written objection from the Borough or the Borough's Representative, the Escrow Agent shall promptly transfer the Escrow Fund to the Buyer, by wire transfer in immediately available funds. If the Escrow Agent has received an objection within the stated time period, then Escrow Agent will proceed as described in Section 5 below.
- (C) In the event that the Agreement is terminated as described in Section 9.1 of the Agreement, the Borough shall provide written notice to the Escrow Agent of such termination specifying in reasonable detail the nature and basis for such termination. The Escrow Agent shall, upon receipt of such notice, deliver a copy of such notice to the Buyer. If within ten (10) Business Days after delivery of such notice, the Escrow Agent has not received a written objection from the Buyer, the Escrow Agent shall promptly transfer the Escrow Fund to the Borough by wire transfer in immediately available funds. If the Escrow Agent has received an objection with the stated time period, then Escrow Agent will proceed as described in Section 5 below.

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

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

- (A) The Escrow Agent shall maintain the escrow Fund in a non-interest bearing account in [Bank] until the earlier of:
  - (i) the time at which there shall be no funds in the Escrow Fund; or
  - (ii) the termination of this Escrow Agreement.
- (B) Notwithstanding any other provision of this Escrow Agreement to the contrary, at any time prior to the termination of the Escrow Fund, the Escrow Agent shall, if so instructed in a writing jointly signed by the Buyer and the Borough's

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Representative, pay from the Escrow Fund, as instructed, to the Borough or the Buyer, as directed in such writing, the amount of cash so instructed.

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

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

Section 8. ESCROW AGENT.

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

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- (B) The duties and obligations of the Escrow Agent shall be determined solely by this Escrow Agreement, and the Escrow Agent shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Escrow Agreement.
- (C) In the performance of its duties hereunder, the Escrow Agent shall be entitled to rely upon any document, instrument, or signature believed by it in good faith to be genuine and signed by any party hereto or an authorized officer or agent thereof (specifically including the Borough's Representative), and shall not be required to investigate the truth or accuracy of any statement contained in any such document or instrument. The Escrow Agent may assume that any person purporting to give any notice on behalf of a party hereto in accordance with the provisions of this Agreement has been duly authorized to do so.
- (D) The Escrow Agent shall not be liable for any error of judgment or any action taken, suffered, or omitted to be taken hereunder except in the case of its gross negligence, bad faith, or willful misconduct. The Escrow Agent may consult with counsel of its own choice and shall have full and complete authorization and protection for any action taken or suffered by it hereunder in good faith and in accordance with the opinion of such counsel.
- (E) The Escrow Agent shall have no duty as to the collection or protection of the Escrow Fund or income thereon, nor to preserve any rights pertaining thereto beyond the safe custody of any such funds actually in its possession.
- (F) As compensation for its services to be rendered under this Agreement, Escrow Agent shall be reimbursed upon request for all expenses, disbursements, and advances, including reasonable fees of outside counsel, if any, incurred or made by it in connection with the preparation of this Escrow Agreement and the carrying out of its duties under this Escrow Agreement. All such expenses shall be the joint and several responsibility of the Borough and the Buyer.
- (G) The Buyer and the Borough shall reimburse and indemnify the Escrow Agent for and hold it harmless against any loss, liability, or expense, including, without limitation, reasonable attorney's fees incurred except in connection with gross negligence, bad faith, or willful misconduct on the part of the Escrow Agent arising out of, or in connection with the acceptance or performance of its duties and obligations under this Escrow Agreement.
- (H) The Escrow Agent may resign at any time by giving twenty (20) Business Days' prior written notice of resignation to the Borough's Representative and the Buyer. The Borough and the Buyer may remove the Escrow Agent at any time by jointly giving the Escrow Agent ten (10) Business Days' written notice signed by each of them. If the Escrow Agent is to resign or be removed, a successor Escrow Agent shall be appointed by the Buyer by written instrument executed by the Borough's Representative and the Buyer. Such instrument shall be delivered to the Escrow Agent and to such successor Escrow Agent and, thereupon, the resignation or

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removal of the predecessor Escrow Agent shall become effective and such successor Escrow Agent, without any further act, deed or conveyance, shall become vested with all right, title, and interest to all cash and property held hereunder of such predecessor Escrow Agent. Such predecessor Escrow Agent shall, on the written request of the Borough's Representative, the Buyer, or the successor Escrow Agent, execute and deliver to such successor Escrow Agent all the right, title, and interest hereunder in and to the Escrow Fund of such predecessor Escrow Agent and all other rights hereunder of such predecessor Escrow Agent. If no successor Escrow Agent is appointed within twenty (20) Business Days of a notice of resignation by the Escrow Agent, the Escrow Agent's sole responsibility shall thereafter be to hold the Escrow Fund until the earlier of its receipt of designation of a successor Escrow Agent, a joint written instruction by the Borough's Representative and the Buyer, or termination of this Escrow Agreement in accordance with its terms.

- (I) The Escrow Agent is acting as a stakeholder only with respect to the Escrow Fund. Upon making delivery of the Escrow Fund in the manner herein provided, the Escrow Agent shall have no further liability hereunder.
- (J) The Borough and the Buyer acknowledge that the Escrow Agent has represented the Borough in connection with, among other things, the Agreement and the matters giving rise to this Escrow Agreement and will continue to represent the Borough in connection with such matters and any other matters. Each of the parties to this Agreement waives any right it now has or may have in the future to any claim of conflict as a result of the Escrow Agent's execution, delivery, and performance of this Agreement or the transactions contemplated hereby and the Escrow Agent's representation of the Borough in any matter including, without limitation, any action, litigation, or representation relating to the Agreement, this Escrow Agreement, and the matters giving rise to each of them.

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

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

If to the Buyer:

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With a copy to:

Copy to:

Ryan J. Scerbo, Esq.  
61 South Paramus Road  
Suite 250  
Paramus, NJ 07652  
[rscerbo@decotiislaw.com](mailto:rscerbo@decotiislaw.com)

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

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

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

Section 14. SEVERABILITY. If any term or other provision of this Agreement is invalid, illegal, or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect as long as the economic and legal substance of the transactions contemplated by this Escrow Agreement is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal, or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner so that the transactions contemplated by this Agreement be consummated as originally contemplated to the fullest extent possible.

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

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

EXECUTION VERSION

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

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

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

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

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

BOROUGH OF SOMERVILLE

[BUYER]

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

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

ESCROW AGENT

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

EXECUTION VERSION

**EXHIBIT J**

**CUSTOMER SERVICE STANDARDS AND CUSTOMER SERVICE PLAN**

1. The Buyer shall maintain the Wastewater System laterals from mains to curb line of property and shall undertake all necessary capital improvements, maintenance, repairs, and replacement to the Wastewater System as shall be required from time to time. Such undertaking shall be made in accordance with prudent industry standards.

2. The Buyer shall maintain buildings and property in a neat and orderly appearance consistent with community standards and shall undertake reasonable measures to protect the health, safety, and welfare of the public with respect to the Wastewater System.

3. The Buyer shall operate the Wastewater System in a manner to minimize odors, dust, spills, and other nuisances. The Buyer shall provide appropriate customer service staffing and response times for any complaints about nuisances or service problems.

4. The Buyer's employees shall provide a qualified staff and experienced employees and third-party contractors who have direct experience in operating similar systems. The Buyer shall maintain the necessary number of employees, staff, and third-party contractors to operate, maintain, and manage the Wastewater System.

5. The Buyer shall implement a plan of action protocol for emergency events which shall include notices to the Borough and other regulating entities having jurisdiction and for measures which facilitate coordinated emergency response actions, as needed. The Buyer shall maintain a toll-free 24-hour telephone number where users of the Wastewater System can report emergencies.

6. The Buyer shall provide monthly billing and add wastewater service charges to the existing Somerville resident water bill, providing customers with one monthly bill that clearly identifies the charges associated with water service and the charges associated with wastewater service. The Buyer shall offer payment options, including by mail, in-person, by phone or online, including an in-person payment location in the Borough – Friendly Check Cashing #7, 19-21 South Bridge St.

EXECUTION VERSION

**EXHIBIT K**

**CAPITAL IMPROVEMENTS**

The following is a list of capital improvements the Buyer intends to make as part of its ten (10) year \$9.5 million commitment in Section 8.4 of the Agreement. The list is subject to revision based upon further due diligence conducted post-Closing.

- Sewer main and manhole replacement and rehabilitation program performed in consultation and coordination with the Borough on road improvement projects
- Inspection and maintenance of the 27" sewer main and associated manholes
- Sewer Camera Truck purchase
- Acquisition of GIS/GPS coordinates for all above-ground or at-grade assets such as manholes, the pump station, valves, clean outs, etc. for GIS mapping of the Wastewater System
- Inflow and Infiltration Study & Manhole Elevation Survey
- Customer service lateral maintenance, replacements and upgrades

EXECUTION VERSION

**EXHIBIT L**  
**BOROUGH CONSENT**

A copy of the Borough's Municipal Consent Ordinance shall be attached following adoption by the Borough's Mayor and Council

EXECUTION VERSION

EXHIBIT M

RESERVED

EXECUTION VERSION

**EXHIBIT N**  
**LIST OF BOROUGH FACILITIES**

Sewer Connection	Occupancy	Location	Comments
Yes	Borough Hall- Daniel Robert House	25 West End Avenue	
Yes	Public Library	35 West End Avenue	Connected to Borough Hall
Yes	Police Headquarters (To be replaced by Emergency Services Facility upon completion of construction and relocation)	24 South Bridge Street (New location: 85 N. Gaston Avenue)	Connected to Council Chambers
Yes	Fire House- Engine Company	170 East Main Street	Borough will repurpose location after construction of new Emergency Service Facility
Yes	Fire House- West End Hose Co. (To be replaced by Emergency Services Facility upon completion of construction and relocation)	135-137 W. High Street (New location: 85 N. Gaston Avenue)	Borough will repurpose location after construction of new Emergency Service Facility
Yes	Fire Museum	15 N. Doughty Avenue	Historic Landmark
Yes	DPW- Municipal Garage	32 5th Street	Seeking to relocate- new property TBD
YES	Comfort Station-Field House-Concession-Carol Peger Park	89 Green Street	
YES	Comfort Station- Walck Park Pool	15 Walnut Street	
YES	Wortman Fire Training Tower	36 5th Street	
YES	Comfort Station- Lepp Park- Pool- Spray Pad	22 Park Avenue	
YES	Somerville Board of Education - HS- stadium, complex	222 Davenport Street	Under renovation
YES	Somerville Board of Education-Vanderveer Elementary	51 Union Avenue	
YES	Somerville Board of Education-Middle School BOE offices	51 W. Cliff Street	

EXECUTION VERSION

**EXHIBIT O**  
**ANNUAL CHARGE PAYMENT PROCESS**

<b>Action</b>	<b>Date</b>
1 Borough receives estimated Annual Fee for following year	November of each year
2 Borough to deliver estimated Annual Fee to Buyer	November of each year.
3 Buyer shall provide the Borough with a payment equal to 105% of the estimated Annual Fee to be held by the Borough in escrow and utilized to make quarterly payments to the SRVSA	By December 15 of each year
4 Borough to make quarterly payments	2/15, 5/15, 8/15 and 11/15 of each year.
5 Borough receives notification from SRVSA that actual Annual Fee is more or less than the estimated Annual Fee (“SRVSA True-up Notice”)	
6 Borough to provide SRVSA True-up Notice to Buyer	
7 Buyer to provide additional payment to the Borough if SRVSA True-up Notice reflects that the actual Annual Fee is more than the estimated Annual Fee	

Or

Borough to provide Buyer with a credit for the amount of the estimated Annual Fee that exceeds the actual Annual Fee

EXECUTION VERSION

**EXHIBIT P**

**ACCESS AND FLOW INDEMNIFICATION AGREEMENT**

225998987v1

**ACCESS AND FLOW LIMITATION INDEMNIFICATION AGREEMENT**

**THIS ACCESS AND FLOW LIMITATION AGREEMENT** (the “Agreement”) is made and entered into on [ ] by and between the Borough of Somerville, a public body corporate and politic in Somerset County in the State of New Jersey (the “Borough” or “Somerville”) and New Jersey-American Water Company, Inc., a New Jersey Corporation with principal corporate offices at One Water Street, Camden New Jersey 08102 (the “NJAW”). Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Agreement of Sale (as defined below).

**WHEREAS**, Borough and NJAW are parties to a certain Agreement of Sale, dated \_\_\_\_\_, 2023 (the “Sale Agreement”), providing for the sale by the Borough of the assets constituting the Wastewater System to NJAW; and

**WHEREAS**, the Wastewater System includes a 27-inch wastewater line within the Borough Wastewater System (the “27-inch Wastewater Line”) connecting to the Somerset Raritan Valley Sewerage Authority (“SRVSA”) wastewater conveyance system; and

**WHEREAS**, the Borough previously entered into an Access and Flow Limitation Agreement with SRVSA which primarily address flow through a 27-inch Wastewater Line, dated September 4, 2018 (the “Access and Flow Agreement”), a copy of which is attached hereto and made a part hereof as **Exhibit A**; and

**WHEREAS**, due the ongoing contractual relationship between the Borough and the SRVSA, and pursuant to the Sale Agreement, the Borough and NJAW agreed to enter into this Agreement such that NJAW shall abide by certain terms, conditions and requirements of the Access and Flow Agreement and indemnify the Borough for same, as more fully described herein.

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

1. NJAW agrees that it shall not discharge in excess of a peak hourly sewer flow of 14 mgd, or a daily average sewer flow of 9 mgd, to the SRVSA’s Storm Water Control Facility (“SCTF”). The SCTF is intended to alleviate sanitary sewer overflows (SSOs) in the wastewater collection system at manholes SV-01, SV-02, SV-03, SV-04, SV-05, SV-06 and/or SV-07. An SSO in any of these manholes not related solely to: 1) a surcharge in the SRVSA interceptor, 2) a failure of the SCTF and/or 3) SRVSA maintenance operations, is therefore solely related to the conveyance capacity of the 27-inch line, which may not entirely be caused by NJAW operation and maintenance of the 27 inch line, but is in no way the responsibility of SRVSA.
2. The SCTF is not designed to accommodate flows in excess of a peak hourly sewage flow of 14 mgd or a daily average sewer flow of 9 mgd. Flow being conveyed into this facility via the existing 27-inch Wastewater Line shall not at any time exceed these flow amounts, occurring as a result of causes or reasons including but not limited to the following: (a) an increase in the capacity of the existing 27-inch Wastewater Line (through lining of the pipe interior or any other available means); (b) replacement of the existing 27-inch Wastewater Line with a pipe of greater capacity; (c) construction

of additional gravity or force main sewer line to increase conveyance capacity to the SCTF; (d) an increase in the capacity of the Somerville Wastewater System; (e) utilization of the former 20-inch conveyance capacity to the SCTF; or (f) as a result of an increase in I/I to the SCTF and/or MC-4. SSOs resulting from verifiable and documented flows from the 27-inch Wastewater Line in excess of the design criteria of the SCTF shall be the sole responsibility of American Water.

3. Except as otherwise set forth herein, NJAW, to the extent permitted by law, expressly agrees to fully indemnify, protect and hold the Borough and any agents, servants, commissioners, employees, consultants and contractors of Borough (collectively, the "Borough Indemnified Parties") harmless from and against any losses, costs, or claims ("Claims") of any kind asserted against Borough, including Claims from the SRVSA or by any party, individual or entity which are associated with, relate to or arise out of (a) SSOs that may occur within the Wastewater System that are not in manholes SV-01, SV-02, SV-03, SV-04, SV-05, SV-06 and/or SV-07, for whatever cause or reason, or (b) for SSOs in manholes SV-01, SV-02, SV-03 when the conditions that trigger the operation of the SCTF have not been met and the SCTF is properly operating, or (c) SSOs in manholes SV-01, SV-02, SV-03, SV-04, SV-05, SV-06 and/or SV-07 which result from verifiable and documented flows in excess of the design criteria of the SCTF and provided the SCTF is properly operating, which such indemnification shall include the payment or reimbursement of the Borough's reasonable attorney's engineering and other related fees, as may be applicable.
4. Access: As of the date of this agreement, NJAW agrees that it will grant the Borough, and Borough invitees, including the SRVSA, perpetual access to manhole SV-04. Access to this location is necessary for the purpose of installing, operating, repairing, replacing, calibrating and maintaining an SRVSA flowmeter (the "Work"). NJAW grants the Borough and Borough invitees, their respective agents, servants, employees and contractors the perpetual right to enter ("Right of Entry") the location for the purposes of conducting the Work, provided that NJAW shall be named additional insured on all insurance policies required of said contractors, subcontractors and agents. The Right of Entry permitted by this agreement shall expire upon the permanent decommissioning of the SCTF. The work shall be performed at the sole cost and expense of party undertaking same. The party undertaking the Work shall use reasonable efforts to conduct the Work in a manner that minimizes the extent of any inconvenience to and/or interference with NJAW's use of the location. The area in which the Work may be conducted by shall be limited to a fifty-foot (50') radius around Manhole SV-04. Upon completion of any Work that performed, the Borough shall give NJAW a minimum of twenty-four (24) hours' notice prior to commencement of the Work, which notice may be verbal communication or via email.
5. As part of the consideration for entering into this Agreement, the Borough shall cooperate and assist NJAW in meeting the obligations of the Access and Flow Agreement. Such cooperation and assistance may include pre-closing and may include facilitation NJAW conducting inflow and infiltration (I&I) studies and participation in meetings with the NJDEP to determine possible mitigation plans.
6. This Agreement shall not be assigned by either of the Parties without the prior written consent of the other, and any purported assignment without such prior written consent

shall be null and void without any effect upon the terms of this Indemnification Agreement.

7. Any modifications, waivers or amendments to the Agreement or any provision hereof shall only be effective if set forth in a written instrument executed by the Parties.
8. In the event that any provision contained in this Agreement shall, for any reason, be determined to be invalid, illegal, or unenforceable in any respect by any court of competent jurisdiction and/or any state agency or governmental body, the Parties shall, to the extent permitted by law, negotiate in good faith and agree to such modifications or amendments of this Agreement as shall, to the maximum extent practicable in light of such determination of invalidity, illegality, or unenforceability implement and give effect to the intentions of Parties as reflected herein. Other provisions of this Agreement shall, as may have been amended, modified, supplemented or otherwise affected by such action, remain in full force and effect.
9. The Borough shall provide NJAW with a copy of all communications from SRVSA related to the Access and Flow Agreement or the 27-inch Wastewater Line within five (5) days of receiving same, whether in writing, electronically or verbally.
10. All notices, consents, approvals or other such communications required or permitted to be provided hereunder by either of the Parties shall be in writing and shall be deemed sufficiently served upon the other Party only if delivered in person or sent by certified or registered mail, postage prepaid, with a copy sent by overnight mail, courier or fax, as follows.

- a. To Borough:  
Mayor Dennis Sullivan  
Borough of Somerville  
Borough Hall  
25 West End Avenue  
Somerville, New Jersey 08876  
Phone: (908) 725-2300  
Email: [mayor@somerville.org](mailto:mayor@somerville.org)
- b. With a copy to:  
Ryan J. Scerbo, Esq.  
DeCotiis, FitzPatrick, Cole & Giblin, LLP  
61 South Paramus Road  
Suite 250  
Paramus, New Jersey 07652  
Phone: (201) 907-5264  
Email: [Rscerbo@decotiislaw.com](mailto:Rscerbo@decotiislaw.com)
- c. To NJAW:  
Vice President Operations  
New Jersey - American Water Company, Inc.  
1 Water Street  
Camden, NJ 08102

d. With a copy to:                   General Counsel  
New Jersey-American Water Company, Inc.  
1 Water Street  
Camden, NJ 08102

11. This Agreement shall be governed by and enforced in accordance with the laws of the State of New Jersey.
12. This Agreement may be executed in counterparts, all of which together shall constitute one agreement binding on all of the parties hereto, notwithstanding that all such parties are not signatories to the original or the same counterpart.

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

**BOROUGH OF SOMERVILLE**

By: \_\_\_\_\_  
Name: Dennis Sullivan  
Title: Mayor

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

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

**EXHIBIT A**  
**ACCESS AND FLOW LIMITATION AGREEMENT**

#3258224

	<b>SOMERSET COUNTY</b>  <b>DOCUMENT COVER SHEET</b>
<p>HON. STEVE PETER                  SOMERSET COUNTY CLERK                  PO BOX 3000                  20 GROVE STREET                  SOMERVILLE, NJ 08876</p> <p>WWW.CO.SOMERSET.NJ.US</p>	

*(Official Use Only)*

DATE OF DOCUMENT: September 4, 2018	TYPE OF DOCUMENT: Access and Flow Limitation Agreement
FIRST PARTY <i>(Grantor, Mortgagor, Seller or Assignor)</i> Somerset Raritan Valley Sewerage Authority	SECOND PARTY <i>(Grantee, Mortgagee, Buyer, Assignee)</i> Borough of Somerville
ADDITIONAL PARTIES:	

THE FOLLOWING SECTION IS REQUIRED FOR DEEDS ONLY	
MUNICIPALITY:	MAILING ADDRESS OF GRANTEE:
BLOCK:	
LOT:	
CONSIDERATION:	

THE FOLLOWING SECTION IS FOR ORIGINAL MORTGAGE BOOKING & PAGING INFORMATION FOR ASSIGNMENTS, RELEASES, SATISFACTIONS, DISCHARGES & OTHER ORIGINAL MORTGAGE AGREEMENTS ONLY			
BOOK	PAGE	INSTRUMENT #	DOCUMENT TYPE

**DO NOT REMOVE THIS PAGE**  
**THIS DOCUMENT COVER SHEET IS PART OF THE SOMERSET COUNTY FILING RECORD**  
**RETAIN THIS PAGE FOR FUTURE REFERENCE**

**ACCESS AND FLOW LIMITATION AGREEMENT  
BY AND BETWEEN  
THE SOMERSET RARITAN VALLEY SEWERAGE AUTHORITY  
AND  
THE BOROUGH OF SOMERVILLE**

THIS AGREEMENT ("Agreement") made this 4<sup>TH</sup> day of September 2018, between Somerset Raritan Valley Sewerage Authority ("SRVSA" or the "Authority"), with offices at 50 Polhemus Lane, Bridgewater, New Jersey 08807, and the Borough of Somerville, a body politic and corporate of the State of New Jersey ("Somerville"), having an address of Borough Hall, 25 West End Avenue, Somerville, New Jersey 08876 (the SRVSA and Somerville collectively referred to herein as the "Parties").

**FACTUAL RECITALS**

- A. The Somerset Raritan Valley Sewerage Authority ("the SRVSA") owns and operates a wastewater treatment plant located at 50 Polhemus Lane, Bridgewater Township, Somerset County, New Jersey, and owns and operates an Interceptor Sewer System which transmits wastewater flows from its Participants.
- B. Seven (7) municipalities discharge all or part of their sanitary wastewater to the SRVSA's collection/conveyance system, to be treated at the SRVSA's wastewater treatment plant. Somerville Borough ("Somerville") is one (1) of the seven (7) Participants to the SRVSA. The other Participants to the SRVSA are as follows: Branchburg Township; Bridgewater Township; Hillsborough Municipal Utilities Authority; Manville Borough; Raritan Borough; and Warren Township Sewerage Authority. The seven Participants are hereinafter referred to collectively as "Participants."
- C. Somerville owns and operates a sanitary wastewater collection system that services private residences, businesses, and other users throughout Somerville, Somerset County, New Jersey and a number of properties located in Bridgewater Township, Somerset County, New Jersey. Somerville measures approximately 2.3 square miles and has a population of approximately 13,000 to 14,000 persons.
- D. Somerville's sanitary wastewater collection system was built between 1890 and 1965 and includes approximately 34 miles of gravity sewer constructed of vitrified clay and reinforced concrete pipe. Pipe diameters range from 8 inches to 27 inches.
- E. Somerville's sanitary wastewater collection system receives wastewater from a portion of the Bridgewater system that is connected to the 27-inch line.
- F. Somerville's collection system discharges to SRVSA via three (3) separate meter chambers known as Meter Chambers 4, 4A & 5.
- G. The New Jersey Department of Environmental Protection issued Somerville a Notice of Violation, dated September 2, 2009, for the unpermitted discharges of raw sewage to waters of the State (Raritan River) via manholes owned by Somerville located off of Southside Avenue adjacent to Meter Chamber 4 ("MC-4").

- H. Somerville responded to the Notice of Violation by re-sealing the affected manholes, the manhole frames, and covers. The upper portions of the manholes were encased with a cohesive concrete pour.
- I. On April 12, 2011, the New Jersey Department of Environmental Protection issued a Notice of Violation, dated April 11, 2011, to Somerville for the unpermitted discharge of raw sewage to waters of the State (Peters Brook) from a manhole owned by Somerville located off Southside Avenue in Arthur Chambres Park. The manhole is located immediately upstream of the manholes that were repaired and encased in concrete in 2009.
- J. Michael Cole of Cole & Associates, LLC was retained by Somerville as its sanitary sewer engineer. Mr. Cole (PE #42137) was further retained to conduct a hydraulic capacity analysis of the suspect sanitary sewer main. Mr. Cole produced a Hydraulic Capacity Analysis of the 27" Diameter Sanitary Sewer Main dated April 2011. Mr. Cole analyzed the conveyance capacity of the gravity sewer main that discharges into the SRVSA's MC- 4. Mr. Cole concluded, among other things, that the sewer main is correctly sized for average daily flow (less than 1 million gallons per day), the sewer main is correctly sized for peak wet weather flow (3 to 3.5 million gallons per day) and there was no debris or excessive grease that would inhibit flow in the sewer main. For the avoidance of all doubt, the Parties acknowledge that SRVSA has not relied upon Mr. Cole's conclusions, studies, findings or results in determining the appropriateness or sizing of the Storm Control Treatment Facility referred to later in this Agreement.
- K. SRVSA has a long history of making improvements to its facilities in order to convey and treat the increases in flows from all of its participant towns, the most significant of which are as follows:
- 1) In order to improve treatment and provide additional capacity, the SRVSA undertook the Wastewater Plant Phase I Upgrades Project designed to improve wastewater treatment performance and to increase its capacity during such conditions to handle high flows associated with wet weather and assure plant reliability. At a cost of approximately \$17.5 million dollars, the project consisted of a new larger influent pumping station, six new additional final clarifiers with a return activated sludge pumping station, computerized Instrumentation and Control System (ICS), increasing the diameter of the plant outfall to Cuckholds Brook from 48" to 72", changing the chlorine and sulfur dioxide gas systems to sodium hypochlorite and sodium bisulfite systems for disinfection and dechlorination, respectively, and upgrading of the plant high voltage electrical distribution system and various other improvements. The project began in September 1998 and was brought to final completion in February 2005.
  - 2) In order to more effectively convey wastewater to the SRVSA facility for treatment, the SRVSA undertook the Interceptor Relief Sewer Project to significantly increase the interceptor system's capacity to deliver flow to the facility during extreme wet weather conditions. Hydraulic modeling of the interceptor sewer system was undertaken which recommended the construction of a relief sewer at a cost of approximately \$10 million. The SRVSA commenced easement acquisitions and funding of approximately four miles of 30-inch diameter sewer that runs parallel to and is hydraulically interconnected with SRVSA's existing interceptor. At various points, control gates and interconnections

allow the new relief sewer and existing interceptor to operate as one unit, yet allow for isolation of various reaches for maintenance and repair activity. This complex Project included seven major river crossings, including one historic canal (Raritan Power Canal dating back to the mid 1800's requiring special attention to archeologically significant factors) and four major road crossings. The project was commenced in 2004 and completed in 2007.

3) In addition to constructing a mechanism to convey a higher flow rate of wastewater to the SRVSA facility and additional treatment capabilities at the facility to treat the same, the SRVSA enhanced its ability to discharge highly treated wastewater to the Raritan River. SRVSA designed and constructed the Outfall Relocation Project calling for the construction of approximately 4,300 linear feet of buried 72-inch inner diameter Pre-stressed Concrete Cylinder Pipe ("PCCP") and associated structures, tunneling of approximately 256 linear feet of 72-inch PCCP under railroads, jacking of five 36-inch PVC pipes (approximately 20 feet) and steel casings under an active eighty year old cast iron 48-inch water pipe, approximately 40 feet of 48-inch PCCP and connection to existing plant facilities, control of contaminated groundwater during pipe and structure installation, and placement of low permeability backfill. Financing for the contract was approximately \$18 million.

- L. Upon completion of the Wastewater Plant Phase I Upgrades Project and the Interceptor Sewer Project, the SRVSA engaged its consulting engineer, Kleinfelder, to undertake a preliminary examination of the Somerville overflows just upstream of MC-4 to determine the extent of any continuing overflows. The purpose of this examination was to develop a cost effective and implementable plan to address and eliminate overflows in the future. It was determined that the extent of the condition was more severe than had ever been anticipated. As part of this examination, Kleinfelder utilized Somerville's numbering system for the existing Somerville manholes along its 27-inch trunk sewer that are tributary to MC-4, as shown on the attached map in Appendix "A" and identified with labels beginning with "SV-" followed by a number.
- M. SRVSA, Somerville and the New Jersey Department of Environmental Protection entered into an Administrative Consent Order ("ACO") on September 5, 2013, which ACO addressed alleged unpermitted discharges resulting during periods of high precipitation occurring at Arthur Chambres Park on March 24, 2011, April 24, 2011, May 16, 2011, August 14, 2011, November 23, 2011, December 8, 2011, June 7, 2013 and June 10, 2013. The ACO required that SRVSA and Somerville complete enumerated tasks to control, eliminate and/or treat such unpermitted discharges.
- N. Pursuant to Paragraph 25A of the ACO, the SRVSA commenced an SSO-Alternatives Analysis, which evaluated the feasibility of different options for eliminating overflows in the vicinity of Meter Chamber Number 4 (MC-4). The options considered in the Alternatives Analysis included: (A) no action; (B) inflow and infiltration (I/I) reduction in the municipal sewer systems; (C) construction of a storage tank to hold excess flow during high flow conditions; (D) construction of a pump station, force main, and SRVSA treatment plant expansion to treat Somerville's flow when it is restricted from entering SRVSA's interceptor; and (E) a Storm Control Treatment Facility (SCTF). The Storm Control Treatment Facility alternative was determined by SRVSA to be the most economical, feasible, and environmentally sound alternative to most expeditiously

address the SSO problem just upstream of MC-4 and prevent additional SSO problems from developing in the future. This conclusion was confirmed by NJDEP by letter dated September 8, 2015, which stated that the NJDEP found no objection to SRVSA's preferred alternative of a Storm Control Treatment Facility (SCTF), and conveyed preliminary effluent limitations and minimum receiving stream (Raritan River) flow requirements for the SCTF.

- O. When constructed, the SRVSA will operate the SCTF during wet weather periods, and will discharge only when the USGS Gage Flow for the Raritan River at Manville exceeds 754 cubic feet per second. The SCTF is designed to treat a peak hourly sewage flow of 14 million gallons per day ("mgd") and a daily average sewage flow of 9 mgd.
- P. The capacity of the SCTF has been designed by the SRVSA based upon the carrying capacity of the Somerville's 27-inch sewer line and on the existing flows emanating from Somerville Borough and a number of properties located in Bridgewater, Somerset County, New Jersey, as measured in the 27-inch Somerville sewer line during high storm flow conditions. In order for the SCTF to treat a peak hourly sewage flow of 14 mgd and a daily average sewage flow of 9 mgd, the 27-inch Somerville sewer line must be in relatively good condition and free of obstructions and conditions that reduce its conveyance capacity. The inability of the 27" sewer line to convey sufficient flow could result in overflows in Somerville.
- Q. The SCTF is intended to alleviate SSOs in the Somerville collection system that would occur at manholes just upstream of MC-4, designated as SV-01, SV-02, SV-03, SV-04, SV-05, SV-06 and/or SV-07 only, and for reasons that are only related to a surcharge in the SRVSA interceptor. The SCTF is not designed to alleviate other SSOs that may occur elsewhere within the Somerville sewer system, for whatever cause or reason.
- R. The Parties are currently negotiating with the New Jersey Department of Environmental Protection with respect to a second ACO for the construction of the SCTF.

NOW THEREFORE, in consideration of the foregoing premises and the mutual agreements contained below, the Parties agree as follows:

- 1. Once the SCTF is constructed by SRVSA, Somerville agrees that at any time it shall not discharge in excess of a peak hourly sewer flow of 14 mgd, or a daily average sewer flow of 9 mgd, to the SCTF. The SCTF is intended to alleviate sanitary sewer overflows (SSOs) in the Somerville collection system at manholes SV-01, SV-02, SV-03, SV-04, SV-05, SV-06 and/or SV-07. An SSO in any of these manholes not related solely to: 1) a surcharge in the SRVSA interceptor, 2) a failure of the SCTF and/or 3) SRVSA maintenance operations, is therefore solely related to the conveyance capacity of the 27-inch line, which may not be entirely caused by Somerville's operation and maintenance of the 27 inch line, but is in no way the responsibility of SRVSA.
- 2. The SCTF is not designed to accommodate flows in excess of a peak hourly sewage flow of 14 mgd or a daily average sewer flow of 9 mgd. Flow being conveyed into this facility via the existing 27-inch Somerville line shall not at any time exceed these flow amounts, occurring as a result of causes or reasons including but not limited to the following: (a) an increase in the capacity of the existing 27-inch Somerville line (through lining of the pipe

interior or any other available means); (b) replacement of the existing 27-inch Somerville line with a pipe of greater capacity; (c) construction of additional gravity or force main sewer line to increase conveyance capacity to the SCTF; (d) an increase in the capacity of the Somerville collection system; (e) utilization of the former 20-inch conveyance capacity to the SCTF; or (f) as a result of an increase in I/I to the SCTF and/or MC-4 . SSOs resulting from verifiable and documented flows from the 27 inch line in excess of the design criteria of the SCTF shall be the sole responsibility of Somerville Borough.

3. Except as otherwise set forth herein, Somerville, to the extent permitted by law, expressly agrees to fully indemnify, protect and hold SRVSA and any agents, servants, commissioners, employees, consultants and contractors of SRVSA (collectively, the "SRVSA Indemnified Parties") harmless from and against any losses, costs, or claims ("Claims") of any kind asserted against SRVSA by any party, individual or entity which are associated with, relate to or arise out of (a) SSOs that may occur within the Somerville sewer system that are not in manholes SV-01, SV-02, SV-03, SV-04, SV-05, SV-06 and/or SV-07, for whatever cause or reason, or (b) for SSOs in manholes SV-01, SV-02, SV-03 when the conditions that trigger the operation of the SCTF have not been met and the SCTF is properly operating, or (c) SSOs in manholes SV-04, SV-05, SV-06 and/or SV-07 which result from verifiable and documented flows in excess of the design criteria of the SCTF and provided the SCTF is properly operating, which such indemnification shall include the payment or reimbursement of SRVSA's reasonable attorney's engineering and other related fees, as may be applicable. .
4. Except as otherwise set forth herein, SRVSA, to the extent permitted by law, expressly agrees to fully indemnify, protect and hold Somerville and any agents, servants, elected officials, employees, consultants and contractors of Somerville (collectively, the "Somerville Indemnified Parties") harmless from and against any losses, costs, or claims ("Claims") of any kind asserted against Somerville by any party, individual or entity which are associated with, relate to or arise out of SSOs that may occur within the Somerville sewer system at manholes SV-01, SV-02, SV-03 when the flow control valve is closed thereby separating the Somerville system from the SRVSA interceptor, and SSOs, or improper or failed operation of the SCTF in manholes SV-04, SV-05, SV-06 and/or SV-07 when there is a documented problem or failure with the SRVSA facilities, including improper or failed operation of the SCTF, and when the verifiable and documented flows do not exceed the design criteria of the SCTF, which such indemnification shall include the payment or reimbursement of Somerville's reasonable attorney's engineering and other related fees, as may be applicable.
5. Access: As of the date of this agreement, Somerville agrees that it will grant SRVSA perpetual access to manhole SV-04. Access to the property is necessary for the purpose of installing, operating, repairing, replacing, calibrating and maintaining a flowmeter (the "Work"). Somerville grants SRVSA, its agents, servants, employees and contractors the perpetual right to enter ("Right of Entry") the Property for the purposes of conducting the Work, provided that Somerville shall be named additional insured on all insurance policies required of SRVSA's contractors, subcontractors and agents. The Right of Entry permitted by this agreement shall expire upon the permanent decommissioning of the Storm Control Treatment Facility (SCTF). The Work shall be performed at the sole cost and expense of SRVSA. SRVSA shall use reasonable efforts to conduct the Work in a manner that minimizes the extent of any inconvenience to and/or interference with

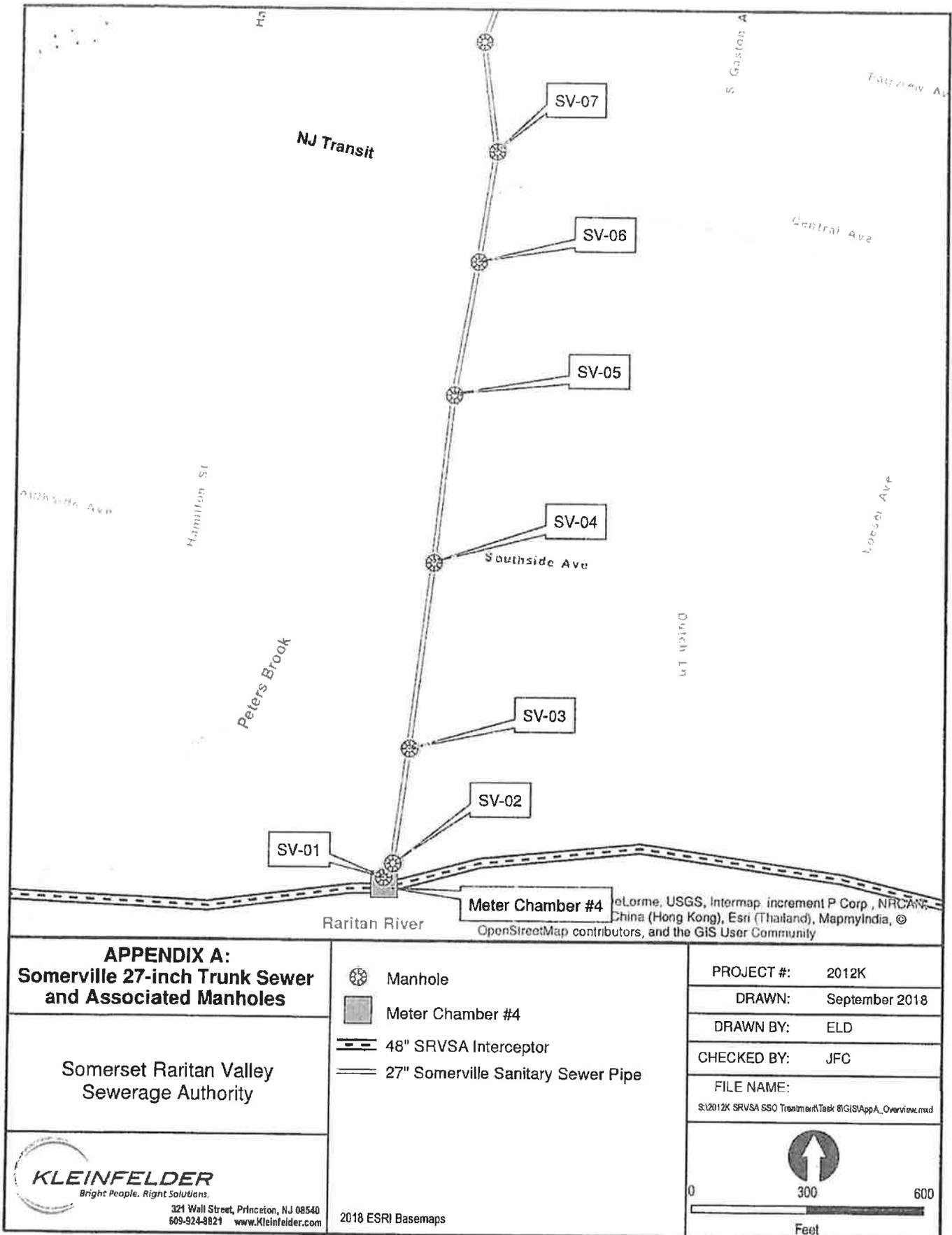
Somerville's use of the Property. The area in which the Work may be conducted by SRVSA shall be limited to a fifty-foot (50') radius around Manhole SV-04. Upon completion of any Work that it performs, SRVSA will complete any necessary restoration of the area affected, if any. SRVSA shall give Somerville a minimum of twenty-four (24) hours' notice prior to commencement of the Work, which notice may be verbal communication or via email.

6. This Agreement shall not be assigned by either of the Parties hereto without the prior written consent of the other, and any purported assignment without such prior written consent shall be null and void and without any effect upon the terms of this Agreement.
7. No oral order, objection, claim or notice by either of the Parties hereto shall affect or modify any of the terms or obligations contained in this Agreement. Any modifications, waivers or amendments to the Agreement or any provision thereof shall only be effective if set forth in a written instrument executed by the SRVSA and Somerville.
8. In the event that any provision contained in this Agreement shall, for any reason, be determined to be invalid, illegal, or unenforceable in any respect by any court of competent jurisdiction and/or any state agency or governmental body, the SRVSA and Somerville shall, to the extent permitted by law, negotiate in good faith and agree to such modifications or amendments of this Agreement as shall, to the maximum extent practicable in light of such determination of invalidity, illegality, or unenforceability implement and give effect to the intentions of the Parties as reflected herein. Other provisions of this Agreement shall, as may have been amended, modified, supplemented or otherwise affected by such action, remain in full force and effect.
9. All notices, consents, approvals or other such communications required or permitted to be provided hereunder by either of the Parties shall be in writing and shall be deemed sufficiently served upon the other Party only if delivered in person or sent by certified or registered mail, postage prepaid, with a copy sent by overnight mail, courier or fax, as follows:

To Somerville: Mayor Ellen Brain  
Borough Hall  
25 West End Avenue  
Somerville, New Jersey 08876  
Phone: (908) 725-2300  
Email: mayor@somerville.org

With a Copy To: Ryan J. Scerbo, Esq.  
DeCotiis, FitzPatrick, Cole & Giblin, LLP  
Glenpointe Centre West, Suite 31  
500 Frank W. Burr Boulevard  
Teaneck, NJ 07666  
Phone: 201-907-5264  
Email: RScerbo@decotiislaw.com

To the SRVSA: Ronald S. Anastasio, P.E.  
Executive Director



**RESOLUTION 18-0904-294**

**AUTHORIZING THE EXECUTION OF AN ACCESS AND FLOW LIMITATION  
AGREEMENT BY AND BETWEEN THE SOMERSET RARITAN VALLEY  
SEWERAGE AUTHORITY AND THE BOROUGH OF SOMERVILLE**

**WHEREAS**, the Somerset Raritan Valley Sewerage Authority ("SRVSA") owns and operates a wastewater treatment plant and an Interceptor Sewer Collection System which conveys wastewater flows from various municipalities, including the Borough of Somerville ("Somerville"), to the wastewater treatment plant; and

**WHEREAS**, Somerville owns and operates a sanitary wastewater collection system that services private residences, businesses and other users throughout Somerville; and

**WHEREAS**, On September 5, 2013, the SRVSA and Somerville entered into an Administrative Consent Order (the "2013 ACO") with the New Jersey Department of Environmental Protection ("Department") to address unpermitted discharges of untreated sanitary wastewater (also known as sanitary sewer overflows, or "SSOs"); and

**WHEREAS**, in addition to requiring Somerville to undertake certain actions, the 2013 ACO required the SRVSA to undertake several actions including a Sanitary Sewer Overflow – Alternatives Analysis to evaluate the feasibility of different options for elimination of the sewer overflows in the vicinity of the SRVSA's Meter Chamber Number 4 (MC-4); and

**WHEREAS**, the Department agreed to the SRVSA's proposal to construct the Storm Control Treatment Facility ("SCTF") designed to reduce I/I by operating only during wet weather periods, and only when the Manville Gage Flow for the Raritan River exceeds 754 cubic feet per second; and

**WHEREAS**, the SCTF is designed to treat a peak hourly sewage flow of 14 million gallons per day ("mgd") and a daily average sewage flow of 9 mgd; and

**WHEREAS**, the capacity of the SCTF has been designed by the SRVSA based upon the carrying capacity of the Somerville's 27-inch sewer line and on the existing flows emanating from Somerville Borough, as measured in the 27-inch Somerville sewer line during high storm flow conditions; and

**WHEREAS**, The SCTF is not designed to accommodate flows in excess of a peak hour sewage flow of 14 mgd or a daily average sewer flow of 9 mgd; and

**WHEREAS**, Somerville, SRVSA and the Department are in the process of negotiating a second ACO that will require SRVSA to complete the SCTF and Somerville to undertake certain I/I source identification actions; and

**WHEREAS**, Somerville and SRVSA desire to enter into a written agreement confirming their respective understandings concerning the SCTF, its capabilities and its restrictions.

**NOW, THEREFORE, BE IT RESOLVED**, by the Borough Council of the Borough of Somerville that it hereby approves and authorizes the execution of the Access and Flow Limitation Agreement by and between the Somerset Raritan Valley Sewerage Authority and the Borough at the time the second ACO is approved and executed by the parties.

**BE IT FURTHER RESOLVED**, that the Mayor and Clerk are hereby authorized and directed to execute the Access and Flow Limitation Agreement.

Adopted by Borough Council on September 4, 2018

  
\_\_\_\_\_  
Mayor  
\_\_\_\_\_  
Clerk/Administrator

I, Kevin Sluka, Borough Clerk of the Borough of Somerville, County of Somerset, State of New Jersey, hereby certify this to be a true copy of a resolution adopted by the Borough Council on September 4, 2018

  
\_\_\_\_\_  
Kevin Sluka, Clerk/Administrator

Res. No. 18-0827-7

**RESOLUTION ACCEPTING AND AUTHORIZING THE ACCESS AND FLOW  
LIMITATION AGREEMENT BY AND BETWEEN THE SOMERSET RARITAN  
VALLEY SEWERAGE AUTHORITY AND  
THE BOROUGH OF SOMERVILLE**

**WHEREAS**, under Res. No. 14-1027-10, the Somerset Raritan Valley Sewerage Authority approved the Storm Control Treatment Facility (SCTF) as the selected alternative for the solution to the Somerville Borough Sanitary Sewer Overflow (SSO) issue; and

**WHEREAS**, the design capacity of the SCTF is based upon the carrying capacity of the Borough of Somerville's existing 27-inch diameter trunk sewer that connects to the SCTF, and flows emanating from the Borough measured during high-flow conditions, where the SCTF is designed to treat a peak hourly average flow of 14 millions of gallons per day (MGD) and a daily average flow of 9 MGD; and

**WHEREAS**, as a part of the SCTF project, the Authority staff have determined that an agreement is needed with the Borough of Somerville to provide assurance to the Authority that the Borough will limit its flow conveyed to the SCTF via the existing 27-inch trunk sewer to a peak hourly average flow of 14 millions of gallons per day (MGD) and a daily average flow of 9 MGD; and

**WHEREAS**, the Authority staff working in conjunction with the Borough of Somerville staff have prepared the attached agreement where the Borough of Somerville provides the Authority with an assurance that flows into the SCTF will be limited to the amounts specified above; and

**WHEREAS**, this agreement also provides the Authority with perpetual access to Manhole SV-04 owned and operated by the Borough for the purpose of installing and maintaining a flowmeter necessary for the operation of the SCTF.

**NOW, THEREFORE, BE IT RESOLVED** by The Somerset Raritan Valley Sewerage Authority Board of Commissioners hereby accepts and authorizes the **ACCESS AND FLOW LIMITATION AGREEMENT BY AND BETWEEN THE SOMERSET RARITAN VALLEY SEWERAGE AUTHORITY AND THE BOROUGH OF SOMERVILLE**; and

**BE IT FURTHER RESOLVED** that The Somerset Raritan Valley Sewerage Authority Board of Commissioners further authorizes directs and empowers the Executive Director to enter into and execute the necessary contracts.

INTRODUCED BY:

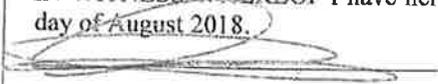
SECONDED BY:

Roll Call Vote:

**CERTIFICATION**

I, RONALD S. ANASTASIO, Executive Director and Certifying Agent of The Somerset Raritan Valley Sewerage Authority, HEREBY CERTIFY that the foregoing is a true copy of a Resolution adopted at a Regular Meeting of the Authority held on the 27<sup>th</sup> day of August 2018, as the same appears on record in the Minute Book of the Authority.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the Seal of the Authority this 28<sup>th</sup> day of August 2018.

  
Ronald S. Anastasio, P.E.  
Executive Director  
RSA/dos

The Somerset Raritan Valley Sewerage Authority  
50 Polhemus Lane; Bridgewater, NJ 08807  
Phone: (732) 469-0593  
Email: Ronald.Anastasio@srvsa.org

With a Copy To: Diane Alexander, Esq.  
Maraziti Falcon, L.L.P.  
150 John F. Kennedy Parkway  
Short Hills, New Jersey 07078  
Phone: (973) 912-6811  
Email: dalexander@mfhenvlaw.com

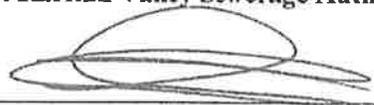
All notices shall be deemed provided as of the day of receipt, except in the case of registered or certified mail where, in such case, notice shall be provided given when sent, postage pre-paid, return receipt requested, addressed to the address set forth herein or as same has been duly modified in writing, even if delivery is refused.

10. This Agreement has been made in the State of New Jersey and shall be interpreted, construed, performed and enforced under and in accordance with the laws of the State of New Jersey.

The Parties hereby intend to be bound by the terms and conditions of this Agreement and cause it to be signed by their proper and authorized representatives.

DATED: 8/28/18

Somerset Raritan Valley Sewerage Authority

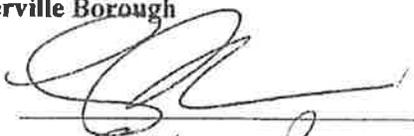
BY: 

NAME: Ronald S. Anastasio, P.E.  
TITLE: Executive Director

By this signature, I certify that I have full authority to execute this document on behalf of the SRVSA.

DATED: 9/4/18

Somerville Borough

BY: 

NAME: Ellen Braun  
TITLE: Mayor

By this signature, I certify that I have full authority to execute this document on behalf of Somerville Borough.

  
Clerk - ADMINISTRATOR