DFCG DRAFT 3/1/21

DRAFT

AGREEMENT OF SALE

BETWEEN

THE BOROUGH OF BOUND BROOK, NEW JERSEY

AND

[BUYER]

[Date]

TABLE OF CONTENTS

ARTICLE I

DEFINITIONS

ARTICLE II

REPRESENTATIONS AND WARRANTIES OF THE BOROUGH

Section 2.1. REPRESENTATIONS AND WARRANTIES OF THE BOROUGH 3
Section 2.2. DISCLAIMER OF OTHER REPRESENTATIONS AND WARRANTIES.....3
Section 2.3. SURVIVAL OF REPRESENTATIONS AND WARRANTIES 4

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE BUYER

Section 3.1. REPRESENTATIONS AND WARRANTIES OF THE BUYER 5
Section 3.2. SURVIVAL OF REPRESENTATIONS AND WARRANTIES 6

ARTICLE IV BASIC

TRANSACTION

Section 4.1. PURCHASE AND SALE OF ASSETS 7
Section 4.2. EXCLUDED ITEMS.....7
Section 4.3. PURCHASE PRICE 7
Section 4.4. BOROUGH TRANSACTION EXPENSE 7
Section 4.5. ADDITIONAL OBLIGATIONS.....7
Section 4.6. THE CLOSING 8
Section 4.7. DELIVERIES AT THE CLOSING.....8
Section 4.8. APPORTIONMENTS 9
Section 4.9. SETTLEMENT STATEMENT.....10

ARTICLE V

PRE-CLOSING COVENANTS

Section 5.1. PRE-CLOSING COVENANTS 11

ARTICLE VI

TITLE AND CONDITION OF SYSTEMS

Section 6.1. TITLE 14
Section 6.2. PROPERTY INFORMATION MATERIALS 15
Section 6.3. CONDITION OF THE SYSTEM 15

ARTICLE VII

CONDITIONS TO OBLIGATION TO CLOSE

Section 7.1. CONDITIONS TO OBLIGATION OF THE BUYER....16
Section 7.2. CONDITIONS TO OBLIGATION OF THE BOROUGH....16
Section 7.3. SCHEDULE FOR CLOSING CONDITIONS....17

ARTICLE VIII

POST-CLOSING OBLIGATIONS OF BUYER

Section 8.1. CONTINUATION OF WASTEWATER SERVICES....18
Section 8.2. MAINTENANCE, REPAIRS, AND REPLACMEENT....18
Section 8.3. RATE STABILIZATION COVENANT....18
Section 8.4. REQUIRED CAPITAL IMPROVEMENTS ……....18
Section 8.5. SERVICE TO BOROUGH FACILITIES....18
Section 8.6. CAPACITY FOR AFFORDABLE HOUSING UNITS....18
Section 8.7. CONNECTION OF NON-SEWERED PROPERTIES WITHIN THE BOROUGH....19
Section 8.8. RESERVED
Section 8.9. SENIOR DISCOUNT PROGRAM....19
Section 8.10. CITIZENS ADVISORY PANEL....19
Section 8.11. PAVING....19

ARTICLE IX

REMEDIES FOR BREACHES OF THIS AGREEMENT

Section 9.1. PRE-CLOSING DEFAULT BY THE BUYER....20
Section 9.2. PRE-CLOSING DEFAULT BY THE BOROUGH....20
Section 9.3. POST-CLOSING DEFAULTS....20

ARTICLE X

ESCROW AGENT

Section 10.1. ESCROW....21

ARTICLE XI

NON-BINDING MEDIATION; FORUM FOR DISPUTE RESOLUTION

Section 11.1. RIGHTS TO REQUEST AND DECLINE NON-BINDING MEDIATION....22
Section 11.2. PROCEDURE....22
Section 11.3. NON-BINDING EFFECT....22
Section 11.4. RELATION TO JUDICIAL LEGAL PROCEEDINGS....22
Section 11.5. FORUM FOR DISPUTE RESOLUTION....22

ARTICLE XII

INDEMNIFICATION

Section 12.1. INDEMNIFICATION BY THE BUYER....23
Section 12.2. INDEMNIFICATION BY THE BOROUGH....23
Section 12.3. THIRD PARTY CLAIMS....23
Section 12.4. NO OTHER DAMAGES....24

ARTICLE XIII

MISCELLANEOUS

Section 13.1. THIRD PARTY BENEFICIARIES....25
Section 13.2. ENTIRE AGREEMENT....25
Section 13.3. SUCCESSION AND ASSIGNMENT....25
Section 13.4. COUNTERPARTS....25
Section 13.5. HEADINGS....25
Section 13.6. NOTICES....25
Section 13.7. GOVERNING LAW....26
Section 13.8. AMENDMENTS AND WAIVERS....26
Section 13.9. SEVERABILITY....26
Section 13.10. EXPENSES....26
Section 13.11. CONSTRUCTION....26
Section 13.12. VARIATIONS IN PRONOUNS....27
Section 13.13. INCORPORATION OF EXHIBITS AND SCHEDULES....27
Section 13.14. TRANSFER TAXES....27
Section 13.15. TIME IS OF THE ESSENCE....27
Section 13.16. REVIEW OR AUDIT BY OFFICE OF THE STATE COMPTROLLER....27

LIST OF EXHIBITS

Exhibit A. Description of the Wastewater System

Exhibit B. Form of Assignment and Assumption Agreement

Exhibit C. Form of Bill of Sale

Exhibit D. Tariff

Exhibit E. List of Written Contracts to Which Borough is a Party which Relate to the Wastewater System **[Note to Bidders: To be identified.]**

Exhibit F. Form of Assignment and Grant of Easements, Rights of Way and other Property

Exhibit G. Form of General Assignment

Exhibit H. Disclosure Schedule to the Agreement of Sale

Exhibit I. Escrow Agreement

Exhibit J. Customer Service Standards and Customer Service Plan

Exhibit K. Capital Improvements

AGREEMENT OF SALE

THIS AGREEMENT OF SALE (this "Agreement"), dated [Date] is made and entered into by and between the **BOROUGH OF BOUND BROOK**, a public body corporate and politic in Somerset County in the State of New Jersey (the "Borough") and [BUYER], a [ ] [Corporation] with principal corporate offices at [_] (the "Buyer"). The Buyer and the Borough are referred to collectively herein as the "Parties."

WHEREAS, the Borough currently owns and operates a wastewater collection system (the "Wastewater System"), more particularly described herein, located in the Borough of Bound Brook, New Jersey; and

WHEREAS, in connection with the proposed sale of its Wastewater System and pursuant N.J.S.A. N.J.S.A. 40:62-1, the Borough prepared, advertised, and made available to all prospective buyers a Request for Bids on _____, 2021; and

WHEREAS, on _____, 2021, the Borough received bids from [_] private water and sewer utilities in response to the RFB; and

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

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

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

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

ARTICLE I

DEFINITIONS

"Agreement" shall mean this Agreement of Sale of the Wastewater System and all exhibits, attachments, and schedules hereto, dated [_____ __, 2021].

"Assumed Liabilities" shall have the meaning set forth in Section 4.5 below.

"BPU" means the New Jersey Board of Public Utilities or any successor agency.

"Buyer" means [_].

"Borough" means the Borough of Bound Brook, New Jersey.

"Borough Consent" shall mean the municipal consent ordinance that is to be enacted by the Borough as a condition of the Closing.

"Closing" has the meaning set forth in Section 4.6 below.

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

"Deposit" shall mean a payment of money equal to 10% of the Purchase Price, which is payable to the Borough upon execution of this Agreement, and which shall be held by the Escrow Agent under the Escrow Agreement attached hereto and incorporated herein by reference as **Exhibit I**, and together with the earnings accrued thereon shall be the Deposit.

"Disclosure Schedule" has the meaning set forth in Section 2.1.

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

"Escrow Agent" shall mean _____.

"Final Approval Order" shall mean an order of the BPU authorizing the Buyer and the Borough to consummate the purchase of assets as contemplated by this Agreement; and as to which the time for filing an appeal as of right has expired, and as to which there are no appeals, petitions for reconsideration, petitions for re-argument, or similar petitions pending.

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

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

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

"Party" shall mean either the Borough or the Buyer.

"Parties" shall mean the Borough and the Buyer.

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

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

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

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

"RFB" means the Request for Bids for the sale of the Wastewater System issued by the Borough on March 8, 2021 and responded to by the Buyer.

"Wastewater System" shall mean the Borough's wastewater collection system, as described in detail in **Exhibit A**.

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

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

ARTICLE II

REPRESENTATIONS AND WARRANTIES OF THE BOROUGH

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

(A) Organization of the Borough. The Borough is a public body corporate and politic in Somerset County in the State of New Jersey.

(B) Authorization of Transaction. The Borough has full right and authority to execute and deliver this Agreement and to perform its obligations hereunder.

(C) Title. The Borough is the sole owner of all assets and each fee parcel of real property included in the Wastewater System, and leasehold interest, license or easement in all other real property in the Wastewater System.

(D) No Litigation. To the best of the Borough's knowledge, there is no litigation, either at law or in equity, nor any proceedings before any commission or regulatory body pending, or threatened against the Borough, in any way that would adversely affect its ability to perform its obligations under the Agreement.

(E) No Default. To the best of the Borough's knowledge, the Borough is not in default of any provisions of law, charter, by-laws, contract, franchise, rules or regulations of any governmental agency or any instrument to which it is a party and which in any way affects the Wastewater System.

(F) No Reimbursement Obligations. To the best of the Borough's knowledge, the Borough is not party to any wastewater extension agreement or other contract which, if assigned to the Buyer, would obligate the Buyer by rebate, reimbursement, or other payment to return moneys to third parties by reason of installation of some portion of the Wastewater System.

(G) System Compliance. The Wastewater System is in compliance with all State, federal, and local laws and regulations.

(H) Tariff. The tariff, attached as **Exhibit D**, represents the true rates of the Wastewater System and are in effect as of the Contract Date.

Section 2.2. DISCLAIMER OF OTHER REPRESENTATIONS AND WARRANTIES. Except for representations and warranties as expressly set forth in this Article II, the Borough makes no other representation or warranty, express or implied, at law or in equity, with respect to the Wastewater System or operations, including with respect to merchantability or fitness for any particular purpose and any such other representations or

warranties are hereby expressly disclaimed. The Buyer hereby acknowledges and agrees that, except for the representations and warranties specifically set forth in this Article II, the Buyer is purchasing the Wastewater System on an "as-is, where-is" basis. The Buyer has satisfied itself on all aspects, of the Wastewater System, including but not limited to all physical, economic, operational, regulatory, tax and title matters that the Buyer deems relevant, and is not relying on any representation of the Borough in connection therewith except for the representations and warranties set forth in this Agreement. The Borough shall not be liable for any latent or patent defects in the Wastewater System.

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

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE BUYER

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

(A) Organization of Buyer. The Buyer is a corporation duly organized, validly existing and in good standing under the law of the State of [New Jersey].

(B) Authorization of Transaction. The Buyer has full right and authority to execute and deliver this Agreement and to perform its obligations hereunder.

(C) No Litigation. To the best of the Buyer's knowledge, there is no litigation, either at law or in equity, nor any proceedings before any commission or regulatory body pending, or threatened against the Buyer, in any way that would affect its ability to perform its obligations under this Agreement.

(D) No Warranties. The Buyer is purchasing the Wastewater System "as is", and that the Buyer will have no recourse against the Borough with respect to any condition of the Wastewater System that might be discovered after the Closing.

(E) Right to Inspect. Prior to the Contract Date, the Buyer has been afforded the opportunity to inspect and has inspected the Wastewater System to the extent that the Buyer deemed necessary and has made such examination of the Wastewater System, the operation, income and expenses thereof and all other matters affecting or relating to this transaction as Buyer deemed necessary. In entering into this Contract, the Buyer has not been induced by and has not relied upon any representations, warranties or statements, whether express or implied, made by the Borough or any agent, employee or other representative of the Borough or by any broker or any other person representing or purporting to represent the Borough, which are not expressly set forth in this Contract, whether or not any such representations, warranties or statements were made in writing or verbally.

(F) Other Limitations of Local, State, and Federal Laws and Regulations. The Buyer accepts the terms of this Agreement subject to the terms and limitations of all applicable local, State, and federal laws, statutes, rules and/or regulations.

(G) Source of Funds. The funds comprising the Purchase Price to be delivered to the Borough in accordance with this Contract are not derived from any illegal activity.

(H) Not a Blocked Person. The Buyer is not a, and is not acting directly or indirectly for or on behalf of any, person, group, entity or nation named by Executive Order of the United States Treasury Department as a terrorist, "Specifically Designated

National and Blocked Person," or other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control and the Buyer is not engaged in this transaction, directly or indirectly, on behalf of, or instigating or facilitating this transaction, directly or indirectly, on behalf of any such person, group, entity or nation.

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

ARTICLE IV BASIC

TRANSACTION

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

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

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

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

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

(A) assume responsibility for all claims and liabilities relating to the Wastewater System that arise post-Closing;

(B) assume and meet all contractual commitments of the Borough on and after the Closing Date in connection with the contracts set forth in **Exhibit E** (collectively, (A) and (B) constitute the "Assumed Liabilities");

(C) comply with the Rate Stabilization Covenant set forth in Section 8.3;

(E) provide the customers of the Wastewater System with continuous, safe and reliable service in accordance with applicable laws and regulations, and the Buyer's tariff as approved by the BPU;

(F) maintain or expand the Wastewater System in conformance with existing Borough land use and zoning ordinances, master plan, and historic district standards, as applicable;

(H) make the required capital improvements pursuant to Section 8.4; and

(I) make application for the transfer, effective at the Closing, of all wastewater system permits and approvals issued to the Borough prior to Closing by the NJDEP or any other local, State or federal agency.

Section 4.6. THE CLOSING. The closing of the transactions contemplated by this Agreement (the "Closing") shall take place at the offices of _____ forty-five (45) days after the satisfaction of the last condition to be satisfied pursuant to Article VII herein (the "Closing Date"). The Parties may mutually agree in writing to have the Closing at another time or place.

Section 4.7. DELIVERIES AT THE CLOSING. At the Closing:

(A) The Borough will execute, acknowledge (if appropriate), and deliver to the Buyer:

(i) a bargain and sale deed associated with the Wastewater System without covenant against grantor's acts, in recordable form, duly executed by the Borough;

(ii) an assignment of easements in the form attached hereto as **Exhibit F**, to convey all easement rights associated with the Wastewater System, subject to the Permitted Encumbrances;

(iii) a Bill of Sale in the form attached hereto as **Exhibit C**;

(iv) an Assignment and Assumption Agreement in the form attached hereto as **Exhibit B**;

(v) a General Assignment in the form attached hereto as **Exhibit G**;

(vi) a Settlement Statement;

(vii) a certified copy of the appropriate Borough resolution(s) and/or ordinances authorizing the transactions contemplated hereunder;

(viii) a signed certification by the Borough that the warranties and representations in Article II are true and correct as of the Closing Date;

(ix) originals or copies of all governmental permits and licenses for the System, or any component thereof, in the Borough's possession, to the extent transferable;

(x) Any other tax information regarding the Borough that the Settlement Agent (as that term is used in Section 6045 of the Code) is required to report to the Internal Revenue Service pursuant to the Code;

(xi) Such other resolutions, instruments, affidavits and documents as may be reasonably necessary to effectuate the transaction.

(B) Buyer will execute, acknowledge (if appropriate) and deliver to the Borough:

(i) an assignment of easements in the form attached hereto as **Exhibit F**, to convey all casement rights associated with the Wastewater System, subject to the Permitted Encumbrances;

(ii) an Assignment and Assumption Agreement in the form attached hereto as **Exhibit B**;

(iii) a General Assignment in the form attached hereto as **Exhibit G**;

(iv) a Settlement Statement;

(v) Certified copy of appropriate corporate resolution(s) authorizing the transactions contemplated hereunder;

(vi) a signed certification by Buyer that the warranties and representations in Article III are true and correct as of the Closing Date;

(vii) Any tax information regarding Buyer that the Settlement Agent (as that term is used in Section 6045 of the Code) is required to report to the Internal Revenue Service pursuant to the Code;

(viii) The Purchase Price;

(ix) The balance of the Transaction Costs Payment ($_____); and

(x) Such other documents, resolutions, instruments, affidavits and documents as may be reasonably necessary to effectuate the transaction.

Section 4.8. APPORTIONMENTS. At the Closing, real estate taxes, if any, for the fee parcels constituting Wastewater System assets to be transferred to the Buyer and all other

operating expenses for the Wastewater System allocable to periods before and after the Closing Date, shall be apportioned for the Wastewater System as of 11:59 p.m. on the day preceding the Closing Date.

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

ARTICLE V

PRE-CLOSING COVENANTS

Section 5.1. PRE-CLOSING COVENANTS. The Parties agree as follows with respect to the period between the execution of this Agreement and the Closing:

(A) General. Each of the Parties will use its reasonable best efforts to take all actions and to do all things necessary, proper, or advisable in order to consummate and make effective the transactions contemplated by this Agreement and the Transaction Documents.

(B) Access to Books. Upon reasonable prior notice, the Borough will give the Buyer, its accountants, engineers, counsel and other representatives full access during normal business hours throughout the period from the date of this Agreement through the Closing Date to all of the Borough's records, books, and properties with respect to the Wastewater System, including, without limitation, all customer usage data and will furnish the Buyer copies, including in electronic format reasonably acceptable to the Buyer, at the Buyer's expense, of such documents or portions of documents related to the ownership, operation and maintenance of the Wastewater System as the Buyer may reasonably request, provided such documents and electronic media are in the Borough's possession or in the possession of third parties under contract with the Borough.

(C) Permits. Prior to the Closing, the Parties shall cooperate to effect the transfer of all Permits related to the operation of the Wastewater System which were granted to the Borough by any Governmental Authority, which transfer shall be effective on our after but not before the Closing. The Borough shall provide reasonable assistance to the Buyer as reasonably requested by the Buyer with respect to such applications.

(D) Operation of Wastewater System. The Borough will:

(i) continue to operate and maintain the Wastewater System;

(ii) maintain the Wastewater System in at least as good order and condition as existed on the date of this Agreement, casualty and normal wear and tear excepted;

(iii) timely comply with the provisions of all leases, agreements, and contracts relating to the Wastewater System; and

(E) BPU Approvals.

(i) The Buyer shall as soon as reasonably practicable after the execution of this Agreement by both Parties, at its sole cost and expense, file or cause to be filed all necessary documentation with the BPU to obtain the approvals required for the sale of the Wastewater System to the Buyer.

(F) Borough Consent. The Buyer shall be responsible, at its sole cost and expense, with reasonable assistance from the Borough, for obtaining BPU approval of the Borough Consent pursuant to N.J.S.A. 48:2-14.

(G) Risk of Loss. The Parties agree that the Borough shall bear the risk of and be responsible for loss with respect to the assets and properties constituting the Wastewater System from the date of this Agreement through the Closing Date. In event that the condition of the Wastewater System is significantly adversely changed from the date of this Agreement to the Closing Date by virtue of fire, casualty, act of God or condemnation, the Borough and the Buyer may mutually agree, in writing, to a reduction in Purchase Price or other consideration as compensation for the significant adverse change in the System. If the Borough and the Buyer cannot reach agreement within sixty (60) days of the event despite good faith efforts, either Party has the option to terminate this Agreement upon written notice to the other Party. If the Buyer terminates the Agreement pursuant to this section, the Borough shall promptly, and in no event later than five (5) business days after such termination, repay to the Buyer, the Deposit, and upon such termination this Agreement shall be deemed canceled, null and void and neither Party shall have any further obligation or liability to the other hereunder.

(H) Customer List and Information; Final Bills. The Borough shall provide or cause to be provided to the Buyer a full and complete customer list for the Wastewater System as of the date of the execution of the Agreement by both parties, together with an electronic data file, in a format reasonably satisfactory to the Buyer, containing such customer information; such list and electronic file are to be updated by the Borough and provided to the Buyer within sixty (60) days before the Closing or as otherwise agreed to between the Parties. The Parties shall agree no later than sixty (60) days before the Closing to a process and method for the final billing of the Wastewater System customers. Buyer shall collect, and remit to the Borough, within sixty (60) following the Closing, all receivables billed by the Borough to customers prior to the Closing.

(I) Publicity. The Parties agree to cooperate on any formal public announcement or statement regarding this Agreement or the transactions contemplated herein. Each Party shall make a good faith effort to provide the other with advance notice of the proposed content of any public announcement or statement.

(J) Identification of Contracts to be Assigned. As set for in Section 4.5(C), the Buyer must assume the Borough's obligations on and following the Closing Date for those agreements set forth in **Exhibit E**.

(K) Buyer Access. The Borough shall provide the Buyer, at the Buyer's sole cost, reasonable access to the Wastewater System from the Contract Date until the Closing Date for purposes including, but not limited to, examination of customer accounts, ordinances, deeds, contracts, maps, and plans; inspection and tests of equipment; and surveys of the real property comprising the Wastewater System and easements. The Buyer hereby agrees to indemnify and hold the Borough harmless from any and all claims, demands, suits, actions, damages, liabilities, or

expenses with respect to or arising from the Buyer's access to the Wastewater System during this period. The Buyer's rights under this Section shall be exercised during normal business hours, with reasonable notice and shall not interfere with the Borough's continuing operation of the Wastewater System. The Borough shall cooperate with the Buyer with respect to such access to ensure a smooth transition in ownership of the Wastewater System.

(L) Confidentiality. Any information provided by the Borough to the Buyer regarding the Borough's customers and the Wastewater System that is not generally available to the public shall remain confidential.

(M) Cooperation During Transition. Generally, the parties shall cooperate to facilitate a smooth transition and the Buyer shall not do anything that will interfere with the Borough's operation and administration of the Wastewater System.

(N) Referendum Education Campaign. The Buyer shall provide reasonable assistance to the Borough in connection with its public referendum education campaign.

ARTICLE VI

TITLE AND CONDITION OF SYSTEMS

Section 6.1. TITLE. Title to the Wastewater System shall be conveyed by the Borough to the Buyer at the Closing free and clear of all Encumbrances, subject only to the Permitted Encumbrances. "Permitted Encumbrances" means any and all:

(A) matters disclosed by the Property Information Materials (as defined in Section 6.2 hereof);

(B) matters that become Permitted Encumbrances in accordance with the provisions of this Article VI;

(C) matters that would be revealed by a physical inspection of or a complete and accurate survey, of the real property comprising the Wastewater System;

(D) rights of way and easements that do not materially interfere with the existing use of the real property comprising the Wastewater System;

(E) zoning and other governmental restrictions;

(F) matters common to any plot or subdivision in which the real property comprising the Wastewater System is located; and

(G) taxes, assessments and other public charges on real property comprising the Wastewater System not due as of the Closing Date, provided, however, in no event shall Permitted Encumbrances include Monetary Liens. With respect to the real property comprising the Wastewater System, Buyer shall within five (5) business days of execution of this Agreement apply for an owner's title insurance policy or policies from a reputable title insurance company licensed to do business in New Jersey (the "Commitment"). Within five (5) business days after receipt of the Commitment, the Buyer shall notify the Borough of any objections, other than the Permitted Encumbrances. Any matters set forth on the Commitment and not objected to by the Buyer within said five (5) day period shall become Permitted Encumbrances hereunder. The Borough may elect to cure any title defect by so notifying the Buyer. If the Borough does not so elect within twenty (20) days after notice of the objection, or if after so electing, the Borough fails to cure the defect(s) prior to the Closing, then the Buyer's sole remedy shall be to close without any reduction in the Purchase Price or to terminate this Agreement upon notice to the Borough, said notice to be delivered within seven (7) days of the Borough's failure to so elect or, if the Borough elects to cure but does not, to be delivered at the Closing. If the Buyer terminates the Agreement pursuant to this section, the Borough shall promptly, and in no event later than five (5) business days after such termination, repay to the Buyer the Deposit, and upon such termination this Agreement shall be deemed canceled,

null and void and neither Party shall have any further obligation or liability to the other hereunder.

Section 6.2. PROPERTY INFORMATION MATERIALS. The Buyer acknowledges that prior to the Buyer's execution of this Agreement, the Borough delivered to the Buyer and the Buyer reviewed the materials and information concerning the Wastewater System provided as part of the RFB (collectively, "Property Information Materials"). The Buyer acknowledges and understands that the Property Information Materials may have been prepared by parties other than the Borough and that the Borough makes no representation or warranty whatsoever, express or implied, as to the content, completeness, or accuracy of the Property Information Materials. The Buyer specifically releases the Borough from all claims, demands, causes of action, judgments, losses, damages, liabilities, costs and expenses (including attorney's fees whether suit is instituted or not) – whether known or unknown, liquidated or contingent (collectively, "Claims"), asserted against or incurred by the Buyer by reason of the information contained in, or that should have been contained in, the Property Information Materials or any inconsistency between such information and any representation or warranty of the Borough contained in this Contract. However, the foregoing release shall not apply to any Claims resulting from any intentional misstatements or willful misconduct on the part of the Borough.

Section 6.3. CONDITION OF THE SYSTEMS. Subject to the terms and conditions of this Agreement, and the representations and warranties contained in the other Transaction Documents, the Buyer has agreed to purchase the Wastewater System in its "AS-IS" condition, including their environmental condition, operating condition, and condition of repair. The Buyer acknowledges that the Buyer has had and/or has been given pursuant to the RFB, an adequate opportunity to make such legal, factual, and other inquiries and investigation as the Buyer deems necessary, desirable, or appropriate with respect to the Wastewater System. The Buyer has satisfied itself on all aspects, without limitation, of the Wastewater System and is not relying on any representation of the Borough in connection therewith except for the representations and warranties contained in this Agreement and the other Transaction Documents.

ARTICLE VII

CONDITIONS TO OBLIGATION TO CLOSE

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

(A) the representations and warranties set forth in Article II of this Agreement and the other Transaction Documents shall be true and correct in all material respects as of the Closing Date;

(B) the Borough shall have performed and complied with all of its covenants hereunder in all material respects through the Closing;

(C) there shall not be any injunction, judgment, order, decree, ruling, or charge in effect preventing consummation of any of the transactions contemplated by this Agreement and the Transaction Documents;

(D) the Buyer shall have secured from the Borough, the BPU, NJDEP, and all other applicable governmental and quasi-governmental entities, all authorizations and approvals required for the transfer of the Wastewater System to the Buyer, including but not limited to the NJDEP Permits, if necessary (the "Approvals"). The Parties shall use all reasonable efforts to obtain the Approvals and to do so as expeditiously as reasonably possible. In connection with the Approvals, the Buyer shall deliver to the Borough or cause to be delivered to the Borough, through addition(s) to the applicable service list(s), copies of all correspondences to and from the bodies with whom the applications have been filed or will be filed. The Borough covenants to cooperate with the Buyer, at the Buyer's cost and expense, in the Buyer's efforts to obtain the Approvals and to promptly consent, when required by law, to all applications for the Approvals filed by the Buyer. The Buyer shall immediately notify the Borough in writing of any determinations made by any authority considering any application.

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

(A) the representations and warranties set forth in Article III of this Agreement and in the other Transaction Documents shall be true and correct in all material respects as of the Closing Date;

(B) the Buyer shall have performed and complied with all of its covenants hereunder in all material respects through the Closing;

(C) there shall not be any injunction, judgment, order, decree, ruling, or charge in effect preventing consummation of any of the transactions contemplated by this Agreement or the Transaction Documents;

(D) the Buyer shall have secured from the Borough, the BPU, NJDEP, and all other applicable governmental and quasi-governmental entities, all authorizations and approvals required for the transfer of the Wastewater System to the Buyer, including but not limited to the NJDEP Permits, if necessary (the "Approvals"). The Parties shall use all reasonable efforts to obtain the Approvals and to do so as expeditiously as reasonably possible. In connection with the Approvals, the Buyer shall deliver to the Borough or cause to be delivered to the Borough, through addition(s) to the applicable service list(s), copies of all correspondences to and from the bodies with whom the applications have been filed or will be filed. The Borough covenants to cooperate with the Buyer, at the Buyer's cost and expense, in the Buyer's efforts to obtain the Approvals and to promptly consent, when required by law, to all applications for the Approvals filed by the Buyer. The Buyer shall immediately notify the Borough in writing of any determinations made by any authority considering any application; and

(E) the Borough shall have obtained any necessary consents and releases for the assignment and assumption of the assumed liabilities as defined in **Exhibit B**.

Section 7.3. SCHEDULE FOR CLOSING CONDITIONS. The Buyer shall promptly initiate and complete its conditions of Closing set forth in Section 7.1, provided, however, that all such conditions must be met no later than the date that is nine (9) months following the date of this Agreement. In the event that all such Closing conditions are not completed by such date notwithstanding the Company's good faith efforts, the Borough shall have the right to terminate this Agreement and keep the Deposit and the $_____[first third] portion of the Transaction Costs Payment that had been paid to the Borough upon the passing of the Borough Ordinance approving the sale.

ARTICLE VIII

POST-CLOSING OBLIGATIONS OF BUYER

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

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

Buyer shall undertake an inflow and infiltration removal plan as set forth in **Exhibit K** in accordance with the schedule set forth therein.

Section 8.3. RATE STABILIZATION COVENANT. **[NOTE: To be developed based on Buyer's Bid.]** Covenant will reflect that rates will not be increased for at least ____ years from the closing (based on 2021 sewer rates) and rates will not be raised more than ____% in total over the _____ (___) years after that. [add additional language] Any future base rate increases shall be included in Buyer's base rate cases periodically filed with the BPU. The Buyer shall use good faith efforts to minimize rate increases to Borough customers by spreading costs of the Wastewater System across its statewide customer base to the extent permitted by law.

Section 8.4. REQUIRED CAPITAL IMPROVEMENTS. As soon as reasonably practicable and no later than two years following Closing, the Buyer shall begin to undertake the capital improvements necessary set forth in **Exhibit K**.

Commented [RJS1]: Pump Station to be upgraded in 2 yrs
I/I work completed within 5 yrs

Section 8.5. SERVICE TO BOROUGH FACILITIES. The Buyer shall provide wastewater service to Borough-owned facilities at no cost to the Borough.

Section 8.6. RESERVED

Section 8.7. RESERVED

Section 8.8. RESERVED

Section 8.9. RESERVED.

Section 8.10. BOROUGH PUBLIC WORKS COMMITTEE. The Buyer shall meet with the Borough's Public Works Committee which shall act as an advisory panel for customer service issues.

Section 8.11. PAVING. The Buyer shall temporarily and permanently pave Borough roads in accordance with **Exhibit** ____ where sewer connections, repairs or replacements are being performed, provided that all permanent paving must be completed not later than _____ after completing said connections, repairs or replacements. The Buyer shall coordinate its paving schedule with other Borough's construction projects.

ARTICLE IX

REMEDIES FOR BREACHES OF THIS AGREEMENT

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

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

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

ARTICLE X

ESCROW AGENT

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

ARTICLE XI

NON-BINDING MEDIATION; FORUM FOR DISPUTE RESOLUTION

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

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

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

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

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

ARTICLE XII

INDEMNIFICATION

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

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

Section 12.3. THIRD PARTY CLAIMS. An Indemnitee shall give the Indemnitor notice of any matter which an Indemnitee has determined has given or could give rise to a right of indemnification under this Agreement (an "Indemnified Claim") within sixty (60) days of such determination, stating the amount of the Losses, if known, the method of computation thereof, and containing a reference to the provisions of this Agreement from which such right of indemnification is claimed or arises. If the Indemnitor acknowledges in writing that its obligation to indemnify the Indemnitee hereunder against any Losses that may result from such Indemnified Claim, then the Indemnitor shall be entitled to assume and control the defense of such Indemnified Claim at its expense and through counsel of its choice if it gives notice of its intention to do so to the Indemnitee within five (5) days of the receipt of such notice from the Indemnitee. In the event the Indemnitor exercises the right to undertake any such defense against any such Indemnified Claim as provided above, the Indemnitee shall cooperate with the Indemnitor in such defense and make available to the Indemnitor, at the Indemnitor's expense, all witnesses, pertinent records, materials and information in the Indemnitee's possession or under the Indemnitee's control relating thereto as is reasonably required by the Indemnitor. Similarly, in the event the Indemnitee is, directly or indirectly, conducting the defense against any such Indemnified Claim, the Indemnitor shall cooperate with the Indemnitee in such defense and make available to the Indemnitee, at the Indemnitor's expense, all such witnesses, records, materials and information in the Indemnitor's possession or under the Indemnitor's control relating thereto as is reasonably required by the Indemnitee. No such Indemnified Claim may be settled by the Indemnitor without the prior written consent of the Indemnitee which shall not be unreasonably withheld. If the Indemnitor fails to acknowledge its indemnity obligation within the time period provided above then the Indemnitee may undertake its own defense without waiving its right to seek indemnity hereunder, including reimbursement of any defense costs incurred.

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

ARTICLE XIII

MISCELLANEOUS

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

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

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

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

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

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

If toBorough:

Copy to:

If to Buyer:

[_]

Copy to:

[_]

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

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

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

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

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

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

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

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

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

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

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

(Signature Page Follows)

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

BOROUGH OF BOUND BROOK

By: _____
Name:
Title:

[BUYER]

By: _____
Name:
Title:

EXHIBIT A

DESCRIPTION OF THE WASTEWATER SYSTEM

EXHIBIT B

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

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

WHEREAS, Assignor and Assignee are parties to a certain Agreement of Sale, dated [_], 2021 (the "Agreement"), providing for the sale by the Assignor of the assets constituting the Wastewater System to the Assignee; and

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

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

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

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

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

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

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

BOROUGH OF BOUND BROOK

By: _____
Name:
Title:

[BUYER]
By: _____
Name:
Title:

SCHEDULE I TO ASSIGNMENT AND ASSUMPTION AGREEMENT

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

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

EXHIBIT C

FORM OF BILL OF SALE

THIS BILL OF SALE dated as [_], 2021 from the Borough of Bound Brook, a public body corporate and politic in Somerset County in the State of New Jersey (the "Borough") and [_], a [New Jersey] Corporation with principal corporate offices at [_] (the "Buyer").

WITNESSETH

WHEREAS, by an Agreement of Sale, dated [_], 2021 (the "Agreement"), between the Borough and the Buyer, the Borough has agreed to convey to the Buyer certain assets, properties, and rights defined, described, and referred to in the Agreement (collectively, the "Wastewater System") which include those assets listed on the document attached hereto as **Schedule I to Exhibit C**, with the exception of those items expressly set forth on the document attached hereto as **Schedule II to Exhibit C**; and

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

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

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

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

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

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

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

By: _____

RECEIPT OF THE FOREGOING

BILL OF SALE

ACKNOWLEDGED AS OF

[_____], **2021**.

[BUYER]

By: _____

SCHEDULE I TO EXHIBIT C

INCLUDED ASSETS

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

SCHEDULE II TO EXHIBIT C

EXCLUDED ASSETS

Personal property

Office equipment

Office supplies

Vehicles

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

EXHIBIT D

TARIFF

BOROUGH OF BOUND BROOK
ORDINANCE #_____

[AN ORDINANCE CONCERNING SEWER USER RATES AND AMENDING CHAPTER XXII OF THE BOROUGH CODE ENTITLED "SEWERS"]

EXHIBIT E

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

[Note to Bidders: To be identified.]

EXHIBIT F

FORM OF ASSIGNMENT AND GRANT OF EASEMENTS,

RIGHTS OF WAY, AND OTHER PROPERTY

THIS ASSIGNMENT is made this day of [_], 2021 between the **BOROUGH OF BOUND BROOK**, a public body corporate and politic in Somerset County in the State of New Jersey (the "Grantor"), and [Buyer], a [New Jersey Corporation] (the "Grantee"), having an address at [_].

WHEREAS, pursuant to an Agreement of Sale (the "Agreement") dated [_], 2021 and a Bill of Sale contemporaneously herewith, the Grantor has granted, sold, conveyed, assigned, transferred, set over, and vested in Grantee, its successors, and its assigns, all of the Grantor's right, title, and interest in the Wastewater System as defined in the Agreement.

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

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

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

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

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

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

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

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

[SEAL]

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

Attest: _____

By: _____
Name
Title:

STATE OF NEW JERSEY)
: SS.:
SOMERSET)

On this, the ___day of 2021, before me, a Notary Public in and for said County, personally appeared _____, who acknowledged himself to be the _____ of the Borough of Bound Brook, a public body corporate and politic in Somerset County in the State of New Jersey, and that he, as such _____, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of _____ by himself as _____.

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

_____
Notary Public
My Commission Expires:
[SEAL]

SCHEDULE I TO EXHIBIT F

LIST OF EASEMENTS GRANTED TO OR OBTAINED BY THE BOROUGH

Easements granted to or obtained by the Borough of Bound Brook herewith as described herein.

EXHIBIT G

FORM OF GENERAL ASSIGNMENT

GENERAL ASSIGNMENT

THIS GENERAL ASSIGNMENT, dated [_], 2021, by and between the **BOROUGH OF BOUND BROOK**, a public body corporate and politic in Somerset County in the State of New Jersey (the "Assignor") and [Buyer], a [_____] corporation having a mailing address at [_] (the "Assignee").

WHEREAS, Assignor and Assignee entered into an Agreement of Sale dated [_], 2021 (the "Agreement") for the sale and purchase of the Wastewater System (as defined in the Agreement); and

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

WHEREAS, Assignee desires to accept the Assigned Rights.

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

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

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

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

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

WITNESS:

_____

ASSIGNOR:

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

Accepted this ___ day of _____, 20___.

By: _____
Name
Title:

WITNESS:

By: _____

ASSIGNEE:

[BUYER]

By: _____
Name
Title:

SCHEDULE I TO EXHIBIT G

LIST OF ASSIGNED RIGHTS

PERMITS:

New Jersey Pollutant Discharge Elimination System Discharge to Surface Water Permit – NJDEP Permit #

Air Quality Permit #

Back Flow Permit #

EXHIBIT H

DISCLOSURE SCHEDULE TO THE AGREEMENT OF SALE

[NOTE: Disclosures to be reflected in this exhibit prior to execution of Agreement.]

BETWEEN THE BOROUGH OF BOUND BROOK AND [BUYER]

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

Schedule 2.1(A)

Organization of Borough

[_]

Schedule 2.1(B)

Authorization of Transaction

[_]

Schedule 2.1(C)

Title

[_]

Schedule 2.1(D)

Litigation

[_]

Schedule 2.1(E)

Default

[_]

Schedule 2.1(F)

Reimbursement Obligation

[_]

Schedule 2.1(G)

System Compliance

[_]

Schedule 2.1(H)

Tariff

[_]

Schedule 3.1(A)

Organization of Buyer

[_]

Schedule 3.1(B)

Authorization of Transaction

[_]

Schedule 3.1(C)

Litigation

[_]

Schedule 3.1(D)

Warranties

[_]

Schedule 3.1(E)

Right to Inspect

[_]

Schedule 3.1(F)

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

[_]

Schedule 3.1(G)

Source of Funds

[_]

Schedule 3.1(H)

Blocked Person

[_]

EXHIBIT I

ESCROW AGREEMENT

THIS ESCROW AGREEMENT, dated as of [_] (this "Escrow Agreement"), by and among **BOROUGH OF BOUND BROOK**, a public body corporate and politic in Somerset County in the State of New Jersey (the "Borough"), [BUYER], a [_____] "Buyer"), and _____ (the "Escrow Agent").

WITNESSETH

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

WHEREAS, it is contemplated under the Agreement that the Buyer will deposit or cause to be deposited into escrow the sum of 10% of the Purchase Price (the "Escrow Amount") in cash upon its execution of the Agreement, to be held and disbursed by the Escrow Agent in accordance with the terms herein; and

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

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

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

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

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

Section 4. PAYMENTS FROM THE ESCROW FUND.

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

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

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

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

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

(A) The Escrow Agent shall maintain the Escrow Fund in a non-interest bearing account in [Bank] until the earlier of:

(i) the time at which there shall be no funds in the Escrow Fund; or

(ii) the termination of this Escrow Agreement.

(B) Notwithstanding any other provision of this Escrow Agreement to the contrary, at any time prior to the termination of the Escrow Fund, the Escrow Agent shall, if so instructed in a writing jointly signed by the Buyer and the Borough's Representative, pay from the Escrow Fund, as instructed, to the Borough or the Buyer, as directed in such writing, the amount of cash so instructed.

(C) Escrowee shall not be responsible for any interest on the Deposit except as is actually earned, or for the loss of any interest resulting from the withdrawal of the Deposit prior to the date interest is posted thereon or for any loss caused by the failure, suspension, bankruptcy or dissolution of the institution in which the Deposit is deposited.

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

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

Section 8. ESCROW AGENT.

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

(B) The duties and obligations of the Escrow Agent shall be determined solely by this Escrow Agreement, and the Escrow Agent shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Escrow Agreement.

(C) In the performance of its duties hereunder, the Escrow Agent shall be entitled to rely upon any document, instrument, or signature believed by it in good faith to be genuine and signed by any party hereto or an authorized officer or agent thereof (specifically

including the Borough's Representative), and shall not be required to investigate the truth or accuracy of any statement contained in any such document or instrument. The Escrow Agent may assume that any person purporting to give any notice on behalf of a party hereto in accordance with the provisions of this Agreement has been duly authorized to do so.

(D) The Escrow Agent shall not be liable for any error of judgment or any action taken, suffered, or omitted to be taken hereunder except in the case of its gross negligence, bad faith, or willful misconduct. The Escrow Agent may consult with counsel of its own choice and shall have full and complete authorization and protection for any action taken or suffered by it hereunder in good faith and in accordance with the opinion of such counsel.

(E) The Escrow Agent shall have no duty as to the collection or protection of the Escrow Fund or income thereon, nor to preserve any rights pertaining thereto beyond the safe custody of any such funds actually in its possession.

(F) As compensation for its services to be rendered under this Agreement, Escrow Agent shall be reimbursed upon request for all expenses, disbursements, and advances, including reasonable fees of outside counsel, if any, incurred or made by it in connection with the preparation of this Escrow Agreement and the carrying out of its duties under this Escrow Agreement. All such expenses shall be the joint and several responsibility of the Borough and the Buyer.

(G) The Buyer and the Borough shall reimburse and indemnify the Escrow Agent for and hold it harmless against any loss, liability, or expense, including, without limitation, reasonable attorney's fees incurred except in connection with gross negligence, bad faith, or willful misconduct on the part of the Escrow Agent arising out of, or in connection with the acceptance or performance of its duties and obligations under this Escrow Agreement.

(H) The Escrow Agent may resign at any time by giving twenty (20) Business Days' prior written notice of resignation to the Borough's Representative and the Buyer. The Borough and the Buyer may remove the Escrow Agent at any time by jointly giving the Escrow Agent ten (10) Business Days' written notice signed by each of them. If the Escrow Agent is to resign or be removed, a successor Escrow Agent shall be appointed by the Buyer by written instrument executed by the Borough's Representative and the Buyer. Such instrument shall be delivered to the Escrow Agent and to such successor Escrow Agent and, thereupon, the resignation or removal of the predecessor Escrow Agent shall become effective and such successor Escrow Agent, without any further act, deed or conveyance, shall become vested with all right, title, and interest to all cash and property held hereunder of such predecessor Escrow Agent. Such predecessor Escrow Agent shall, on the written request of the Borough's Representative, the Buyer, or the successor Escrow Agent, execute and deliver to such successor Escrow Agent all the right, title, and interest hereunder in and to the Escrow Fund of such predecessor Escrow Agent and all other rights hereunder of such predecessor Escrow Agent. If no successor Escrow Agent is appointed within twenty (20) Business Days of a notice of resignation by the Escrow Agent, the Escrow Agent's sole responsibility shall thereafter be to hold the Escrow Fund until the earlier of its receipt of designation of a successor Escrow Agent, a joint written instruction by the Borough's Representative and the Buyer, or termination of this Escrow Agreement in accordance with its terms.

(I) The Escrow Agent is acting as a stakeholder only with respect to the Escrow Fund. Upon making delivery of the Escrow Fund in the manner herein provided, the Escrow Agent shall have no further liability hereunder.

(J) The Borough and the Buyer acknowledge that the Escrow Agent has represented the Borough in connection with, among other things, the Agreement and the matters giving rise to this Escrow Agreement and will continue to represent the Borough in connection with such matters and any other matters. Each of the parties to this Agreement waives any right it now has or may have in the future to any claim of conflict as a result of the Escrow Agent's execution, delivery, and performance of this Agreement or the transactions contemplated hereby and the Escrow Agent's representation of the Borough in any matter including, without limitation, any action, litigation, or representation relating to the Agreement, this Escrow Agreement, and the matters giving rise to each of them.

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

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

If to the Buyer:

[_]

With a copy to:

[_]

If to the Borough:

Copy to:

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

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

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

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

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

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

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

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

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

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

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

BOROUGH OF BOUND BROOK

By: _____
Name
Title:

[BUYER]

By: _____
Name
Title:

ESCROW AGENT

By: _____
Name
Title:

EXHIBIT J

CUSTOMER SERVICE STANDARDS AND CUSTOMER SERVICE PLAN

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

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

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

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

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

[Note to Bidders: Customer Service Plan to be included based on Bid.]

EXHIBIT K

CAPITAL IMPROVEMENTS TO LIFT SEWER BAN

[NOTE: To be developed based upon information submitted with Bid].