

**FILED**  
May 27, 2021  
INDIANA UTILITY  
REGULATORY COMMISSION

**JOINT PETITIONERS' EXHIBIT NO. 2**

**INDIANA-AMERICAN WATER COMPANY, INC.**

**AND**

**TOWN OF LOWELL, INDIANA**

**INDIANA UTILITY REGULATORY COMMISSION**

**CAUSE NO. 45550**

**DIRECT TESTIMONY**

**OF**

**JUSTIN SCHNEIDER**

**SPONSORING ATTACHMENTS JS-1 THROUGH JS-3**

**DIRECT TESTIMONY  
OF  
JUSTIN SCHNEIDER**

**CAUSE NO. 45550**

**BACKGROUND**

1 **Q. Please state your name and business address.**

2 A. My name is Justin Schneider. My business address is 153 N. Emerson Avenue,  
3 Greenwood, Indiana 46143.

4 **Q. By whom are you employed and in what capacity?**

5 A. I am employed by Indiana-American Water Company, Inc. (“Indiana American” or the  
6 “Company”) as Director of Consumer Affairs.

7 **Q. Please summarize your educational and professional qualifications.**

8 A. I hold a Bachelor of Science degree in Agribusiness Management from Purdue  
9 University and a Juris Doctor from the Indiana University Mauer School of Law.

10 **Q. Please describe your business experience.**

11 A. From 2001 to 2005, I was employed as a judicial law clerk for the Indiana Court of  
12 Appeals. From 2005 to 2019, I was employed by Indiana Farm Bureau, most recently  
13 as the director of state government relations. In this role, I was responsible for leading  
14 strategy development and implementation in working with the Indiana General  
15 Assembly and executive branch agencies. From 2019 to the present, I have been  
16 employed by Indiana American as Director of Consumer Affairs.

1 **Q. What are your current responsibilities?**

2 A. In my current role, I am responsible for several facets of the business. My position  
3 includes the day-to-day management of our business development team which works  
4 directly with water and wastewater utilities regarding acquisition of their assets as well  
5 as finding other potential partnerships to serve the needs of their utility customers. I also  
6 provide support to our team in finding solutions to concerns that are raised by our  
7 customers.

### **SCOPE OF TESTIMONY**

8 **Q. What is the purpose of your testimony in this proceeding?**

9 A. The purpose of my testimony is to describe the purchase transaction between Indiana  
10 American and the Town of Lowell, describe what assets are included in the purchase,  
11 explain the reasons for the transaction, describe the terms of the purchase agreement,  
12 and outline the approvals requested by the Joint Petitioners in this Cause. I will  
13 demonstrate the benefits of the transaction for the customers of Lowell's water utility  
14 system (the "Lowell Water System") and show how the customers of the Lowell Water  
15 System are being notified of the transaction. I will also sponsor Attachments JS-1  
16 through JS-3 in support of this testimony.

17 **Q. Please describe Indiana American's operations and the areas it serves.**

18 A. Indiana American is a public utility incorporated under Indiana law. Indiana American's  
19 principal office is located in Greenwood, Indiana. Indiana American provides  
20 residential, commercial, industrial and municipal water utility service to approximately  
21 320,000 water customers throughout the state. Indiana American also provides sewer

1 service to approximately 2,100 customers in the communities of Riley, Sheridan,  
2 Somerset and Delaware County. Pending approval of the Commission, we will also add  
3 the customers of the Wastewater One water and sewer utility through the acquisition of  
4 their water and wastewater assets during the summer of 2021. A map of the State of  
5 Indiana showing the locations of Indiana American's operations is marked as  
6 Attachment JS-1.

### 7 LOWELL'S WATER SYSTEM

8 **Q. Please describe the Lowell Water System.**

9 A. The Lowell Water System has approximately 4,000 customers based upon customer  
10 count information provided by Lowell. The assets that will be acquired through the  
11 purchase of the Lowell Water System include the water treatment plant, distribution  
12 system, water tower, and wellfield, which are more specifically addressed in the  
13 testimony of Company Witness David Elmer.

### 14 THE LOWELL AGREEMENT AND REQUESTED APPROVALS

15 **Q. Please describe Attachment JS-2.**

16 A. Attachment JS-2 is a copy of the Asset Purchase Agreement (the "Agreement")  
17 between Indiana American and the Town of Lowell providing for the acquisition by  
18 Indiana American of the water assets of Lowell.

19 **Q. Please describe the negotiations between Lowell and the Company.**

20 A. Discussions with Lowell first occurred in 2019. Indiana American has a significant  
21 presence in northwest Indiana and was looking for opportunities to expand the service

1 area within that region of the state. Indiana American was interested in acquiring the  
2 Lowell Water System to expand into the southern part of Lake County. Lowell was  
3 interested in divesting of the water system. In early 2020, Lowell sought appraisals of  
4 the water utility. The appraisal was completed in December 2020. As described by  
5 Lowell Witness John Yelkich, ongoing discussions throughout the process led to the  
6 execution of the Asset Purchase Agreement on April 5, 2021.

7 **Q. Were the negotiations leading up to the execution of the Agreement conducted at**  
8 **arm's length?**

9 A. Yes. The Agreement is the result of arm's length negotiations between a willing buyer  
10 (Indiana American) and a willing seller (the Town of Lowell), both of whom were  
11 represented by counsel. I describe below how the purchase price was determined.

12 **Q. What is the purchase price?**

13 A. As described in Section 2.3 of the Agreement, the total purchase price to be paid by  
14 Indiana American for the Lowell Water System is \$24,500,000. Assuming \$120,000 of  
15 incidental expenses and other costs of acquisition, the original cost rate base for the  
16 Lowell Water System would be \$24,620,000. The journal entry accounting for this  
17 transaction has been included in the direct testimony of Company Witness Gregory D.  
18 Shimansky.

19 **Q. How was the price determined?**

20 A. As explained in the direct testimony of Mr. Yelkich, Lowell followed the process  
21 established in Indiana Code § 8-1.5-2-1 *et seq.* and appointed appraisers to determine  
22 the appraised value of the Lowell water system. The appointed appraisal firms include

1 Wessler Engineering and Banning Engineering, both with appraisers licensed as  
2 registered engineers under I.C. 25-31. The third appraisal firm was Integra Realty  
3 Resources which employs individuals licensed to complete real estate appraisals under  
4 I.C. 25-34.1. All three appraisers are disinterested, and they, through their education  
5 and experience, possess the necessary expertise and technical knowledge and  
6 qualifications as to make a proper appraisal and valuation. The engineering and real  
7 estate appraisals were completed in 2020 and the appraisers agreed upon a value of the  
8 system. As explained by Mr. Elmer, a team of operation and engineering professionals  
9 from Indiana American reviewed the appraisals and conducted a site visit in September  
10 2020 to visually assess the condition of the assets in the appraisal as well as any updates  
11 that have been made to the system with a follow up site visit on May 14, 2021. The  
12 appraised value of the Lowell Water System as determined by the appraisers is  
13 \$25,321,000. Since the purchase price for the utility assets and the land is less than the  
14 appraised value of the Lowell Water System, the purchase price is reasonable.

15 **Q. What are the significant terms and conditions of the agreement?**

16 A. All of the terms and conditions are set forth in the Agreement; however, some of the  
17 significant terms and condition which I have not already mentioned include:

- 18 • the obtaining of certain approvals from the Indiana Utility Regulatory  
19 Commission (“Commission”) of the contemplated transaction and the  
20 transfer of the Lowell Water System;
- 21 • the proposed accounting and rate base treatment with respect to the  
22 transaction including recognition of the full purchase price in net  
23 original cost rate base;

- 1 • the application of Indiana American’s depreciation accrual rates to the
- 2 assets being acquired;
- 3 • the application of appropriate rates;
- 4 • the encumbrance of the real property being acquired under Indiana
- 5 American’s mortgage indenture;
- 6 • that Lowell will complete several capital projects in 2021; and
- 7 • that Indiana American will work with Lowell to complete a main
- 8 extension to a school on the west side of town.

9 **Q. What approvals do the Joint Petitioners request in this proceeding?**

10 A. Joint Petitioners are requesting that the Commission:

- 11 • Grant such approvals as may be necessary to consummate the
- 12 acquisition of the Lowell Water System on the terms described in the
- 13 Agreement;
- 14 • Find that public convenience and necessity require water service by
- 15 Indiana American in the areas now served by the Town of Lowell;
- 16 • Authorize Indiana American to charge the monthly recurring water rates
- 17 and charges applicable to customers of the Lowell Water System from
- 18 and after closing of the acquisition and otherwise apply to customers of
- 19 the Lowell Water System Indiana American’s rates and charges
- 20 applicable to its Northwest Indiana Operations, as more particularly
- 21 described in the direct testimony of and tariff sheet sponsored by Mr.
- 22 Shimansky;

- 1 • Authorize Indiana American to apply the same rules and regulations  
2 applicable to its existing water customers to water utility customers to  
3 be served by Indiana American as a result of this acquisition;
- 4 • Approve the accounting entry described in the direct testimony of Mr.  
5 Shimansky to reflect the acquisition of the Lowell Water System;
- 6 • Authorize Indiana American to apply its existing depreciation accrual  
7 rates to the Lowell Water System as described in the direct testimony of  
8 Mr. Shimansky; and
- 9 • Approve the encumbering of the properties comprising the Lowell  
10 Water System by subjecting such properties to the lien of Indiana  
11 American’s Mortgage Indenture, as described in the direct testimony of  
12 Mr. Shimansky.

13 **Q. What assets does Indiana American propose to acquire from Lowell?**

14 A. Indiana American proposes to acquire all of the property necessary to operate the  
15 Lowell Water System, the property that is the subject of the appraisal of the Town of  
16 Lowell’s Water System, as set forth in Section 2.1 of the Agreement. The acquired  
17 assets are listed in the appraisals sponsored by Mr. Yelkich as Attachment JY-3.

18 **OFFERED UTILITY**

19 **Q. Why is the Town of Lowell proposing to sell the water utility assets?**

20 A. Mr. Yelkich discusses the benefits to customers and the risks that will be mitigated by  
21 the Town of Lowell’s decision to sell the water utility assets in his direct testimony.  
22 The Lowell Water System serves fewer than 8,000 customers. The town council



1 determined that an increase of up to 25% in monthly rates and charges was needed to  
2 maintain the water utility. They also noted that the increasing stringency of federal and  
3 state laws and regulations regarding the operations of water utilities require greater  
4 technical and financial resources and expertise than the Town of Lowell can maintain.  
5 By selling to a larger water utility like Indiana American, the Town of Lowell will  
6 reduce demands on the municipal employees and the financial impacts on those served  
7 by the water utility. This will free up the resources of municipal employees and the  
8 council to focus on other community needs.

9 **Q. Does the phrase “offered utility” have a meaning in connection with the transfer**  
10 **of a water utility like the Town of Lowell’s?**

11 A. Yes. An “offered utility” is a utility company whose property is the subject of an  
12 acquisition under Ind. Code § 8-1-30.3-5(a). The law establishes certain circumstances  
13 under which a public water or wastewater utility that acquires the utility property of an  
14 “offered utility” may petition the Commission to include any “cost differential”  
15 associated with the acquisition as part of its rate base.

16 **Q. Please describe how the proposed acquisition of the Lowell Water System follows**  
17 **this process.**

18 A. An “offered utility” is too small to capture economies of scale or is not furnishing or  
19 maintaining adequate, efficient, safe and reasonable service and facilities if the  
20 Commission finds any of the six (6) conditions listed in Ind. Code § 8-1-30.3-6 exist.  
21 The Lowell Water System serves less than 8,000 customers so it satisfies this  
22 requirement. This is sufficient to qualify the proposed transaction as one involving an

1 “offered utility” for purposes of the process I described above. Although not necessary  
2 to satisfy additional conditions, the system also meets the requirements for an offered  
3 utility because of past violations of one or more state or federal regulatory requirements  
4 that affects the safety, adequacy, efficiency, or reasonableness of the services or  
5 facilities. Lowell has historically received violations, most recently in 2020 as  
6 described in the testimony of Company Witness David Elmer. The Lowell Water  
7 System also needs capital investment which drives rates higher. As noted in the  
8 testimony of Mr. Yelkich and the ordinance to sell the utility passed by Lowell, it was  
9 determined that Lowell would have to increase rates by 20-25% to meet the capital  
10 requirements to maintain and operate the Lowell Water System. At the time that  
11 discussions began with the Town of Lowell, an Indiana American customer who used  
12 an average of 4,000 gallons per month would have had a lower monthly bill than a  
13 Lowell water customer. In addition, the charges and fees that Lowell applies to its  
14 customers are generally higher than those charged by Indiana American. Throughout  
15 the discussions about the acquisition of the Lowell Water System, it became evident  
16 that the needed operational and capital investments for Lowell necessitated rates higher  
17 than those currently charged to other Indiana American customers. However, Indiana  
18 American can provide service to the customers in Lowell at lower rates than Lowell is  
19 able to provide service. Indeed, throughout the discussions with Lowell, it was  
20 determined that a fifteen percent increase in rates, in conjunction with an acquisition  
21 by Indiana American, would provide the level of service that the customers of Lowell  
22 deserve. Thus, Lowell is implementing a rate increase of fifteen percent during the  
23 summer of 2021. This satisfies the factor in Ind. Code § 8-1-30.3-6(4) which

1 recognizes that “the offered utility, due to necessary improvements to its plant or  
2 distribution or collection system or operations, is unable to furnish and maintain  
3 adequate service to its customers at rates equal to or less than those of the acquiring  
4 utility company.”

5 **Q. What is the next step in the process?**

6 A. Because the system constitutes an “offered utility”, the Joint Petitioners in this Cause  
7 have filed a petition under Ind. Code § 8-1-30.3-5. In order to qualify for ratemaking  
8 treatment established in Ind. Code § 8-1-30.3-5, the acquisition must satisfy all of the  
9 elements listed in subsection (d).

10 **Q. Does the proposed acquisition satisfy the elements of IC 8-1-30.3-5(d)?**

11 A. Yes. The elements are listed in the Joint Petition filed in this Cause, which is attached  
12 as Attachment JS-3. I will address them here in turn.

13 First, as evidenced by the appraisal and described by Mr. Elmer, the utility property  
14 being acquired is used and useful to Lowell in providing water service to their  
15 customers.

16 In addition, I have already explained how the Lowell Water System qualifies as an  
17 “offered utility” that “is too small to capture economies of scale or has failed to furnish  
18 or maintain adequate, efficient, safe and reasonable service and facilities” within the  
19 meaning of the statute. Indiana American will improve the economies of scale and  
20 operations of the Lowell Water System.

1 **Q. What do you mean by economies of scale?**

2 A. Economies of scale as used in the Indiana Code 8-1-30.3-6 is generally understood to  
3 describe operational savings from larger size. In the utility business, it is usually  
4 expressed in terms of cost per customer. It is important, however, to know what we  
5 are comparing when we consider whether there are cost savings. This is not simply a  
6 comparison of what it costs Lowell to operate its system and what it will cost us. It is  
7 far too simplistic to compare Lowell's cost structure or rates to ours, as doing so  
8 suggests an expectation of the status quo in terms of service. Lowell has a water system  
9 that is well maintained with what appears to be a good customer experience. However,  
10 Lowell must make capital investment and operational changes that will have a  
11 significant rate impact. Long-term, Lowell will not be able to provide a sufficient level  
12 of customer service based on the capital need. Additionally, as noted by Mr. Yelkich  
13 in his testimony, the best interests of Lowell's customers is to become a part of the  
14 larger Indiana American customer base because our size will minimize rate increases  
15 and Indiana American operates in a more cost-effective manner than Lowell. You may  
16 occasionally hear us say that we are obsessed with enhancing customer experience. We  
17 have a team of professionals in Indiana that are backed by a national team of experts  
18 with access to new technology and a world class lab. Those capabilities allow us to  
19 provide a higher level of service. This is the commitment to customers that regulators,  
20 policy-makers, and customers should expect from their utility service providers. We  
21 should expect of all our utilities the type of service that Indiana American provides.  
22 The question then becomes whether it is less expensive for Indiana American to provide  
23 that level of service because of our size than it would be for Lowell to do so.

1 **Q. How will Indiana American improve the operations?**

2 A. Put simply, Indiana American is in the utility business and brings to bear all of the  
3 financial, managerial and technical ability and expertise required to adequately run the  
4 utility in a way that Lowell cannot. Systems the size of Lowell cannot do that because  
5 they do not have access to the entire team of water quality, operation and engineering  
6 professionals that we do. Indiana American has 104 employees with distribution  
7 licenses, 98 employees with water treatment licenses, and 17 licensed wastewater  
8 operators. Indiana American will maintain licensed operators for all of the systems we  
9 own.

10 **Q. Can you provide some specific examples of improvements that Indiana American  
11 can bring towards achieving this level of customer excellence that you describe?**

12 A. Yes. Following the acquisition, the Lowell Water System will be included in Indiana  
13 American's prioritization model for infrastructure replacement planning purposes. An  
14 asset management plan will be implemented to establish and sustain a more cost-  
15 effective level of service over the long term. The importance of this lies in Indiana  
16 American's sophisticated planning to predict and prevent, through investment with  
17 available funds, the most likely plant failures. Investing in prevention of failures is a  
18 much more efficient use of investment dollars than responding to emergencies and  
19 saves customers cost in the near and long term. Asset management has become such a  
20 baseline expectation of every water and wastewater utility in Indiana that if an entity  
21 has not implemented an approved asset management plan it is not eligible to receive  
22 loans or grants from the Drinking Water, Wastewater, or Infrastructure Improvement  
23 Revolving Funds.

1 **Q. Are there more customary examples of improvement?**

2 A. Yes. Under Indiana American ownership the customers will also benefit by leveraging  
3 Indiana American's ability to purchase materials and services at more effective costs  
4 due to the size of the company. Beyond bulk pricing, from which customers benefit,  
5 Indiana American makes purchasing and contracting decisions based on the experience  
6 of an industry leader which stays ahead or abreast of industry trends such as identifying  
7 manufacturing defects or shortcomings of materials before they become (bigger)  
8 problems.

9 **Q. Will Indiana American improve day-to-day operations?**

10 A. Yes. Operationally, Indiana American prides itself on safety and efficiency. Our  
11 experience with systems we have acquired has demonstrated that not every system is  
12 operated as is ours. The safety of our employees is a cornerstone principle of our  
13 operations to efficiently and consistently provide quality and affordable service to our  
14 customers. Our team has identified safety enhancements to make working conditions  
15 safer for the production and distribution employees. The operations and engineering  
16 teams will work to make improvements related to the source water for Lowell and  
17 ensure environmental compliance. Our teams will also make needed changes related to  
18 the use of technology for data and asset management. All of these are more specifically  
19 explained in the testimony of Mr. Elmer.

20 **Q. Does being part of a larger system also provide benefits related to testing and  
21 research?**

22 A. Yes. As part of American Water, the Lowell customers will benefit from resources no

1 system of Lowell's size could offer. Our lab in Belleville, Illinois, supports research  
2 through sophisticated testing and analysis. Since its inception, our research and  
3 development program has evolved to become a leading water-related research program,  
4 achieving advancements in the science of drinking water and wastewater. The lab has  
5 a history of being on the forefront of monitoring, testing, identifying and controlling  
6 contaminants before specific federal regulations are put in place. Our highly  
7 sophisticated analytical and research capabilities are why the United States  
8 Environmental Protection Agency regularly taps into our lab and our research team to  
9 help develop federal drinking water standards and regulations. This is a quality of  
10 service that a system the size of Lowell could never afford.

11 As part of our R&D and innovation efforts, we have a staff of scientists who are  
12 working with research institutions and partners to develop and pilot new technology  
13 advances. As the whole water and wastewater sector examines and plans to respond to  
14 emerging contaminants, much like infrastructure investment, American Water believes  
15 it better for our customers to be proactive rather than reactive. We collaborate on a  
16 significant number of our research projects with many stakeholders, including  
17 governmental entities (such as the USEPA), consultants, universities, other utilities,  
18 and research agencies (such as the Water Research Foundation, WateReuse Research  
19 Foundation, and the Water Environment Research Foundation). We also participate and  
20 collaborate with numerous state and local organizations through our state-regulated  
21 entities. Again, this is the level of service that Indiana should expect from its water  
22 and wastewater utilities. All of our citizens should benefit from this level of dedication  
23 to water quality. However, a system the size of Lowell could never afford it because it

1 lacks economies of scale.

2 Lowell customers will also benefit by gaining access to Indiana American's technology  
3 and information systems.

4 **Q. Can you explain the benefit of the Lowell customers gaining access to Indiana  
5 American's technology and information systems?**

6 A. As an example, beginning on the first day they will have access to 24/7 customer  
7 service and emergency response. American Water's Technology and Innovation (T&I)  
8 team has been working through all of its utility subsidiaries to develop technological  
9 solutions to enhance employee effectiveness and allow customers to interact with us  
10 more easily. These enterprise software solutions are customized products and  
11 applications that utilities the size of Lowell simply cannot realistically expect to  
12 implement. They include tools and technology that strengthen the fundamentals of our  
13 business to improve our customers' experience, as well as operational effectiveness  
14 through enhanced capital management and planning, timely visibility into asset  
15 maintenance and inspections based on criticality, and enhanced meter management.  
16 These tools include the following:

17 CustomerView: a one-stop shop for customer information that can be accessed by  
18 employees that regularly interact with our customers. It provides a field service  
19 technician the same information a call center operator would see and vice versa. If a  
20 customer recently had work done, the call center would see the technician's notes and  
21 if a customer had just spoken to the call center before the technician comes out, the  
22 tech would see the notes of the conversation. This provides more efficient



1 communication between the customer and the company and allows our services to flow  
2 more smoothly.

3 Meter Ops: an application that monitors over 20 key attributes for each meter and  
4 allows local operations supervisors and managers a near real-time view of meter  
5 performance. This may allow for differentiating between a leak, and the filling of a  
6 swimming pool.

7 WorkIView: a tool that provides a single view for managing work in the field, customer  
8 information and meter information, including a real-time operations map to see work  
9 orders with optimized routing. Through efficient use of our employees' time, we can  
10 provide better service to our customers at a lower cost.

11 MapCall: an intuitive interface among the Company's enterprise software, GIS and its  
12 employees in the field, providing the flexibility to create work orders, configure  
13 workflows and report progress while in the field.

14 **Q. Please continue to describe how the proposed acquisition satisfies the remaining**  
15 **elements of IC 8-1-30.3-5(d).**

16 A. The Asset Purchase Agreement is the result of arm's length negotiations and the  
17 process described in Lowell witness Mr. Yelkich's direct testimony.

18 Pursuant to Indiana statute, appraisers were appointed to determine the appraised value  
19 of the system. The purchase price of \$24,500,000 for the Lowell Water System was  
20 determined based upon and is less than the appraised value of the water utility assets

1 (as shown in Attachment JY-3 to Mr. Yelkich’s direct testimony). The purchase price  
2 is therefore deemed to be reasonable under Ind. Code § 8-1-30.3-5(c)(1) for purposes  
3 of Ind. Code § 8-1-30.3-5(d)(5), since it does not exceed the statutory appraised value.

4 Lowell and Indiana American are not affiliated and share no common ownership  
5 interests.

6 Mr. Shimansky is addressing how any cost differential will be added to Indiana  
7 American’s rate base and be amortized, and he is confirming that Indiana American’s  
8 rates and charges will not increase unreasonably in future general rate cases as a result  
9 of the acquisition.

10 **IC 8-1-30.3-5(e)**

11 **Q. Are there additional requirements that must be met under Chapter 30.3?**

12 A. Yes. Indiana American must provide: (1) Notice to customers of the acquiring utility  
13 company that a petition has been filed with the Commission; (2) Notice to the office of  
14 the utility consumer counselor; and (3) A statement of known infrastructure,  
15 environmental or other issues affecting the offered utility, and the process for  
16 determining reasonable and prudent improvements upon completing the acquisition.

17 **Q. Is Indiana American providing the required notices and statement?**

18 A. Yes. Indiana American customers will be notified of the proposed acquisition via a  
19 notice containing the Cause number in this and a copy of the notice will be late-filed  
20 as Mr. Shimansky’s Attachment GDS-4. OUCC has been provided a copy of the Joint

1           Petition filed in this cause and testimony in support thereof. Mr. Elmer provides in his  
2           direct testimony a description of the known infrastructure, environmental or other  
3           issues affecting the Lowell Water System, and the process for determining reasonable  
4           and prudent improvements upon completing the acquisition.

5   **Q.    Has any customer contacted Indiana American to object to the transaction?**

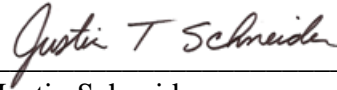
6   A.    No.

7   **Q.    Does this conclude your prepared direct testimony?**

8   A.    Yes, it does.

## VERIFICATION

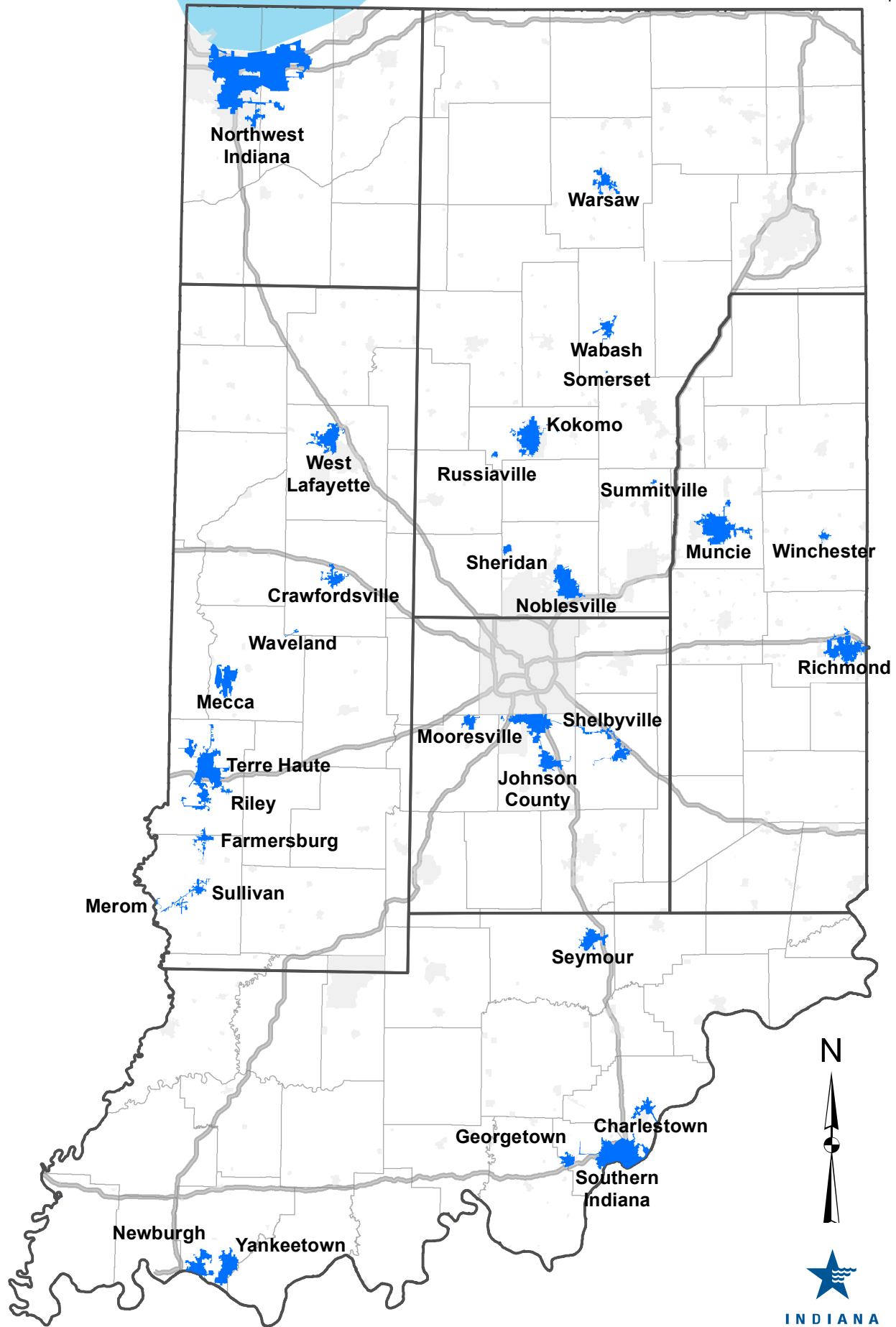
I, Justin Schneider, Director of Consumer Affairs, Indiana-American Water Company, Inc., affirm under penalties of perjury that the foregoing representations are true and correct to the best of my knowledge, information and belief.



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Justin Schneider

Date: May 26, 2021



## **ASSET PURCHASE AGREEMENT**

**This Asset Purchase Agreement** (“Agreement”) is made and entered into this 5<sup>th</sup> day of April, 2021, by and between **Indiana-American Water Company, Inc.**, an Indiana public utility corporation (“Buyer”), and **the Town of Lowell, Indiana**, an Indiana municipality (“Seller”). Hereinafter, the Buyer and Seller may be individually referred to as a “party” or jointly as the “parties”.

### **RECITALS:**

A. Seller owns and operates a water system which provides potable water service to customers located within its service area, graphically depicted on Exhibit A attached hereto, and incorporated herein (the “Service Area”) (collectively referred to as the “Business”).

B. Buyer desires to acquire and Seller desires to sell the Assets of Seller relating to the Business pursuant to the terms and conditions of this Agreement.

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

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

For purposes of this Agreement and all documents executed in connection with this Agreement, the capitalized terms shall have the meanings assigned to them herein or in Schedule 1.

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

**2.1 Transfer and Description of Assets.** Subject to and upon all other terms and conditions of this Agreement, effective as of the Effective Time on the Closing Date, Seller shall sell, convey, transfer, assign and deliver to Buyer free and clear of all Encumbrances, and Buyer shall acquire from Seller, all of Seller’s right, title and interest in and to all of Seller’s assets, properties, business, and right of every kind and description, whether tangible or intangible, real, personal or mixed, other than the Excluded Assets, regardless of where located, which are, should, be, could be, or in the future would be part of the water system utilized to provide potable water service to Seller’s customers, including the following:

(a) all Real Property, including any easements, rightsofway or other rights granted to the Seller in furtherance of the operation of the Business, including as set forth on Schedule 3.4(c);

(b) all Tangible Personal Property utilized by Seller in the operation of the Business, including but not limited to the 2021 Construction Assets set forth on Schedule 2.1(b);

(c) all Data and Records related to Seller’s operation of the Business, including the customer list which shall include the service and billing address of all customers of Seller and, subject to applicable Law, copies of all Records related to Seller’s operation of the Business, except for personnel records and as described in Section 2.2(b);

(d) the Material Contracts set forth on Schedule 2.1(d) (the “Assigned Contracts”);

(e) all Permits and all pending applications therefor, renewals thereof or exemptions therefrom which are necessary or advisable in the operation of Seller’s Business, including those listed in Schedule 3.9; and

(f) all of the intangible rights and property of Seller utilized by Seller in the operation of the Business.

All of the foregoing shall be hereinafter referred to collectively as the “Assets”.

**2.2 Excluded Assets.** Notwithstanding anything to the contrary contained in Section 2.1 or elsewhere in this Agreement, the following assets of Seller are not part of the sale and purchase contemplated hereunder, are excluded from the Assets, and shall remain the property of Seller after the Closing:

- (a) all insurance policies and rights thereunder;
- (b) all personnel Records and other Records that Seller is required by Law to retain in its possession;
- (c) all office furniture and equipment, including computers, used in the operation of the Business;
- (d) all rights in connection with and assets of the employee benefit plans and employment or independent contractor Contracts;
- (e) all Contracts other than the Assigned Contracts;
- (f) all rights of Seller under the Transaction Documents;
- (g) cash, cash equivalents, short-term investments, and customer deposits;
- (h) accounts receivable arising prior to the Effective Time;
- (i) all vehicles, equipment, and tools used by the Seller in its provision of sewer services, as set forth on Schedule 2.2(i); and
- (j) Customer Service Connections, which shall remain the property of the customer.

All of the foregoing shall be hereinafter referred to collectively as the "Excluded Assets".

**2.3 Consideration.** The consideration for the Assets will be \$24,500,000 . The Assets shall be in substantially the same condition at the time of Closing, as represented by Seller in Article 3. If any of the Assets materially deviate from the condition represented by Seller in Article 3, and are not able to perform the function they are intended to, the Buyer, at its option, may request an adjustment to the Purchase Price to compensate for the deterioration or loss of said Asset. In the event the parties are not able to agree to the amount of the adjustment, the adjustment amount shall be the amount necessary to return the Asset to the condition it was in at the time of the most recent appraisal.

**2.4 Liabilities.** The Buyer shall not be responsible for any of the Liabilities of Seller, including any that may arise after Closing, and any such Liabilities shall remain the sole responsibility of and shall be retained, paid, performed and discharged solely by Seller. Subject to the terms and conditions set forth herein, Buyer shall assume and agree to pay, perform and discharge when due any and all liabilities and obligations arising out of or relating to Buyer's ownership of the Assets and operation of the Business after the Closing (collectively, the "Assumed Liabilities").

**2.5 Closing.** The purchase and sale provided for in this Agreement will take place at a location and time of day agreed upon by the parties (the "Closing"). The date of the Closing shall be no later than forty-five (45) days after the Indiana Utility Regulatory Commission (the "IURC") issues an Order approving the Contemplated Transaction and the terms and conditions contained in Section 5.1 (d) herein, or at such later date as is agreed upon by the parties. Closing shall be effective as of 5:00 pm local time (the "Effective Time") on the actual date of Closing (the "Closing Date").

**2.6 Closing Obligations.**

- (a) At or prior to Closing, Seller shall deliver to Buyer the following documents, duly executed:

(i) a Bill of Sale for all of the Assets that are Tangible Personal Property in a form reasonably acceptable to Buyer (“Bill of Sale”);

(ii) an assignment of all of the Assets that are intangible personal property in a form reasonably acceptable to Buyer;

(iii) for each interest in Real Property identified on Schedule 3.4(c), a recordable warranty deed or such other appropriate document or instrument of transfer or approval, as the case may require, each in form and substance satisfactory to Buyer and its legal counsel. Notwithstanding the fact that the same may not be listed on Schedule 3.4(c), Seller must provide easements or other transferable property rights to Buyer for all mains used in the Business, which are not located on or in public rights-of-way, and must provide assignments of public rights-of-way Permits with only those conditions acceptable to Buyer for all mains located in municipal, county or state owned public rights-of-way;

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

(v) a certificate as to the accuracy of Seller’s representations and warranties as of the date of this Agreement and as of Closing in accordance with Section 5.1(a) and as to its compliance with and performance of its covenants and obligations to be performed or complied with at or before Closing in accordance with Section 5.1(b);

(vi) a certificate of the Seller’s Town Council President, dated as of the Closing, certifying: (A) that attached are true copies of the duly adopted Ordinance(s) of the Seller’s municipal town council authorizing the execution of this Agreement and the sale of all Assets; and (B) the incumbency, signatures and authority of the officer or officers of Seller executing this Agreement or any agreement contemplated hereby on behalf of Seller;

(vii) an assignment and assumption agreement in a form reasonably acceptable to Buyer (the “Assignment and Assumption Agreement”) effecting the assignment to and assumption by Buyer of the Assets and Assumed Liabilities; and

(viii) A Water Service Termination Agreement substantially in the same form as set forth in Schedule 2.6 (a)(viii) executed by Seller.

(b) At or prior to Closing, Buyer shall deliver to Seller, the following documents, duly executed, or funds:

(i) The Purchase Price, by wire transfer or other immediately available funds to an account specified by the Seller;

(ii) a certificate as to the accuracy of Buyer’s representations and warranties as of the date of this Agreement and as of Closing in accordance with Section 5.2(a) and as to its compliance with and performance of its covenants and obligations to be performed or complied with at or before Closing in accordance with Section 5.2(b);

(iii) a certificate of the company secretary of Buyer, dated as of the Closing, certifying: (A) that attached are true copies of the duly adopted resolutions of the Buyer’s board of directors authorizing the execution of this Agreement and the purchase of all Assets; and (B) the incumbency, signatures and authority of the officer or officers of Buyer executing this Agreement or any agreement contemplated hereby on behalf of Buyer;

(iv) a certificate of existence issued by the Secretary of State of Indiana with respect to Buyer, dated not earlier than thirty (30) days prior to Closing; and

(v) A Water Service Termination Agreement substantially in the same form attached as Schedule 2.6(a)(viii) executed by Buyer.



### **ARTICLE 3** **Representations and Warranties of Seller**

Seller hereby makes the following representations and warranties to Buyer as of the date of this Agreement and as of the Closing:

**3.1 Organization.** Seller is a municipality duly organized, and validly existing under the Laws of the State of Indiana. Seller has the power and authority to own, lease and operate its assets (including the Assets) and to conduct the Business as it is now being conducted.

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

(a) Seller has the power to enter into and perform this Agreement and the other Transaction Documents to which it is a party and to consummate the Contemplated Transaction.

(b) The execution, delivery, and performance of this Agreement and the other Transaction Documents to which it is a party by Seller, and the consummation of the Contemplated Transaction, have been duly and validly authorized by all necessary action on the part of Seller. This Agreement has been duly executed and delivered by Seller (and all documents required to be executed and delivered by Seller at Closing shall be duly executed and delivered by Seller), and this Agreement constitutes, and at the Closing such documents shall constitute, the valid and binding obligations of Seller, enforceable in accordance with their terms except as such enforceability may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or similar Laws now or hereafter in effect relating to creditors' rights generally and (ii) equitable defenses at the discretion of the court before which any Proceeding therefor may be brought (clauses (i) and (ii) collectively, the "Bankruptcy and Equity Exceptions").

(c) Neither the execution, delivery and performance of this Agreement and the other Transaction Documents to which Seller is a party by Seller nor the consummation of the Contemplated Transaction will, directly or indirectly (with or without notice or lapse of time):

(i) contravene, conflict with or result in a violation of: (A) any provision of the Organizational Documents of Seller; or (B) any resolution adopted by the governing body of Seller;

(ii) contravene, conflict with or result in a violation of any Laws or any Order to which Seller or any of the Assets may be subject, or require the consent of or other action by a Governmental Authority except for the IURC and the Indiana Department of Environmental Management (the "IDEM");

(iii) contravene, conflict with or result in a violation of any of the terms or requirements of or give any Governmental Authority the right to revoke, withdraw, suspend, cancel, terminate or modify any Permit or other authorization by a Governmental Authority that is held by Seller or that otherwise relates to the Business or any of the Assets;

(iv) contravene, conflict with or result in a default under, or give rise to any right of termination, cancellation or acceleration of any right or obligation of Seller or to a loss of any benefit to which Seller is entitled under any provision of any Contract to which Seller is a party, or by which any of the Assets or any other material assets and properties of Seller are bound or subject; or

(v) result in the imposition or creation of any Encumbrance upon or with respect to any of the Assets, except for Permitted Encumbrances or as contemplated by this Agreement.

**3.3 Assets.**

(a) Seller has good and marketable title to, valid leasehold interest in or valid licenses to use, all of the Assets, free and clear of all Encumbrances, other than Permitted Encumbrances. The

use of the Assets is not subject to any Encumbrances, other than Permitted Encumbrances, and such use does not encroach on the property or the rights of any Person.

(b) The Assets are sufficient for, and constitute all the assets, properties, business, and rights of every kind and description, and services required for, the continued conduct and operation of the Business by Buyer in substantially the same manner as currently conducted and operated by Seller. The Assets, taken as a whole, comprise all the assets, properties, business, and rights of every kind and description used or held for use in, or useful or necessary to the operation of the Business as currently operated by Seller. There are no Assets that are owned by any Person other than Seller that will not be licensed or leased to Buyer at Closing under valid license arrangements or leases on terms no less favorable to Buyer than the terms applicable to Seller as of the date hereof under such license agreements or leases. None of the Excluded Assets are material to the Business.

(c) All Assets appraised in preparation for the Contemplated Transaction are in substantially the same condition as they were at the time of their respective appraisals. Except as otherwise disclosed to Buyer in Seller's five-year plan, leak records, and other Records, all other Assets are in good operating condition and repair (except for normal wear and tear) and are usable in the ordinary course of the business and are being operated in conformity in all material respects with all applicable Laws and the terms of any Contracts to which Seller is a party or by which such Assets are subject or bound.

### **3.4 Real Property.**

(a) With respect to all real property owned by Seller in connection with its operation of the Business (including any easements and rights-of-way) (the "Owned Real Property"), there is no condemnation, expropriation or other Proceeding in eminent domain pending or, to the Knowledge of Seller, threatened affecting any parcel of Owned Real Property or any interest therein. Seller has made available to Buyer all title insurance policies, property condition reports, and surveys for each parcel of Owned Real Property. There are no outstanding options, rights of first offer, or rights of first refusal to purchase any Owned Real Property or any portion thereof or interest therein. Seller is not a party to any agreement or option to purchase any real property or interest therein.

(b) Seller has made available to Buyer a correct and complete copy of each lease, sublease, license or other Contract, currently in effect and as amended to date (each, a "Lease"), under which any real property leased or subleased has been granted to Seller in connection with its operation of the Business (including any easements and rights-of-way) (the "Leased Real Property" and together with the Owned Real Property, the "Real Property"). Neither Seller nor, to the Knowledge of Seller, any other party to any such Lease, is in breach or default, and no event has occurred (including the failure to obtain any consent) which, with notice or lapse of time or both, would constitute a breach or default under or permit termination or material modification of, or acceleration of a material amount of rents due under, any Lease.

(c) The Real Property is set forth on Schedule 3.4(c).

**3.5 Financial Statements.** True, correct and complete copies of Seller's audited Financial Statements are available from the State Board of Accounts.

### **3.6 Taxes.**

(a) Seller has filed all Tax Returns required to be filed under applicable Law arising from its ownership or operation of the Business, and all such Tax Returns were correct and complete in all material respects.

(b) Seller has timely paid all material Taxes due from or with respect to it arising from its ownership or operation of the Business, except Taxes that are being contested in good faith as set forth on Schedule 3.6.

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

(d) No Proceeding or audit is now in progress with respect to Seller regarding Taxes, and Seller has not received written notice of any pending or threatened Proceeding or audit against it (which remains outstanding) from any applicable Governmental Authority.

(e) Seller has not waived any statute of limitations in respect of any material Taxes or agreed to any extension of time with respect to a material Tax assessment or deficiency.

(f) Seller is not, nor has been, a party to any understanding or arrangement described in Section 6662(d)(2)(C)(ii) of the Code or any "listed transaction" as defined in Section 6707A(c)(2) of the Code and Treasury Regulation § 1.6011-4(b)(2).

**3.7 Contracts.** Set forth on Schedule 3.7 is a complete and correct list of all Contracts (a) by which any of the Assets are bound or affected or (b) related to the Business to which Seller is a party (the "Material Contracts"). Seller has delivered or caused to be delivered to Buyer correct and complete copies of each Material Contract (including all amendments thereto) or a description of the terms of each Material Contract which is not in writing, and all documents affecting the rights or obligations of any party thereto. The Material Contracts have not been modified or amended except as disclosed on Schedule 3.7. Each Material Contract is valid and enforceable against Seller in accordance with its terms and is in full force and effect, and each Material Contract constitutes a legal, valid and binding obligation of the other parties thereto, enforceable against them in accordance with its terms. To Seller's Knowledge, no default and no event which, with the giving of notice, lapse of time, or both, would be a default has occurred under any Material Contract. To Seller's Knowledge, there are no setoffs, counterclaims or disputes existing or asserted with respect to such Material Contracts, and Seller has not made any agreement with any other party thereto for any deduction from or increase to any amount payable thereunder. To Seller's Knowledge, there are no facts, events or occurrences which in any way impair the validity or enforcement of any Contract or tend to reduce or increase the amounts payable thereunder. Seller has not, directly or indirectly, by operation of Law or otherwise, transferred or assigned all or any part of its right, title or interest in and to any Material Contract to any other Person. To Seller's Knowledge, there are no Proceedings pending nor threatened against any party to any of the Material Contracts.

**3.8 Environmental Matters.**

Except as set forth on Schedule 3.8, to the Knowledge of Seller:

(a) Seller has at all times complied with all applicable Environmental Laws, except where failure to comply would not, individually or in the aggregate, result in Environmental, Health and Safety Liabilities.

(b) Seller has not received any court order, demand, notice, or other written communication relating to any (i) actual, alleged, or potential violation of or failure to comply with any Environmental Law or giving rise to Environmental Health and Safety Liabilities (ii) actual or potential Liability resulting from or arising under any Environmental Law or otherwise relating to Hazardous Substances; or (iii) actual or potential Liability with respect to any off-site Environmental Law matter including but not limited to, Hazardous Substances handling, transportation, treatment, storage, management or disposal services facilities or locations used by the Sellers..

(c) There are no pending or threatened Environmental Health and Safety Liabilities, with respect to, arising from, or affecting any of the Real Property or any other asset owned or used by Seller.

(d) There is no Hazardous Substance present on or under the Real Property in material violation of Environmental Law.

(e) None of the Real Property contains any (i) above-ground or underground storage tanks or (ii) landfills, surface impoundments, or Hazardous Substance disposal areas.

(f) No Hazardous Substances have been transported, discharged, released, spilled or disposed from the Real Property during Seller's occupancy of the Real Property in material violation of any Environmental Law; no Hazardous Substances have been generated, handled, treated, stored, managed or disposed of at, on or under the Real Property during Seller's occupancy of such Real Property in material violation of any Environmental Law; and there has been no release of Hazardous Substances at or from the Real Property during Seller's occupancy of such Real Property, or arising from the operations of Seller in connection with its Real Property during Seller's occupancy of any such Real Property or its Business, in material violation of any Environmental Laws.

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

**3.9 Permits.** Set forth on Schedule 3.7 is a complete and correct list of all Permits used by the Seller in the operation of the Business. To the Knowledge of the Seller, and at all relevant times has had, all Permits necessary for its operation of the Business to comply with all Laws applicable to the Assets and is and has been in material compliance with the terms of such Permits (as applicable) on and after January 1, 2019. Seller has no Knowledge of any reason the Permits would be revoked or materially altered before the closing date and/or Buyer's timely request to the appropriate agency to transfer the Permit.

**3.10 Insurance.**

(a) Seller maintains and has maintained appropriate insurance necessary for the full protection of all of its Assets, Business, operations, products and services. Schedule 3.10(a) sets forth a list of the insurance policies as of the date of this Agreement that insure the properties, assets or operations of the Business, or the Assets. There are no claims by Seller pending under any of such policies as to which coverage has been questioned, denied or disputed by the underwriters of such policies or in respect of which such underwriters have reserved their rights, and all such policies are in full force and effect, and no written notice of cancellation, termination or non-renewal has been received with respect to any such policy. Seller is not in default with respect to any provisions contained in any such insurance policies and no insurance provider is in default with respect to such insurance policies.

(b) Seller has no outstanding guarantees or other credit support issued or entered into in connection with the Assets or the Business and no guarantees or other credit support is required to satisfy any contractual, statutory, or regulatory requirement applicable to Seller with respect to the Business or Assets.

**3.11 Intellectual Property.**

(a) There are no registrations or applications for registration for Intellectual Property Rights owned by Seller in connection with its ownership and operation of the Business. All of the Intellectual Property Rights owned by Seller in connection with its ownership and operation of the Business are subsisting, and to the Knowledge of Seller, valid and enforceable.

(b) To Seller's Knowledge, no Intellectual Property Right owned by Seller in connection with its ownership and operation of the Business is being infringed or misappropriated by any third party, and Seller is not infringing or misappropriating any valid and enforceable Intellectual Property Right owned by any third party, except, in any case, where such infringement or misappropriation would not result in a Material Adverse Effect.

(c) To the Knowledge of Seller, there have been no actual or alleged theft or unauthorized disclosure, use, access, intrusions, or breaches of security, of: (i) the Systems; (ii) any

personal information, payment card information, confidential or proprietary Data or any other such information collected, maintained or stored by or on behalf of Seller in connection with its ownership and operation of the Business; or (iii) any trade secrets and other confidential information that constitutes Intellectual Property Rights owned by Seller in connection with its ownership and operation of the Business, except where such theft or unauthorized disclosure, use, access, intrusions, or breaches of security would not result in a Material Adverse Effect.

**3.12 Conduct of Business in Ordinary Course.** Since the effective date of the appraisal used to determine the value of the Assets, Seller has operated the Business in the ordinary course of business consistent with past practice, and there has not been any event, occurrence or development that has had a Material Adverse Effect.

**3.13 Proceedings.** Other than as set forth on Schedule 3.13, there are no Proceedings pending or threatened against Seller or directly affecting any of the Assets or the Business by or on account of any Person or before any Governmental Authority and to Seller's Knowledge there is no valid basis for any such Proceeding. Seller has not been charged with, nor to Seller's Knowledge is it under investigation with respect to any charge which has not been resolved to their favor concerning any violation of any applicable Law with respect to any of the Assets or the Business and to Seller's Knowledge, there is no valid basis for any such charge or investigation. No judgment, Order, writ, injunction, decree, assessment or other command of any Governmental Authority affecting Seller or any of the Assets or the Business has been entered which is presently in effect. There is no Proceeding pending or to Seller's Knowledge, none threatened which challenges the validity of this Agreement or the Contemplated Transaction or otherwise seeks to prevent, directly or indirectly, the consummation of the Contemplated Transaction, nor to seller's Knowledge is there any valid basis for any such Proceeding.

**3.14 Compliance with Laws.** Except as set forth on Schedule 3.8, to Seller's Knowledge, it is, and since January 1, 2019 has been, in compliance with all Laws applicable to the Assets and the operation of the Business and has not committed any violation of any Law applicable to the Assets and/or operation of the Business. Seller has not received any notice or other communication (whether oral or written) from any Governmental Authority or any other Person regarding (i) any actual, alleged, possible or potential violation of, or failure to comply with, any Law or (ii) any actual, alleged, possible or potential obligation on the part of Seller to undertake, or to bear all or any portion of the cost of, any remedial action of any nature. To Seller's Knowledge, the Assets, in their current condition, are capable of complying with all Laws.

**3.15 Affiliate Obligations.** There is no intergovernmental agreement, account, Contract, or transaction among Seller or any of its Affiliates that constitutes an Asset.

**3.16 Brokers.** Seller has no Liability or obligation to pay any fees or commissions to any broker, finder, or agent in connection with the negotiation, execution or delivery of this Agreement or any other Transaction Document.

#### **ARTICLE 4**

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

Buyer hereby makes the following representations and warranties to Seller as of the date of this Agreement and as of the Closing:

**4.1 Organization.** Buyer is a public utility corporation duly organized, validly existing and in good standing under the Laws of the State of Indiana.

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

(a) Buyer has the power to enter into and perform this Agreement and the other Transaction Documents to which it is a party and to consummate the Contemplated Transaction.

(b) The execution, delivery, and performance of this Agreement and the other Transaction Documents to which it is a party by Buyer, and the consummation of the Contemplated

Transaction, have been duly and validly authorized by all necessary action on the part of Buyer. This Agreement has been duly executed and delivered by Buyer (and all documents required to be executed and delivered by Buyer at Closing shall be duly executed and delivered by Buyer), and this Agreement constitutes, and at the Closing such documents shall constitute, the valid and binding obligations of Buyer, enforceable in accordance with their terms except as such enforceability may be limited by the Bankruptcy and Equity Exceptions.

(c) Neither the execution, delivery and performance of this Agreement and the other Transaction Documents to which Buyer is a party by Buyer nor the consummation of the Contemplated Transaction will, directly or indirectly (with or without notice or lapse of time):

(i) contravene, conflict with or result in a violation of: (A) any provision of the Organizational Documents of Buyer; or (B) any resolution adopted by the governing body of Buyer;

(ii) contravene, conflict with or result in a violation of any Laws or any Order to which Buyer or any of its material assets may be subject, or require the consent of or other action by a Governmental Authority; or

(iii) contravene, conflict with or result in a default under, or give rise to any right of termination, cancellation or acceleration of any right or obligation of Buyer or to a loss of any benefit to which Buyer is entitled under any provision of any Contract to which Buyer is a party, or by which any of the material assets and properties of Buyer are bound or subject.

**4.3 Proceedings.** There are no Proceedings pending or, to the Knowledge of Buyer, threatened against or affecting Buyer that challenges or seeks to prevent, enjoin, alter or materially delay the Contemplated Transaction. Buyer is not a party or subject to any Order other than orders of general applicability, and is not in default thereunder.

**4.4 Brokers.** No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the Contemplated Transaction based upon arrangements made by or on behalf of Buyer.

**4.5 Sufficiency of Funds.** Buyer has sufficient cash on hand or other sources of immediately available funds to enable it to make payment of the Purchase Price and consummate the Contemplated Transaction.

**4.6 Solvency.** Immediately after giving effect to the transactions contemplated hereby, Buyer shall be solvent and shall: (a) be able to pay its debts as they become due; (b) own property that has a fair saleable value greater than the amounts required to pay its debts (including a reasonable estimate of the amount of all contingent liabilities); and (c) have adequate capital to carry on its business. No transfer of property is being made and no obligation is being incurred in connection with the transactions contemplated hereby with the intent to hinder, delay or defraud either present or future creditors of Buyer or Seller. In connection with the transactions contemplated hereby, Buyer has not incurred, nor plans to incur, debts beyond its ability to pay as they become absolute and matured.

**4.7 Independent Investigation.** Buyer has conducted its own independent investigation, review and analysis of the Business and the Assets, and acknowledges that it has been provided adequate access to the personnel, properties, assets, premises, books and records, and other documents and data of Seller for such purpose. Buyer acknowledges and agrees that: (a) in making its decision to enter into this Agreement and to consummate the transactions contemplated hereby, Buyer will have relied solely upon its own investigation and the express representations and warranties of Seller set forth in Article 3 of this Agreement (including related portions of the Disclosure Schedules); and (b) neither Seller nor any other Person has made any representation or warranty as to Seller, the Business, the Assets or this Agreement, except as expressly set forth in Article 3 of this Agreement (including the related portions of the Disclosure Schedules).

## ARTICLE 5 Conditions Precedent to Closing

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

(a) Representations and Warranties. Each of the representations and warranties of Seller contained in Article 3 is true, correct and accurate from the date of this Agreement and as of the Closing Date shall be true, correct and accurate as though restated on and as of such date (except in the case of any representation and warranty that by its terms is made as of a date specified therein, which shall be accurate as of such date) except where the failure of any such representation or warranty to be true, correct and accurate would not, individually or in the aggregate, be material to the Business; provided, however, that any representation or warranty of Seller contained in Article 3 qualified by materiality, Material Adverse Effect or similar qualifications shall be deemed not to be so qualified for the purposes of this Section 5.1(a);

(b) Covenants. Seller shall have performed and complied in all material respects with all covenants required by this Agreement to be performed or complied with by them prior to or at the Closing;

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

(d) Approvals. Buyer shall have received prior to Closing (i) an Order from the IURC approving the Contemplated Transaction and the transfer of the Assets and Business thereunder, its proposed accounting and rate base treatment with respect to the Contemplated Transaction including recognition of the full Purchase Price in net original cost rate base, the application of proposed depreciation accrual rates to the Assets, the application of proposed rates, and the encumbrance of the Real Property with the lien of its mortgage indenture; and (ii) all other regulatory approvals required by any Governmental Authority to operate the Business within the Service Area.

(e) Closing Deliveries. Seller shall have delivered to Buyer the Closing requirements set forth in Section 2.6(a);

(f) Due Diligence. Buyer shall be satisfied, in its sole and absolute discretion, with the results of the appraisals, its due diligence review of the Business, the Assets and the Seller, including without limitation, satisfaction with the results of any environmental assessment performed with respect to the Assets.

(g) No Adverse Change. Buyer has determined that there has not been any material adverse change in the Business, the Assets, financial condition or Business prospects of Seller and that there is no material adverse change in the relationships maintained by Seller with its employees, suppliers, customers or Governmental Authorities as of Closing; and

(h) Board Approval. Buyer shall have obtained approval of the Contemplated Transaction by Buyer's board of directors

(i) Material Adverse Effect. Since the date of this Agreement, there has not been any event, occurrence or development which, individually or in the aggregate, has had or would have a Material Adverse Effect; and

(j) HSR Act. The applicable waiting period under the HSR Act with respect to the transactions contemplated by this Agreement shall have expired or been terminated.

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

(a) Representations and Warranties. Each of the representations and warranties of Buyer contained in Article 4 is true, correct and accurate as of the date of this Agreement and, as of the Closing Date, shall be true, correct and accurate as though restated on and as of such date (except in the case of any representation and warranty that by its terms is made as of a date specified therein, which shall be accurate as of such date) except where the failure of any such representation or warranty to be true, correct and accurate would not, individually or in the aggregate, materially impair Buyer's ability to consummate the Contemplated Transaction; and

(b) Covenants. Buyer shall have performed and complied in all material respects with all covenants required by this Agreement to be performed and complied with by Buyer prior to or at Closing;

(c) Closing Deliveries. The Buyer shall have delivered to Seller the Closing requirements set forth in Section 2.6(b).

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

**6.1 Covenants of Seller Prior to Closing.** Seller covenants and agrees that during the period from the date hereof until Closing:

(a) Non-Solicitation. Unless and until such time as this Agreement is terminated pursuant to Article 8, Seller shall not, and will cause each employee, officer, governing body, and agent not to, directly or indirectly: (i) submit, solicit, initiate, encourage or discuss any proposal or offer from any Person relating to any sale of all or any portion of the Assets or a sublease or assignment of any lease or any similar transaction involving Seller and the Business or the Assets; (ii) enter into any agreement or commitment related to any such transaction; or (iii) furnish any information with respect to or assist or participate in or facilitate in any other manner any effort or attempt by any Person to do or seek any of the foregoing. Seller shall notify Buyer immediately if any Person makes any proposal, offer, inquiry or contact with respect to any of the foregoing.

(b) Access. Upon reasonable prior notice by Buyer, Seller shall: (i) furnish Buyer and its financial and legal advisors with copies of all such Contracts, books and Records and other existing documents and data as Buyer may reasonably request; (ii) furnish Buyer and its financial and legal advisors with such additional financial, operating and other data and information as Buyer may reasonably request; (iii) permit Buyer or its representatives to conduct such physical inspections and environmental audits of the Real Property, as requested by Buyer; and (iv) permit Buyer or its representatives to conduct interviews of employees of Seller.

(c) Ordinary Course. Seller shall carry on the operation of the Business in the ordinary course of business, consistent with prior practice, not introduce any materially new method of management or operation, and use reasonable efforts to preserve the Business and conserve the goodwill and relationships of Seller's customers, suppliers, Governmental Authorities and others having business relations with it. Seller shall not engage in any activity or transaction which is inconsistent with the terms of this Agreement.

(d) Liens; Encumbrances. Seller shall not enter into or assume any mortgage, pledge, security agreement or other title retention agreement or permit any Encumbrance to attach to any of the Assets, whether now owned or hereafter acquired.



(e) Water Rates. Seller shall institute a water rate increase, at or before closing, of fifteen percent (15%) above Seller's current water rates.

(f) Further Covenants.

(i) Reports. Seller shall duly and timely file all reports required to be filed with any Governmental Authority and will promptly pay when due all Taxes, assessments and governmental charges including interest and penalties levied or assessed, unless diligently contested in good faith by appropriate Proceedings;

(ii) Condition of Property. Consistent with past practice, Seller shall maintain and keep the Assets in substantially the same condition as of the date hereof, normal wear and tear excepted;

(iii) Insurance. Seller shall maintain in full force and effect all policies of insurance now in effect up and through the Effective Time on the Closing Date, but not thereafter;

(iv) No Breach or Default of Contracts. Seller shall not do any act or omit any act or permit any omission to act which will cause a breach or default by Seller of any Contract;

(v) Supplies. Seller shall keep supplies at a level sufficient to operate the Business in accordance with past practice;

(vi) Contracts. Seller shall not enter into any Contract other than in the ordinary course of business; and

(vii) Related Person Transactions. Seller shall not enter into any transaction with any Related Person.

**6.2 Covenants of Buyer Prior to Closing**. Buyer covenants and agrees that, during the period from the date hereof until Closing, Buyer shall conduct due diligence and investigation reasonably and in goodfaith, and any determination or action required by Buyer as a precondition of Closing shall not be unreasonably withheld.

**6.3 Environmental Assessment**. Buyer, in its sole discretion and at its sole expense, may conduct a Phase I and Phase II environmental analysis of any or all of the Real Property, and the Seller shall cooperate and provide access for same. In the event that an assessment detects any actual or possible violation of any Environmental Law, the Buyer may, in its sole discretion, terminate this Agreement the effect of which is described in Section 8.2 herein.

**6.4 Regulatory Compliance; Consents**.

(a) Upon the terms and subject to the conditions set forth in this Agreement, each of Buyer and Seller shall use its reasonable best efforts to assist, consult with and cooperate with each other and any other parties in doing all things necessary, proper or advisable to consummate and make effective, in the most expeditious manner practicable, the Contemplated Transaction, including using reasonable best efforts to accomplish the following: (i) the taking of all actions necessary to cause the conditions to the Closing set forth in Article 5 to be satisfied as promptly as practicable; (ii) the obtaining of all Permits and Consents from all third parties and all Governmental Authorities necessary or advisable to consummate, or in connection with, the Contemplated Transaction; (iii) the making of all necessary registrations and filings promptly with the appropriate Governmental Authorities, including any registrations and filings required by the HSR Act and the IURC; and (iv) the execution and delivery of any additional instruments necessary to consummate the transactions contemplated by, and to fully carry out the purposes of, this Agreement.

(b) In furtherance (but not in limitation) of Section 6.4(a), Buyer and Seller shall each keep the other apprised of the status of matters relating to filings, Permits and Consents and completion of the Contemplated Transaction. Subject to applicable Law, each of Buyer and Seller shall have the right to

review in advance, and, to the extent practicable, each shall consult the other on, all of the information relating to Buyer, Seller, the Business or the Assets, as the case may be, and any of their respective Affiliates, that appear in any filing made with, or written materials submitted to, any third party or any Governmental Authority in connection with the Contemplated Transaction. Buyer and Seller shall promptly (but in no event later than (i) with respect to any required applications, notices or other filings under the HSR Act, five days after the date of this Agreement, or (ii) with respect to any required applications, notices or other filings required by the IURC or under any other applicable Law, 90 days after the date of this Agreement) make all filings and submissions with Governmental Authorities under applicable Law that are necessary or advisable to consummate, or in connection with, the Contemplated Transaction. Seller, on the one hand, and Buyer, on the other hand, shall each, in connection with the efforts referenced in this Section 6.4 to obtain all requisite Permits and Consents for the Contemplated Transaction under applicable Law, use its reasonable best efforts to: (i) cooperate in all respects with each other in connection with any filing or submission and in connection with any investigation or other inquiry, including any Proceeding initiated by a private party, in each case, regarding any such transaction; (ii) keep the other party informed of any material communication received by such party from, or given by such party to, any Governmental Authority and of any communication received or given in connection with any Proceeding by a private party, in each case regarding any such transaction; (iii) subject to applicable Law, permit the other party to review, in advance, any written communication given by it to or received from, and consult with each other in advance of any meeting or conference with, any Governmental Authority or, in connection with any Proceeding by a private party regarding any such transaction, any other Person, and to the extent permitted by any such Governmental Authority or other Person, give the other party the opportunity to attend and participate, and shall participate and attend upon the request of the other party, in such meetings and conferences subject to applicable Law; and (iv) shall, if requested by the other party or any Governmental Authority, promptly provide information or respond to questions by such Governmental Authority in connection with the subject matter of this Agreement. The parties shall each bear their own costs pursuant to this Section 6.3.

**6.4 Certain Post-Closing Covenants of Seller.**

- (a) Seller:
- (i) shall pay in a timely manner all Taxes resulting from or payable in connection with the sale of the Assets pursuant to this Agreement, regardless of the Person on whom such Taxes are imposed.
  - (ii) shall pay, or make adequate provisions for the payment, in full, of all of the retained Liabilities and other Liabilities of Seller under this Agreement.
  - (iii) hereby agrees to cooperate with Buyer to ensure a proper transition of all customers with respect to billing and customer service activities.
  - (iv) shall provide Buyer with a timely opportunity to review and approve, or not, in its sole discretion, all material projects to be installed in the system in 2021.
  - (v) hereby acknowledges that Buyer must comply with all provisions of its tariffs as filed with and approved by the IURC.

**6.5 Certain Post-Closing Covenants of Buyer.**

- (a) Buyer:
- (i) to the extent Buyer offers employment to any of Seller's employees, such employment shall be undertaken by Buyer independent of this

Agreement, and Seller shall have no responsibilities, obligations, or Liabilities with respect thereto;

- (ii) shall not charge, or otherwise propose in a rate case, DSIC proceeding, or other proceeding affecting Buyer's rates and charges, to the IURC, or any board, commission or agency that might succeed to the IURC's powers governing utility regulation, that customers within the Service Area or Seller's municipal corporate limits, whichever is larger, be subject to a special rate or charge that exceeds rates charged for similar services to the communities subject to Buyer's Area One rates as reflected on Buyer's tariff approved by the IURC; provided, however, Buyer may charge the rates approved by Seller pursuant to Section 6.1(e) until such time that Buyer's Area One rates, as reflected on Buyer's IURC-approved tariff, meet or exceed the rates approved by Seller pursuant to Section 6.1(e) or Seller may, by ordinance, authorize Buyer to implement an economic development surcharge upon approval by the IURC;
- (iii) shall provide written notice to Seller, prior to filing its petition or other pleading initiating a case before the IURC, of any filing, to occur on or before the fifth (5th) anniversary of Closing, of any general rate case, distribution system improvement charge case, or any other case that affects the rates and charges applicable within the Service Area. Further, Seller hereby waives any objection to Seller intervening in any IURC proceeding involving Buyer; and
- (iv) shall cooperate with Seller and extend water service to Lake Prairie Elementary School on a mutually agreeable timeline consistent with Seller's extension of sanitary sewer service to Lake Prairie Elementary School.

## **ARTICLE 7**

### **Indemnification; Limitations**

**7.1 Survival.** Subject to the limitations and other provisions of this Agreement, the representations and warranties contained herein shall survive the Closing and shall remain in full force and effect until the date that is eighteen (18) months from the Closing Date; *provided*, that the representations and warranties in (i) Section 3.1, Section 3.2, Section 3.3(a), and Section 3.4 shall survive indefinitely. None of the covenants or other agreements contained in this Agreement shall survive the Closing Date other than those which by their terms contemplate performance after the Closing Date, and each such surviving covenant and agreement shall survive the Closing for the period contemplated by its terms. Notwithstanding the foregoing, any claims asserted in good faith with reasonable specificity (to the extent known at such time) and in writing by notice from the non-breaching party to the breaching party prior to the expiration date of the applicable survival period shall not thereafter be barred by the expiration of the relevant representation or warranty and such claims shall survive until finally resolved.

**7.2 Indemnification and Payment of Damages by Seller.** Subject to the other terms and conditions of this Article, Seller shall defend, indemnify, and hold harmless Buyer and Buyer's past, present and future officers, directors, shareholders, employees, agents, attorneys, representatives, successors and assigns (collectively, the "Buyer Indemnitees"), from any and all Damages arising out of, or caused by: (i) the misrepresentation, breach of warranty or nonfulfillment of any provision of this Agreement by Seller or; (ii) all Liabilities and/or duties of Seller, whether accruing prior to or after the Effective Time on the Closing Date, and any Encumbrance affecting the Assets; (iii) assessments, charges and other similar claims due or owing, directly or indirectly, by Seller or otherwise as a result of or on account of the Assets or the Business at any time prior to the Effective Time on the Closing Date; (iv) the ownership and/or

operation of any of the Assets or the Business prior to the Effective Time on the Closing Date; (v) any claim or Proceeding now existing or hereafter arising and relating to the Assets or the Business of Seller and arising from events or matters occurring prior to the Effective Time on the Closing Date; and (vi) any claim by an employee of Seller for any severance payment or arising out of such employee's employment with Seller or under the Worker Adjustment and Retraining Notification Act, COBRA (Sections 601 through 608 of the Employee Retirement Income Security Act of 1974), or under any employee benefit plan or employment Contract to which Seller is a party.

**7.3 Indemnification and Payment of Damages by Seller - Environmental Matters.** In addition to the provisions of Section 7.2, subject to the other terms and conditions of this Article, Seller shall defend, indemnify, and hold harmless Buyer Indemnitees, from any and all Damages (including costs of cleanup, containment or other remediation) arising out of, or caused by:

(a) Any Environmental, Health and Safety Liabilities arising out of or relating to: (i) (A) the ownership, operation or condition at any time on or prior to the Effective Time on the Closing Date of the Assets or any other properties (whether real, personal or mixed and whether tangible or intangible) in which Seller has or had an interest; or (B) any Hazardous Materials or other contaminants that were present on or in the Assets at any time on or prior to the Effective Time on the Closing Date; or (ii) (A) any Hazardous Materials or other contaminants, wherever located, that were, or were allegedly, generated, transported, stored, treated, Released or otherwise handled by Seller or by any other Person for whose conduct Seller is or may be held responsible, at any time on or prior to the Effective Time on the Closing Date; or (B) any Hazardous Activities that were, or were allegedly, conducted by Seller or by any other Person for whose conduct it is or may be held responsible, on or prior to the Effective Time on the Closing Date; or

(b) Any bodily injury (including illness, disability and death), personal injury, property damage (including trespass, nuisance, wrongful eviction and deprivation of the use of real property) or other damage of or to any Person, including any employee or former employee of Seller or any other Person for whose conduct it is or may be held responsible, in any way arising from or allegedly arising from any Hazardous Activity conducted or allegedly conducted with respect to the Assets or the Real Property by Seller prior to the Effective Time on the Closing Date, or from Hazardous Material that was: (i) present or suspected to be present on or before the Effective Time on the Closing Date on or at the Real Property (or present or suspected to be present on any other property, if such Hazardous Material emanated or allegedly emanated from any of the Real Property and was present or suspected to be present on any of the Real Property on or prior to the Effective Time on the Closing Date); or (ii) Released or allegedly Released by Seller or any other Person for whose conduct it is or may be held responsible, at any time on or prior to the Effective Time on the Closing Date.

Buyer shall control any Cleanup, any related Proceeding and, except as provided in the following sentence, any other Proceeding with respect to which indemnity may be sought under this Section 7.3. The procedure described in Section 7.5 will apply to any claim solely for monetary Damages relating to a matter covered by this Section 7.3.

**7.4 Indemnification By Buyer.** Subject to the other terms and conditions of this Article, Buyer shall defend, indemnify, and hold harmless Seller and Seller's past, present and future officers, governing body, employees, agents, attorneys, representatives, successors and assigns from any and all Damages arising out of, or caused by: (i) Buyer's misrepresentation, breach of warranty or nonfulfillment of any provision of this Agreement; (ii) any Assumed Liabilities; (iii) any claim or Proceeding arising after the Effective Time on the Closing Date and relating to events or matters occurring subsequent to the Effective Time on the Closing Date; and (iv) any claim by an employee of Buyer arising out of such employee's employment with Buyer after the Effective Time on the Closing Date.

**7.5 Procedure for Indemnification.** The procedure for indemnification shall be as follows:

(a) The party claiming indemnification (the "Claimant") shall promptly give notice to the party from whom indemnification is claimed (the "Indemnifying Party") of any claim, whether between the parties or brought by a third party, specifying: (i) the factual basis for such claim; and (ii) the amount of

the claim (to the extent known). If the claim relates to a Proceeding filed by a third party against Claimant, Claimant shall give such notice within ten (10) Business Days after written notice of such Proceeding was given to Claimant. Claimant's failure to give the Indemnifying Party such notice shall not preclude Claimant from obtaining indemnification from the Indemnifying Party unless Claimant's failure has materially prejudiced the Indemnifying Party's ability to defend the claim or litigation, and then the Indemnifying Party's obligation shall be reduced to the extent of such prejudice.

(b) Following receipt of notice from the Claimant of a claim between the parties, the Indemnifying Party shall have sixty (60) days to make such investigation of the claim as the Indemnifying Party deems necessary or desirable. For the purposes of such investigation, the Claimant agrees to make available to the Indemnifying Party and/or its authorized representatives the information relied upon by the Claimant to substantiate the claim. If the Claimant and the Indemnifying Party agree at or prior to the expiration of said sixty (60)-day period (or any mutually agreed upon extension thereof) to the validity and amount of such claim, the Indemnifying Party shall immediately pay to the Claimant the full amount of the claim. If the Claimant and the Indemnifying Party do not agree within said period (or any mutually agreed upon extension thereof), the Claimant may seek appropriate legal remedy.

(c) With respect to any claim by a third party as to which the Claimant asserts it is entitled to indemnification hereunder, the Indemnifying Party shall have the right, at its own expense, to participate in or at its election to assume control of the defense of such claim, with counsel reasonably satisfactory to Claimant, subject to reimbursement of Claimant for actual out-of-pocket expenses incurred by Claimant as the result of request by the Indemnifying Party, subject to the following;

(i) The Claimant may retain separate co-counsel at its sole cost and expense and participate in the defense of any such claim by a third party; and

(ii) The Indemnifying Party shall conduct the defense of the third party claim actively and diligently thereafter.

If the Indemnifying Party elects to assume control of the defense of any third party claim pursuant to this Section, the Indemnifying Party may nevertheless reserve the right to dispute the amount of indemnification claimed or dispute Claimant's right to be indemnified with respect to all or any portion of the claim. Except with the written Consent of the Claimant, the Indemnifying Party shall not, in defending any claim or any litigation resulting therefrom, consent to entry of any judgment or enter into any settlement which does not release the Claimant from all Liability in respect of such claim or litigation. In the event the Claimant fails to consent to any settlement or compromise which such failure results in Damages in excess of the amount for which Consent was requested, the limitation of the Indemnifying Party's obligations to indemnify the Claimant with respect to the subject matter of the claim shall be the amount of the proposed settlement or compromise rejected by Claimant and the Claimant shall be responsible for, and shall hold harmless the Indemnifying Party from, all Damages (including, without limitation, reasonable attorneys' fees incurred with respect to matters subsequent to the rejection of the settlement by Claimant) in excess of the amount of the proposed settlement or compromise rejected by Claimant.

(d) If a claim, whether between the parties or by a third party, requires immediate action, the parties will make every effort to reach a decision with respect thereto as expeditiously as possible.

## **7.5 Limitations on Damages.**

(a) The Indemnifying Party shall not be liable to any Claimant for indemnification under Section 7.2 or Section 7.3, as the case may be, until the aggregate amount of all Damages indemnifiable

under Section 7.2 or Section 7.3 exceeds one million dollars (\$1,000,000) (the "Deductible"), in which event the Indemnifying Party shall only be required to pay or be liable for Losses in excess of the Deductible.

(b) The aggregate amount of all Damages for which an Seller shall be liable pursuant to Section 7.2 and Section 7.3 shall not exceed thirty percent (30%) of the Purchase Price, except to the extent the Damages arise from Fraud committed by Seller.

(c) In no event shall any Indemnifying Party be liable to any Claimant for any incidental, consequential, special or indirect damages, including loss of future revenue or income, loss of business reputation or opportunity relating to the breach or alleged breach of this Agreement, or diminution of value, nor shall any Indemnifying Party be liable to any Claimant for any punitive damages or any damages based on any type of multiple, except to the extent actually awarded to a Governmental Authority or other third party.

(d) Each Claimant party shall take, and cause its Affiliates to take, all reasonable steps to mitigate any Damages upon becoming aware of any event or circumstance that would be reasonably expected to, or does, give rise thereto, including incurring costs only to the minimum extent necessary to remedy the breach that gives rise to such Damages. In no event shall the the Indemnifying Party be liable to any Claimant for any Damages incurred as a result of the Claimant's failure to mitigate Damages.

(e) Seller shall not be liable under this Article for any Damages based upon or arising out of any inaccuracy in or breach of any of the representations or warranties of Seller contained in this Agreement if Buyer had Knowledge of such inaccuracy or breach prior to the Closing.

## **ARTICLE 8**

### **Termination**

**8.1 Termination and Abandonment.** This Agreement may be terminated and abandoned at any time prior to the Closing Date:

- (a) by mutual written Consent of Buyer and Seller; or
- (b) by Buyer, if the IURC does not approve the Contemplated Transaction by one year following the filing date for approval or such other later date as agreed upon, in writing, by Buyer.

**8.2 Effect of Termination.** The right of each party to terminate this Agreement under Section 8.1 is in addition to any other rights such party may have under this Agreement or otherwise, and the exercise of a right of termination will not be an election of remedies. If this Agreement is terminated pursuant to Section 8.1, all further obligations of the parties under this Agreement will terminate, except that the obligations set forth in Sections 9.9 (Legal Fees, Costs) and 9.15 (Publicity; Announcements); and all other covenants and agreements which by their terms continue after the termination of this Agreement will survive; provided, however, that if this Agreement is terminated by a party because of the breach of the Agreement by another party or because one (1) or more of the conditions to the terminating party's obligations under this Agreement is not satisfied as a result of the other party's failure to comply with its obligations under this Agreement, the terminating party's right to pursue all legal remedies will survive such termination unimpaired.

## **ARTICLE 9**

### **General Provisions**

**9.1 Amendment and Modification.** No amendment, modification, supplement, or termination, any section or provision of this Agreement will in any event be effective unless the same is in writing and is signed by the parties. Any Consent given pursuant this Agreement, any waiver of any provision of this Agreement, or any Consent to any departure from the terms of any provision of this Agreement shall be effective only in the specific instance and for the specific purpose for which given and only if it is given in writing and is signed by the party granting such Consent or waiver.

**9.2 Assignments.** Neither party may assign or transfer any of its rights or obligations under this Agreement to any other Person without the prior written Consent of the other party

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

**9.4 Counterparts; Electronic Mail.** This Agreement may be executed by the parties hereto on any number of separate counterparts, and all such counterparts so executed constitute one agreement binding on all the parties hereto notwithstanding that all the parties hereto are not signatories to the same counterpart. For purposes of this Agreement, a document (or signature page thereto) signed and transmitted in .pdf format by electronic mail is to be treated as an original document. The signature of any party thereon is to be considered as an original signature, and the document transmitted is to be considered to have the same binding effect as an original signature on an original document. At the request of any party hereto, the .pdf copy is to be re-executed in original form by the parties who executed the .pdf copy. No party hereto may raise the use of a .pdf copy or the fact that any signature was transmitted through the use of electronic mail as a defense to the enforcement of this Agreement or any amendment or other document executed in compliance with this Section 9.4.

**9.5 Entire Agreement.** This Agreement and the other Transaction Documents constitute the entire agreement among the parties hereto pertaining to the subject matter hereof and supersede all prior agreements, letters of intent, understandings, negotiations and discussions of the parties hereto, whether oral or written.

**9.6 Exhibits and Schedules.** All of the Exhibits and Schedules attached to this Agreement are deemed incorporated herein by reference.

**9.7 Failure or Delay.** Except as otherwise provided by this Agreement, no failure on the part of any party hereto to exercise, and no delay in exercising, any right, power or privilege hereunder operates as a waiver thereof; nor does any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof, or the exercise of any other right, power or privilege. No notice to or demand on any party hereto in any case entitles such party to any other or further notice or demand in similar or other circumstances.

**9.8 Governing Law.** This Agreement and the rights and obligations of the parties hereunder are to be governed by and construed and interpreted in accordance with the Laws of the State of Indiana applicable to Contracts made and to be performed wholly within Indiana, without regard to choice or conflict of Laws rules. In the event of any litigation or claim regarding this Agreement, the parties agree that the IURC has jurisdiction to govern all matters involving the Contemplated Transaction and the provision of water service by Buyer to the residents located within the Service Area.

**9.9 Legal Fees, Costs.** All legal, consulting and advisory fees and other costs and expenses incurred in connection with this Agreement and the Contemplated Transaction are to be paid by the party incurring such costs and expenses; provided, however, in the event litigation is instituted by either party to enforce or remedy a breach of any provision of this Agreement, in addition to any other relief therein awarded, the prevailing party shall be entitled to judgment for reasonable attorney's fees and litigation expenses. The term "prevailing party" shall include, but not be limited to, a party who obtains legal counsel or brings an action against the other by reason of the other's breach or default and obtains substantially the relief sought whether by compromise, mediation, settlement, judgment or otherwise.

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

if to Seller:

Town of Lowell, Indiana  
Attn: Town Manager  
Town Hall  
501 East Main Street  
Lowell, Indiana 46356

with a copy to (which will not constitute notice):

David T. McGimpsey  
Dentons Bingham Greenebaum LLP  
212 W. 6th Street  
Jasper, Indiana 47546

if to Buyer:

Attn: President  
Indiana-American Water Company, Inc.  
153 N. Emerson Avenue  
Greenwood, Indiana 46143

with a copy to (which shall not constitute notice):

Attn: Corporate Counsel  
Indiana-American Water Company, Inc.  
153 N. Emerson Avenue  
Greenwood, Indiana 46143

or to such other address as any party hereto may designate by notice to the other parties in accordance with the terms of this Section 9.10. For e-mail, a party shall contact the other party to receive the then-applicable e-mail for the person in the position stated above.

**9.11 Severability.** Any provision of this Agreement which is prohibited, unenforceable or not authorized in any jurisdiction is, as to such jurisdiction, ineffective to the extent of any such prohibition, unenforceability or nonauthorization without invalidating the remaining provisions hereof, or affecting the validity, enforceability or legality of such provision in any other jurisdiction, unless the ineffectiveness of such provision would result in such a material change as to cause completion of the Contemplated Transaction to be unreasonable.

**9.12 Specific Performance and Injunctive Relief.** The parties hereto recognize that if any or all of them fail to perform, observe or discharge any of their respective obligations under this Agreement, a remedy at Law may not provide adequate relief to the other parties hereto. Therefore, in addition to any other remedy provided for in this Agreement or under applicable Law, any party hereto may demand specific performance of this Agreement, and such party shall be entitled to temporary and permanent injunctive relief, in a court of competent jurisdiction at any time when any of the other parties hereto fail to comply with any of the provisions of this Agreement applicable to such party. To the extent permitted by applicable Law, all parties hereto hereby irrevocably waive any defense based on the adequacy of a remedy at Law which might be asserted as a bar to such party's remedy of specific performance or injunctive relief.

**9.13 Successors and Assigns.** Subject to Section 9.2, all provisions of this Agreement are binding upon, inure to the benefit of and are enforceable by or against the parties hereto and their respective heirs, executors, administrators or other legal representatives and permitted successors and assigns.

**9.14 No Third-Party Beneficiary.** This Agreement is solely for the benefit of the parties hereto and their respective successors and permitted assigns, and no other Person has any right, benefit, priority or interest under, or because of the existence of, this Agreement.



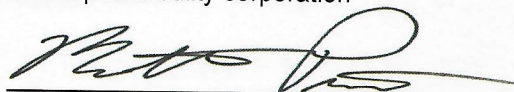
**9.15 Publicity; Announcements.** From the date hereof through and including Closing, no party hereto shall issue, cause or permit the publication by any of their respective Related Persons, agents or representatives, any press release or other public announcement with respect to this Agreement or the Contemplated Transaction except: (i) with the Consent of the other parties hereto (which shall not be unreasonably withheld); or (ii) as required by applicable Law (including, without limitation, any applicable securities Law). Seller will not, without the prior Consent of Buyer, make any announcements to employees of Seller with respect to the Contemplated Transaction and, at such time as an announcement to the employees is made, Buyer shall be allowed to participate in such announcement.

**9.16 Cooperation.** The parties shall use good faith in the administration and execution of this Agreement. Any notices or certifications given under this Agreement or any related agreement shall be given in good faith without any intention to unfairly impede or delay the other party. Buyer and Seller shall cooperate fully with each other and their respective counsel and accountants in connection with any actions required to be taken as part of their respective obligations under this Agreement including, without limitation, actions required to be taken with respect to obtaining any applicable regulatory approval of the Contemplated Transaction. Buyer and Seller shall execute such other documents as may be necessary and desirable to the implementation and consummation of this Agreement. Each party agrees to use all reasonable efforts to consummate the Contemplated Transaction including, without limitation, doing all things reasonably necessary to obtain the requisite regulatory approval.

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

**Buyer**

INDIANA-AMERICAN WATER COMPANY, INC.,  
an Indiana public utility corporation

By: 

Name: Matthew Prine

Title: President

**Seller**

TOWN OF LOWELL, INDIANA,  
an Indiana municipality

By: 

Name: Christopher Salatas

Title: Town Council President

**Exhibit A**  
**Service Area**

## Schedule 1 Definitions

“Affiliate” means, with respect to any Person, a Person that directly or indirectly controls, is controlled by, or is under common control with, such Person, with control in such context meaning the ability to direct the management or policies of a Person through ownership of voting shares or other securities, pursuant to a written agreement, or otherwise.

“Assets” as defined in Section 2.1.

“Agreement” as defined in the introductory paragraph.

“Assigned Contracts” as defined in Section 2.1(d).

“Assignment and Assumption Agreement” as defined in Section 2.6(a)(vii).

“Bankruptcy and Equity Exceptions” as defined in Section 3.2(b).

“Bill of Sale” as defined in Section 2.6(a)(i).

“Business” as defined in the Recitals.

“Business Days” means any day other than (i) Saturday or Sunday, or (ii) any other day on which governmental offices in the State of Indiana are permitted or required to be closed.

“Buyer” as defined in the introductory paragraph.

“Closing” as defined in Section 2.5.

“Closing Date” as defined in Section 2.5.

“Consent” means any approval, consent, ratification, waiver or other authorization.

“Contemplated Transaction” means all of the transactions contemplated by this Agreement and the Transaction Documents.

“Contract” means any written or oral binding contract, commitment, lease, license, mortgage, bond, note or other instrument, or other legally binding agreement, and all amendments thereto, but excluding any Permits.

“Customer Premises” means a dwelling, building, structure or parcel of real estate which is supplied with water service through a Service Line.

“Customer Service Connection” means that portion of water pipe extending from the Customer Premises to the curb box containing the curb service stop which Customer Service Connection shall be owned and maintained by the customer.

“Damages” means any actions, suits, debts, sums of money, interest owed, accounts, controversies, agreements, charges, damages, judgments, executions, and reasonably incurred costs, expenses, fees (including reasonable attorneys’ fees and court costs), counterclaims, claims, demands, causes of action, liabilities and losses; *provided, however*, that “Damages” shall not include any incidental, consequential, special or indirect damages, including loss of future revenue or income, loss of business reputation or opportunity relating to the breach or alleged breach of this Agreement, or diminution of value, nor shall it include punitive damages or any damages based on any type of multiple, except to the extent actually awarded to a Governmental Authority or other third party.

“Data” means the data relating to the Business as currently stored in an electronic format on computer servers operated by Seller, including financial, customer payment and billing information, customer service records, and maintenance records.

“Effective Time” as defined in Section 2.5.

“Encumbrance” means, with respect to any property or asset, any charge, claim, community property interest, condition, easement, encumbrance, equitable interest, lien, mortgage, option, pledge, security interest, right of first refusal, right of way, servitude or restriction of any kind in respect of such property or asset, including any restriction on use, transfer, receipt of income or exercise of any other attribute of ownership, or any repayment obligation under any grant.

“Environment” means soil, land surface or subsurface strata, surface waters (including navigable waters, ocean waters, streams, ponds, drainage basins and wetlands), groundwater, drinking water supply, stream sediments, ambient air (including indoor air), plant and animal life and any other environmental medium or natural resource.

“Environmental Law” means any Federal, State, County or Municipal laws, statutes and implementing regulations relating to environmental protection, health, safety or natural resources, including without limitation CERCLA, RCRA, the Emergency Planning and Community Right-to-Know Act (42 U.S.C. 11001 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. 1801 et seq.), the Clean Water Act (33 U.S.C. 1251 et seq.), the Safe Drinking Water Act (42 U.S.C. §300f et seq.), and the Clean Air Act (42 U.S.C. 7401 et seq.).

“Excluded Assets” as defined in Section 2.2.

“Fraud” means an act, committed by a party, with intent to deceive another party and requires (a) a false representation of material fact made in Article 3 or Article 4 by such party; (b) with actual knowledge that such representation is false; (c) with an intention to induce the party to whom such representation is made to act or refrain from acting in reliance upon it; (d) causing that party, in justifiable reliance upon such false representation and with ignorance to the falsity of such representation, to take or refrain from taking action; and (e) causing such party to suffer material loss by reason of such reliance; provided, however, that for the avoidance of doubt, “Fraud” shall not include any type of constructive or equitable fraud.

“Governmental Authority(ies)” means any federal, state or local government located in the United States, including any political subdivision, departments, courts, commissions, boards, bureaus, ministries, agencies, or other instrumentalities of any of them.

“Hazardous Materials” means any pollutant, toxic substance, including asbestos and asbestos-containing materials, hazardous waste, hazardous material, hazardous substance, contaminant, petroleum and petroleum-containing materials, radiation and radioactive materials, leaded paints, toxic mold or other harmful biological agents, and polychlorinated biphenyls as defined in, the subject of, or that could give rise to Liability under any Environmental Law.

“HSR Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

“IDEM” as defined in Section 3.2(c)(ii).

“Intellectual Property Rights” means all of the following in all jurisdictions throughout the world: (i) patents, patent applications, patent or invention disclosures, design rights, and inventions (whether or not patentable and whether or not reduced to practice) and any reissue, continuation, continuation in part, division, extension or reexamination thereof; (ii) trademarks, trade names, service marks, trade dress, corporate names slogans and other indicia of source or origin, together with all goodwill associated therewith, and all translations, adaptations, derivations and combinations of the foregoing (and all logos related to the foregoing), and all registrations and applications therefor; (iii) copyrights, copyrightable or copyrighted works and mask work, and all registrations and applications therefor; (iv) internet domain names and social media accounts; (v) trade secrets and other confidential information, ideas, know how,

related processes and techniques, manufacturing processes, research and development information, drawings, specifications, formulas, designs, plans, proposals, technical data and manuals, internal business information, identities of, individual requirements of, specific contractual arrangements with, and information about, suppliers, distributors, customers, independent contractors or other business relations, compilations of data and analyses, systems, records, reports, documentation, models, innovations, improvements, methods, designs, analyses, reports and all similar or related information; (vi) computer programs and software (including source code, object code, executable code, firmware, systems, tools, Data, databases, and related documentation) and software implementations of algorithms, models and methodologies; (vii) databases, (viii) moral rights and (ix) all other intellectual property and intangible properties.

"IURC" as defined in Section 2.5.

"Knowledge" means an individual will be deemed to have "Knowledge" of a particular fact or other matter if:

- (a) Such individual is actually aware of such fact or other matter; or
- (b) A prudent individual could be expected to discover or otherwise become aware of such fact or other matter in the course of conducting a reasonable investigation concerning the existence of such fact or other matter.

A Person (other than an individual) will be deemed to have "Knowledge" of a particular fact or other matter if any individual who is serving as a director or officer of such Person (or in any similar executive capacity) has, or at any time had, Knowledge of such fact or other matter.

"Law" means any law, statute, rule, regulation, ordinance, order, decree, requirement, judgment, and code of any Governmental Authority.

"Lease" as defined in Section 3.4(b).

"Leased Real Property" as defined in Section 3.4(b).

"Liability" means, with respect to any Person, any liability or obligation of such Person, whether known or unknown, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due, vested or unvested, executory, determined, determinable or otherwise and whether or not the same is required to be accrued on the financial statements of such Person.

"Material Adverse Effect" means any change, condition or event that is materially adverse to (a) the operations, results of operations or financial condition of the Assets or the Business, taken as a whole or (b) the ability of Seller to consummate the transactions contemplated hereby; provided, however, that "Material Adverse Effect" shall not include any event, occurrence, fact, condition or change, directly or indirectly, arising out of or attributable to: (i) general economic or political conditions; (ii) conditions generally affecting the industries in which the Business operates; (iii) any changes in financial, banking or securities markets in general, including any disruption thereof and any decline in the price of any security or any market index or any change in prevailing interest rates; (iv) acts of war (whether or not declared), armed hostilities or terrorism, or the escalation or worsening thereof; (v) any action required or permitted by this Agreement or any action taken (or omitted to be taken) with the written consent of or at the written request of Buyer; (vi) any matter of which Buyer is aware on the date hereof; (vii) any changes in applicable Laws or accounting rules (including GAAP) or the enforcement, implementation or interpretation thereof; (viii) the announcement, pendency or completion of the transactions contemplated by this Agreement, including losses or threatened losses of employees, customers, suppliers, distributors or others having relationships with the Seller and the Business; (ix) any natural or man-made disaster or acts of God; (x) any epidemics, pandemics, disease outbreaks, or other public health emergencies; or (xi) any failure by the Business to meet any internal or published projections, forecasts or revenue or earnings predictions.

"Material Contracts" as defined in Section 3.5.

"Order" means any award, decision, injunction, judgment, order, ruling, subpoena or verdict entered, issued, made or rendered by any Governmental Authority or by any arbitrator.

"Organizational Documents" means the articles or certificate of incorporation, the bylaws or other similar organizational or governing documents of a corporation and any amendment thereto.

"Owned Real Property" as defined in Section 3.4(a).

"Permits" means all permits, licenses, authorizations, consents and approvals from or of, and has made all material filings, applications and registrations with, all Governmental Authorities required to own and operate the Business as now conducted.

"Permitted Encumbrance" means:

(a) mechanic's, materialman's, carrier's, repairer's and other similar Encumbrances arising or incurred in the ordinary course of business or that are not yet due and payable or are being contested in good faith and by appropriate proceedings and for which reserves have been established on the Balance Sheet;

(b) Encumbrances in the nature of zoning restrictions, easements, rights or restrictions of record on the use of real property that do not materially impair the continued use of such property in the Business in the manner in which it is currently used;

(c) Encumbrances to secure obligations owed to landlords, lessors or renters under leases or rental agreements for the occupancy or use of real or personal property;

(d) Encumbrances that will be fully and unconditionally discharged on or prior to the Closing Date;

(e) Intellectual Property Rights licenses; and

(f) other non-monetary and non-financial Encumbrances which would not, individually or in the aggregate, materially impair the continued use of such property and asset in the manner in which it is currently used.

"Person" means any individual, corporation (including any non-profit corporation), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, labor union or other entity or Governmental Authority.

"Proceeding" means any action, arbitration, hearing, litigation, suit, claim or other similar proceeding commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Authority or arbitrator.

"Purchase Price" as defined in Section 2.3.

"Real Property" as defined in Section 3.4(b).

"Records" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

"Related Person" with respect to a particular individual, means:

(a) Each other member of such individual's Family (as hereinafter defined);

(b) Any Person that is directly or indirectly controlled by such individual or one or more members of such individual's Family;

(c) Any Person in which such individual or members of such individual's Family hold (individually or in the aggregate) a Material Interest; and

(d) Any Person with respect to which such individual or one or more members of such individual's Family serves as a director, officer, partner, executor or trustee (or in a similar capacity).

With respect to a specified Person other than an individual:

(e) Any Person that directly or indirectly controls, is directly or indirectly controlled by, or is directly or indirectly under common control with such specified Person;

(f) Any Person that holds a Material Interest in such specified Person;

(g) Each Person that serves as a director, officer, partner, executor or trustee of such specified Person (or in a similar capacity);

(h) Any Person in which such specified Person holds a Material Interest;

(i) Any Person with respect to which such specified Person serves as a general partner or a trustee (or in a similar capacity); and

(j) Any Related Person of any individual described in clause (b) or (c).

For purposes of this definition, (i) the "Family" of an individual includes (A) the individual, (B) the individual's spouse, (C) any other natural person who is related to the individual or the individual's spouse within the second degree, and (D) any other natural person who resides with such individual; and (ii) "Material Interest" means direct or indirect beneficial ownership (as defined in Rule 13d-3 under the Securities Exchange Act of 1934) of voting securities or other voting interests representing at least five percent (5%) of the outstanding equity securities or equity interests in a Person.

"Release" means any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, migrating, disposing or dumping of Hazardous Materials into the environment (including, without limitation, the abandonment or discarding of barrels, containers and other closed receptacles containing any Hazardous Materials) and any condition that results in the exposure of a person to a Hazardous Materials.

"Seller" shall have the meaning given that term in the introductory paragraph.

"Service Area" as defined in the Recitals.

"Service Line" means that portion of water pipe extending from the sewer main to and including the curb stop and curb box located at or near the property line of a Customer Premises.

"Systems" means the computer systems (including the computer software, firmware and hardware), telecommunications, networks, peripherals, platforms and other similar or related items of automated, computerized and/or software systems that are used or relied on by Seller in connection with its ownership and operation of the Business.

"Tangible Personal Property" means all collection, pumping, and treatment systems, equipment, tools, furniture, office equipment, computer hardware, supplies (including chemicals and spare parts), materials, vehicles and other items of tangible personal property of every kind owned or leased by Seller (wherever located and whether or not carried on Seller's books), which are, could be, or in the future would be utilized to provide water service to Seller's water customers, together with any express or implied warranty by the manufacturers or sellers or lessors of any item or component part thereof, and all maintenance Records and other documents relating thereto.

"Tax" means (i) federal, state, or local taxes, charges, fees imposts, levies, or other assessments, including all net income, gross receipts, franchise, capital, sales, use, ad valorem, value added, transfer,

profits, inventory, capital stock, license, withholding, payroll, employment, social security, unemployment, excise, severance, stamp, occupation, property and estimated taxes, fees, assessments, and charges of any kind whatsoever; (ii) all interest, penalties, fines, additions to tax, or additional amounts imposed by any Governmental Authority in connection with any item described in subsection (i); and (iii) any Liability for any item described in subsections (i) and (ii), payable by reason of Contract, assumption, transferee Liability, operation of Law, or otherwise.

“Transaction Documents” means this Agreement, the Bill of Sale, the Assignment and Assumption Agreement and all other documents, certificates, assignments, instruments and agreements related to this Agreement or executed and delivered in connection with this Agreement, as the same may be amended, restated, modified or otherwise replaced by mutual agreement from time to time.

### **Rules of Construction**

For purposes of this Agreement and the other documents executed in connection herewith, the following rules of construction shall apply, unless specifically indicated to the contrary: (i) wherever from the context it appears appropriate, each term stated in either the singular or plural shall include the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, the feminine and the neuter; (ii) the term “or” is not exclusive; (iii) the term “including” (or any form thereof) shall not be limiting or exclusive; (iv) all references to statutes and related regulations shall include any amendments of same and any successor statutes and regulations; (v) all references in this Agreement or in the Schedules to this Agreement to sections, schedules, exhibits and attachments shall refer to the corresponding sections, schedules, exhibits and attachments of or to this Agreement; and (vi) all references to any instruments or agreements, including references to any of the documents executed in connection herewith, shall include any and all modifications or amendments thereto and any and all extensions or renewals thereof.



**Schedule 2.1(b)**  
**2021 Construction Assets**

This schedule will be completed to Buyer's and Seller's mutual satisfaction prior to closing.

**Schedule 2.1(d)**  
**Assigned Contracts**

This schedule will be completed to Buyer's and Seller's mutual satisfaction prior to closing.

**Schedule 2.6(a)(viii)**  
**Form of Water Service Termination Agreement**

This schedule will be completed to Buyer's and Seller's mutual satisfaction prior to closing.

**Schedule 3.4(c)**  
**Real Property**

This schedule will be completed to Buyer's and Seller's mutual satisfaction prior to closing.

**Schedule 3.5**  
**Contracts**

This schedule will be completed to Buyer's and Seller's mutual satisfaction prior to closing.

### **Schedule 3.6**

#### **Environmental Matters**

This schedule will be completed to Buyer's and Seller's mutual satisfaction prior to closing.

**Schedule 3.7**  
**Permits**

This schedule will be completed to Buyer's and Seller's mutual satisfaction prior to closing.

**Schedule 3.8(a)**  
**Insurance**

This schedule will be completed to Buyer's and Seller's mutual satisfaction prior to closing.



**Schedule 3.13  
Proceedings**

This schedule will be completed to Buyer's and Seller's mutual satisfaction prior to closing.

**ATTACHMENT JS-3, JOINT PETITIONERS'  
PETITION, IS NOT DUPLICATED HEREIN**