

DRAFT

AGREEMENT OF SALE BETWEEN

THE BOROUGH OF ALLENDALE

AND

SUEZ WATER NEW JERSEY INC.

[__], 2021

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AGREEMENT OF SALE

THIS AGREEMENT OF SALE (this “Agreement”), dated as of [], 2021 is made and entered into by and between the **BOROUGH OF ALLENDALE**, a public body corporate and politic in Bergen County in the State of New Jersey (the “Borough”) and **SUEZ WATER NEW JERSEY INC.**, a New Jersey corporation with principal corporate offices at 461 From Road, Suite 400, Paramus, New Jersey 07652 (the “Buyer”). The Buyer and the Borough are referred to collectively herein as the “Parties.”

WHEREAS, the Borough currently owns and operates, via a contract operator, a potable water supply, treatment, distribution and storage system (referred to herein as the “System” or the “Business” interchangeably), more particularly described herein, located in the Borough of Allendale, New Jersey; and

WHEREAS, in connection with the proposed sale of its System, the Borough, pursuant to N.J.S.A. 40:62-1, prepared, advertised, and made available to all prospective buyers a Request for Bids on April 7, 2021; and

WHEREAS, on May 28, 2021, the Borough received Bids from two private 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 System to the Buyer will take place, provided all conditions of the Closing are satisfied or waived; and

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

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 System and all exhibits, attachments, and schedules hereto, dated _____, 2021.

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

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

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

“Borough’s knowledge” shall mean actual knowledge of the Borough’s governing body (i.e., Mayor and Council).

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

“Buyer” shall have the meaning set forth in the preamble.

“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.

“Code” means the Internal Revenue Code of 1986, as amended, and any rules and regulations issued by the IRS pursuant to the Internal Revenue Code or any successor law.

“Consents” means any consent, notice, authorization, or approval required to be obtained from any Person, including, without limitation, from any Governmental Authority and from any third party pursuant to any Contract.

“Contracts” means all contracts, leases, deeds, mortgages, licenses, instruments, notes, commitments, undertakings, indentures, joint ventures and all other agreements, commitments and legally binding arrangements, whether written or oral.

“Deposit” shall mean a payment of money equal to 10% of the Purchase Price, which shall be deposited with the Escrow Agent 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**, together with the earnings accrued thereon.

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

“Easements” means any privileges, easements, licenses, appurtenances, and hereditaments relating to real property.

“Easement Assignments” means the form of Easement Assignments pursuant to which the Easements that form part of the Purchased Assets are assigned to Buyer.

“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.

“Environmental Laws” means any applicable Law, and any Order or binding agreement with any Governmental Authority: (a) relating to pollution (or the cleanup thereof) or the protection of natural resources, endangered or threatened species, human health or safety, or the environment (including ambient air, soil, surface water or groundwater, or subsurface strata);

or (b) concerning the presence of, exposure to, or the management, manufacture, use, containment, storage, recycling, reclamation, reuse, treatment, generation, discharge, transportation, processing, production, disposal or remediation of any Hazardous Substances. The term “Environmental Law” includes, without limitation, the following (including their implementing regulations and any state analogs): the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6901 et seq.; the Federal Water Pollution Control Act of 1972, as amended by the Clean Water Act of 1977, 33 U.S.C. §§ 1251 et seq.; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. §§ 2601 et seq.; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001 et seq.; the Clean Air Act of 1966, as amended by the Clean Air Act Amendments of 1990, 42 U.S.C. §§ 7401 et seq.; the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. §§ 651 et seq. and the New Jersey Spill Compensation and Control Act (N.J.S.A. 58:10-23.11 *et seq.*).

“Escrow Agent” shall mean Insight Title Services, located at 518 Stuyvesant Ave, Lyndhurst, New Jersey.

“Final Approval Order” shall mean an order of the BPU authorizing the Buyer and the Borough to consummate the purchase and sale of the System as contemplated by this Agreement, in a form and substance acceptable to Buyer in its sole discretion; 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.

“Hazardous Substances” means (a) any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, mineral or gas, in each case, whether naturally occurring or manmade, that is hazardous, acutely hazardous, toxic, or words of similar import or regulatory effect under Environmental Laws; and, including but not limited to (b) any petroleum or petroleum-derived products, radon, radioactive materials or wastes, asbestos in any form, lead or lead-containing materials, urea formaldehyde foam insulation, perfluoroalkyl substances, perchloroethylenes, trichloroethylenes and polychlorinated biphenyls.

“Highest Responsible Bid” shall mean the Highest Responsible Bid as determined pursuant to Section 4.0 of the RFB.

“Improvements” means any buildings and other improvements located on real property.

“Instrument” means any mortgages, deeds of trust, security instruments, financing statements, or other instruments that evidence or secure indebtedness.

“Land” means the parcel or parcels of land including the improvements thereon located in the Borough and having a tax map designation of [_____], each of

which parcel is owned in fee by the Borough, each of which is necessary and required in connection with the operation of the System and the assets being sold and conveyed under this Agreement, and each of which shall be transferred by the Borough to the Buyer hereunder subject to a deed restriction in favor of the Borough specifically providing that the parcel or parcels cannot be utilized for any purpose other than potable water supply operations, treatment, storage and distribution.

“Law” means any statute, law, ordinance, regulation, rule code, order constitution, treaty, common law, judgment, decree or other requirement or rule of law of any Governmental Authority.

“Liability” or “Liabilities” means any liability, cost, expense, debt, guarantee, assurance, commitment or obligation of any kind, character, or description, and whether known or unknown, accrued or unaccrued, absolute, fixed, contingent or otherwise, asserted or unasserted, matured or unmatured, liquidated or unliquidated, due or to become due and whenever or however arising.

“Losses” means all losses, damages, Liabilities, deficiencies, claims, interest, awards, judgments, penalties, costs or expenses, including reasonable attorneys’ fees, costs and other out-of-pocket expenses incurred in investigation, preparing or defending the foregoing.

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

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

“Order” means any judgment, award, order, writ, injunction or decree issued by any federal, state, local or foreign authority, court, tribunal, agency, or other Governmental Authority, or by any arbitrator, to which the Borough or its assets are subject, or to which Buyer or its assets are subject, as the case may be.

“Ordinary Course of Business” means an action taken by a Person that:

- (a) is consistent in nature, scope and magnitude with the past practices of such Person and is taken in the ordinary course of the normal, day-to-day operations of such Person;
- (b) does not require authorization by the board of directors, shareholders or elected officials (including the mayor or the borough council) of such Person (or by any Person or group of Persons exercising similar authority) and does not require any other separate or special authorization of any nature; and
- (c) is similar in nature, scope and magnitude to actions customarily taken, without any separate or special authorization, in the ordinary course of the normal, day-to-day operations of other Persons that are in the same line of business as such Person.

“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 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.

“Proceeding” means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or otherwise, whether at law or in equity.

“Purchased Assets” means the following real and personal property of the Borough:

- (a) the System (and appurtenances thereto);
- (b) all of the Borough’s rights and interests under the Easements being assigned to Buyer and pursuant to the Easement Assignments and to any other real property that is required in connection with the operation of the System;
- (c) all of the Borough’s rights and interests under the Orders, Consents and Permits affecting the foregoing.
- (d) all of the Borough’s information, correspondence, data, drawings, recorded knowledge, and accounting information pertaining to the foregoing;
- (e) all of the Borough’s rights and interests under Instruments relating to the foregoing;
- (f) all of the Borough’s rights and interests in any Improvements (including, but not limited appurtenant facilities) situated on or at the Land and other parcels of real property assigned as part of the Purchased Assets; and
- (g) all of the Borough’s files, computer files, books, data, manuals, papers and records relating to the foregoing.

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

“RFB” means the Request for Bids for the sale of the System issued by the Borough on April 7, 2021 and responded to by the Buyer.

“System” shall mean the Borough’s water supply, treatment, storage and distribution 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 and as of the Closing Date. 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 Bergen 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. The Borough has taken all necessary action to authorize the sale hereunder on the terms and conditions of this Agreement and to authorize the execution, delivery and performance of this Agreement. This Agreement has been duly executed by the Borough and constitutes a legal, valid and binding obligation of the Borough enforceable against it in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, or other similar laws from time to time in effect, which affect the enforcement of creditors rights in general and by general principles of equity (regardless of whether such enforceability is considered in a Proceeding in equity or at law).
- (C) Title to Purchased Assets. To the Borough’s knowledge, the Borough has good, marketable and valid title to all of the Purchased Assets, subject in each case to the Permitted Encumbrances. The Borough is the sole owner of all Purchased Assets and each parcel of real property included in the System, and leasehold interest, license or easements in all other real property in the System, subject to any disclosures made by the Borough to Buyer as set forth on **Schedule 2.1(C)** of the Disclosure Schedule.
- (D) No Litigation. To the Borough’s knowledge, except as set forth on **Schedule 2.1(D)** of the Disclosure Schedule, there is no litigation, either at law or in equity, nor any Proceedings before any commission, Governmental Authority or regulatory body pending, or to the knowledge of the Borough, threatened against the Borough, in any way that would adversely affect its ability to perform its obligations under the Agreement. No investigation is pending, or, to the knowledge of the Borough threatened, by any federal, state or local Governmental Authority, the effect of which would impair the value of, or affect, the Purchased Assets.

- (E) No Default. To 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 Authority or any Instrument to which it is a party and which in any way affects the Purchased Assets.
- (F) No Reimbursement Obligations. To the Borough's knowledge, except as identified in **Schedule 2.1(F)** of the Disclosure Schedule, the Borough is not party to any 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 Purchased Assets or ownership of thereof.
- (G) System Compliance. To the Borough's knowledge, except as identified in **Schedule 2.1(G)** of the Disclosure Schedule, the 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 System and are in effect as of the date hereof, including discount rates for financially eligible seniors.
- (I) No Undisclosed Liabilities. To the Borough's knowledge, and acknowledging that the Buyer's affiliate has operated the Borough's System since August 1, 2013, except as set forth in **Schedule 2.1(I)** of the Disclosure Schedule, as of the date hereof no basis exists for the assertion against the Borough of any Liability or any other obligation of any nature arising since December 31, 2020, other than Liabilities which have been incurred in the Ordinary Course of Business.
- (J) No Material Adverse Change. To the Borough's knowledge, and acknowledging that the Buyer's affiliate has operated the Borough's System since August 1, 2013, since the issuance of the Request For Bids For Sale of Water System on April 7, 2021, there has not been (i) any material adverse change in the financial or other condition or in the operations, business, properties or assets of the Borough that might affect the Purchased Assets, (ii) any material damage, destruction or loss to, or change in, any of the Purchased Assets, whether or not covered by insurance, or (iii) any of the prohibited transactions described in **Section 2.1(U)** of this Agreement.
- (K) Tax Returns and Payments. To the extent applicable, the Borough has duly and timely filed and paid any and all required federal, state, local and foreign, income, excise, sales, franchise, use, withholding, unemployment and other tax, if any (collectively, "Taxes") returns and reports required to be filed. All such returns and reports are true, correct and complete. There is no material unpaid assessment or proposal by any Governmental Authority for additional Taxes. All monies required to be withheld by the Borough from employees for income Taxes, social security and unemployment insurance Taxes have been collected or withheld, and either paid to the respective Governmental Authority or set aside in accounts for such purpose, or accrued, reserved against, and entered upon the books of the Borough.

- (L) Real Property. **Schedule 2.1(L)** of the Disclosure Schedule contains a legal description of the Land, the Borough and tax parcel identification number of the Land; and a copy of each of the Easements. All such real property interests are held in fee or subject to Contracts which are valid and effective in accordance with their respective terms, and there are no existing defaults or events of default, or events which with notice or lapse of time or both would constitute defaults, thereunder on the part of the Borough, except for such defaults, if any, as are not material in character, amount or extent and do not, severally or in the aggregate, materially detract from the value or interfere with the present use of the Purchased Assets or affect the validity, enforceability or assignability of such Contracts or otherwise materially impair the use and operation of the Purchased Assets. To the Borough's knowledge, there is no default or claimed or purported or alleged default or state of facts which with notice or lapse of time or both would constitute a default on the part of any other party in the performance of any obligation to be performed or paid by such other party under any Contract referred to in or submitted as a part of **Schedule 2.1(L)** of the Disclosure Schedule. The transfer of the Purchased Assets and the consummation of the transactions contemplated by this Agreement (including, but not limited to, any assignment of Easement rights) will in no way affect the continuation, validity and effectiveness of any such Contract or require the Consent of any third party or Governmental Authority, other than the Board of Public Utilities. The Borough has furnished to Buyer true and correct copies of all Contracts, deeds, and legal descriptions of the real property referred to or set forth in **Schedule 2.1(L)** of the Disclosure Schedule.
- (M) Sufficiency of Purchased Assets. To the Borough's knowledge, and acknowledging that the Buyer's affiliate has operated the Borough's System since August 1, 2013, except as set forth in **Schedule 2.1(M)** of the Disclosure Schedule, the Purchased Assets constitute all of the tangible assets necessary to operate the Business in the manner presently operated by the Borough in the Ordinary Course of Business.
- (N) Improvements. To the Borough's knowledge, and acknowledging that the Buyer's affiliate has operated the Borough's System since August 1, 2013, use of the Land and other real property of which the Purchased Assets are located for the various purposes for which it is presently being used is permitted as of right under all applicable zoning requirements and is not subject to "permitted nonconforming" use or structure classifications. All Improvements are in compliance with all applicable Laws, including those pertaining to zoning, building and the disabled, are in working order, and are free from patent defects. No part of any Improvement encroaches on any real property not included in the Land and real property included in the Purchased Assets, and there are no buildings, structures, fixtures or other Improvements primarily situated on adjoining property which encroach on any part of the Land.
- (O) Personal Property. Except as set forth in **Schedule 2.1(O)** of the Disclosure Schedule, each item of personal property included in the Purchased Assets is in working condition, is suitable for immediate use in the Ordinary Course of Business and is free from patent defects.

- (P) Regulatory Compliance; Permits. **Schedule 2.1(P)** of the Disclosure Schedule sets forth a complete and accurate list of all Consents, Orders and Permits relating to the Purchased Assets to which the Borough is a party, or which are otherwise binding on the Borough, or which directly or indirectly affect or in any way relate to the Purchased Assets. No Consent, Permit or Order of any Person or Governmental Authority is required for or with respect to the Borough in connection with the execution or delivery of this Agreement by the Borough or the consummation by the Borough of the transactions contemplated hereby other than those specified in **Schedule 2.1(P)** of the Disclosure Schedule. All of the Consents, Orders and Permits to which the Borough is a party, or which are otherwise binding on the Borough, or affect the Purchased Assets are in full force and effect as of the date hereof, and the Borough has not engaged in any activity which would cause or permit revocation or suspension of any such Permit or a default or violation under any such Order, Consent or Permit and no Proceeding looking to or contemplating the revocation or suspension of any such Consent, Permit or Order is pending or threatened. Except as set forth in **Schedule 2.1(P)** of the Disclosure Schedule, there are no existing defaults, or events of default, or events or state of facts, which with notice or lapse of time would constitute a default by the Borough under any Consent, Order or Permit to which the Borough is a party, or which are otherwise binding on the Borough, or which directly or indirectly affect or in any way relate to the Purchased Assets. Except as set forth in **Schedule 2.1(P)** of the Disclosure Schedule, there are no defaults or claimed or purported or alleged default or state of facts which with notice or lapse of time would constitute a default on the part of any party in the performance of any obligation to be performed or paid by any party under any Consent, Order or Permit to which the Borough is a party, or which are otherwise binding on the Borough, or which directly or indirectly affect or in any way relate to the Purchased Assets.
- (Q) Compliance with Laws. Except as set forth on **Schedule 2.1(Q)** of the Disclosure Schedule, the Borough is now, and at all times prior to the date hereof the Borough has been, in full compliance with all Laws that are or were applicable to it or to the conduct or operation of the Business, or the ownership or use of the Purchased Assets. Except as set forth on **Schedule 2.1(Q)** of the Disclosure Schedule, no event has occurred or circumstance exists that (with or without notice or lapse of time) may constitute or result in a violation by the Borough of, or a failure on the part of the Borough to comply with, any Laws or which may give rise to any obligation on the part of the Borough to undertake, or to bear all or any portion of the cost of, and remedial action of any nature. Except as set forth on **Schedule 2.1(Q)** of the Disclosure Schedule, the Borough has not received any notice or other communication from any Governmental Authority or any other Person regarding any actual, alleged, possible, or potential violation of, or failure to comply with, any Laws, or any actual, alleged, possible, or potential obligation on the part of the Borough to undertake, or to bear all or any portion of the cost of, any remedial action of any nature relating to the Purchased Assets.
- (R) Compliance with Other Instruments, etc. Subject to obtaining the Consents, Permits and Orders listed in **Schedule 2.1(R)** of the Disclosure Schedule, neither the execution and delivery of this Agreement by the Borough, nor the consummation of the

transactions contemplated hereby will (i) conflict with or result in any violation of or constitute a default under any Law, Instrument, Monetary Lien or Contract by which the Borough is, or its properties or assets are, bound or (ii) result in the creation or imposition of any Lien or give to any other Person any interest or right, including rights of acceleration, termination or cancellation in or with respect to, or otherwise affect, any of the Purchased Assets.

- (S) Adverse Agreements. The Borough is not a party to any Contract or subject to any charter or other corporate restriction or any Law which adversely affects or, so far as the Borough now reasonably foresees, the continued current use of the Purchased Assets.
- (T) Contracts, Instruments, etc. Set forth in **Schedule 2.1(T)** of the Disclosure Schedule are complete and accurate lists of all Contracts and Instruments affecting or otherwise relating to the Purchased Assets, except the Easement Agreements, which are set forth in **Schedule L** of the Disclosure Schedule. Except as set forth in **Schedule I to Exhibit F**, the sale of the Purchased Assets and the consummation of the transactions contemplated by this Agreement will in no way affect the continuation, validity or effectiveness of any of the Contracts, or require the Consent of any third party under any of the Contracts. There are no defaults or claimed or purported or alleged default or state of facts which with notice or lapse of time would constitute a default on the part of any party in the performance of any obligation to be performed or paid by any party under any Contract or Instrument affecting or relating to the Purchased Assets.
- (U) Prohibited Transactions. The Borough has not (i) entered into, amended or modified any collective bargaining Contract, (ii) created or permitted to exist any Lien on any of the Purchased Assets, (iii) waived any rights or amended, modified, canceled or terminated any Contract directly or indirectly affecting the Purchased Assets; or (iv) violated any, and has remained in full compliance with, all Laws that are applicable to it or to the conduct or operation of the Business or the ownership or use of any of the Purchased Assets.
- (V) Environmental Compliance. To the Borough's knowledge, and acknowledging that the Buyer's affiliate has operated the Borough's System since August 1, 2013, except as disclosed in **Schedule 2.1(V)** of the Disclosure Schedule (i) the Borough has conducted the Business in compliance with all applicable Environmental Laws, including having all Permits necessary under applicable Environmental Laws for the operation of the Business; (ii) none of the real properties owned or leased by the Borough contain any Hazardous Substance in amounts exceeding the levels permitted by Environmental Laws; (iii) the Borough has not received any notices, inquiries, demand letters or requests for information from any Governmental Authority or third party indicating that the Borough may be in violation of, or liable under, any Environmental Law in connection with the ownership or operation of the Business; (iv) there are no civil, criminal or administrative Proceedings pending or, to the knowledge of the Borough, threatened against the Borough, relating to any violation, or alleged violation, of any applicable Environmental Law; (v) no reports have been filed, or are required to be filed, by the Borough concerning the release of any

Hazardous Substance or the threatened or actual violation of any Environmental Law; (vi) no Hazardous Substance has been disposed of, released or transported in violation of any applicable Environmental Law from any real properties owned or leased by the Borough; (vii) there have been no environmental investigations, studies, audits, tests, reviews or other analyses regarding compliance or noncompliance with any applicable Environmental Law conducted by or which are in the possession of the Borough which have not been delivered to Buyer prior to the date hereof; (viii) there are no underground storage tanks on, in or under any real properties owned or leased by the Borough and no underground storage tanks have been closed or removed by the Borough from any of such properties; (ix) to the knowledge of the Borough, there is no asbestos or asbestos-containing material present in any of the Purchased Assets, and no asbestos has been removed by the Borough from any of such properties; and (x) neither the Borough nor the Purchased Assets is subject to any material Liabilities or expenditures (fixed or contingent) relating to any suit, settlement, Law or claim asserted or arising under any Environmental Law.

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 System or operations, including with respect to merchantability or fitness for any particular purpose and any such other representations of 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 System on an “as-is, where-is” basis. The Buyer has satisfied itself on all aspects, of the 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 System.

Section 2.3. SURVIVAL OF REPRESENTATIONS AND WARRANTIES. All of the representations and warranties made by the Borough hereunder shall survive the Closing for a period of 18 months, except for the representations and warranties of the Borough set forth in Sections 2.1(A), 2.1(B), 2.1(K) and 2.1(L) which shall survive for the applicable statute of limitations. At the Closing, the Borough shall provide a signed certification that the warranties and representations in Article II and the representations and warranties to be provided by the Borough hereunder with respect to title are true and correct as of the Closing Date, subject to any disclosures made to Buyer by the Borough in the Disclosure Schedules on or prior to the Closing Date. No disclosure made by the Borough after the date hereof shall amend the Disclosure Schedules as originally delivered hereunder. Notwithstanding any right or remedy available to any Party hereunder or otherwise under applicable Law, if any disclosures made between the date hereof and the Closing that were not previously on the Disclosure Schedule discloses any breach of a representation or warranty made hereunder by a Party, then the non-disclosing party shall have the right to terminate the transaction contemplated herein if the matter(s) disclosed individually (with respect to any single amendment/disclosure) and with respect to all such amendments/disclosures (taken as a whole), have a material adverse effect on the Business.

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 and the Closing Date. 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 laws of the State of New Jersey.
- (B) Authorization of Transaction. The Buyer has full right and authority to execute and deliver this Agreement and to perform its obligations hereunder.
- (C) No Litigation. To the best of the Buyer's knowledge, there is no litigation, either at law or in equity, nor any proceedings before any commission or regulatory body pending, or threatened against the Buyer, in any way that would affect its ability to perform its obligations under this Agreement.
- (D) No Warranties. Except for the representations and warranties set forth in this Agreement, the Buyer is purchasing the System "as is" and "where is", and that the Buyer will have no recourse against the Borough or its professionals with respect to any condition of the System that might be discovered after the Closing.
- (E) Right to Inspect. Prior to the date hereof, the Buyer has been afforded, and has availed itself of, the opportunity to inspect and has inspected the System to the extent that the Buyer deemed necessary and has made such examination of the 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 Agreement, 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 Agreement, 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 Agreement 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 Buyer pursuant to this Article III shall survive the Closing for a period of three (3) years.

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 Purchased Assets, except for the items excluded, all as further described in **Exhibit A** for the consideration specified below in Section 4.3.

Section 4.2. EXCLUDED ITEMS AND AR RECONCILIATION. In no event shall the Purchased Assets include personal property, office equipment, office supplies, vehicles, cash, securities, and the accounts receivable of the Borough relating to the System up to and including the Closing Date. The Excluded Items are set forth on **Schedule II to Exhibit C** attached hereto. The Borough shall continue to collect all accounts receivable owed to the Borough up to the date of the Closing. The Buyer shall pay the Borough the amount of any then outstanding accounts receivable remaining on the Closing Date, thereafter the Buyer shall collect and retain any outstanding accounts receivable.

Section 4.3. PURCHASE PRICE.

- (A) 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 (\$18,000,000) (the “Purchase Price”). Upon the execution of this Agreement, the Buyer shall pay the Deposit to be held by Escrow Agent pursuant to the terms of the Escrow Agreement, with any interest or earnings to follow the Deposit, and which Deposit shall be credited against the Purchase Price. Subject to the terms and conditions of this Agreement, the balance of the Purchase Price less the Deposit, increased or decreased by the items to be apportioned pursuant to Section 4.8 of this Agreement (such sum, before the apportionments referred to herein is referred to as the “Closing Balance” and after such apportionments is referred to as the “Adjusted Closing Balance”) shall be paid on the Closing Date by wire transfer in federal funds to a bank account designated in writing by the Borough at least five (5) business days prior to the Closing Date.

- (B) Notwithstanding anything to the contrary contained in this Agreement, if the Borough is unwilling or unable to remedy damage to the System that occurs prior to the Closing Date that would prevent the normal operation of the System, the Parties agree to meet prior to the Closing Date to discuss an appropriate repair of the damage and agree upon the costs for same which cost shall be deducted from the Purchase Price on the Closing Date. However, in the event there is insufficient time prior to the Closing Date for the Parties to meet and discuss the repair of the damage and the cost for same, the Parties agree to escrow no more than \$500,000 of the Purchase Price until the Parties can meet and agree upon a mutually acceptable adjustment to the Purchase Price; provided, however that the Parties shall reach agreement on any Purchase Price adjustment not later than ninety (90) days after the Closing Date. Regardless of the damage, or any Purchase Price adjustment agreed upon pursuant to Section 7.1(G), collectively in no case shall the Purchase Price be reduced by more than \$500,000.

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 System, including, but not limited to, attorneys, engineering, inspection, and other consultant costs (collectively the "Transaction Costs Payment"). The Buyer agrees to pay the Borough one-third of the Transaction Costs Payment, Fifty Thousand Dollars (\$50,000) upon the passing of the Borough Ordinance approving the sale of the System, which amount shall be non-refundable. The Buyer agrees to pay the Borough the remaining two-thirds One Hundred Thousand Dollars (\$100,000) of the Transaction Costs Payment upon Closing. For the avoidance of any doubt, in no event shall the Transaction Costs Payment exceed \$150,000.00.

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 Liabilities relating to the System that occur 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;
- (D) provide the customers of the System with continuous, safe and reliable service in accordance with applicable laws and regulations, and the Buyer's tariff as approved by the BPU;
- (E) maintain or expand the System in conformance with existing Borough land use and zoning ordinances, master plan, and historic district standards, as applicable;
- (F) make the required capital improvements pursuant to Section 8.4; and

- (G) make application for the transfer, effective at the Closing, of all System permits and approvals issued to the Borough prior to Closing by the NJDEP or any other local, State or federal agency.
- (H) allow the Borough, at no cost to the Borough, to operate, maintain, repair, replace and upgrade communications equipment located on the water supply storage tank on Block 5405, Lot 20 (Ramsey storage tank) and Block 203, Lot 1.01 (Fairhaven storage tank).
- (I) offer to the Borough a right of first refusal, at no cost to the Borough, for any real property, and the facilities located thereon, that comprises the System in the event that the Buyer ceases to utilize same to produce, treat, store or supply potable water to the Borough and its residents and business; provided that if Borough exercises the right of first refusal, the Borough and Buyer shall determine the fair market value of the real property via an appraisal, and the facilities located thereon that comprise the System. For the avoidance of all doubt, the fair market value of the property shall reflect the value of the property taking into consideration the deed restriction applicable thereto.
- (J) address PFAS contamination occurring in all wells in accordance with the Buyer's PFAS plan provided with their Bid and attached hereto and made a part hereof as **Exhibit L** and in a manner consistent with applicable NJDEP drinking water standards.

Notwithstanding the foregoing, Buyer shall not assume and shall not be responsible to pay, perform or discharge any other Liabilities or obligations of the Borough (the "Excluded Liabilities"), which include without limitation: (i) any Liabilities or obligations of the Borough not arising out of or relating to the Borough's ownership or operation of the Business or Purchased Assets, (ii) any Liability, obligation or commitment arising out of any Contract not expressly assumed by Buyer, and (iii) any Liability, obligation or commitment of the Borough to the extent relating to, or arising out of, any Excluded Asset.

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, and to have the Closing take place by the exchange of electronic signature copies of the applicable agreements.

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 with covenants against grantor's acts conveying fee simple title to the Land associated with the System, subject to a deed restriction in favor of the Borough specifically providing that the parcel or

parcels cannot be utilized for any purpose other than potable water supply operations, treatment, storage and distribution, along with such other documents and instruments as are required in connection with the recordation of the deed(s), including appropriate transfer tax 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 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's resolution(s) and/or ordinances authorizing the transactions contemplated hereunder and the Transaction Documents, as may reasonably be requested by Buyer's attorneys, title insurance company, or, if applicable, lender, concerning the status and authority of the Borough to consummate the transactions contemplated by this Agreement and the Transaction Documents;
 - (viii) a signed certification by the Borough that the representations and warranties 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 Borough:
- (i) an assignment of easements in the form attached hereto as **Exhibit F**, to convey all easement rights associated with the 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 One Hundred Thousand Dollars (\$100,000); 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 System assets to be transferred to the Buyer and all other operating expenses for the System allocable to periods before and after the Closing Date, shall be apportioned for the 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 commercially 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 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 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. However, Buyer acknowledges and understand that billing and customer account information is currently maintained by the Buyer's affiliate as the Borough's private operator.
- (C) Permits. Prior to the Closing, the Parties shall cooperate to effect the transfer of all Permits related to the operation of the System which were granted to the Borough by any Governmental Authority, which transfer shall be effective on or after the Closing Date 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 Business. The Borough will:
 - (i) continue to operate and maintain the System in the Ordinary Course of Business;
 - (ii) maintain the 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 Contracts relating to the System; and;
 - (iv) timely pay and discharge all invoices, bills and other monetary Liabilities, other than those which are being contested in good faith;
 - (v) not sell, assign, transfer, lease, sublease, pledge or otherwise encumber or dispose of any of the Purchased Asset, except for the provision of services in the Ordinary Course of Business and at regular prices;
 - (vi) maintain in full force and effect all insurance coverages for the Borough in connection with its ownership of the Purchased Assets substantially comparable to coverages existing on the date hereof; and
 - (vii) not accelerate the collection of its accounts receivable or delay the payments of its accounts payable or other Liabilities, in each case arising out of the

operation of the System in a manner which would be inconsistent with past practice.

- (E) Referendum. The Borough will advance a Referendum process, as required pursuant to the Municipal Sale Law, asking the Borough voters if they will approve the sale of the System. The Parties acknowledge that this Agreement shall be null and void if the Referendum is not approved.
- (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 Purchased Assets from the date of this Agreement through the Closing Date. In event that the condition of the Purchased Assets is 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, Buyer has the option to terminate this Agreement upon written notice to the Borough. 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 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 acknowledge that the Borough's customer billing is provided by the Buyer's affiliate as the Borough's private operator and the Buyer and the Borough shall not be responsible for any costs associated with the transfer of customer billing information. The Parties shall agree no later than sixty (60) days before the Closing to a process and method for the final billing of the customers of the System. Buyer shall remit to the Borough, within sixty (60) following the Closing, the total amount of accounts receivable accumulated prior to the Closing. The Buyer shall then seek to collect all accounts receivable as reimbursement to the Buyer.
- (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 Purchased Assets from the date hereof 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 plant and equipment; and endorsements, assessments and surveys of the real property comprising the Borough and easements. The Parties acknowledge that the Buyer already possesses a level of familiarity with the System given that Buyer's affiliate is the current operator of the Borough's System. 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 Purchased Assets during this period, except due to the negligence or willful misconduct of the Borough or its agents. 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 System. The Borough shall cooperate with the Buyer with respect to such access to ensure a smooth transition in ownership of the Purchased Assets.
- (L) Confidentiality. Any information provided by the Borough to the Buyer regarding the Borough's customers and the 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 System.
- (N) Referendum Education Campaign. The Buyer shall provide reasonable assistance to the Borough in connection with its public referendum education campaign.
- (O) Restrictions on New Contracts. Except as set forth in **Schedule 5.1(O)**, or except with the prior written consent of the Buyer, which consent shall not be unreasonably withheld, delayed or conditioned, the Borough shall not enter into any Contract, incur any Liability, assume, guarantee or otherwise become liable or responsible for any Liability of any other Person, or waive any right or enter into any other transaction, in each case other than in the Ordinary Course of Business.
- (P) Capital Expenditures. The Borough shall not make any capital expenditures in excess of its approved capital expenditures budget (which has been previously provided to the Buyer and is set forth on **Schedule 5.1(P)**) without the Buyer's prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned.

ARTICLE VI

TITLE AND CONDITION OF THE PURCHASED ASSETS

Section 6.1. TITLE. Title to the 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 System; provided the same do not materially affect or detract from the System or render title unmarketable to such property;
- (D) rights of way and easements that do not materially interfere with the existing use of the real property comprising the System;
- (E) zoning and other governmental restrictions, including a deed restriction restricting the use the Land for potable water supply operations, treatment, storage and distribution; provided same do not materially interfere with the existing use of the real property comprising the System; and
- (F) taxes, assessments and other public charges on real property comprising the 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 System (including the Land), Buyer shall within thirty (30) 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 thirty (30) business days after receipt of the Commitment, Buyer shall notify the Borough of any objections to title, other than the Permitted Encumbrances. Any matters set forth on the Commitment and not objected to by Buyer within said thirty (30) day period shall become Permitted Encumbrances hereunder. The Borough may elect to cure any title defect by so notifying 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 Buyer's sole remedy shall be to terminate this Agreement or 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 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 System provided as part of the RFB (collectively, "Property Information Materials"). The Parties also acknowledge that the Buyer's affiliate has been the private operator of the System since August 1, 2013. 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. Except as otherwise expressly provided forth in this Agreement, 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 Agreement. However, the foregoing release shall not apply to any Claims resulting from any material misstatements or willful misconduct on the part of the Borough.

Section 6.3. CONDITION OF THE PURCHASED ASSETS. 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 Purchased Assets 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 System. The Buyer has also had the opportunity to confer with its affiliate that has served as the Borough's private operator of the System since August 1, 2013. The Buyer has satisfied itself on all aspects, without limitation, of the Purchased Assets 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 consummate 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 made by the Borough 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 System to the Buyer, including but not limited to the NJDEP Permits, if necessary (collectively, 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. In the event that the Approvals are received but are not satisfactory to Buyer in its sole discretion, Buyer and the Borough shall meet to determine any appropriate adjustments to this Agreement in light of such Approvals or Buyer may terminate this Agreement.
- (E) The voters of the Borough shall have approved referendum authorizing the sale of the System.
- (F) The Buyer shall have, at its sole cost and expense, with reasonable assistance from the Borough, obtained approval from BPU of the Borough Consent pursuant to N.J.S.A. 48:2-14, in a form and substance acceptable to Buyer.
- (G) Within three (3) months following execution of this Agreement, Buyer shall have completed and be satisfied with the results of a Phase I Environmental Site Assessment or other environmental assessment performed with respect to the real property portion of the System (including the Land). If the results of the environmental assessment reveal the potential for the existence of Liabilities or other matters not acceptable to Buyer, Buyer and the Borough shall meet and confer in good faith to determine an appropriate additional evaluation processes. Buyer acknowledges that the Borough may not be able to provide Buyer access to certain properties on which it has only acquired an easement for the System to conduct additional evaluation processes. The cost of any additional evaluation process shall be shared by the Parties. If the Parties cannot agree on an appropriate additional evaluation process, or to the extent such additional evaluation process does not exist or is unavailable, and Borough does not provide an adjustment to the Purchase Price pursuant to Section 4.3(B), then Buyer may terminate this Agreement.

- (H) The Borough has executed and delivered to Buyer all of the documents and Instruments required under Section 4.7(B) hereof.
- (I) There shall not have occurred an event, action or condition affecting the Purchased Assets that would have a material adverse effect on the Business in the sole judgment of Buyer, nor shall there be an event, action or condition discovered by the Buyer during the period between the date hereof and the Closing, that would be deemed to have a material adverse effect on the Business in the sole judgment of Buyer. In the event any such material adverse effect has occurred or is discovered, the Buyer shall have a right to immediately terminate this Agreement, notwithstanding anything contained herein to the contrary.

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 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, at the Borough's written request, 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 **Schedule I to Exhibit C**.
- (F) The voters of the Borough shall have approved referendum authorizing the sale of

the System.

- (G) The Board of Public Utilities, when initially approving this Agreement, shall have approved a Rate Stabilization schedule substantially similar to the schedule set forth in **Exhibit M** attached hereto, or if not substantially similar to **Exhibit M**, then the Borough shall have thirty (30) days following the Board of Public Utilities decision concerning the Rate Stabilization schedule to decide in its sole discretion to either move to Closing or terminate the this Agreement.

Section 7.3. SCHEDULE FOR CLOSING CONDITIONS. Buyer and the Borough shall each promptly initiate and complete its conditions of Closing set forth in Section 7.1 and Section 7.2. In the event Buyer has not obtained the Approvals within twelve (12) months of the date of this Agreement, either Party can terminate the Agreement. Buyer shall, prior to the expiration of the initial twelve (12)-month period, be entitled to request one additional three (3)-month extension from the Borough, which extension shall not be unreasonably withheld, delayed or conditioned. In the event that all such Closing conditions are not completed by such date notwithstanding the Buyer's good faith efforts, the Borough shall have the right to terminate this Agreement and keep the Deposit and the _____ dollars (\$_____) portion of the Transaction Costs Payment that had been paid to the Borough upon the passing of the Borough Ordinance approving the sale. The Parties may mutually agree in writing to further extend the timeframe to achieve Closing. For the avoidance of doubt, the Deposit shall be credited against the Purchase Price in the event the Closing occurs.

ARTICLE VIII

POST-CLOSING OBLIGATIONS OF BUYER

Section 8.1. CONTINUATION OF 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 supply, treatment, storage and distribution of potable water to the customers of the System in a manner that meets all local, state, and federal laws and regulations relating to such activities and shall operate and maintain the System to provide safe, reliable and adequate service.

Section 8.2. MAINTENANCE, REPAIRS, AND REPLACEMENT. The Buyer shall perform, at its own expense, all maintenance, repair, and replacement of the machinery, equipment, structures, improvements, and all other property and components constituting the 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 System and shall conduct predictive, preventive, and corrective maintenance of the System as required by applicable law.

Section 8.3. RATE STABILIZATION COVENANT. The Buyer, subject to approval of the Board of Public Utilities, agrees that it shall propose rates for ten (10) years as set forth in **Exhibit M** and shall use best efforts in each future rate case before the Board of Public

Utilities to maintain the rate schedule set forth in **Exhibit M**. In the event that the Board of Public Utilities does not approve rates as set forth in **Exhibit M**, Buyer agrees to work cooperatively with the Borough and the Board of Public Utilities to preserve the rate schedule set forth in **Exhibit M** to the maximum extent acceptable to the Board of Public Utilities. Buyer acknowledges that the rate schedule set forth in **Exhibit M** is a significant inducement to the Borough entering into the Agreement and that without same, the Borough may choose to terminate this Agreement, without consequence to the Borough. Any future base rate increases shall be included in Buyer's base rate cases periodically filed with the Board of Public Utilities. The Buyer shall use good faith efforts to minimize rate increases to Borough customers by spreading costs of the System across its statewide customer base to the extent permitted by law.

Section 8.4. CAPITAL IMPROVEMENTS. As soon as reasonably practicable and no later than one year following Closing, the Buyer shall begin to undertake the capital improvements as described in **Exhibit K**.

Section 8.5. SERVICE TO BOROUGH FACILITIES. The Buyer shall provide potable water service to Borough-owned facilities at no cost to the Borough for a period of five (5) years from the date of Closing.

Section 8.6. REQUIREMENT TO PROVIDE THE BOROUGH WITH CERTAIN DATA. Buyer shall provide the Borough with a report detailing the total amount of water consumed by the customers of the System on or before May 1, 2021 of each calendar year so that the Borough can provide wastewater flow data to the Northwest Bergen Utilities Authority.

Section 8.7. RESERVED.

Section 8.8. RESERVED.

Section 8.9. SENIOR DISCOUNT PROGRAM. The Buyer shall continue the Borough's current senior citizen discount program for seniors with financial hardship meeting qualifying criteria for real property tax deductions. The existing senior citizen discount is set forth in **Exhibit D**.

Section 8.10. TRANSITION ADVISORY PANEL. The Buyer agrees that it shall meet at least twice per year for two years post Closing with the Borough's Water Sewer and Public Utilities Committee to address Borough and customer service related issues.

Section 8.11. PAVING. The Buyer shall pave Borough roads in accordance with all applicable Borough Ordinances and requirements. The Buyer shall coordinate its project construction schedule with the Borough's paving schedule.

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 _____ dollars (\$_____) 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.

Section 9.4. UNSUCCESSFUL REFERENDUM. In the event that the referendum authorizing the sale does not succeed, the Borough shall return the Deposit but shall retain the _____ dollars (\$_____) portion of the Transaction Costs Reimbursement paid to the Borough upon the passing of the Ordinance approving the sale. The Parties shall have no further obligation to each other and this Agreement shall be rendered null and void.

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 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 Bergen 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 Losses, third-party claims, demands, suits, actions or expenses incurred or sustained by, or imposed upon, the Borough Indemnitees arising from or alleged to arise from or in connection with: (1) the operation of the System subsequent to the Closing Date; (2) any failure by the Buyer to perform its obligations under this Agreement; and (3) the negligent acts 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 and its officers, shareholders, employees, agents, affiliates and subsidiaries (together, the "Buyer Indemnitees") from and against any and all Losses incurred or sustained by, or imposed upon, the Buyer Indemnitees based upon, arising out of, with respect to or by reason of:

(A) any and all third-party claims, demands, suits or actions arising from (or alleged to arise from or in connection with: (1) the operation of the System prior to the Closing Date; (2) any failure by the the Borough to perform its obligations under this Agreement; and (3)

the negligent acts or willful misconduct of the Borough or any of its officers, directors, employees, agents, representatives or subcontractors in connection with this Agreement);

(B) any inaccuracy in or breach of any representation or warranty made by the Borough in (i) this Agreement, (ii) the Disclosure Schedule, (iii) the supplements to the Disclosure Schedule, (iv) the certificates delivered pursuant to Section 4.7(A)(vii), (v) any transfer Instrument or (vi) any other certificate, document, writing or Instrument delivered by the Borough pursuant to this Agreement;

(C) any breach of any covenant or obligation of the Borough in this Agreement or in any other certificate, document, writing, Transaction Document or Instrument delivered by the Borough pursuant to this Agreement;

(D) any Excluded Assets or Excluded Liabilities.

Section 12.3. THIRD PARTY CLAIMS. An Indemnitee (Buyer or Borough) 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. DIRECT CLAIMS. Any claim by an Indemnitee on account of a Loss which does not result from or involve a third party claim (a "Direct Claim") shall be asserted by the Indemnitee by providing prompt written notice thereof to the indemnitor after the Indemnitee becomes aware of such Direct Claim. Such notice by the Indemnitee shall describe the Direct Claim in reasonable detail and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnitee. The indemnitor shall have thirty (30) days after its receipt of such notice to respond in writing to such Direct Claim asserting or denying its

responsibility with respect to such Direct Claim. During such thirty (30) day period, the Indemnitee shall allow the indemnitor and its professional advisors to investigate the matter or circumstance alleged to give rise to the Direct Claim, and whether and to what extent any amount is payable in respect of the Direct Claim and the Indemnitee shall reasonably assist in the indemnitor's investigation. If the indemnitor does not so respond within such thirty (30) day period, the indemnitor shall be deemed to have accepted such claim.

Section 12.5. TAX TREATMENT. All indemnification payments made with respect to any claim pursuant to this Section 12 shall be treated by the Parties as an adjustment to the Purchase Price for Tax purposes, unless otherwise required by Law.

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, Exhibits and Schedules hereto) 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 to Borough:

Municipal Clerk
Allendale Borough Hall

500 West Crescent Avenue
Allendale, New Jersey 07401

Copy to:

Raymond R. Wiss
Wiss & Bouregy
345 Kinderkamack Road
Westwood, NJ 07675

and

Ryan J. Scerbo, Esq.
DeCotiis, FitzPatrick, Cole & Giblin, LLP
Suite 250
61 South Paramus Road
Paramus, New Jersey 07652

If to Buyer:

SUEZ Water New Jersey Inc.
200 Lake Shore Drive
Haworth, New Jersey 07641
Attn: Alan Weland, General Manager

Copy to:

SUEZ North America Inc.
461 From Road, Suite 400
Paramus, New Jersey 07652
Attn: Legal Department – Utility Operations

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 _____ dollars (\$_____) 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. However, with respect to the transfer of real property, the Parties agree to work cooperatively to develop an alternative transfer schedule if there is a delay in obtaining or locating documentation evidencing all easements, rights of way or access necessary to operate, manage, repair and maintain the System.

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

eight 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 ALLENDALE

By _____
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SUEZ WATER NEW JERSEY INC.

By _____
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EXHIBIT A

DESCRIPTION OF THE 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 Allendale, a public body corporate and politic in Bergen County in the State of New Jersey (the “Assignor”) and SUEZ Water New Jersey Inc., a New Jersey Corporation with principal corporate offices at 461 From Road, Suite 400, Paramus, New Jersey 07652 (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 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 ALLENDALE

By: _____

Name:

Title:

SUEZ WATER NEW JERSEY INC. By:

Name: _____

Title:

SCHEDULE I TO ASSIGNMENT AND ASSUMPTION AGREEMENT

All obligations relating to the 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 Allendale, a public body corporate and politic in Bergen County in the State of New Jersey (the “Borough”) and SUEZ Water New Jersey Inc., a New Jersey corporation with principal corporate offices at 461 From Road, Suite 400, Paramus, New Jersey 07652 (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 “System”) which includes 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 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 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 SYSTEM AS IS. Except as specifically set forth in the Agreement, the 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 System. The Buyer is hereby thus acquiring the 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 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 Allendale, a public body corporate and politic in Bergen 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 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 System up to and including the Closing Date.

EXHIBIT D

TARIFF

**BOROUGH OF ALLENDALE
ORDINANCE # _____**

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 ALLENDALE**, a public body corporate and politic in Bergen County in the State of New Jersey (the “Grantor”), and SUEZ Water New Jersey Inc., a New Jersey Corporation (the “Grantee”), having an address at 461 From Road, Suite 400, Paramus, New Jersey 07652.

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 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 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 roads.

TOGETHER WITH all of Grantor's rights of ingress, egress, and regress to and from said Easements, water mains and appurtenances, at any and all times for the purpose of operating the System and laying, relaying, installing, operating, inspecting, maintaining, repairing, altering, removing, renewing, and replacing the 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 and behoof 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 Premises shall be transferred subject to a deed restriction in favor of the Grantor restricting the use of the Premises to potable water supply operations, treatment, storage and distribution uses.

The Grantor, with respect to any of the Easements and Premises shall have the right of first refusal, at no cost to the Grantor, in the event that the Grantor ceases utilizing same to develop, store, treat and supply potable water to the Grantor and the residents and businesses of the Borough of Allendale.

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 ALLENDALE, a
public body corporate and politic in
Bergen County in the State of New Jersey

Attest: _____

By: _____
Name
Title:

STATE OF NEW JERSEY)
): **SS.:**
BERGEN)

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 Allendale, a public body corporate and politic in Bergen 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 Allendale herewith as described herein.

EXHIBIT G

FORM OF GENERAL ASSIGNMENT

GENERAL ASSIGNMENT

THIS GENERAL ASSIGNMENT, dated [], 2021, by and between the **BOROUGH OF ALLENDALE**, a public body corporate and politic in Bergen County in the State of New Jersey (the “Assignor”) and **SUEZ WATER NEW JERSEY INC.**, a New Jersey corporation having a mailing address at 461 From Road, Suite 400, Paramus, New Jersey 07652 (the “Assignee”).

WHEREAS, Assignor and Assignee entered into an Agreement of Sale dated [], 2021 (the “Agreement”) for the sale and purchase of the 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 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.

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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 ALLENDALE, a
public body corporate and politic in
Bergen County in the State of New Jersey

Accepted this ____ day of _____, 20____.

By: _____
Name
Title:

WITNESS:
ASSIGNEE:

WATER NEW JERSEY INC.

SUEZ

By: _____

Name

By:

Title:

SCHEDULE I TO EXHIBIT G
LIST OF ASSIGNED RIGHTS

PERMITS:

EXHIBIT H**DISCLOSURE SCHEDULE TO THE AGREEMENT OF SALE**

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

BETWEEN BOROUGH OF ALLENDALE 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 to Assets**

☐

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(I)

No Undisclosed

Liabilities

☐

Schedule 2.1(L)

Real Property

☐

Schedule 2.1(M)

Sufficiency of Purchased Assets

☐

Schedule 2.1(O)

Personal Property

☐

Schedule 2.1(P)

Consents, Orders, and Permits Applicable to the Borough

☐

Schedule 2.1(Q)

Compliance with Laws

☐

Schedule 2.1(R)

Required Consents, Permits, and Orders

☐

Schedule 2.1(T)

Contracts, Instruments, Etc.

☐

Schedule 2.1(V)

Compliance with Environmental Laws

☐

Schedule 2.1(W)

Water Quality

☐

Schedule 5.1(O)

Restriction on

New Contracts

Schedule 5.1(P)

Capital

Expenditure

Budget

EXHIBIT I**ESCROW AGREEMENT**

THIS ESCROW AGREEMENT, dated as of [] (this “Escrow Agreement”), by and among **THE BOROUGH OF ALLENDALE**, a public body corporate and politic in Bergen County in the State of New Jersey (the “Borough”), **SUEZ WATER NEW JERSEY INC.**, a New Jersey corporation (the “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 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 within 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 be deemed to have been duly given or made upon receipt) by delivery in person, by courier service, by cable, by telecopy, by telegram, by telex, or by registered or certified mail (postage prepaid, return receipt requested) to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 10):

If to the Buyer:

SUEZ Water New Jersey Inc.
200 Lake Shore Drive
Haworth, New Jersey 07641
Attn: Alan Weland, Vice President & General Manager

With a copy to:

SUEZ Water Management & Services Inc.
461 From Road, Suite 400
Paramus, New Jersey 07652
Attn: Bryant Gonzalez, Corporate Attorney
Utility Operations

If to the Borough:

Municipal Clerk
Borough of Allendale
500 Crescent Avenue
Allendale, New Jersey 07401

Copy to:

Ryan J. Scerbo, Esq.
DeCotiis, FitzPatrick, Cole & Giblin, LLP
Suite 250.
500 Crescent Avenue
Paramus, New Jersey 07652

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 ALLENDALE

SUEZ WATER NEW JERSEY INC.

By: _____
Name
Title:

By: _____
Name
Title:

ESCROW AGENT

By: _____
Name
Title:

EXHIBIT J

CUSTOMER SERVICE PLAN



SUEZ Water New Jersey currently provides Allendale Residents with Customer Service functions as outlined in the Operations and Maintenance Agreement established in 2013 between the Borough of Allendale and SUEZ Water Operations Inc. These services are delivered by SUEZ employees based in SUEZ Water New Jersey's Hackensack, New Jersey service center. Allendale residents will continue to be supported by the same local SUEZ team that has been serving Borough customers since 2013. We believe the local presence provides a better customer experience.

Our call center is fully staffed with trained customer service representatives and management professionals. Our staff members are trained in the areas of customer contact, metering and field work, construction and maintenance, billing, payments and collections. The change in ownership of the Borough's water system to SUEZ will be seamless for Allendale residents. Borough customer information will remain in the current SUEZ customer system, Oracle CC&B. There will be no system changes or conversion required to transition Allendale residents from the current customer system.

Currently, SUEZ Water New Jersey bills Allendale residents on a quarterly basis. SUEZ will transition Allendale residents to monthly billing within the first 18 months of date of acquisition in conjunction with the installation of Advanced Meter Infrastructure (AMI), as referenced in the capital improvements plan (Exhibit K).

CUSTOMER SERVICE STANDARDS

SUEZ Water New Jersey is a regulated water utility that must meet all statutes, codes, and regulations as established by the New Jersey Board of Public Utilities. As such, Allendale residents will be afforded the same high standards as all the existing 870,000 people currently served by SUEZ Water New Jersey. These customer service standards are further defined in the New Jersey Administrative Code (NJAC) Title 14 – PUBLIC UTILITIES. Examples of regulations for all utilities under Title 14 – PUBLIC UTILITIES includes but not limited to:

- Chapter 3 – ALL UTILITIES
 - SERVICE
 - METERS
 - CONTACTING THE UTILITY
 - BILLS AND PAYMENTS FOR SERVICE
- Chapter 9 – WATER AND WASTEWATER, Subchapter 3 - QUALITY OF SERVICE
 - Pressure and Volume of water
 - Quality of Water

EXHIBIT K

CAPITAL IMPROVEMENTS

SUEZ Water New Jersey has prepared a proposed 10-year capital plan for the Allendale Water System based on our knowledge and experience operating the system since 2013. Details of capital improvements are shown in Table K-1. The plan is segregated into two periods: The first five years of ownership and the second five-year period. The reason for this separation is the first five-year period requires significant and extraordinary capital investment for compliance (e.g., PFAS treatment), as well as operational efficiency and resiliency. The second five-year period anticipates a more “routine” level of investment in the Borough’s water infrastructure.

SUEZ Water New Jersey is committed to the capital plan as presented. However, capital plans to a certain extent must be flexible based on the needs of the system and external factors that drive investment needs, such as changing regulations. SUEZ reviews its capital plans on a regular basis and on an annual basis revises the plans and priorities as necessary.

Table K-1 - Proposed 10-Year Capital Plan (in thousands of dollars)

Project Description	First Five Years	Next Five Years
COMMON ITEMS		
Supervisory Control and Data Acquisition (SCADA) Improvements	\$ 600	\$ -
General Security Items and Safety Improvements	\$ 375	\$ 125
General Facility Improvements (paving and buildings)	\$ 125	\$ 125
Well Pump Replacement	\$ 50	\$ 50
Failed Equipment Replacement (chemical feed, equipment, electrical equipment, etc)	\$ 100	\$ 100
Customer Meter / Radio Read Equipment Replacement	\$ 600	\$ -
Advanced Metering Infrastructure (AMI) System	\$ 50	\$ -
Production and Pumping Facility Meter Replacements	\$ 50	\$ -
Arc Flash Study	\$ 40	\$ -
Routine Transmission & Distribution System Improvements (services, valves, hydrants, short main replacements, etc.)	\$ 1,250	\$ 1,250
Water Main Replacement Projects	\$ 930	\$ 4,650
Lead Service Replacement Program	\$ 1,500	\$ 1,500
FACILITIES		
Well No. 11 (W. Crescent Ave)		
Raw Water Pipe to Consolidate PFAS Treatment at New Street	\$ 550	\$ -
New Emergency Generator	\$ 250	\$ -

Well No. 17 (Meeker Ave)		
Gravel Sump for Waste Stream for Chlorine Analyzer	\$ 20	\$ -
New Emergency Generator	\$ -	\$ 200
New Street Treatment Plant (98 New Street)		
Lowry Air Diffuser System Replacement (Included in PFAS Treatment Project)	\$ -	\$ -
PFAS, Disinfection Treatment & Emergency Generator (Consolidated with Wells 2 & 4)	\$ 7,250	\$ -
PFAS Media Replacement	\$ 160	\$ 400
Replace 10" New Street Pump Station Discharge Pipe with 12" Pipe	\$ 750	\$ -
Well 2		
New Emergency Generator (Included in New Street PFAS Project)	\$ -	\$ -
Well 4		
New Emergency Generator (Included in New Street PFAS Project)	\$ -	\$ -
Well 15		
New Emergency Generator	\$ -	\$ 200
Ramsey Water Storage Tank		
Replace Tank Inlet/Outlet Pipe	\$ 1,000	\$ -
Fairhaven Tank and Pump Station		
Fairhaven Tank Improvements (associated with tank painting project) ⁽¹⁾	\$ 200	\$ -
Add SCADA Control at Altitude Valve to Control Rate of Tank Fill	\$ 30	\$ -
Interconnection Improvements		
Ridgewood Interconnection Improvement - Replacing 4" Pipe & Pump	\$ 400	\$ -
SWNJ Interconnection - New PRV Vault	\$ 500	\$ -
Ramsey Interconnection Abandonment	\$ 100	\$ -
TOTAL CAPEX PROGRAM (2021 DOLLARS)	\$16,880	\$ 8,600
AVERAGE ANNUAL INVESTMENT	\$ 3,376	\$ 1,720

Notes:

1. Tank painting is not a capitalized expense and has not been included in the table. The estimated additional cost for the Fairhaven Tank painting is \$1M.

CAPITAL PLAN HIGHLIGHTS

The following are brief summaries of key elements of the SUEZ Water New Jersey proposed capital plan for the Allendale Water System:

SCADA Improvements – The existing SCADA system, while functional, is outdated and requires upgrading. A new local Clear SCADA system will be implemented for remote system operation and to monitor performance and reliability.

Metering and AMI – SUEZ utilizes Sensus Advanced Meter Infrastructure (AMI) to manage customer meter data. This technology ensures accurate data measurement, consistent billing and operational efficiency. The proposed capital plan assumes replacement of all customer meters and radio endpoints within the first year of ownership to transition Allendale to Sensus technology. This will help facilitate the transition from quarterly billing to monthly billing, as described below in our Customer Service Plan.

Distribution System Improvements – In addition to routine work in the water distribution system to replace aged/failed assets (services, valves, hydrants, short main replacements, etc.), our capital plan includes replacement/renewal of an average of 1,200 linear feet of main per year within the Allendale Water System, or 0.5% of the Allendale system annually. This is in line with the renewal/replacement rate for the existing SUEZ Water New Jersey system. We do not plan to start this program of main renewal/replacement until after the large capital expenditures of years 1 through 5, notably PFAS treatment.

In addition, improvements are planned at the existing SUEZ Water New Jersey interconnection and the Ridgewood Water Department interconnection to improve operations and reliability.

PFAS – See **Exhibit L** for SUEZ’s PFAS Plan.

Finished Water Storage Tank Improvements – The Fairhaven Tank was last rehabilitated in 2002 and painted in 1993. SUEZ plans to paint and rehabilitate the Fairhaven Tank within the first five years of ownership.

The Ramsey Water Storage Tank was recently rehabilitated, and painting is not planned in the 10-year period. However, the existing inlet/outlet pipe has a history of issues, complicated by its location on resident property that makes it difficult to access. In the first five years of ownership, we plan to replace and relocate the pipe to improve access.

SUEZ acknowledges the Borough can maintain communication equipment, including the repair, replacement upgrading and expanding of same and related ground structures, on the Borough’s Ramsey Water Tank and the land adjacent to same in perpetuity.

Lead – While there are no known lead services lines in Allendale, the materials for approximately 2/3 of the service lines are unknown. With the pending Lead and Copper Rule revisions, these materials will need to be identified and any lead materials removed. Based on our experience working on the lead issue in Bergen County, we have included a capital program for identifying and removing the lead materials over the 10-year planning period. The plan assumes 175 location investigations per year to determine service line materials and that 10% will contain lead and require replacement.

EXHIBIT L

BUYER'S PFAS PLAN

SUEZ is fully committed to meeting and exceeding requirements for the removal of PFAS from our drinking water as the EPA and NJDEP introduce new regulations. Levels of PFAS at the existing New Street Wells and Well 11 are near the regulatory limits. SUEZ Water New Jersey intends to implement treatment for removal of these compounds, if/when required. The proposed capital plan (Exhibit K) assumes a full upgrade of the New Street Treatment Plant, including replacement of the existing Lowery Boxes used for VOC treatment as well as a new treatment technology for PFAS. Treatment capacity at the plant will be increased to 750 GPD to allow for consolidated treatment of the existing New Street Wells plus Well 11. A new raw water pipe will be constructed to convey water from Well 11 to the New Street facility. The existing New Street discharge pipe will be replaced with a larger diameter pipe to accommodate the increased capacity. The approximate timeline would be roughly three and a half years from design to construction completion, which would require the negotiation of an ACO with the NJDEP to extend the deadline for installed treatment, depending on when the regulatory limits are exceeded.

Should treatment be needed prior to completion of the upgraded New Street Treatment Plant construction, installation of a mobile treatment trailer to provide temporary treatment is feasible if Allendale grants a temporary property easement. The trailer would remain at the treatment plant and in operation until permanent treatment is installed. Temporary treatment is not included in the proposed capital plan.

EXHIBIT M

RATE STABILIZATION COVENANT

10-Year Binding Rate Schedule										
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Rate Year Start Date	7/01/22	7/01/23	7/01/24	7/01/25	7/01/26	7/01/27	7/01/28	7/01/29	7/01/30	7/01/31
Rate Year End Date	6/30/23	6/30/24	6/30/25	6/30/26	6/30/27	6/30/28	6/30/29	6/30/30	6/30/31	6/30/32
Rate Increase Percentage	0%	0.5%	0%	0%	5%	0%	5%	0%	0%	5%
Average Annual Water Bill Increase		\$4.64			\$33.60		\$35.40			\$37.24
Rate Increase Effective Date		1/01/24			7/01/26		1/01/29			7/01/31

Notes:

- 1) In Year 2, minimum charge rates increased by 2% (representing a charge for Public Fire Protection), no change in volumetric rates, resulting in an average overall rate increase of 0.5%.
- 2) Starting year 5, schedule includes 5% rate increase every 30 months.
- 3) Effective dates for rate increases in Years 2 and 7 are in the middle of the rate year.
- 4) The "Average Annual Water Bill Increase" represents the annual billing increase that a residential customer would experience assuming an average water usage of 7,000 gallons per month, or \$84,000 gallons per year.