ASSET PURCHASE AGREEMENT

By and Among

THE CITY OF INDIANAPOLIS

and

THE SANITARY DISTRICT OF THE CITY OF INDIANAPOLIS, ACTING BY AND THROUGH THE BOARD OF PUBLIC WORKS

AS SELLERS

and

THE DEPARTMENT OF PUBLIC UTILITIES FOR THE CITY OF INDIANAPOLIS, ACTING BY AND THROUGH THE BOARD OF DIRECTORS FOR UTILITIES, AS TRUSTEE, IN FURTHERANCE OF THE PUBLIC CHARITABLE TRUST FOR THE WASTEWATER SYSTEM

and

CWA AUTHORITY, INC.

AS PURCHASER

Dated as of August 11, 2010
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>ARTICLE I.</th>
<th>DEFINITIONS</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>5</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ARTICLE II.</th>
<th>TERMS OF PURCHASE AND ASSUMPTION OF LIABILITIES</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 2.01.</td>
<td>Purchase and Sale of Acquired Assets</td>
<td>18</td>
</tr>
<tr>
<td>Section 2.02.</td>
<td>Excluded Assets</td>
<td>20</td>
</tr>
<tr>
<td>Section 2.03.</td>
<td>Sale Free of Liens</td>
<td>20</td>
</tr>
<tr>
<td>Section 2.04.</td>
<td>Assumption of Liabilities</td>
<td>20</td>
</tr>
<tr>
<td>Section 2.05.</td>
<td>Subsequent Documentation</td>
<td>22</td>
</tr>
<tr>
<td>Section 2.06.</td>
<td>Assignment of Contracts</td>
<td>22</td>
</tr>
<tr>
<td>Section 2.07.</td>
<td>Vesting of Power and Authority; Governmental Approvals</td>
<td>23</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ARTICLE III.</th>
<th>PURCHASE PRICE</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 3.01.</td>
<td>Purchase Price</td>
<td>23</td>
</tr>
<tr>
<td>Section 3.02.</td>
<td>Payment of the Purchase Price</td>
<td>23</td>
</tr>
<tr>
<td>Section 3.03.</td>
<td>Fair Consideration</td>
<td>24</td>
</tr>
<tr>
<td>Section 3.04.</td>
<td>Working Capital; Collection of Accounts Receivable</td>
<td>24</td>
</tr>
<tr>
<td>Section 3.05.</td>
<td>PILOT Payments</td>
<td>25</td>
</tr>
<tr>
<td>Section 3.06.</td>
<td>Allocation of the Purchase Price</td>
<td>25</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ARTICLE IV.</th>
<th>REPRESENTATIONS AND WARRANTIES OF THE SELLERS</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 4.01.</td>
<td>Power</td>
<td>26</td>
</tr>
<tr>
<td>Section 4.02.</td>
<td>Authorization and Validity of Agreement</td>
<td>26</td>
</tr>
<tr>
<td>Section 4.03.</td>
<td>No Conflict or Violation; Vesting of Powers</td>
<td>26</td>
</tr>
<tr>
<td>Section 4.04.</td>
<td>Consents and Approvals</td>
<td>27</td>
</tr>
<tr>
<td>Section 4.05.</td>
<td>Financial Statements</td>
<td>27</td>
</tr>
<tr>
<td>Section 4.06.</td>
<td>Absence of Certain Changes or Events</td>
<td>28</td>
</tr>
<tr>
<td>Section 4.07.</td>
<td>Tax Matters</td>
<td>28</td>
</tr>
<tr>
<td>Section 4.08.</td>
<td>Real Property-Owned Premises</td>
<td>29</td>
</tr>
<tr>
<td>Section 4.09.</td>
<td>Real Property-Leased Premises</td>
<td>29</td>
</tr>
<tr>
<td>Section 4.10.</td>
<td>Conformity of the Real Property and the Leased Real Property</td>
<td>30</td>
</tr>
<tr>
<td>Section 4.11.</td>
<td>Equipment and Machinery/Distribution System</td>
<td>30</td>
</tr>
<tr>
<td>Section 4.12.</td>
<td>Supplies</td>
<td>30</td>
</tr>
<tr>
<td>Section 4.13.</td>
<td>Intellectual Property</td>
<td>30</td>
</tr>
<tr>
<td>Section 4.14.</td>
<td>Employee Benefit Plans</td>
<td>31</td>
</tr>
<tr>
<td>Section 4.15.</td>
<td>Personnel; Labor Relations</td>
<td>32</td>
</tr>
<tr>
<td>Section 4.16.</td>
<td>Environmental Compliance</td>
<td>34</td>
</tr>
<tr>
<td>Section 4.17.</td>
<td>Licenses and Permits</td>
<td>37</td>
</tr>
<tr>
<td>Section 4.18.</td>
<td>Insurance; Bonds</td>
<td>37</td>
</tr>
<tr>
<td>Section 4.19.</td>
<td>Contracts and Commitments</td>
<td>37</td>
</tr>
</tbody>
</table>
Section 8.04. Management Agreements ......................................................... 47
Section 8.05. Employee Matters ...................................................................... 47
Section 8.06. System Service to the Sellers; Payments to the Sellers .................. 49
Section 8.07. Public Charitable Trust Status ..................................................... 50
Section 8.08. Restrictions on Sale or Lease of System; Right of First Refusal; IURC Regulation ................................................................. 50
Section 8.09. Future Rates ............................................................................... 51
Section 8.10. Use of and Repair of Public Rights of Way .................................. 51
Section 8.11. MBE/WBE/VBE Opportunities ................................................... 51
Section 8.12. Property Tax Exemption ............................................................... 52
Section 8.13. Compliance with Laws Relating to Customers ............................... 52
Section 8.14. Stormwater Operations and Maintenance ...................................... 52
Section 8.15. Adequate Rates .......................................................................... 52

ARTICLE IX. DISPUTE RESOLUTION; INDEMNIFICATION ................................. 52

Section 9.01. Survival ....................................................................................... 52
Section 9.02. Dispute Resolution ..................................................................... 52
Section 9.03. Indemnification by the Sellers ...................................................... 56
Section 9.04. Indemnification by Purchaser ....................................................... 56
Section 9.05. Procedure ................................................................................... 57
Section 9.06. Limitations on Indemnification Obligations .................................. 58
Section 9.07. Knowledge of Breach ................................................................. 59
Section 9.08. Tort Claims ............................................................................... 59
Section 9.09. Indemnified Claims ................................................................. 59

ARTICLE X. PRE-CLOSING COVENANTS OF THE SELLERS ...................... 60

Section 10.01. Operation of the System ............................................................ 60
Section 10.02. Prior Purchaser Approval .......................................................... 60
Section 10.03. Due Diligence .......................................................................... 61
Section 10.04. Cooperation ............................................................................. 61
Section 10.05. Exclusivity .............................................................................. 61
Section 10.06. Notification of Certain Matters ................................................ 61
Section 10.07. Supplements and Updates to Representations and Warranties and Related Disclosure Schedules ............................................. 61
Section 10.08. Governmental Approvals ............................................................ 62

ARTICLE XI. PRE-CLOSING COVENANTS OF PURCHASER AND CITIZENS ................................................................. 62

Section 11.01. Actions Before the Closing Date .............................................. 62
Section 11.02. Governmental Approvals .......................................................... 62
Section 11.03. Cooperation ............................................................................ 63
Section 11.04. Notification of Certain Matters ................................................ 63
Section 11.05. Supplements and Updates to Representations and Warranties and Related Disclosure Schedules ............................................. 63
ARTICLE XII. CONDITIONS PRECEDENT TO OBLIGATIONS OF THE SELLERS

Section 12.01. Consents and Approvals
Section 12.02. Representations and Warranties of Purchaser and Citizens
Section 12.03. IURC Transactional Approval
Section 12.04. Management Agreement
Section 12.05. Environmental Approvals
Section 12.06. Assignment of Contracts Relating to CSO Control Measures
Section 12.07. No Injunctions
Section 12.08. Legal Opinions
Section 12.09. Release of Assumed Debt Obligations
Section 12.10. Performance of the Obligations of Purchaser
Section 12.11. Deliveries by Purchaser
Section 12.12. SRF Release of Sanitary District
Section 12.13. Moral Obligation
Section 12.14. Deferred Bond
Section 12.15. IRS Determination
Section 12.16. Simultaneous Closing

ARTICLE XIII. CONDITIONS PRECEDENT TO OBLIGATIONS OF PURCHASER

Section 13.01. Consents and Approvals
Section 13.02. Representations and Warranties of Purchaser
Section 13.03. IURC Transactional Approval
Section 13.04. IURC Approval of Purchaser Items
Section 13.05. IURC Approval of Rates
Section 13.06. SRF Approval
Section 13.07. Management Agreement
Section 13.08. IRS Determination
Section 13.09. Environmental Approvals
Section 13.10. Construction Fund
Section 13.11. Assignment of Contracts Relating to CSO Control Measures
Section 13.12. DSRF Surety Debt Issues and Bond Insurer
Section 13.13. Indianapolis Bond Bank
Section 13.14. Vesting of Power and Authority
Section 13.15. Financing
Section 13.16. Paygo
Section 13.17. Due Diligence
Section 13.18. No Injunctions
Section 13.19. No Material Adverse Effect
Section 13.20. Environmental Compliance
Section 13.21. Laboratory Audit
Section 13.22. Environmental Insurance
Section 13.23. Legal Opinions
Section 13.24. Deliveries by Sellers
ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT ("Agreement"), dated as of August 11, 2010 (the "Effective Date"), is made and entered into by and among the CITY OF INDIANAPOLIS, INDIANA ("City"), THE SANITARY DISTRICT OF THE CITY OF INDIANAPOLIS, INDIANA, ACTING BY AND THROUGH THE BOARD OF PUBLIC WORKS ("Sanitary District"; collectively, City and Sanitary District are referred to herein as the "Sellers", and each, individually, as a "Seller") and THE DEPARTMENT OF PUBLIC UTILITIES FOR THE CITY OF INDIANAPOLIS, ACTING BY AND THROUGH THE BOARD OF DIRECTORS FOR UTILITIES (the "Citizens Board"), AS TRUSTEE, IN FURTHERANCE OF THE PUBLIC CHARITABLE TRUST FOR THE WASTEWATER SYSTEM (and as further defined in Article I, "Citizens ") and CWA AUTHORITY, INC. ("Purchaser")

WITNESSETH:

WHEREAS, the City and the Sanitary District, acting by and through the board of public works ("Board of Public Works"), own and operate, pursuant to the provisions of Indiana Code 36-9-25 and related statutes, a wastewater collection and treatment system, including without limitation, the Belmont and Southport wastewater treatment facilities (the "System"); and

WHEREAS, the City and the waterworks district of the City (the "Waterworks District" and collectively, with the Sanitary District, the "Districts"), acting by and through the board of directors, the governing body of the City's Department of Waterworks ("Waterworks Board" and collectively with the Board of Public Works, the "Utility Boards"), own and operate, pursuant to the provisions of Indiana Code 8-1.5-4 and related statutes, a water system (the "Water System" and collectively with the System, the "Systems"); and

WHEREAS, the City recognizes the impact the System's operations have on the quality of water in Indianapolis rivers, streams and aquifers and has therefore determined that an integrated watershed-wide effort is necessary to achieve the ultimate water quality goals of the City; and

WHEREAS, such an integrated effort will (i) complement control measures being undertaken to ensure compliance with water quality based requirements of environmental laws, such as the Clean Water Act; and (ii) enhance the ability to maintain the quality of the City's water supply in accordance with requirements such as Indiana's water quality standards and NPDES permits; and

WHEREAS, studies have shown that (i) issues related to urban water supply and demand should not be considered independently of issues related to wastewater disposal and water reuse; and (ii) water management strategies and opportunities for water reuse can only be properly evaluated in the context of their interactions with the overall waterworks system; and

WHEREAS, the EPA has recognized that ensuring a sustainable water supply and infrastructure is a top national priority and has led collaborative efforts to integrate the management systems for water and wastewater operations, such as establishment of the Sustainable Water Infrastructure Initiative designed to ensure that all components of our nation's water infrastructure are capable of meeting future needs; and
WHEREAS, other governmental entities have recognized the benefits of structuring integrated management systems that are responsible for the efficient and environmentally responsible provision of drinking water, wastewater collection and treatment and water and wastewater transportation services to residents of their communities; and

WHEREAS, the Department of Public Utilities of the City of Indianapolis, acting by and through the Citizens Board (and on behalf of the utility special taxing district by the Citizens Board and all of the existing or future divisions and affiliates, including but not limited to the Affiliate designees referred to in the MOU, and the Affiliate created consistent with the Interlocal Agreement, pursuant to which the Citizens Board holds or will hold assets in public charitable trust for the benefit of the inhabitants of the City) (collectively, "Citizens Energy Group") is vested by Indiana Code 8-1-11.1 with the power to own and operate utility properties of any kind within the City, or outside the City within the limits authorized by law, and to own all utility property related or belonging thereto; and

WHEREAS, Citizens Energy Group currently provides local gas distribution services to the City and the residents of Marion County, Indiana ("Citizens Gas"), and in conjunction therewith owns and operates a steam production, transmission and distribution plant and a chilled water production and distribution plant for the provision of steam service and chilled water in the downtown areas and near downtown areas of the City ("Citizens Thermal"), and through its direct and indirect Affiliates engages in other energy-related ventures; and

WHEREAS, the City issued a Request for Expression of Interest regarding integration of the Systems into a combined operation, as it explored ways to achieve operating efficiencies, to improve customer service, to keep customer rates as low as possible and to raise capital to fund important City infrastructure needs; and

WHEREAS, Citizens Energy Group investigated and continues to investigate and study ways in which it may more efficiently and effectively provide service to its customers and otherwise satisfy the purposes of providing utility services in public charitable trust to its utility customers and the inhabitants of the City; and

WHEREAS, Citizens Energy Group has determined that the combined operation of the Systems, Citizens Gas and Citizens Thermal will result in operating and capital project synergies for the benefit of the City and its inhabitants, thus resulting in lower rates for all utility customers than would otherwise result in the absence of such combined operation; and

WHEREAS, Citizens Energy Group's unique structure will ensure that local control over critical Central Indiana utilities will continue with the same invulnerability to takeover by distant companies and investors that has protected the utilities held by Citizens Energy Group in public charitable trust for over one hundred years and will also ensure local reinvestment and community-based decision making; and

WHEREAS, Citizens Energy Group responded to the City's Request for Expression of Interest and engaged in extensive discussions with the City, which resulted in the City and Citizens Energy Group entering into a Memorandum of Understanding, dated March 9, 2010 (the "MOU") for the sale and transfer of the Systems; and

-2-

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WHEREAS, the City, the Sanitary District and Citizens Energy Group have the power under Indiana Code 36-1-7 to enter into and have determined that it would be advisable to enter into an Interlocal Cooperation Agreement for the Provision of Utility Services (the "Interlocal Agreement"), including the creation of Purchaser consisting of a separate legal entity organized as an Indiana nonprofit corporation and controlled by Citizens Board for the purpose of providing for the administration of an Interlocal Agreement through Purchaser or by delegation to Citizens and for the purpose of acquiring, owning, operating and exercising all of Citizens Energy Group's, the City's and the Districts' powers that are necessary, useful or appropriate to the acquisition, ownership and operation of the Systems; and

WHEREAS, each of the City, the Districts, Purchaser, Citizens and Citizens Energy Group are political subdivisions under Indiana Code 36-1-2-13 and are therefore governed by Indiana Code 5-22-22, 36-1-7 and 36-1-11; and

WHEREAS, the City-County Council may create and terminate City departments, divisions, offices and other agencies and, except as otherwise provided by Law, transfer the powers, duties, functions and obligations to or from such departments, divisions offices and agencies; and

WHEREAS, the City and Citizens Energy Group have determined that it would be advisable for Citizens Energy Group directly or through its designated Affiliate(s) to acquire the Systems in order to achieve the benefits of integration and operating synergies described above; and

WHEREAS, the City has found the transfer and delegation to, and vesting in and exercising (to the maximum extent permitted by Law) by Citizens and Purchaser (as to the System), and Citizens Board, as trustee of a public charitable trust for the Water System (as to the Water System), of all of the powers, duties, functions and obligations of the Districts that are necessary, useful or appropriate to the acquisition, ownership and operation of the Systems and the sale and transfer and operation of the Systems on the terms and conditions set forth herein, in the Water Purchase Agreement and as set forth in the Interlocal Agreement would be expedient and in the best interests of the Districts, and the proper serving of the inhabitants of the City and communities within Marion County and, in furtherance of interlocal cooperation, nearby counties; and

WHEREAS, Purchaser:

a. will be qualified to own, operate and finance the System under various federal and state statutes or regulations;

b. will be organized as a nonprofit corporation under the Indiana Nonprofit Corporation Act of 1991, as amended, Indiana Code 23-17, et. seq., and will be exempt from federal taxation;

c. will be governed by a board of directors, the members of which shall be those individuals who are appointed by the Board of Trustees for Utilities of the Department of Public Utilities of the City, from time to time in the manner set forth in Indiana Code 8-1-11.1-1, as members of Citizens Board;
d. will be authorized to operate the System through the employees of Citizens Energy Group and others;

e. will have all of the powers of Citizens Energy Group, the Sanitary District and the City which are necessary, useful or appropriate for the acquisition, ownership and operation of the Systems;

f. will be a "qualified entity" under Indiana Code 5-1.4-1-10;

g. will be an "issuer" under Indiana Code 5-1-14-4(a);

h. will meet the definition of an eligible borrower under applicable environmental requirements;

i. will meet the SRF/EPA definition of a qualified owner/operator; and

j. will have the same power and authority with respect to debt, bond and other financing as set forth in the Interlocal Agreement; and

WHEREAS, the City and the Districts have the authority to sell and transfer the Systems to Citizens Energy Group or its Affiliate under Indiana law, including without limitation pursuant to the following:

a. each of the City, the Districts, Purchaser and Citizens Energy Group is governed by Indiana Code 36-1-11 because each is a political subdivision;

b. each of the City, the Districts, Citizens and Citizens Energy Group is a governmental entity under Indiana Code 36-1-11-8;

c. each of the City, the Districts, Citizens and Citizens Energy Group is a governmental body under Indiana Code 5-22-22;

d. Indiana Code 5-22-22-10 provides each of the City, the Districts, Citizens and Citizens Energy Group with the authority to transfer or exchange property and establishes a process for doing so;

e. the other provisions of Indiana Code 5-22-22 for disposal do not apply because Indiana Code 5-22-22-10 provides an independent process from those other requirements;

f. Indiana Code 36-1-11-8 provides each of the City, the Districts, Citizens and Citizens Energy Group with the authority to transfer or exchange property and establishes a process for doing so;

g. the other provisions of Indiana Code 36-1-11 for disposal do not apply because Indiana Code 36-1-11-8 provides an independent process from those other requirements;
h. Indiana Code 36-1-7 specifically provides the authority to transfer the Systems, without compliance with any other statute; and

WHEREAS, Citizens Energy Group's or its Affiliates' acquisition of each of the Systems will be as a going concern and as part of an integrated transaction involving both Systems, with each part dependent on the other; and

WHEREAS, Citizens Energy Group's or its Affiliates' acquisition of the Systems presents a unique opportunity the benefits of which are not otherwise available to the residents of the City, unless the acquisition is made by Citizens Energy Group; and

WHEREAS, based on the due diligence completed through the Effective Date, the due diligence demonstrates:

a. The Systems are synergistic with existing operations and position Citizens Energy Group as a provider of a broader range of services;

b. similarities between current operations of Citizens Energy Group and the Systems provide opportunities to reduce operating costs; and

c. acquisition by the Citizens Energy Group's Affiliates preserves local ownership of the Systems; and

WHEREAS, Purchaser, in reliance upon the representations, warranties and covenants of the Sellers, desires to purchase and acquire from the Sellers, and the Sellers desire to sell, transfer and convey all of the properties, assets, and interests in properties and assets of each of the Sellers relating to, used in or necessary or important in the operation of, the System as a going concern, which are owned or leased by the Sellers at Closing, except for the Excluded Assets, and in connection therewith, Purchaser has agreed to assume certain ongoing obligations and liabilities of the Sellers, all on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing and of the mutual representations, warranties, covenants, and agreements herein contained and intending to be legally bound, the Parties hereto agree as follows:

ARTICLE I.

DEFINITIONS

In addition to the capitalized terms defined elsewhere in this Agreement, the following terms, as used in this Agreement and in all Related Agreements, shall have the meanings set forth in this Article I:

"Accepted Debt" has the meaning specified in Section 2.04(a)(i).

"Access Rights" has the meaning specified in Section 7.07.

"Accounts Receivable" means all accounts and notes receivable, rights to refunds, unbilled revenue (net of bad debt) and deposits of any kind of the Sellers, or either of them,
accrued by or on behalf of Sellers, or either of them, in the operation of the System, in each case
to the extent constituting a current asset, outstanding as of the Closing Date.

"Achievement of Full Operation" means completion of construction and installation of
equipment or infrastructure such that the equipment or infrastructure has been placed in full
operation, and is expected to both function and perform as designed, plus completion of
shakedown and related activities, as well as completion of in-situ modified operations and
maintenance manuals. The definition specifically includes all control systems and
instrumentation necessary for normal operations and all residual handling systems. Certain
specified CSO Control Measures set forth in Exhibit 1 of the Consent Decree consist of separate
components. For those specified CSO Control Measures, "Achievement of Full Operation" shall
not be achieved until the last component is completed.

"Acquired Assets" has the meaning specified in Section 2.01.

"Acquired Authorizations" has the meaning specified in Section 2.01(j).

"Affiliate" means, with respect to Purchaser or Citizens, a limited liability company,
corporation (or equivalent legal entity under foreign law), joint venture, limited partnership,
limited liability partnership or general partnership (or equivalent under foreign law) or other
Person that is owned or controlled by, or is under common ownership or control with, Purchaser
or Citizens, as applicable, and with respect to Sellers, any department of the City controlled by
the City. Notwithstanding the foregoing, for purposes of this Agreement, none of Purchaser,
Citizens Board, Citizens, the public charitable trust for water or any other Citizens entity shall be
considered an "Affiliate" of Sellers or their non-Citizens Affiliates, and none of the Sellers, the
Wastewater System, Board of Public Works, Department or any other department controlled by
the City (excluding Purchaser and its Affiliates) shall be considered an "Affiliate" of Purchaser.

"Agreement" means this Asset Purchase Agreement and the Schedules and Exhibits
attached hereto as they may be amended or modified in accordance with the applicable
provisions hereof.

"Approved Revised CSO Control Measures Plan" means any Revised CSO Control
Measures Plan included in any Approved Workplan on Revising CSO Controls approved in
accordance with Subsection VI.B of the Consent Decree, or established through Dispute
Resolution pursuant to Section XV of the Consent Decree.

"Arbitration Award" has the meaning specified in Section 9.02(d)(v).

"Arbitration Demand" has the meaning specified in Section 9.02(d)(i).

"Arbitration Response" has the meaning specified in Section 9.02(d)(i).

"Arbitrators" has the meaning specified in Section 9.02(d)(ii).

"Assigned Contracts" has the meaning specified in Section 2.01(c).
"Assignment and Assumption Agreement" has the meaning specified in Section 14.02(c).

"Assumed Debt Obligations" has the meaning specified in Section 2.04(a).

"Assumed Liabilities" have the meaning specified in Section 2.04(a).

"Belmont Road Easement" has the meaning specified in Section 7.10.

"Boundary Evidence" has the meaning specified in Section 7.04(a).

"Business Day" means any day other than Saturday, Sunday, and any day on which commercial banks in Indiana are authorized by Law to be closed.

"Cash Escrow Agreement" means the Cash Escrow Agreement with respect to the Cash Escrow Amount by and among Purchaser, Sellers, Citizens and the Escrow Agent to be entered into concurrently with the Closing Date and terminating two years from the Closing Date.

"Cash Escrow Amount" means Forty Million Dollars ($40,000,000), which will be funded from the Sanitary District's Sanitation General Fund (also known as the Sanitation Liquid Waste Fund).

"CERCLA" means the Comprehensive Environmental Response Compensation and Liabilities Act of 1980, as amended.

"CIP Plan" has the meaning specified in Section 10.02(e).

"Citizens" as used in this Agreement, refers to the Department of Public Utilities of the City of Indianapolis, acting by and through the Board of Directors for Utilities, as trustee in furtherance of the public charitable trust for the provision of wastewater services to the inhabitants of the City, and on behalf of Purchaser, and in any event, not in its individual capacity or as trustee in furtherance of any public charitable trust in which the water, gas, steam and/or chilled water systems are held and operated.

"Citizens Board" has the meaning specified in the Preamble to this Agreement.

"Citizens Energy Group" has the meaning specified in the Preamble to this Agreement.

"Citizens Gas" has the meaning specified in the recitals to this Agreement.

"Citizens Thermal" has the meaning specified in the recitals to this Agreement.

"City" means the City of Indianapolis, Indiana.

"City-County Council" means the City-County Council of the City of Indianapolis and Marion County.

"City Roads" has the meaning specified in Section 7.10.
"Claim" has the meaning specified in Section 9.03.

"Closing" means the consummation of the sale and purchase of the Acquired Assets in accordance with the terms and conditions of this Agreement as provided for in Section 14.01.

"Closing Amount" means $170,600,000, subject to adjustments pursuant to Section 2.04(h), Section 6.02 and Section 6.02 of the Water Purchase Agreement.

"Closing Date" has the meaning specified in Section 14.01.

"Closing Effective Time" has the meaning specified in Section 14.01.

"COBRA" means Title X of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, including, without limitation, Sections 2201 through 2208 of the Public Health Service Act and Part 6 of Subtitle B of the Employee Retirement Income Security Act of 1974, as amended.


“Combined Sewer System Assets” means the assets of the sewer system originally designed and constructed to collect and convey municipal sewage (domestic, commercial and industrial) and stormwater through a single pipe-system to wastewater treatment plants or combined sewer overflow structures, including but not limited to (i) stormwater drains, pipes, collection basins and all other stormwater drainage assets used for stormwater collection, and (ii) catch basins, inlets, pipes and all other stormwater lateral facilities that connect surface stormwater drains to combined sewer mains that discharge to wastewater treatment plants or combined sewer overflow structures, but excluding those assets listed as excluded in Schedule 2.02(e). As soon as practicable after the Effective Date, the Sellers shall provide the Purchaser with a list and series of maps of the Combined Sewer System Assets, which shall be subject to verification and confirmation by Purchaser. The term “Combined Sewer System” also includes facilities constructed in accordance with Exhibit 1 of the Consent Decree or any Approved Revised CSO Control Measure.

"Commitment Preconditions" has the meaning specified in Section 7.04(a).

"Completion of the Bidding Process" means (1) the City has appropriately allocated funds for a specific CSO Control Measure (or portion thereof) or measure specified in Exhibit 3 of the Consent Decree (or portion thereof), (2) the bid for the specific CSO Control Measure or measure specified in Exhibit 3 of the Consent Decree has been accepted and awarded by the Sanitary District for the construction of the CSO Control Measure, and (3) a notice to proceed has been issued and remains in effect for the CSO Control Measure specified in Exhibit 3 of the Consent Decree.

"Consent Decree" means the order of the United States District Court for the Southern District of Indiana dated December 19, 2006, among EPA, IDEM and the City, as amended on December 19, 2008, and as anticipated to be modified in accordance with Schedule 4.16(i).

"Construction Funds" has the meaning specified in Section 2.01(b).
"Contractor" means United Water and any other independent contractor engaged by Sellers that, as of the Closing Effective Time, employs individuals who operate, or assist in the operation of, the System or the Acquired Assets.

"Contractor Personnel" means the individuals employed by a Contractor with responsibility related to the operation of the System.

"Contracts" have the meaning specified in Section 4.19.

"Counterproposal" has the meaning specified in Section 9.02(c)(iii).

"CSO Control Measures" means the construction, control measures, actions and other activities set forth in Exhibit 1 of the Consent Decree, including the City's Long-Term Control Plan, as approved by Federal and State regulatory authorities and as may be amended from time to time including, but not limited to, as shown on Schedule 4.16(i) or any Approved Revised CSO Control Measures Plan.

"Damages" means any and all losses, liabilities, obligations, damages, penalties, interest, claims, actions, demands, causes of action, judgments, reasonable attorneys' fees and all other reasonable costs and expenses sustained or incurred in investigating, preparing or defending any claim. Notwithstanding the foregoing, Damages shall not include loss of profits or punitive damages, if any, unless the Party seeking indemnification has had lost profits or punitive damages assessed or asserted against it by a third-party.

"Deferred Amount" means $92,000,000.

"Deferred Bond" has the meaning specified in Section 3.02(c).

"Designated Parties" has the meaning specified in Section 9.02(c)(v).

"Design Criteria" means the design criteria specified in Exhibit 1 of the Consent Decree or any Approved Revised CSO Control Measures Plan.

"Design Professionals" has the meaning specified in Section 4.16(i).

"Dispute" has the meaning specified in Section 9.02(a).

"Effective Date" has the meaning specified in the Preamble.

"Environmental Claims" means all formal investigations, warnings, notice letters, notices of violations, Liens, orders, claims, demands, suits or administrative or judicial actions for any injunctive relief, fines, penalties, or any damage, including, without limitation, personal injury, property damage (including any depreciation of property values), lost use of property, natural resource damages, or environmental response costs arising out of Environmental Conditions or under Environmental Requirements.

"Environmental Conditions" means the (i) state of the environment, including natural resources (e.g., flora and fauna), soil, surface water, ground water, any present drinking water supply, subsurface strata or ambient air, relating to or arising out of the use, handling, storage,
treatment, recycling, generation, transportation, spilling, leaking, pumping, pouring, injecting, emptying, discharging, emitting, escaping, leaching, dumping, disposal, release, or threatened release of Hazardous Materials, which could or does result in Environmental Claims, and (ii) any repair, replacement, retrofit or activity (a) required to be completed, performed, remediated or corrected on the Real Property and/or the Leased Real Property and Acquired Assets as necessary to bring the properties into compliance with all applicable Laws or Environmental Requirements or (b) necessary to bring the Real Property and/or the Leased Real Property and Acquired Assets to the general operating and engineering standards of the wastewater collection and treatment industry. With respect to Environmental Claims by third parties, Environmental Conditions also include the exposure of persons to Hazardous Materials at the work place or the exposure of persons or property to Hazardous Materials migrating or otherwise emanating from, to, or located at, under, or on the Real Property and/or the Leased Real Property.

"Environmental Expenses" means any liability (including strict liability), loss, cost, penalty, fine, punitive damages, Lien, or expense relating to any Environmental Claim or Environmental Conditions, or incurred in compliance with any Environmental Requirements, including without limitation the costs of investigation, cleanup, remedial, monitoring, corrective, or other responsive action, compliance costs, settlement costs, lost property value, and related legal and consulting fees and expenses.

"Environmental Insurance Policy" has the meaning specified in Section 6.02.

"Environmental Reports" has the meaning specified in Section 6.01.

"Environmental Requirements" mean all past and present Laws, rules, regulations, ordinances, policies, guidance documents, approvals, plans, authorizations, licenses or permits issued by any Governmental Authority relating to human health, pollution, or protection of the environment (including ambient air, surface water, ground water, land surface or surface strata), including (i) Laws relating to emissions, discharges, releases, or threatened releases of Hazardous Materials, (ii) Laws relating to the identification, generation, manufacture, processing, distribution, use, treatment, storage, disposal, recovery, transport or other handling of Hazardous Materials, (iii) CERCLA; the Toxic Substances Control Act, as amended; the Hazardous Materials Transportation Act, as amended; RCRA; the Clean Water Act, as amended; the Safe Drinking Water Act, as amended; the Clean Air Act, as amended; the Atomic Energy Act of 1954, as amended; and the Occupational Safety and Health Act, as amended; and (iv) all analogous Laws promulgated or issued by any federal, state or other Governmental Authority.

"EPA" means the United States Environmental Protection Agency.

"Equipment and Machinery" means (i) all the equipment, tangible personal property, machinery, office furniture and equipment, fixtures, tooling, spare maintenance or replacement parts, environmental testing equipment, and vehicles owned or leased by the Sellers (including all leases of such property), which are used, necessary or important in the operation of the System, (ii) any rights of the Sellers to warranties applicable to the foregoing (to the extent assignable), and licenses received from manufacturers and sellers of any such item, and (iii) any related claims, credits, and rights of recovery with respect thereto. Notwithstanding the foregoing, "Equipment and Machinery" shall not include any of the Stormwater System Assets.

"Escrow Agent" means a mutually acceptable bank agreed to by the Parties before the Closing to act as the escrow agent for the Cash Escrow Amount.

"Excluded Assets" has the meaning specified in Section 2.02.

"Excluded Intellectual Property" has the meaning specified in Section 2.01(g).

"Excluded Liability" or "Excluded Liabilities" means, notwithstanding any provision in this Agreement to the contrary, those obligations or liabilities:

(i) related to any of the Excluded Assets, including the Stormwater System Assets and any related liabilities;

(ii) related to the operation of the City's Stormwater System Assets;

(iii) that constitute Trade Payables;

(iv) related to any claim for Damages payable by Sellers under any Barrett Law claim against Sellers pending prior to the Closing Date;

(v) related to any tort claims against either Seller ("Tort Claims");

(vi) related to any claim for Damages to the extent the Seller(s) have the right to be indemnified by a third party other than Purchaser;

(vii) related to any penalties or fines, or interest thereon, assessed by the EPA or IDEM by reason of any acts or omissions of either Seller prior to Closing alleged to be in violation of applicable Law or the Consent Decree;

(viii) that constitute indebtedness for money borrowed by the Sellers that is not included in the Assumed Debt Obligations; or

(ix) that constitutes any claim, liability or obligation in respect of Personnel (present or former), agents, consultants or independent contractors of the Sellers arising prior to the Closing Date or as a result of the Closing, by or on behalf of any Personnel (present or former), agents or independent contractors of the Sellers or by any Governmental Entity, for: (A) severance or termination payments, (B) payments for unemployment compensation or unemployment insurance, (C) workers' compensation, (D) bonus, (E) accrued vacation or accrued sick leave, (F) hospital, medical, life insurance or disability claims, (G) Sellers' Benefit Obligations, (H) Sellers' Plans or (I) other compensation or damages.

"Executive Officers" of the Sellers include the Director and Deputy Director/Chief Engineer of the Department of Public Works.

"Existing Survey" has the meaning specified in Section 7.02(a).
"Face-to-Face Meeting" has the meaning specified in Section 9.02(c)(iv).

"FERC" has the meaning specified in Section 3.06.

"Files and Records" means all files and records of the Sellers relating to the System, whether in hard copy or magnetic or other format including customer and supplier records, customer lists (both current and prospective), records of sales calls, manuals, books, files, records, engineering data, procedures, systems, instructions, drawings, blueprints, plans, designs, specifications, equipment lists, parts lists, equipment maintenance records, equipment warranty information, plant plans, specifications and drawings, sales and advertising material, computer software, and records relating to Personnel to be employed or leased by Purchaser following the Closing, and whether stored on-site or off-site.

"Financial Statements" has the meaning specified in Section 4.05.

"Financing Cost" means the interest accrued and fees incurred each as related to an interest bearing obligation or liability.

"First Notice of Claim" has the meaning specified in Section 9.02(c)(ii).

"GO Debt" has the meaning specified in Section 2.04(e).

"Governmental Approval" means any consent, approval, authorization, notice, filing, registration, submission, reporting or similar item of, to or with any Governmental Authority.

"Governmental Authority" or "Governmental Authorities" means any court, department, commission, board, bureau, municipality, agency or instrumentality of the United States, any state, county, city or political subdivision thereof, or any foreign governmental body, including without limitation, the IURC, the EPA, IDEM, SRF and the City-County Council.

"Hazardous Materials" mean (i) any substance that is a "hazardous substance," "hazardous waste," "hazardous material," pollutant, or contaminant under any Environmental Requirements, including CERCLA; the Superfund Amendments and Reauthorization Act, as amended; the RCRA; and any analogous and applicable federal, state, local, or foreign law; (ii) petroleum (including crude oil and any fraction thereof); and (iii) any natural or synthetic gas (whether in liquid or gaseous state).

"Hired Personnel" has the meaning specified in Section 8.05(b).

"IDEM" means the Indiana Department of Environmental Management.

"Improved Billing System Plan" has the meaning specified in Section 10.01(b).

"Indianapolis Bond Bank" means the Indianapolis Local Public Improvement Bond Bank created by the City pursuant to Indiana Code 5-1.4.

"Indemnified Party" has the meaning specified in Section 9.05(a).

"Indemnifying Party" has the meaning specified in Section 9.05(a).
"Intellectual Property" has the meaning specified in Section 2.01(g).

"Interlocal Agreement" has the meaning specified in the recitals to this Agreement.

"IRPTL Disclosure" has the meaning specified in Section 7.03.

"IURC" means the Indiana Utility Regulatory Commission.

"Knowledge", to the "Knowledge" of, and phrases of similar import, means the actual knowledge of (A) with respect to Sellers, the Executive Officers, or (B), with respect to Purchaser or Citizens, Carey Lykins, Aaron Johnson, John Brehm, Barbara Quiets-Smith and John Whitaker.

"Law" means any law, statute, regulation, ordinance, rule, order, judicial, administrative and regulatory decree, judgment, consent decree, settlement agreement or governmental requirement enacted, promulgated, entered into, agreed or imposed by any Governmental Authority, as may be in effect at the relevant time or times in the context in which the term is used.

"Leased Real Property" has the meaning specified in Section 4.09.

"Liability Cap" has the meaning specified in Section 9.05(c).

"Licenses and Permits" mean all licenses, permits, franchises, authorizations, certificates, registrations, consents, orders, variances, waivers and approvals issued or granted by Governmental Authorities to either Seller, including without limitation, environmental permits, operating permits and approvals that are held by the Sellers that relate directly or indirectly to the operation of the System, including those described in Schedule 4.17.

"Liens" means all liabilities, obligations, claims, security interests, leases, liens, mortgages, deeds of trust, pledges, rights of first refusal, encroachments, rights of third parties, charges, options, conditional sales or other title retention agreements, UCC-1 financing statements, licenses, rights of way, easements, encumbrances, restrictions, covenants, rights and defects in title of any nature whatsoever, including, without limitation, any restriction on use, transfer, receipt of income, or exercise of any other attribute of ownership.

"Line of Credit" has the meaning specified in Section 2.04(a)(iii).

"Material Adverse Effect," means any event, change, occurrence or circumstance which could reasonably be expected to have a material adverse impact on the condition of the Acquired Assets or condition (financial or otherwise) or results of operations of the System or the ability of Purchaser or Citizens to consummate any of the transactions contemplated by this Agreement or any of the Related Agreements, but excluding any effect to the extent arising from any one or more of the following: (a) any act or omission of Sellers that is conducted with the prior written consent of Purchaser if required hereby or that is expressly authorized by the terms of this Agreement; (b) any costs or expenses incurred or accrued in connection with the transactions as contemplated by this Agreement; (c) any changes to the financial, banking or securities markets (provided that such event, change or action does not affect Purchaser or Citizens in a
substantially disproportionate manner); or (d) any fire, explosion, accident, flood, drought, riot, storm, act of terrorism, act of enemy or act of God.

"MBEs" has the meaning specified in Section 8.11.

"MOU" has the meaning specified in the recitals to this Agreement.

"NARUC" has the meaning specified in Section 3.06.

"Neutral Arbitrator" has the meaning specified in Section 9.02(d)(ii).

"Nonassignable Assets" has the meaning specified in Section 2.06(a).

"Non-SRF Revenue Debt" has the meaning specified in Section 2.04(a)(ii).

"NPDES Permit" means any National Pollutant Discharge Elimination System Permit issued from time to time by IDEM to the City with respect to the System, and including any revision or modification to such permit.

"Occupancy Agreements" has the meaning specified in Section 4.27.

"Outside Date" means one (1) year from the Effective Date.

"Panel" has the meaning specified in Section 9.02(d)(ii).

"Party" means Purchaser, Citizens or either of the Sellers and the term "Parties" means collectively Purchaser, Citizens and the Sellers.

"Permitted Liens" means (a) the Access Rights, (b) the Reserved Rights, (c) the Belmont Road Easement, (d) the liens, security interests, encumbrances and pledges of revenues on revenue bonds in the Acquired Assets that are identified on Schedule 1.01, or (e) with respect to Real Property, the "Permitted Real Property Encumbrances" as determined pursuant to Section 7.04(b).

"Person" means any individual, corporation, partnership, joint venture, association, limited liability company, joint-stock company, trust, or unincorporated organization, or any governmental agency, officer, department, commission, board, bureau, or instrumentality thereof.

"Personnel" means the employees of the Sellers whose primary responsibility relates to the operation of the System.

"PILOT Ordinance" has the meaning specified in Section 3.05.

"PILOT Payments" has the meaning specified in Section 3.05.

"Policies" and "Policy" have the meanings specified in Section 4.18.

"Prior Agreements" has the meaning specified in Section 4.16(I)(iii).
"Priority Four Property" has the meaning specified in Section 7.01(a) and also includes Property Held for Future Expansion not otherwise designated as Priority One Property, Priority Two Property or Priority Three Property.

"Priority One Property" has the meaning specified in Section 7.01(a).

"Priority Three Property" has the meaning specified in Section 7.01(a).

"Priority Two Property" has the meaning specified in Section 7.01(a).

"Property Held for Future Expansion" shall mean any (i) real property that is owned by Sellers and acquired with Assumed Debt Obligations or real property that is owned by Sellers and was acquired for the express purpose of expanding the System in the future as evidenced in the Files and Records (and not rescinded in the Files and Records prior to March 9, 2010), or (ii) any real property interest (e.g. fee simple, subterranean or surface easement, temporary construction easement or other real property interest sufficient to support the completion of the contemplated improvements) owned by Sellers which (a) the Sellers have contemplated using for future expansion of the System as evidenced in any Files and Records and (b) Purchaser reasonably determines is necessary to complete any project required by the Approved Revised CSO Control Measures Plan. Any real property interest that is described in clause (ii) above shall be conveyed to Purchaser in such a manner as to minimize any disturbance to Seller (e.g. if the Approved Revised CSO Control Measures Plan requires a pipe to be installed under property held by the City's Parks Department, the property interest transferred would be a subterranean easement for the pipe and not a fee simple conveyance of the property).

"Proposed Resolution" has the meaning specified in Section 9.02(c)(ii).

"Purchase Price" has the meaning specified in Section 3.01.

"Purchaser" means CWA Authority, Inc. and its successors in interest and assigns.

"Purchaser Indemnified Persons" has the meaning specified in Section 9.03.

"Rate Case" has the meaning specified in the Water Agreement.

"RCRA" means the Resource Conservation and Recovery Act, as amended.

"Real Property" means collectively the Priority One Property, Priority Two Property, Priority Three Property and Priority Four Property.

"Real Property Lease" or "Real Property Leases" have the meaning specified in Section 4.09.

"Related Agreements" means all agreements, instruments, ordinances and other documents contemplated by or executed, delivered or performed pursuant to this Agreement.

"Reserved Rights" means those rights to be reserved and retained at Closing by the City and its Affiliates as described in this Agreement or on Schedule 2.02(e).
"Response" has the meaning specified in Section 9.02(c)(iii).

"Sanitary District" has the meaning specified in the Preamble to this Agreement.

"Scheduled Occupancy Agreements" has the meaning specified in Section 4.27.

"Seller" and "Sellers" have the meaning specified in the Preamble of this Agreement.

"Sellers' Benefit Obligations" have the meaning specified in Section 4.14.

"Sellers' Indemnified Persons" has the meaning specified in Section 9.04.

"Sellers' Plans" have the meaning specified in Section 4.14.

"SRF" has the meaning specified in Section 2.04(a)(i).

"Standing Panel" has the meaning specified in Section 9.02(b).

"STEP" has the meaning specified in Section 2.04(d).

"Stormwater System Assets" means all assets used or necessary in the operation of the Municipal Separate Storm Sewer System ("MS4"), including but not limited to (i) those assets listed on Schedule 2.02(e), (ii) drains, pipes and collection basins and all other stormwater drainage assets used for stormwater collection and transportation within the MS4 area; and (iii) catch basins, inlets, pipes and all other stormwater lateral facilities (the "Stormwater Lateral Facilities") that connect surface stormwater drains to storm sewer mains within the combined sewer area which mains discharge through outfalls directly to surface waters. As soon as practicable after the Effective Date, the Sellers shall provide the Purchaser with a list and series of maps of the Stormwater System Assets. Stormwater System Assets shall not include the Combined Sewer System Assets or any other property that is jointly used for (a) the collection, transportation and treatment of stormwater or otherwise in the operation of the stormwater system and (b) the operation of the System, including, but not limited to, the Stormwater Lateral Facilities that connect surface stormwater drains to Combined Sewer System Assets mains, except to the extent such property jointly used is listed on Schedule 2.02(e).

"Supplies" means all the lubricants, spare parts, fuel, chemicals, raw materials, and other supplies owned by the Sellers or to which either of them may have rights, which are used, necessary or important in the operation of the System and related to the System, and all rights of the Sellers to warranties received from their suppliers with respect to the foregoing (to the extent assignable), and related claims, credits, and rights of recovery with respect thereto.

"Surplus Property" has the meaning specified in Section 8.07.

"Survey" has the meaning specified in Section 7.02(a).

"Survey Affidavit" has the meaning specified in Section 7.02(a).

"System" has the meaning specified in the recitals to this Agreement and shall include the Acquired Assets and exclude the Excluded Assets.
"Tax" or "Taxes" means all federal, state, and local employment taxes, unemployment taxes, and sales and use taxes, if any, imposed upon a Person (including all taxes or payments in lieu of taxes which a Person is required to collect and/or pay over to any government), and all related additions to tax, penalties or interest thereon.

"Threshold Amount" has the meaning specified in Section 9.06(a).

"Title Commitment" has the meaning specified in Section 7.01(b).

"Title Company" has the meaning specified in Section 7.01(b).

"Title Evidence" has the meaning specified in Section 7.04(a).

"Top Executive Negotiation" has the meaning specified in Section 9.02(b)(v).

"Tort Claims" has the meaning set forth in subparagraph (v) in the definition of "Excluded Liabilities.

"Trade Payables" means any current liability representing an amount owed by either Seller in respect of the System, whether arising from the purchase of merchandise, materials, Supplies or services, payments to Personnel, any damages the nature of which relates to failure to pay or perform any Trade Payable, and all other amounts typically deemed current liabilities (but excluding any portion, including the current portion, of the Assumed Debt Obligations), in each case to the extent constituting a current liability, outstanding as of the Closing Date.

"Transition Services Agreement" means the Transition Services Agreement by and between Purchaser and Sellers, to be entered into concurrently with the Closing. The Transition Services Agreement will take into account Purchaser's operational and management plan. Such plan shall include a description of Purchaser's organizational structure, proposed staff, staffing levels, and organizational function for the System; the procedure related to the defense and coordination of the Tort Claims; further detail on the A/R List and outstanding Accounts Receivable as provided in Section 3.04(b); and a mechanism to resolve any disagreements between the Parties regarding proration or allocation of the pre-Closing or post-Closing current assets and current liabilities relating to the System pursuant to this Agreement. As part of the Transition Services Agreement Sellers shall provide their assistance to Purchaser, to the extent reasonably requested, with respect to the development of a program management plan of how the Consent Decree and CIP Plan will be successfully implemented.

"UCC Search" has the meaning specified in Section 7.06.

"United Agreement" means the City's management agreement with United Water for the operation of the System.

"United Water" means White River Environmental Partnership and Indiana General Partnership d/b/a United Water Services Indiana, the manager of the System under a management contract with the City.
"Unsatisfactory Environmental Conditions" has the meaning specified in Section 6.01(b).

"Unsatisfactory Exceptions" has the meaning specified in Section 7.04(a).

"Unscheduled Occupancy Agreements" has the meaning specified in Section 4.27.

"VBEs" has the meaning specified in Section 8.11

"Veolia Agreement" has the meaning specified in the Water Purchase Agreement.

"WARN Act" has the meaning specified in Section 4.15(d)(i).

"Water Purchase Agreement" has the meaning specified in Section 12.16.

"Water System" has the meaning specified in the recitals to this Agreement.

"WBEs" has the meaning specified in Section 8.11

"Working Capital" has the meaning specified in Section 3.04(a).

"Work Papers" has the meaning specified in Section 4.05.

ARTICLE II.

TERMS OF PURCHASE AND ASSUMPTION OF LIABILITIES

Section 2.01. Purchase and Sale of Acquired Assets. Subject to the terms and conditions set forth in this Agreement, at Closing, Purchaser shall purchase from each of the Sellers and each Seller shall sell, transfer, assign and deliver to Purchaser, all of the right, title and interest of such Seller to and under all of the assets used, necessary or important in the operation of the System (whether or not any such assets have any value for accounting purposes or are carried or reflected on the books or financial statements of the Sellers), except for the Excluded Assets (the assets to be transferred collectively referred to as the "Acquired Assets"), free and clear of all Liens except for the Permitted Liens, including, without limitation, the following:

(a) all real and personal property interests owned, licensed or leased by Sellers or either of them and any real or personal property interests that are in the process of being acquired, licensed or leased by Sellers, or any of the City's Affiliates, and used, necessary or important in the operation of the System, including without limitation, the Real Property and Occupancy Agreements;

(b) cash, cash equivalents and invested funds of the Sanitary District (specifically excluding the Sanitary District's Sanitation General Fund (also known as the Sanitation Liquid Waste Fund)), or any of the City's Affiliates representing the unexpended bond proceeds, plus investment earnings, and other amounts in the capital improvement, bond and/or construction fund balances and reserves for the System, including any proceeds held by SRF or rights to borrow from or against SRF and any other monies held under bond trust indentures or resolution
(such unexpended bond proceeds and other amounts referred to herein as the "Construction Funds");

(c) except for those contracts, licenses and leases listed on Schedule 2.01(c), all right, title and interest of Sellers in, to and under all contracts, licenses and leases related to the System to which the Sanitary District or the City or any of its Affiliates is a party, including without limitation, all construction contracts, insurance contracts, surety bonds, management agreements, architect agreements and consultant agreements, relating to the CSO Control Measures and Equipment and Machinery, vehicles and other items of personal property (the "Assigned Contracts");

(d) all Supplies, except such thereof as may be consumed or used by the Sellers between the Effective Date and the Closing Date in the ordinary course of business and in accordance with the terms of this Agreement;

(e) all personal property and fixed assets, including, without limitation, Equipment and Machinery, system pipes, auxiliary equipment and plant equipment owned, licensed or leased by Sellers and used, necessary or important in the operation of the System;

(f) the benefit of Sellers' prepaid expenses, security deposits and prepaid insurance related to the System;

(g) except for the intellectual property set forth on Schedule 2.01(g) (the "Excluded Intellectual Property") all United States patents and patent applications (whether utility, design, or plant product), registered and unregistered trademarks, service marks, trade names, copyrights and copyright applications (and all derivations thereof), logos, brands, business identifiers, private labels, trade dress (including all goodwill and reputation symbolized by any of the foregoing), rights of publicity, processes, industrial designs, drawings, specifications, inventions, improvements, discoveries, formulae, know-how, and trade secrets, customer lists, supplier lists, proposals and analyses, business plans and strategies, licenses, research and development files, manuals, sales literature and promotional material, URLs, domain names, and all rights with respect to the foregoing, whether or not patentable or registrable (the "Intellectual Property");

(h) each of the Sellers' other intangible assets, including, without limitation, the benefit of third party representations, warranties and guarantees, correspondence and the computer software and programs (whether proprietary or not), all as used, necessary or important in the operation of the System prior to Closing including without limitation, the intangible assets listed on Schedule 2.01(h);

(i) each Seller's Files and Records;

(j) subject to Section 2.06, all Licenses and Permits (the "Acquired Authorizations") issued or to be issued to the Sellers by any Governmental Authority including, without limitation, environmental permits, operating permits and those items listed or described on Schedule 4.17 hereto;

(k) all other miscellaneous assets owned, licensed or leased by Sellers and used, necessary or important in the operation of the System;
Section 2.02. Excluded Assets. Notwithstanding anything herein to the contrary, the Acquired Assets shall not include (the "Excluded Assets"): 

(a) the City's Stormwater System Assets, including but not limited to Eagle Creek Reservoir;

(b) the cash balance of the Sanitary District's Sanitation General Fund (also known as the Sanitation Liquid Waste Fund);

(c) the Accounts Receivable;

(d) the Excluded Intellectual Property, the Sellers' telephone numbers and fax numbers; and

(e) the Sellers' Access Rights, Reserved Rights and any other assets listed in Schedule 2.02(e).

Section 2.03. Sale Free of Liens. The Acquired Assets sold, conveyed, transferred, assigned and delivered by the Sellers, or either of them, to Purchaser, as herein provided, are and shall be on the Closing Date, free and clear of all Liens other than Permitted Liens. Such Acquired Assets shall be conveyed by appropriate deeds, bills of sale, endorsements, leases, mortgages, security interests, pledges, assignments and other instruments of transfer and conveyance described herein, and if not expressly described herein, then by transfer documents satisfactory in form and substance to Purchaser and Sellers and their counsel in their reasonable discretion.

Section 2.04. Assumption of Liabilities.

(a) At the Closing, Purchaser shall issue debt on terms acceptable to Purchaser to replace the Assumed Debt Obligations and shall assume the liabilities of the Sellers related to the System and the Acquired Assets (other than the Excluded Liabilities), including litigation against either Seller related to the System or the Acquired Assets, performance obligations under all Assigned Contracts (as set forth in Section 2.06), the Consent Decree (as set forth in Section 2.04(b)), STEP (as set forth Section 2.04(d)), and PILOT Payments (as set forth in Section 3.05) (collectively, the "Assumed Liabilities") in the manner described below. For purposes of this Agreement, "Assumed Debt Obligations" means the Accepted Debt, Non-SRF Revenue Debt, and Line of Credit, each defined below. At Closing, Purchaser shall:

(i) issue debt on terms acceptable to Purchaser to replace the interest-bearing and other indebtedness related to the debt issued to the Indianapolis Bond Bank for the Indiana State Revolving Fund ("SRF") amounting to Four Hundred Thirty-Four Million Ninety-Four Thousand Two Hundred Fifty Dollars ($434,094,250), as of June 1, 2010, as further summarized on Schedule 2.04(a)(i) (the "Accepted Debt");
(ii) issue debt on terms acceptable to Purchaser to replace the outstanding amount of non-SRF revenue bonds of the Sanitary District ("Non-SRF Revenue Debt") in the amount of Thirty-Nine Million Two Hundred Ninety Thousand Dollars ($39,290,000,) as of June 1, 2010, as further summarized on Schedule 2.04(a)(ii); and

(iii) issue debt on terms acceptable to Purchaser to replace the debt to the Indianapolis Bond Bank with respect to an Eighty Five Million Dollars ($85,000,000) line of credit provided by Wells Fargo, N.A. ("Line of Credit"), established to provide necessary funds for certain capital improvements to the System prior to the Closing Date, as summarized on Schedule 2.04(a)(iii), subject to the consent of Wells Fargo, N.A. and upon such terms as are acceptable to Purchaser; provided however, that the amount drawn on the Line of Credit shall not exceed Fifty Million Dollars ($50,000,000) for 2010 and an additional Thirty-Five Million Dollars ($35,000,000) for the first quarter of 2011, in each case without the prior written consent of Purchaser or Citizens Energy Group.

Purchaser shall receive the various funds, accounts and contracts established under the District's resolution and the Indianapolis Bond Bank's indenture for such bonds (e.g., debt service reserve fund, debt service funds, construction funds, insurance policies), specifically excluding the Sanitary District's Sanitation General Fund (also known as the Sanitation Liquid Waste Fund), held by the District, the City or the Indianapolis Bond Bank, or in the case of such funds, accounts and contracts held by SRF, an acknowledgement that the same are held for the benefit of Purchaser in respect of the Assumed Debt Obligations. At the Closing, Sellers shall be released from their obligations, including any moral obligation, under the Assumed Liabilities.

(b) Notwithstanding the terms of the Consent Decree indicating that a transfer or sale of the System will not relieve the City from its obligations under the Consent Decree, Purchaser shall assume the City's obligations under the Consent Decree, consistent with and subordinate to the terms of any bond financings undertaken and assumed to consummate the transactions contemplated by this Agreement and shall be liable for all Damages resulting from the failure to meet the requirements and obligations of the Consent Decree, other than Excluded Liabilities.

(c) Except as set forth in Section 9.04, Purchaser shall not assume or be liable to pay any liabilities or obligations relating to the Excluded Liabilities and all obligations and liabilities relating to the Excluded Liabilities shall be paid and satisfied by the Sellers in accordance with their respective terms.

(d) Purchaser shall finance, construct, implement and complete the Septic Tank Elimination Projects ("STEP") set forth in Schedule 2.04(d) upon the terms and in the timeframe established therein. At Closing, Sellers shall deliver by wire transfer from the Sanitary District's Sanitation General Fund (also known as the Sanitation Liquid Waste Fund) Four Million Seven Hundred Thousand Dollars ($4,700,000) to compensate Purchaser for STEP obligations under this subparagraph (d).

(e) Purchaser shall cause semiannual payments to be made to the City in an amount equal to the interest and remaining principal obligations of the City and at such times as may be required under the City's general obligation bonds associated with the Sanitary District ("GO Debt") with a total principal outstanding of Fifty-Three Million Six Hundred Eight Thousand-
Dollars ($53,608,000) as of June 1, 2010. Purchaser or Citizens may prepay the GO Debt at its option at anytime on terms acceptable to Purchaser and Citizens.

(f) Purchaser shall be liable for any fees or penalties associated with the assumption or defeasance of the Assumed Debt Obligations.

(g) If the Sellers determine that debt in addition to that described above as the Assumed Debt Obligations is necessary to be issued, including to carry out the CIP Plan or the requirements of the Consent Decree, Purchaser’s consent to the terms and conditions of any such issuance shall be required prior to its issuance, which consent shall not be unreasonably withheld and any such debt which is so consented to by Purchaser shall be considered an "Assumed Debt Obligation" under this Agreement.

(h) SRF has informed the City that an additional debt service reserve for the SRF indebtedness referenced in Section 2.04(a)(i) is necessary due to the downgrading of the credit rating of the City’s provider of surety bonds backing the System. Purchaser shall be responsible for such debt service reserve requirement; provided however, at Closing the Closing Amount shall be reduced by One Million Two Hundred Thousand Dollars ($1,200,000) to reflect the increased financial costs due to such downgrade.

Section 2.05. Subsequent Documentation. At any time and from time to time after the Closing Date, each of the Sellers shall, upon the request of Purchaser, and Purchaser shall, upon the request of the Sellers, promptly execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such other instruments of conveyance and transfer and other documents, and perform or cause to be performed such further acts, as may be reasonably required to evidence or effectuate, or more fully evidence or effectuate, (a) the sale, conveyance, transfer, assignment and delivery hereunder of the Acquired Assets to Purchaser, (b) the assumption by Purchaser of any of the Assumed Liabilities, (c) the Sellers', Purchaser's or Citizens' rights under any Access Rights, Reserved Rights or the Belmont Road Easement, (d) performance by the Parties of any of their other respective obligations under this Agreement or the Related Agreements, (e) the satisfaction of Excluded Liabilities, (f) the organization of Purchaser and vesting in Purchaser and Citizens of all powers and authority of Sellers with respect to the System, (g) the financing by Purchaser of the Purchase Price and (h) any other matters reasonably requested by a Party to carry out the provisions, purposes and intent of this Agreement or the Related Agreements.

Section 2.06. Assignment of Contracts.

(a) To the extent that any of the Assigned Contracts or Acquired Authorizations that constitute an Acquired Asset are not assignable or transferable without the consent of the issuer thereof or the other party thereto or any third party including, without limitation, a Governmental Authority (the "Nonassignable Assets"), this Agreement shall not constitute an assignment or transfer of the Nonassignable Assets if such assignment or transfer or attempted assignment or transfer would constitute a breach thereof or a violation of any Law. The Sellers shall use reasonable efforts, at reasonable cost to Sellers, to obtain any consents or waivers necessary to any such assignment. To the extent that such consents or waivers are not obtained by the Sellers on or before the Closing, the Sellers agree to cooperate with Purchaser and to take such reasonable actions, at reasonable cost to Sellers, as Purchaser may reasonably request in order to
secure any arrangement designed to provide for Purchaser the benefits of such Nonassignable Assets. Sellers shall further assign and deliver to Purchaser any proceeds or receivables by the Sellers pursuant to the Nonassignable Assets except and to the extent that the Sellers have previously provided Purchaser with the benefits of such proceeds or receivables or to the extent the assignment is not permitted under the Nonassignable Assets. In connection therewith, Sellers shall enforce, for the benefit of Purchaser, any and all material rights of the Sellers against such issuer or such other party or parties, to the extent reasonably permitted.

(b) To the extent Purchaser receives the benefit of any Nonassignable Asset pursuant to Section 2.06(a), Purchaser agrees to assume and discharge any liability or obligation related to the benefits of such Nonassignable Asset.

Section 2.07. Vesting of Power and Authority; Governmental Approvals. Upon Closing, to the maximum extent permitted by Law, the Sellers shall transfer to and vest in Purchaser and Citizens all powers and authority of the Sellers with respect to the operations of the System and the Acquired Assets (excluding taxing power and taxing authority), including without limitation the power to implement the organization of Purchaser and consummate the transactions contemplated by this Agreement. Purchaser and Citizens shall be successors in interest of the Sellers under the Consent Decree.

ARTICLE III.

PURCHASE PRICE

Section 3.01. Purchase Price. In addition to the assumption of the Assumed Liabilities, the obligations relating to STEP projects described in Section 2.04(d) and the obligations relating to PILOT Payments described in Section 3.05, Purchaser shall pay the Sellers as full consideration for the Acquired Assets and the covenants of the Sellers provided herein an aggregate amount equal to Two Hundred Sixty-Two Million Six Hundred Thousand Dollars ($262,600,000) (the "Purchase Price"), subject to the terms and conditions of this Agreement.

Section 3.02. Payment of the Purchase Price. Subject to the terms and conditions of this Agreement and consistent with the specific flow of funds mechanics to be mutually agreed prior to Closing, Purchaser shall pay the cash portion of the Purchase Price as follows:

(a) On the Closing Date, Purchaser shall transmit the Closing Amount by wire transfer of immediately available funds to an account designated by the Sellers;

(b) On the Closing Date, the Cash Escrow Amount shall be placed in escrow by the Sellers to be held under the terms of the Cash Escrow Agreement; and

(c) On October 1, 2011, Purchaser shall transmit the Deferred Amount, by wire transfer of immediately available funds to an account designated by the Sellers. Purchaser shall evidence its obligation to pay the Deferred Amount by delivering a negotiable bond ("Deferred Bond") in substantially the same form, security interest and collateral as the bonds or other obligations issued by Purchaser under Section 2.04 and for financing the Purchase Price paid at Closing (collectively, the "Acquisition Financing Bonds"), bearing no interest until payment is
due on October 1, 2011, and thereafter at the rate of Eight Percent (8%) per annum, provided that
the Deferred Bond shall be subordinate to the Acquisition Financing Bonds and all other bonds
or other obligations incurred to operate the System in the manner provided in this Agreement. In
no event will the Deferred Amount be offset by Purchaser or Citizens for any amount for any
reason, including but not limited to Damages incurred by Purchaser or Citizens under this
Agreement.

Section 3.03. Fair Consideration. The Parties acknowledge and agree that the
consideration provided for in this Article III represents fair consideration and reasonable
value for the sale and transfer of the Acquired Assets and the transactions, covenants
and agreements set forth in this Agreement, which consideration was agreed upon as the result of
arm’s-length good faith negotiations between the Parties and their respective representatives.

Section 3.04. Working Capital; Collection of Accounts Receivable.

(a) For the avoidance of doubt, the Parties intend that Purchaser shall provide its own
Working Capital to operate the System after Closing and that Sellers will retain rights to all
Accounts Receivable and the obligation to satisfy all Trade Payables. As used herein, the term
"Working Capital" shall mean normal and customary working capital consisting of current assets
less current liabilities.

(b) Purchaser shall be responsible for collecting the Accounts Receivable (except for
the Accounts Receivable secured by liens on real property) and promptly remit the Accounts
Receivable to the Sellers as follows:

(i) Within ten (10) Business Days following the Closing Date, the Sellers
shall deliver to Purchaser an Accounts Receivables aging report, setting forth the total
amount of Accounts Receivable outstanding as of the Closing Date and the amounts that
are "current", "30 days", "60 days", "90 days" and "more than 90 days" due ("A/R List”).
Further detail regarding the A/R List and outstanding Accounts Receivable, including
Accounts Receivable for billing cycles for wastewater services incurred prior to Closing
and not yet billed, shall be provided in the Transition Services Agreement.

(ii) Within sixty (60) days after the Closing Date, Purchaser shall pay Sellers
an amount equal to a blended rate of the historical average of collection rates for
"current", "30 day", "60 day", "90 day" and "more than 90 days" due Accounts
Receivable ("A/R Payment Percentage") expressed as a percentage to be applied as
against the total outstanding Accounts Receivable as provided in the Transition Services
Agreement.

(iii) In the event that Purchaser fails to remit the City the amount due pursuant
to Section 3.04(b)(ii) on its due date, then interest shall accrue on such delinquent amount
at a rate equal to ten percent (10%) per annum, commencing on the due date and
continuing until such amount is received.

(iv) The amounts to be remitted to Sellers under this Section 3.04(b) shall be
deemed to be the Accounts Receivable to be retained by Sellers as part of the Excluded
Assets.
Prior to Closing, Purchaser shall have received all reasonably requested information and records to carry out its responsibilities under this Section 3.04. From time to time after Closing, the Parties shall reconcile amounts related to Accounts Receivable, Trade Payables and other assets and liabilities affected by the timing of Closing. Any disagreements or disputes relating to this Section 3.04 shall be resolved by the Parties pursuant to the Transition Services Agreement. The Sellers hereby authorize Purchaser, effective as of the Closing, to open any mail addressed to the Sellers and received by Purchaser at any location relating to the operation of the System. Additionally, in order to effectuate customer transition, Sellers shall cooperate with Purchaser in coordinating the transfer of lock boxes and other payment processes for customers of the System who pay their bills through Automated Clearinghouse (ACH) or similar processes.

Section 3.05. **PILOT Payments.** Prior to the Closing Date, the City shall have issued public debt, payments of principal and interest on which shall be secured and funded by a series of payments in lieu of taxes from the System ("PILOT Payments"). all as set forth in City County Special Ordinance No. 5, 2010 (the "PILOT Ordinance") passed pursuant to Indiana Code 36-3-2-10. As an essential component of the consideration received by the Sellers for the System and the Acquired Assets, upon Closing Purchaser shall be obligated to pay to the City when due the scheduled PILOT Payments as set forth in the PILOT Ordinance, which the Parties have mutually agreed shall be fixed representing a bargain which such that Purchaser is assured that such stream of PILOT Payments shall not be more, and the City is assured that such payments shall be less, than the amounts set forth in the PILOT Ordinance. A component part of the approvals contemplated as conditions to Closing set forth in Sections 12.03 and 13.03 is IURC approval of this obligation on the part of Purchaser to make the PILOT Payments for the full term of the payment schedule as set forth in the PILOT Ordinance. Purchaser shall make the scheduled PILOT Payments in two equal installments on June 1 and December 1 of each year. In the event that Purchaser fails to pay the City the required payment on its due date, then interest shall accrue on such delinquent amount at a rate consistent with Indiana Code 36-3-2-10(j). For any portion of the calendar year that is prior to the Closing Date, Purchaser shall be entitled to a credit of the PILOT Payments due for the pre-Closing portion of the calendar year. The obligation of Purchaser to make PILOT Payments to the City shall be subordinate to operating and maintenance expenses, payment of principal and interest on any bonded indebtedness, depreciation or replacement fund expenses, bond and interest sinking fund expenses and any other priority fund requirements required by law or any ordinance, resolution, indenture, contract or similar instrument binding on the System. Purchaser agrees not to seek to subject the Acquired Assets to property tax. Consistent with Indiana Code 36-3-2-10(h), Purchaser shall seek approval of rates sufficient to have cash earnings from legally available sources of revenue sufficient to timely make such PILOT Payments. The Sellers agree that the PILOT Ordinance shall not be amended in any manner which increases Purchaser's obligations under this Section 3.05. For years beginning in 2040 and thereafter, Purchaser shall continue to pay annually a payment in lieu of taxes equal to that amount determined in accordance with Indiana Code 36-3-2-10 or its successor.

Section 3.06. **Allocation of the Purchase Price.** Purchaser and the Sellers agree to allocate the Purchase Price, plus the amount of the Assumed Debt Obligations, to the Acquired Assets as specified in Schedule 3.06 in accordance and consistent with the standards issued by the National Association of Regulatory Utility Commissioners ("NARUC") and Federal Energy Regulatory Commission ("FERC") accounting standards and in a manner that preserves and
maintains the tax exempt status of all Assumed Debt Obligations and the bonds to be issued by Purchaser, to the extent permitted by Law.

ARTICLE IV.

REPRESENTATIONS AND WARRANTIES OF THE SELLERS

The Sellers make only the representations and warranties which are set forth in this Article IV. Any disclosure set forth on any particular schedule of the Disclosure Schedules shall be deemed disclosure in reference to all schedules comprising the Disclosure Schedules to which such disclosure is clearly applicable based solely upon such disclosure.

Purchaser and Citizens acknowledge that they have conducted an independent investigation of the financial condition, assets, liabilities, properties and projected operations of the System in making their determination as to the propriety of the transaction contemplated by this Agreement and, in entering into this Agreement and Related Agreements, have relied solely on the results of said investigation and on the representations and warranties of the Sellers expressly contained in Article IV of this Agreement. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT AND THE RELATED AGREEMENTS, SELLERS MAKE NO EXPRESS OR IMPLIED WARRANTY OF ANY KIND WHATSOEVER, INCLUDING ANY REPRESENTATIONS AS TO THE PHYSICAL CONDITION OR VALUE OF ANY OF THE ASSETS OF THE SYSTEM OR THE FUTURE PROFITABILITY OR FUTURE EARNINGS PERFORMANCE OF THE SYSTEM. ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY EXCLUDED.

As a material inducement to Purchaser to enter into this Agreement and to consummate the transactions contemplated hereby, the Sellers jointly and severally represent and warrant to Purchaser that:

Section 4.01. Power. Sellers have all requisite power and authority to own, lease and operate the Acquired Assets and the System as operated on the Closing Date, to sell and transfer in the manner described herein the Acquired Assets and powers described herein to Purchaser and to enter into, execute and deliver this Agreement.

Section 4.02. Authorization and Validity of Agreement. The execution and delivery of this Agreement and the Related Agreements by the Sellers and the consummation by the Sellers of the transactions contemplated by this Agreement and the Related Agreements have been duly and validly authorized by all necessary action on the part of each of the Sellers, and no other proceedings on the part of the Sellers is necessary to authorize the execution, delivery and performance of this Agreement. This Agreement has been duly executed and delivered by each of the Sellers and constitutes a legal, valid and binding obligation of the applicable Seller, enforceable against the applicable Seller in accordance with its terms and conditions, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency, reorganization or other laws affecting the enforcement of creditors' rights generally.

Section 4.03. No Conflict or Violation; Vesting of Powers. The execution, delivery and performance of this Agreement by the Sellers does not and shall not: (a) violate any
provision of Law applicable to the Sellers or the System, (b) except as set forth on Schedule 4.03 hereto, violate or result in a breach of or constitute (with due notice or lapse of time or both) a default under any contract, lease, loan agreement, mortgage, security agreement, indenture, license, consent order, or other instrument or obligation to which the Sellers are a party, or by which their assets or properties may be bound; or (c) result in the imposition of any Liens or restrictions on the System or any of the Acquired Assets, in each case where such violation, breach, default or resulting Lien or restriction could reasonably be expected to have a Material Adverse Effect. By this Agreement and the Related Agreements, to the maximum extent permitted by Law, Sellers will vest in Purchaser and Citizens all powers and authority of Sellers (other than taxing power and taxing authority) with respect to the Acquired Assets.

Section 4.04. Consents and Approvals. Schedule 4.04 sets forth a list of each consent, waiver, authorization or approval of any Governmental Authority, or of any other Person, and each declaration to or filing or registration with any Governmental Authority required in connection with the execution and delivery of this Agreement by the Sellers or the performance by the Sellers of their obligations hereunder. Except as set forth in Schedule 4.04 any and all notices, consents, authorizations and approvals set forth in Schedule 4.04 have been or prior to the Closing will be made and obtained. In addition, Schedule 4.04 contains a true and complete list of all Nonassignable Assets as of the Effective Date.

Section 4.05. Financial Statements. The Sellers have made available to Purchaser certain work papers relating to the System, which reflect the revenues, expenses, cash flows, assets and liabilities of the System, as attached on Schedule 4.05 (the "Work Papers"). The Work Papers truly and accurately reflect the revenue, expenses, cash flows, assets and liabilities of the System. The City's Comprehensive Annual Financial Report for the calendar year ended December 31, 2009 (the "Financial Statements") was provided when published by the City. The Financial Statements have been prepared and presented in accordance with the applicable standards for financial reporting of the Governmental Accounting Standards Board (GASB) and the Government Finance Officers Association of the United States and Canada (GFOA), the financial information as presented in the Financial Statements is accurate in all material respects and is presented in a manner designed to set forth the financial position and results of operations of the System for the periods indicated. Except as reflected or reserved for in the Financial Statements, or as set forth in Schedule 4.05, neither of the Sellers is subject to any liability or obligation related to the System, other than immaterial current liabilities and obligations incurred since such date in the ordinary and usual course of business consistent with past practice.

Section 4.06. Absence of Certain Changes or Events. Except as reflected in the Financial Statements, or as set forth on Schedule 4.06, since January 1, 2009, the Sellers have operated the System in the ordinary course of business consistent with past practice and other than in the ordinary course of business, consistent with past practice there has not been any:

(a) change, event or condition (whether or not covered by insurance) that has resulted in, or is likely to result in a Material Adverse Effect;

(b) except for normal periodic increases in the ordinary course of business consistent with past practice, (i) increase in the compensation payable or to become payable to any Personnel, (ii) bonus, incentive compensation, service award or other like benefit granted, made or accrued, contingently or otherwise, for or to the credit of any Personnel, (iii) employee
welfare, pension, retirement, profit sharing, or similar payment or arrangement made or agreed to by the Sellers for any Personnel other than in the ordinary course of business, or (iv) new employment agreement with any Personnel to which either Seller is a party;

(c) addition to or modification of any employee benefit plan, arrangement, or practice described in Schedules 4.14(b), (c), or (d) other than (i) the extension of coverage to other Personnel who became eligible after December 31, 2009, or (ii) changes required by Law;

(d) sale, assignment or transfer of any of the assets or properties of the Sellers used, necessary or important to the operation of the System;

(e) capital expenditures or the execution of any lease or any incurring of liability therefor in connection with the System involving payments in excess of One Hundred Thousand Dollars ($100,000) in the aggregate, other than as contemplated by the CIP Plan established therefor and provided to Purchaser prior to the date of the Agreement or otherwise approved in writing in advance by Purchaser;

(f) failure to repay or discharge any material obligation or liability;

(g) failure to operate the System in the ordinary course or to preserve the System intact, to keep available to Purchaser the services of the Personnel and to preserve for Purchaser the goodwill of the Sellers' dealers, suppliers, customers and others having business relations with it;

(h) change or modification to the United Agreement;

(i) without written notice to Purchaser, change in accounting methods or practices;

(j) without written notice to Purchaser, revaluation by the Sellers of any of the Acquired Assets;

(k) damage, destruction or loss (whether or not covered by insurance) affecting the Acquired Assets or the System;

(l) except as otherwise provided in Section 2.04, indebtedness, obligations or liabilities incurred, increased or modified with respect to the System that would constitute Assumed Liabilities;

(m) agreements, waivers, permits, fees, charges, or other burdens of any nature placed on the System by the City, the Sanitary District, the Department of Public Works or any other Affiliate of the City for the benefit of the City or any such Affiliate thereof;

(n) agreement by the Sellers, or either of them, to do any of the foregoing; or

(o) other event or condition of any character which in any one case or in the aggregate has had or may have a Material Adverse Effect.

Section 4.07. Tax Matters. Except as set forth in Schedule 4.07, no state or local Taxing authority has assessed any Taxes on the Acquired Assets or on the operation of the
System within two (2) years immediately preceding the Effective Date and no Taxes will be due and payable on or before the Closing Date. Sellers have timely paid all Taxes that may have been or may be due and payable by the Sellers on or before the Closing Date, arising from the ownership or operation of the Acquired Assets or the System on or before the Closing Date. The Sellers have set up reserves or accruals on the Financial Statements that are adequate for the payment of Taxes, if any, for all periods through the Closing Date. No Taxing authority has asserted any claim against the Sellers for the assessment of any additional Tax liability or initiated any action or proceeding which could result in such an assertion. The Sellers have made all withholding of Taxes required to be made under all applicable Laws and regulations, including without limitation, withholding with respect to compensation paid to employees, and the amounts withheld have been properly paid over to the appropriate Taxing authorities.

Section 4.08. Real Property-Owned Premises. Except for the Permitted Liens and as set forth in Schedule 4.08, the Sellers have good and marketable title in Priority One Property, Priority Two Property and Priority Three Property. Except as set forth on Schedule 4.08, none of the Priority One Property or Priority Two Property is subject to any lease or grant to any Person of any right to the use, occupancy or enjoyment of such property or any portion thereof. Except for Permitted Liens, Priority One Property and Priority Two Property are not subject to any use restrictions, exceptions, reservations or limitations which in any material respect interfere with or impair the present and continued use thereof in the ordinary course of business and in the same manner after Closing as conducted by the Sellers prior to Closing. There are no pending or, to the Knowledge of the Sellers, threatened condemnation proceedings relating to any of the Real Property.

Section 4.09. Real Property-Leased Premises. Schedule 4.09 contains a list and brief description of all real property leased by any third party to the Sellers and held for or used, necessary or important to the operation of the System (each a "Real Property Lease" and collectively the "Real Property Leases" and the property covered by those Real Property Leases being referred to herein as the "Leased Real Property"). Sellers have made available true and complete copies of all Real Property Leases to Purchaser. Except as set forth on Schedule 4.09, neither of the Sellers is in breach of any material term or in "default" under any Real Property Lease and no party to any Real Property Lease has given the Sellers written notice of or made a claim with respect to any breach or default thereunder. Sellers have no Knowledge of any condition that currently exists or with the passage of time will result in a default or breach of any material term by any party to a Real Property Lease. Except as set forth on Schedule 4.09, to the Knowledge of Sellers, none of the Leased Real Property is subject to any sublease or grant to any Person of any right to the use, occupancy or enjoyment of the property or any portion thereof that would materially impair the use of the Leased Real Property in the operation of the System. Except as set forth on Schedule 4.09, to the Knowledge of Sellers, the Leased Real Property is not subject to any Lien that was placed on the Leased Real Property through the action or inaction of Sellers. To the Knowledge of Sellers, the Leased Real Property is not subject to any use restrictions, exceptions, reservations or limitations which in any material respect interfere with or impair the present and continued use thereof in the ordinary course of business. To the Knowledge of Sellers, there are no pending or, to the Knowledge of the Sellers, threatened condemnation or other proceedings or claims relating to any of the Leased Real Property. To the Knowledge of Sellers, the Real Property Leases will continue to be legal, valid, binding,
enforceable and in full force and effect on the same material terms immediately following the consummation of the transactions contemplated hereby.

**Section 4.10. Conformity of the Real Property and the Leased Real Property.**

All buildings, structures and improvements located on, fixtures contained in, and appurtenances attached to the Real Property or the Leased Real Property conform in all material respects to applicable federal, state, county, local and foreign laws, regulations and ordinances, including without limitation, those related to zoning, use or construction, and the Real Property and Leased Real Property are zoned for the purposes for which they are presently used by the Sellers.

**Section 4.11. Equipment and Machinery/Distribution System.**

(a) Schedule 4.11(a) sets forth a list of, or otherwise describes, all material Equipment and Machinery included in the Acquired Assets. Except as set forth in Schedule 4.11(a), the Sellers have good title, free and clear of all Liens (other than the Permitted Liens) to the Equipment and Machinery owned by Sellers. Except as set forth on Schedule 4.11(a), the Sellers hold good and transferable leasehold interests in all Equipment and Machinery leased by them, in each case under valid and enforceable leases. Except as set forth on Schedule 4.11(a), none of the leased Equipment and Machinery of the Sellers requires the approval of the lessor to be assigned, or upon assignment will experience a material change in terms, costs or tax recapture.

(b) To the Knowledge of Sellers, the Equipment and Machinery are in good operating condition and repair (except for ordinary wear and tear), and are being operated in conformity in all material respects with all applicable Laws.

**Section 4.12. Supplies.** All Supplies included in the Acquired Assets consist of a quality and quantity usable in the ordinary course of business, consistent with past practice.

**Section 4.13. Intellectual Property.** All material Intellectual Property owned by the Sellers is listed on Schedule 4.13. Except as set forth on Schedule 4.13, all Intellectual Property material to the System is owned by or licensed to the Sellers free and clear of all Liens, except for Permitted Liens, and is in good standing, is duly authorized, valid, issued and enforceable, has not been canceled, and, to the Knowledge of Sellers, is not the subject of any challenge. Schedule 4.13 also lists all such Intellectual Property which is licensed to the Sellers. To the Knowledge of Sellers, no facts exist that would invalidate or render unenforceable any Intellectual Property. Except as disclosed on Schedule 4.13, (a) there are no licenses now outstanding or other rights granted to third parties under any Intellectual Property, and (b) neither of the Sellers is a party to any agreement or understanding with respect to any Intellectual Property. Except as described on Schedule 4.13, there are no unresolved claims made, and no Person or Governmental Authority has communicated to the Sellers, or either of them, the threat of any such claim, that any of the Intellectual Property or activities of the Sellers in connection with the Intellectual Property constitutes unfair competition or is in violation or infringement of any patent, trademark, trade name, service mark, trade dress, right of publicity, copyright or registration therefor, of any other Person. To the Knowledge of Sellers, the Intellectual Property does not infringe the patent, trademark, copyright, trade secret or other proprietary right of any third party. All filings or recordings necessary or appropriate to protect the interests of the Sellers in any Intellectual Property have been duly made and are in full force and effect.
Section 4.14  Employee Benefit Plans.

(a) As used in this Section 4.14 and elsewhere in this Agreement, the following terms have the meanings set forth below:

"Sellers' Benefit Obligations" means all obligations, arrangements, or practices (other than Sellers' Plans or salary or wages), whether or not legally enforceable, to provide benefits (including, without limitation, post-retirement benefit obligations) to Personnel, that are owed, adopted or followed by the Sellers or an Affiliate, to the extent that the Sellers would have any liability with respect to such obligation, arrangement or practice of the Affiliate. Sellers' Benefit Obligations also include consulting agreements under which the compensation paid does not depend upon the amount of service rendered, sabbatical policies, severance payment policies and fringe benefits within the meaning of Code §132.

"Sellers' Plans" means any employee benefit plan or any other retirement, deferred compensation (including any "nonqualified deferred compensation plan" within the meaning of Section 409A of the Code), severance, sick leave, medical, or other material plan or arrangement providing benefits to current or former Personnel (including, without limitation, any post-retirement benefit plans), in each case, whether or not terminated, to which the Sellers are a plan sponsor, or to which the Sellers or an Affiliate otherwise contribute or have contributed, or in which the Sellers or an Affiliate otherwise participate or have participated. For purposes of this Section 4.14 "Affiliate" also includes any member of an affiliated group as defined under Section 414(m) of the Code, and all entities under common control with Sellers pursuant to Section 414(b) or (c) of the Code.

(b) Schedule 4.14(b) contains a true and complete list of all Sellers' Plans and Sellers' Benefit Obligations with respect to the System. All such Sellers' Plans and Sellers' Benefit Obligations are in full force and effect and are in compliance in all respects, both as to form and operation, with applicable provisions of the Code, and any other applicable laws, and with any applicable collective bargaining agreement. With respect to all of Sellers' Plans and Sellers' Benefit Obligations, all required reports, tax filings, and descriptions (including, without limitation, Forms 5500, Forms 1099-R, summary annual reports, and summary plan descriptions) have been filed and distributed. No event has occurred, and there exists no condition or set of circumstances which has resulted in or, to the Knowledge of Sellers, which could result in the imposition of any liability on the Sellers under the Code or other applicable law with respect to any Sellers' Plans or Sellers' Benefit Obligations. Neither Sellers' nor any Affiliate of Sellers (or any fiduciaries thereof) have received any correspondence, claims, arbitrations, suits, or any other written or verbal notice from the Internal Revenue Service, the U.S. Department of the Treasury, any other governmental agency, any participant in, or beneficiary of, any Sellers' Plan or with respect to any Sellers' Benefit Obligation, or any agent representing any of the foregoing that brings into question the Sellers' compliance with respect to the matters to which this subsection (b) refers or any benefits due, or alleged to be due, under Sellers' Plans or Sellers' Benefit Obligations (other than routine claims for benefits). To Sellers' Knowledge, there is no basis for any claims, arbitrations, suits, or other disputes with regard to the matters to which this subsection (b) refers.

(c) Except as set forth on Schedule 4.14(c), neither Sellers nor any Affiliate of Sellers with respect to the System, sponsors, maintains, contributes to, or is required to contribute to,
any medical, health, life or other welfare plan or benefits for present or future terminated or
retired employees or their spouses or dependents, other than as required by COBRA, or any
comparable state Law, and has no liability of any nature, whether known or unknown, fixed or
contingent, with respect to any such post-termination welfare benefits.

(d) Except as set forth on Schedule 4.14(d), to the Sellers' Knowledge, no tax
liabilities have arisen and are currently unpaid in relation to a violation of any applicable Sellers'
Plan or Sellers' Benefit Obligations of Section 409A of the Code, nor is any tax liability expected
to arise in connection with any payment as a result of the transaction contemplated by this
Agreement. All of Sellers' Plans and Sellers' Benefit Obligations subject to Section 409A of the
Code have been documented to conform to such Section.

(e) Neither Sellers' Plans nor Sellers' Benefit Obligations are subject to Title IV of
ERISA. No contingent or other liability with respect to which Sellers' have or could have any
liability exists under Title IV of ERISA to the Pension Benefit Guaranty Corporation (PBGC) or
to any Sellers' Benefit Plan or any plan sponsored by an employee organization that provides
benefits to Personnel, and no assets of Sellers are subject to a lien under Section 4046 or 4068 of
ERISA.

(f) The Sellers and each Affiliate are and have been in full compliance with the
requirements of COBRA and neither of the Sellers nor any Affiliate is subject to any excise tax
under Code Section 4980B for the current or any prior taxable year. The Sellers and each
Affiliate of Sellers represent and warrant that they will provide continuing health benefit
coverage as described in under COBRA to all persons who are "M&A qualified beneficiaries"
(as described in IRS Regulation Section 54.4980B-9, Question and Answer 4) with respect to the
transactions contemplated under this Agreement (referred to as "COBRA Beneficiaries").

Section 4.15. Personnel; Labor Relations.

(a) Neither Seller is a party to any collective bargaining agreements with respect to
the System. Notwithstanding anything in this Agreement that may suggest the contrary, it is
expressly understood that Purchaser shall not assume or be responsible or liable for or bound by
any collective bargaining agreement of any Seller or any Contractor of any Seller, including
without limitation, United Water.

(b) With respect to all Personnel:

(i) there is no labor strike, lockout, dispute, slowdown or stoppage pending
or, to the Knowledge of the Sellers, threatened against or involving the operation of the
System, nor has any such event or labor difficulty occurred within the past five (5) years;

(ii) no labor union claims to represent the Personnel;

(iii) none of the Personnel are represented by any labor union and there has
been no attempt to organize any group or all of the Personnel within the past five (5)
years, and neither of the Sellers, with respect to the System, has received notice of any
current labor union organizing petition to any Governmental Authority, nor have the
Sellers with respect to the System, received notice of any procedure concerning representation of any of its Personnel;

(iv) the Sellers, with respect to the System, are in compliance in all material respects with all applicable federal, state and local laws respecting employment and employment practices, terms and conditions of employment, wages, hours of work and occupational safety and health;

(v) there is no unfair labor practice charge or complaint against the Sellers with respect to the System, pending or, to the Knowledge of the Sellers, threatened (and the Sellers do not believe that there exists any reasonable basis therefor);

(vi) there is no grievance pending against either of the Sellers filed by any Personnel arising out of any grievance or complaint procedure (and the Sellers do not believe that there exists any reasonable basis therefor);

(vii) there is no charge of employment discrimination, harassment or retaliation with respect to or relating to the System pending before the Equal Employment Opportunity Commission or any other agency responsible for the prevention of unlawful and/or discriminatory employment practices (and the Sellers do not believe that there exists any reasonable basis therefor);

(viii) neither of the Sellers has received any written notice of the intent of any Governmental Authority responsible for the enforcement of labor or employment laws to conduct an investigation or other inquiry relating to the System, and no such investigation or other inquiry is in progress;

(ix) there is no claim, action, suit, proceeding, investigation or inquiry pending or, to the Knowledge of the Sellers, threatened, in any forum by or on behalf of any present or former Personnel, any applicant for employment with Sellers with respect to the System, or classes of the foregoing alleging breach of any express or implied contract of employment, violation of any law governing employment or the termination thereof or other discriminatory, wrongful or tortious conduct in connection with the employment relationship;

(x) there is no private agreement which restricts the Sellers from relocating, closing or terminating any of the operations or facilities relating to the System;

(xi) neither Seller has Knowledge that any of the Personnel have any current or immediate plans to terminate employment with the Sellers;

(xii) neither Seller has any present intention to terminate the employment of any Personnel due to misconduct or unsatisfactory performance; and

(xiii) within the 12 month period prior to the Effective Date, neither of the Sellers has received notice of any assertion or allegation of any wrongful employment action or practice, including, without limitation, discrimination, retaliation and
harassment, by any present or former Personnel or any applicant for employment with Sellers.

(c) The Sellers shall timely pay, or cause to be timely paid, the Personnel as required under their policies and/or by applicable law for accrued but unused and unpaid vacation, sick leave, other accrued benefits and commissions as of the Closing Date.

(d) Neither of the Sellers has, in the past five (5) years, with respect to the System, effectuated:

(i) a "plant closing" (as defined in the Worker Adjustment and Retraining Notification Act ("WARN Act") affecting any site of employment or one or more facilities or operating units within any site of employment or facility of the System; or

(ii) a "mass layoff" (as defined in the WARN Act) affecting any site of employment or facility of the System; nor has the System been affected by any transaction or engaged in layoffs or employment terminations sufficient in number to trigger application of any similar state or local law. None of the Personnel has suffered an "employment loss" (as defined in the WARN Act) during the previous six months.

(e) Except as provided in Section 8.05, nothing contained in this Agreement shall confer upon any Personnel any right with regard to continued employment by Purchaser nor any third party beneficiary rights, nor shall anything herein interfere with the right of Purchaser after the Closing Date and after the term of any leased employee arrangement to:

(i) terminate the employment of any of the Personnel at any time, with or without cause or notice; or

(ii) exercise its independent business judgment in establishing or modifying any of the terms or conditions of the employment of the Personnel.

Section 4.16. Environmental Compliance.

(a) To the Knowledge of Sellers, the Real Property currently operated by Sellers and all operations and activities conducted by the Sellers on the Real Property are, and at all times during possession thereof by the Sellers have been in material compliance with all applicable Environmental Requirements. The Real Property which is currently leased to third parties was in material compliance with all applicable Environmental Requirements at the time the Real Property was leased to said third parties. Sellers make no representation or warranty regarding whether the operations conducted by third party lessees of the Real Property are in material compliance with applicable Environmental Requirements, except that Sellers have no Knowledge of any non-compliance with applicable Environmental Requirements by such lessees. Sellers operations and activities on the Leased Real Property are in material compliance with all applicable Environmental Requirements but Seller has no Knowledge with respect to the existence of any conditions which may be in violation of Environmental Requirements and which existed prior to Sellers taking possession of the Leased Real Property.
(b) Except as set forth in Schedule 4.16(b), to the Knowledge of Sellers, all Hazardous Materials have been generated, used, transported, treated, stored, handled, disposed or offered for disposal, transferred or processed at or on the Real Property or, to the Knowledge of Sellers, the Leased Real Property in material compliance with all applicable Environmental Requirements;

(c) There are no existing Environmental Claims and Sellers have no Knowledge of any potential Environmental Claims relating to the Real Property or the Sellers' operations on the Leased Real Property related to the time period of Sellers' possession thereof; and neither Seller has received any notification or Knowledge of alleged, actual or potential responsibility for any disposal, release or threatened release at any location of any Hazardous Material generated at or transported from the Real Property or the Leased Real Property by or on behalf of the Sellers.

(d) Other than in material compliance with all applicable Environmental Requirements, (i) to the Knowledge of Sellers, there are no underground storage tanks subject to regulation pursuant to 329 IAC 9-1-1 currently located on the Real Property or the Leased Real Property, and except as set forth in Schedule 4.16(d), to the Knowledge of Sellers, there have been no releases of any Hazardous Materials from any such underground storage tanks or related piping at any time prior to the Closing; and (ii) except as set forth in Schedule 4.16(d), to the Knowledge of Sellers, there have been no releases (i.e., any past or present releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping) of Hazardous Materials at, on, to or from the Real Property or the Leased Real Property.

(e) To the Knowledge of Sellers, there are no regulated PCB containing articles or friable asbestos located at or on the Real Property or the Leased Real Property.

(f) No Lien or other encumbrance has been imposed on the Real Property or, to the Knowledge of Sellers, Leased Real Property by any federal, state, local or foreign governmental agency or authority due to either the presence of any Hazardous Material on or off the Real Property or Leased Real Property or a violation of any Environmental Requirement.

(g) Neither of the Sellers has received any written notice issued pursuant to the citizen's suit provision of any Environmental Requirement relating to the Real Property or Leased Real Property or any facility or operations thereon.

(h) Except as set forth in Schedule 4.16(h), neither Seller has received any request for information, notice, demand, letter, administrative inquiry, complaint, or claim with respect to any Environmental Conditions or violation of any Environmental Requirement relating to the Real Property or Leased Real Property or any facility or operations thereon.

(i) The Consent Decree is in full force and effect and amendments, one approved and one pending, and minor modifications thereto have been negotiated with the EPA and the U.S. Department of Justice as shown in Schedule 4.16(i). Although the pending Amendment No. 2 to the Consent Decree may not be entered by the court as of the date this Agreement is executed, the language agreed to between the parties is attached in Schedule 4.16(i) along with the currently available evidence of agreement between the parties. Except as set forth on Schedule 4.16(i), the Sellers are in material compliance with all terms, conditions and
requirements of the Consent Decree and no claims, actions, suits, proceedings, arbitral actions or investigations are pending, or to the Knowledge of the Sellers, threatened against the Sellers with respect to the Consent Decree.

(j) Except as set forth on Schedule 4.16(j), Sellers have completed all requirements or undertaken all actions required to be performed by Sellers prior to the Closing Date pursuant to:

(i) the Consent Decree, including but not limited to all control, operation, maintenance and mitigation requirements and the implementation of the CSO Control Measures, the Approved Revised CSO Control Measures Plan and Schedule 4.16(i); and

(ii) the Acquired Authorizations.

(k) Purchaser shall have all of the requisite power and authority as a successor in interest to complete the CSO Control Measures in accordance with the terms of the Consent Decree.

(l) The CSO Control Measures are being implemented in accordance with the Consent Decree, as amended and modified by agreement among the EPA, IDEM and the City and as awaiting final entry by the court in the form shown on Schedule 4.16(i), including with the Descriptions, Design Criteria, and dates for Completion of the Bidding Process and Achievement of Full Operation for each such project set forth in the Consent Decree or any Approved Revised CSO Control Measures Plan. All work performed by or on behalf of Sellers pursuant to the Consent Decree, including but not limited to work performed by architects, design professionals, and civil, mechanical or other engineers, whether by contract or pursuant to employment with the Sellers or as an agent or affiliate of the City (collectively, the "Design Professionals") are, to the Knowledge of Sellers, (i) in accordance with the terms and conditions of the Consent Decree, (ii) sufficient to complete the CSO Control Measures required to be undertaken on or prior to the Closing Date and (iii) sufficient, as of the Closing Date, for Purchaser to implement the CSO Control Measures after the Closing Date. To the extent services have been provided by or for Sellers pursuant to the Consent Decree on or before the Closing Date:

(i) as of the Closing Date, the plans and specifications and other designs are in material compliance with the Consent Decree;

(ii) neither Seller has Knowledge that the CSO Control Measures set forth in the Approved Revised CSO Control Measures and as shown on Schedule 4.16(i) cannot be designed, constructed, commissioned, occupied, and used for its intended purpose within the budgets and schedules pursuant to the Consent Decree; and

(iii) neither Seller has any claims of any kind whatsoever arising out of any prior agreements between the Sellers and any Design Professionals (collectively "Prior Agreements") or the performance of services thereunder, except as set forth in this Agreement.
Section 4.17. Licenses and Permits. Schedule 4.17 lists or describes the License and Permits. The Licenses and Permits are all the licenses and permits that are necessary for the operation of the System. The Licenses and Permits are in full force and effect. The Sellers have made true and complete copies of all Licenses and Permits available to Purchaser. The Sellers are in compliance with all material terms, conditions and requirements of all Licenses and Permits and no proceeding is pending or, to the Knowledge of the Sellers threatened relating to the revocation or limitation of any of the Licenses or Permits.

Section 4.18. Insurance; Bonds.

(a) Schedule 4.18(a) lists all of Sellers' policies of title, liability, fire, casualty, business interruption, workers' compensation and other forms of insurance insuring the properties, assets or operations of the System (collectively, "Policies" and individually, a "Policy"), setting forth the carrier, policy number, expiration dates, premiums, description of type of coverage and coverage amounts. The Sellers have made true and complete copies of all such policies available to Purchaser. Such policies are in amounts deemed to be adequate by the Sellers, all premiums with respect thereto are currently paid, such policies are in full force and effect and the Sellers have not received any notice that any such policy will not be renewed.

(b) Except as set forth on Schedule 4.18(b), Sellers have no outstanding surety bonds or other surety arrangements issued or entered into in connection with the Acquired Assets or the System. No surety bond is required to satisfy any contractual, statutory, or regulatory requirement applicable to the Sellers with respect to the System.

Section 4.19. Contracts and Commitments.

(a) With respect to the System, Schedule 4.19 lists all of the following material contracts (collectively, the "Contracts"):

(i) employment, consulting, bonus, deferred compensation, pension, welfare, retirement, or agreements and commitments with the Personnel;

(ii) notes, mortgages, contracts, agreements, swaps or other derivatives or commitments for the repayment or borrowing of money by either Seller in excess of One Hundred Fifty Thousand Dollars ($150,000) in any one case, or for a line of credit including borrowings by either Seller in the form of a guarantee of, indemnification for, or agreement to acquire any obligation of others, and all security or pledge agreements related thereto;

(iii) contracts, including management, operating or service agreements, providing for payments in excess of One Hundred Fifty Thousand Dollars ($150,000) by either Seller in any twelve (12) month period;

(iv) contracts, agreements or commitments relating to any joint venture or partnership to which either Seller is a party or is bound;
(v) contracts, agreements or commitments containing covenants purporting to limit the freedom of either Seller or any Personnel to compete in any business or in any geographic area;

(vi) contracts relating to ongoing construction, including related to CSO Control Measures, insurance contracts, surety bonds, management agreement, architect agreement or consultant agreement, providing for payments by either Seller in excess of $150,000 in any twelve (12)-month period; and

(vii) contracts not made in the ordinary course of business, providing for payments by either Seller in excess of One Hundred Fifty Thousand Dollars ($150,000) in any twelve (12)-month period.

(b) The Sellers have made available to Purchaser true and complete copies of all the foregoing Contracts.

(c) All of the Contracts are in full force and effect. Except as set forth in Schedule 4.19, neither Seller has, nor to the Knowledge of the Sellers has any other party thereto, breached any provision of or defaulted under the terms of, nor does any condition exist which, with notice or lapse of time, or both, would cause the Sellers, or to the Knowledge of Sellers, any other party, to be in default under any Contract.

Section 4.20. Compliance with Law. Except as set forth on Schedule 4.20, the Sellers and, to the Knowledge of Sellers, United Water, with respect to the System are in compliance with all applicable Laws. Neither Seller nor, to the Knowledge of Sellers, United Water, is in violation of any Law applicable to the System, its Personnel or any of the Acquired Assets, nor are the Sellers aware that any factual circumstances are likely to result in such violation.

Section 4.21. Litigation. Except as set forth on Schedule 4.21, (a) there are no claims, actions, suits, proceedings, arbitral actions or investigations pending or, to the Knowledge of the Sellers threatened against the Sellers with respect to the System or any of the Acquired Assets before or by any Governmental Authority; and (b) there are no unsatisfied judgments of any kind against the Sellers with respect to the System or the Acquired Assets requiring payment in excess of $50,000.

Section 4.22. Title to the Acquired Assets and Related Matters. Except with respect to Real Property and Leased Real Property (the representations and warranties of which are contained in Sections 4.08 and 4.09, respectively), the Sellers have good and marketable title to all of the Acquired Assets owned by Sellers, free and clear of all Liens, subject to the Permitted Liens. With the exception of Non-assignable Assets, the Sellers have complete and unrestricted power and the right to sell, convey, assign, transfer and deliver the Acquired Assets, and the deeds and other instruments of assignment and transfer to be executed and delivered by the Sellers to Purchaser at the Closing, subject to the approvals and consents required to consummate the transactions contemplated by this Agreement subject to the Permitted Liens. Such deeds and other instruments of assignment and transfer will be valid and binding obligations of the Sellers, enforceable in accordance with their respective terms. All consents necessary to consummate the transactions contemplated by this Agreement have been obtained,
or will be obtained on or prior to and be in effect as of the Closing Date, and are or will be when obtained valid and binding upon the persons giving the same. The Acquired Assets include all properties and assets (real, personal and mixed, tangible and intangible, and all leases, licenses and other agreements) necessary or desirable to permit Purchaser to carry on the operation of the System subsequent to the Closing as presently conducted by the Sellers.

Section 4.23. **Absence of Certain Business Practices.** Within the two (2) years immediately preceding the Effective Date, neither the Sellers, nor to the Knowledge of Sellers any Personnel or other Person acting on behalf of the Sellers, has given or agreed to give, directly or indirectly, any gift or similar benefit to any dealer, supplier, customer, governmental employee or other Person who is or may be in a position to help or hinder the operation of the System (or assist the Sellers in connection with any actual or proposed transaction relating to the System or the Acquired Assets), which might subject the Sellers to any damage or penalty in any civil, criminal or governmental litigation or proceeding and which, if not continued in the future, may result in a Material Adverse Effect.

Section 4.24. **Severance Agreements.** Neither of the Sellers has entered into any severance or similar arrangement in respect to any present or former Personnel that shall result in any obligation (absolute or contingent) of Purchaser to make any payment to any present or former Personnel following termination of employment, including the termination of employment effected by the transactions contemplated by this Agreement. The consummation of the transactions contemplated by this Agreement will not trigger any severance or other obligation of the Sellers for which Purchaser shall have any liability.

Section 4.25. **No Other Agreements to Sell Assets.** Neither of the Sellers has any obligation, absolute or contingent, to any other Person to sell any of the Acquired Assets, or to effect any merger, consolidation or other reorganization of the Sellers or to enter into any agreement with respect thereto.

Section 4.26. **Broker's and Finder's Fees.** No broker, finder, or Person is entitled to any commission or finder's fee by reason of any agreement or action of Sellers in connection with this Agreement or the transactions contemplated by this Agreement. Sellers agree to pay when due the fees and expenses of their financial and technical advisors.

Section 4.27. **Occupancy Agreements.** Schedule 4.27 contains a list of easements, licenses, use agreements and other occupancy agreements for real property granted by third parties to Seller that are used or expected to be used in the operation of the System (the "Scheduled Occupancy Agreements"). Sellers have made available true and complete copies of all Scheduled Occupancy Agreements to Purchaser. To Seller's Knowledge, Sellers are not in breach of or in default under the Scheduled Occupancy Agreements and no party to any Scheduled Occupancy Agreements have given Seller's written notice of or made a claim with respect to any breach or default thereunder, nor are Sellers aware of any condition that currently exists or with the passage of time will result in a default or breach by any party to a Scheduled Occupancy Agreement. The Parties acknowledge that Seller may own other easements, licenses, use agreements, and other occupancy agreements for real property that are used or expected to be used in the operation or future expansion of the System other than those listed in Schedule 4.27 (the "Unscheduled Occupancy Agreements"). The terms Scheduled Occupancy Agreements and
Unscheduled Occupancy Agreements shall collectively be referred to as "Occupancy Agreements".

Section 4.28. **All Material Information.** To the Knowledge of Sellers, neither of the Sellers has withheld from Purchaser any material facts relating to the System, the Acquired Assets, the operations of the Sellers or the financial or other condition of the Sellers. To the Knowledge of Sellers, no representation or warranty made herein by the Sellers and no statement contained in any certificate or other instrument furnished or to be furnished to Purchaser by the Sellers in connection with the transactions contemplated by this Agreement contains or will contain an untrue statement of a material fact or omits or will omit to state any material fact necessary in order to make any representation, warranty, or other statement of the Sellers not misleading.

ARTICLE V.

REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser and Citizens make only the representations and warranties which are set forth in this Article V. Any disclosure set forth on any particular schedule of the Disclosure Schedules shall be deemed disclosure in reference to all schedules comprising the Disclosure Schedules to which such disclosure is clearly applicable based solely upon such disclosure.

As a material inducement to the Sellers to enter into this Agreement and to consummate the transactions contemplated hereby, Purchaser and Citizens, jointly and severally, hereby represent and warrant to the Sellers as follows:

Section 5.01. **Entity Organization.** As of the Closing Date, Purchaser shall be a not-for-profit entity created under the Indiana Nonprofit Corporations Act of 1991, as amended, Indiana Code 23-17, et. seq., in compliance with the Interlocal Agreement. As of the Closing Date, Purchaser will have all requisite power and authority to own, lease and operate the Acquired Assets and the System as operated on the Effective Date and to perform its obligations hereunder.

Section 5.02. **Authorization and Validity of Agreement.** Each of Purchaser and Citizens has all requisite power and authority to execute and deliver this Agreement and all Related Agreements. The execution and delivery of this Agreement and the Related Agreements and the performance of the obligations of Purchaser and Citizens hereunder and the consummation by Purchaser of the transactions contemplated by this Agreement and the Related Agreements have been duly and validly authorized by all necessary action of Purchaser's Board of Directors and the Citizens Board, and no other proceeding on the part of Purchaser are necessary to authorize the execution, delivery and performance of this Agreement. This Agreement has been duly executed and delivered by Purchaser and Citizens and constitutes a legal, valid and binding obligation of Purchaser and Citizens, enforceable against Purchaser and Citizens in accordance with its terms and conditions, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency, reorganization or other laws affecting the enforcement of creditors' rights generally.
Section 5.03. **No Conflict or Violation.** The execution, delivery and performance of this Agreement by Purchaser upon satisfaction of the conditions set forth herein do not and shall not: (a) violate or conflict with any provision of any governing document of Purchaser, (b) violate any provision of Law, or any order, judgment or decree of any court or other Governmental Authority, or (c) violate or result in a breach of, or constitute (with due notice or lapse of time or both) a default under any contract, lease, loan agreement, mortgage, security agreement, trust indenture or other agreement or instrument to which Purchaser is a party or by which it is bound or to which any of its properties or assets is subject; in each case where such violation, breach, default or resulting Lien or restriction could reasonably be expected to have a Material Adverse Effect.

Section 5.04. **Approvals and Consents.** Except as set forth on Schedule 5.04, the execution, delivery and performance of this Agreement by Purchaser and Citizens and the consummation by Purchaser and Citizens of the transactions contemplated hereby will not require any notice to, or consent, authorization or approval from any Person or Governmental Authority or any third party. Except as set forth in Schedule 5.04, any and all notices, consents, authorizations and approvals set forth in Schedule 5.04 have been or prior to the Closing will be made and obtained.

Section 5.05. **Broker's and Finder's Fees.** Except as set forth on Schedule 5.05, no broker, finder or other Person is entitled to any commission or finder's fee in connection with this Agreement or the transactions contemplated by this Agreement. Purchaser and Citizens agree to pay when due the fees and expenses of their financial and technical advisors listed on Schedule 5.05.

Section 5.06. **Financial Ability.** Upon satisfaction of the conditions to Closing, absent facts or circumstances that would constitute a breach of a representation or warranty of either Seller, and after giving effect to the consummation of the transactions contemplated hereby and the incurrence of any indebtedness in connection therewith, Purchaser will have the financial ability and will have sufficient working capital for its needs and anticipated needs to operate the System as a utility system regulated by the IRC.

Section 5.07. **Financing.** Upon satisfaction of the conditions to Closing, absent facts or circumstances that would constitute a breach of a representation or warranty of either Seller, at the Closing, Purchaser will have sufficient funds available to consummate the transaction contemplated by this Agreement and to pay the Purchase Price in accordance with Section 3.02 and expenses related to the transactions contemplated by this Agreement and to generally provide working capital for the operations of the System following the Closing assuring that the residents of the City will receive adequate and reliable wastewater service.

Section 5.08. **Independent Decision.** Except as expressly set forth in this Agreement, the Disclosure Schedules or any of the Related Agreements, Purchaser acknowledges that (a) neither Sellers nor any other Person has made any representation or warranty, express or implied, as to the accuracy or completeness of the System or information provided to Purchaser, and (b) neither Sellers nor any other Person shall have or be subject to any liability to Purchaser, Citizens or any other Person resulting from the distribution to Purchaser or Citizens, or Purchaser or Citizens' use of, any information regarding the System or Acquired Assets that has been furnished or made available to Purchaser, Citizens and their
Section 5.09. Disclosure Schedule Matters. Purchaser acknowledges that: (a) the inclusion of any matter on any Disclosure Schedule shall not necessarily be deemed an admission by Sellers that such listed matter is material or that such listed matter has or could have a Material Adverse Effect or constitutes a material liability with respect to the Acquired Assets; (b) matters reflected in the Disclosure Schedules are not necessarily limited to matters required by this Agreement to be reflected in such Disclosure Schedules; and (c) such additional matters are set forth for informational purposes only and do not necessarily include other matters of a similar nature.

Section 5.10. WARN ACT. Purchaser has no present plans or intention to carry out, as part of the transaction, any "plant closing" or "mass layoff" (each as defined in the WARN Act) affecting any site of employment or facility of the System.

ENVIRONMENTAL MATTERS

Section 6.01. Environmental Study. Until the Closing Date, Purchaser shall have the right to conduct, or the right to cause an environmental consultant or consultants to conduct an environmental review of the Real Property and/or the Leased Real Property, Acquired Assets and the System and complete one or more Environmental Studies. Sellers shall cooperate with any reasonable request and provide access to the Acquired Assets and the System as may be reasonably necessary for Purchaser to receive a report, or series of reports, it reasonably finds to be sufficiently complete for purposes of this Section 6.01 (collectively, the "Environmental Reports").

(b) As soon as practicable upon receipt of the Environmental Reports, Purchaser shall provide Sellers the Environmental Reports and notice of any unsatisfactory Environmental Conditions ("Unsatisfactory Environmental Conditions") disclosed in the Environmental Reports. Sellers shall cooperate with Purchaser to allow Purchaser to remediate any such Environmental Conditions. The proposed remediation shall be necessary to cause the Unsatisfactory Environmental Condition to achieve compliance with Environmental Requirements and to the extent applicable, meet the Commercial/Industrial Closure Levels contained in the Risk Integrated System for Closure ("Industrial RISC") developed by IDEM; and in either case, to the extent necessary to avoid current civil or criminal liability. If Purchaser has determined that the costs of remediating any Unsatisfactory Environmental Conditions are excessive, as determined in Purchaser's reasonable discretion, Purchaser shall have no obligation to close, and shall provide Sellers with thirty (30) days prior written notice of its decision not to close.

Section 6.02. Environmental Insurance. If Purchaser obtains insurance to insure against Environmental Expenses related to the System incurred by Purchaser (the "Environmental Insurance Policy"), the Closing Amount shall be reduced by an amount up to Five Hundred Thousand Dollars ($500,000) to cover the premiums of such insurance. The sole remedy of Purchaser as against Sellers for any Environmental Expenses covered by the Environmental Insurance Policy shall be the proceeds of such Environmental Insurance Policy.
Notwithstanding the foregoing, Purchaser reserves all rights to contribution or damages as to all persons and entities other than the Sellers, and, to the extent allowable under applicable Laws, each Seller hereby assigns and transfers to Purchaser any rights to contribution or damages either of them may have against any third party with respect to any Environmental Expenses.

ARTICLE VII.

TITLE TO REAL ESTATE; UCC STATEMENTS

Section 7.01. Classification of Real Property and Leased Real Property: Evidence of Title.

(a) Classification of Real Property. The real property and Leased Real Property described in Schedule 7.01(a)(i) shall be defined as "Priority One Property." The real property and Leased Real Property described in Schedule 7.01(a)(ii) shall be defined as "Priority Two Property." The real property and Leased Real Property described in Schedule 7.01(a)(iii) shall be defined as "Priority Three Property." All other real property that is used in the operation of the System not described in Schedules 7.01(a)(i) through (iii), including, but not limited to all of Sellers' rights, title and interest in and to those items listed in Schedule 7.01(a)(iv) and all underground pipes, interceptors, transport related improvements and CSO outflows that are located in public right-of-way or private easements that are considered fixtures or real property, shall be defined as "Priority Four Property."

(b) Evidence of Title — Priority One and Priority Two Property. With respect to all Priority One and Priority Two Property, Sellers shall obtain and deliver to Purchaser within ninety (90) days after the Effective Date (with the understanding that Sellers shall use good faith efforts to obtain the same as soon as reasonably practicable) a commitment for an owner's policy of title insurance on ALTA Owner's Form 2006 (the "Title Commitment"), issued by Chicago Title Insurance Company (the "Title Company"), having an effective date after the Effective Date, and containing such endorsements as Purchaser requests, to the extent available, from the Title Company. The Title Company shall agree to insure, in Purchaser, good, merchantable and marketable title to the fee simple estate in the Priority One Property and Priority Two Property for the portion of the Purchase Price allocated to the Priority One Property and Priority Two Property, as applicable. The final title policy or policies for Priority One Property shall be issued without the standard general exceptions for: (i) rights or claims of parties in possession not shown by the public records, (ii) easements, or claims of easements, not shown by the public records, (iii) encroachments, overlaps, boundary line disputes or other matters which would be disclosed by an accurate survey and (iv) any lien, or right to a lien, for services, labor or material theretofore or thereafter furnished, imposed by law and not shown by the public records. The final title policy or policies for Priority Two Property shall be issued without the same standard general exceptions for Priority One Property, except that the standard exception for encroachments, overlaps, boundary line disputes or other matters which would disclosed by an accurate survey shall not be deleted for Priority Two Property where an Existing Survey does not exist.

(c) Evidence of Title — Priority Three Property. With respect to Priority Three Property, Sellers shall obtain, to the extent practicable, and deliver to Purchaser within ninety (90) days after the Effective Date a title report evidencing the record owner of the fee simple
estate of the Real Property and Leased Real Property issued by the Title Company (the "Title Report").

(d) **Evidence of Title – Priority Four Property.** Seller shall have no obligation to provide title evidence with respect to Priority Four Property.

**Section 7.02. Survey and Other Evidence of Boundary.**

(a) **Priority One Property.** Within sixty (60) days after the Effective Date, Seller shall obtain and deliver to Purchaser a staked survey of the Priority One Property made in accordance with the "Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys," jointly established and adopted by the American Land Title Association and the American Congress on Surveying and Mapping in 1999, and including Items 1, 2, 3, 4, 6, 7(a), 8, 10, 11(b), 13 of Table A thereof (collectively, the "Survey"). The Survey shall be sufficient to permit the Title Company to delete the standard survey exceptions from the title policy as provided in Section 7.01. The parties shall share equally all costs in obtaining all Surveys. Notwithstanding anything to the contrary in this Section 7.02, Seller shall not have to comply with this Section 7.02(a) as to a specific Priority One Property if the Seller (i) delivers to Purchaser and the Title Company a survey of Priority One Property at issue that was completed before Effective Date (the "Existing Survey") and (ii) agrees to execute an affidavit regarding the accuracy of Existing Survey that is sufficient to cause the Title Company to delete the standard survey exception from the final title policy and issue an affirmative survey endorsement for the Priority One Property at issue (a "Survey Affidavit").

(b) **Priority Two Property.** With respect to Priority Two Property, Sellers shall deliver an Existing Survey and a Survey Affidavit within sixty (60) days of the Effective Date. In the event an Existing Survey does not exist, Seller shall deliver an aerial depiction from the Marion County GIS Office of the Priority Two Property at issue within sixty (60) days of the Effective Date.

(c) **Priority Three Property.** With respect to Priority Three Property, Seller shall deliver an aerial depiction from the Marion County GIS Office of each Priority Three Property within sixty (60) days of the Effective Date.

(d) **Priority Four Property.** With respect to Priority Four Property, Seller shall deliver any and all maps of that depict the location of Priority Four Property in its possession within sixty (60) days of the Effective Date.

**Section 7.03. Responsible Property Transfer Law.** If applicable, Sellers shall comply with the Indiana Responsible Property Transfer Law (Indiana Code §13-25-3 et. seq.) and provide Purchaser with all environmental disclosure documents required thereunder (the "IRPTL Disclosure") within thirty (30) days after the Effective Date.

**Section 7.04. Objections to Title.**

(a) **Objections.** Within thirty (30) days after receipt of the later of (i) the Title Commitment or Title Report (collectively, the "Title Evidence") and (ii) the Survey, the Existing Survey or GIS aerial depiction (collectively, the "Boundary Evidence"), whichever is applicable
to the Real Property at issue, Purchaser shall give Sellers written notice of any of the following shown in or disclosed by the Title Evidence and Boundary Evidence: (1) matters that are unsatisfactory to Purchaser ("Unsatisfactory Exceptions") and (2) any Seller requirements shown in the "Requirements" section of the Title Commitment which must be satisfied by Seller before the Title Company will issue a final title policy for the Priority One Property and the Priority Two Property at issue (the "Commitment Preconditions"). Sellers shall have the obligation, at their sole cost, to satisfy all Commitment Preconditions prior to Closing.

(b) Sellers' Obligation to Cure. With respect to Priority One and Priority Two Property, Sellers shall have the obligation, at their sole cost, to cure prior to the Closing Date or make arrangements to cure after the Closing Date all Unsatisfactory Exceptions that can be cured without paying money to third parties, are Liens or will materially restrict or prevent the use of the Priority One Property or Priority Two Property at issue in the operation of the System. With respect to Priority Three Property, Sellers shall have the obligation, at their sole cost, to cure prior to the Closing Date or make arrangements to cure after the Closing Date any Unsatisfactory Exceptions that indicate Sellers do not own or have the right to transfer rights in and to the Priority Three Property at issue. Nothing in this Section 7.04 shall be deemed to restrict or modify the Parties' respective obligations after the Closing Date in Section 2.05 with respect to Real Property, Leased Real Property or Occupancy Agreements. Any amount Sellers expend to cure an Unsatisfactory Exception, shall be subject to the Liability Cap (but not the Threshold Amount) and shall reduce the amount of the Cash Escrow Amount. Any matter disclosed by the Title Evidence or Boundary Evidence to which Purchaser fails to timely object or with respect to which Sellers have no obligation to cure pursuant to this Section 7.04(b) shall be deemed a "Permitted Real Property Encumbrance."

(c) Insurable Claims. To the extent any Claim for Damages under Article IX constitutes an Insurable Claim (as defined herein), Purchaser agrees to assert and pursue with reasonable diligence such Insurable Claim against the Title Company (which shall include commencing litigation and diligently prosecuting such Insurable Claim to judgment) prior to pursuing a Claim for Damages under Article IX. If at any time following a non-favorable judgment that substantially denies the relief sought by Purchaser from the Title Company in connection with the Insurable Claim (each a "Non-Favorable Judgment"), Purchaser shall be permitted, following such Non-Favorable Judgment, to pursue Sellers with a Claim for Damages under Article IX (any such Claim against Sellers following an attempted Insurable Claim against the Title Company being a "Residual Title Claim"). Notwithstanding anything to the contrary in Article IX, Purchaser shall have the right to assert a Claim for Damages based upon a Residual Title Claim for a sixty (60) day period after the Non-Favorable Judgment. For purposes of this Section 7.04(c), an "Insurable Claim" shall mean a Claim which: (i) arises out of Purchaser's discovery of a title defect or encumbrance with respect to any of the Real Property following the Closing that materially restricts or prevents the use of such Real Property at issue in the operation of the System; and (ii) constitutes a colorable claim against the Title Company under Purchaser's final title policies contemplated by Section 7.01(b) hereof.

Section 7.05. Title Expenses. Whether or not the transaction described by this Agreement is consummated, all costs and expenses of obtaining the Title Commitment, Title Report and the title policy or policies shall be paid by Sellers. All costs and expenses for title work for any lender or trustee policy, special coverages and/or endorsements to the Title
Commitment and final title policy shall be paid by Purchaser. Sellers and Purchaser shall each pay one-half of the cost of the Survey.

**Section 7.06. UCC Search: Releases.** Within sixty (60) days after the Effective Date, Sellers shall obtain at their expense a Uniform Commercial Code search against each Seller covering any of the personal property or fixtures included among the Acquired Assets from the Office of the Secretary of State of Indiana and the Recorder of Marion County, Indiana (the "UCC Search"). On or prior to the Closing, Sellers shall at their expense obtain releases of any and all security interests in any of the Acquired Assets which are not Permitted Liens on or prior to the Closing. The form of the releases of such security interests shall be provided to Purchaser on or prior to the Closing Date.

**Section 7.07. Post-Closing Access Rights.** If at any time before, on or after the Closing, the Sellers or Purchaser determine that as a result of the transfer of the Acquired Assets that (i) they or their Affiliates are, or will likely be, unable to access any property in the same manner as before the Closing and (ii) access to such property is necessary for either Party to properly and effectively operate any other assets owned, licensed or leased by such Party or any of their Affiliates, then the Parties hereby agree to grant to the requesting party or their respective Affiliates, as applicable, a right of entry and access so that the requesting Party can access the property at issue; provided that such entry and access rights shall not materially interfere with the current use or contemplated use of the granting Party's property (collectively, the "Access Rights"). As soon as reasonably practicable after the request for Access Rights, the granting party shall deliver to the requesting party a legal document granting Access Rights in form and substance reasonably acceptable to Sellers and Purchaser and in recordable form. A grant of Access Rights shall be free of charge to the requesting party and each Party shall bear their own costs incurred with respect to memorializing the Access Rights as contemplated in this Section 7.07. The obligations and rights of the Parties under this Section 7.07 shall survive the Closing.

**Section 7.08. Occupancy Agreements.** Sellers shall use their best efforts to obtain any required consents or satisfy any preconditions necessary to transfer the Scheduled Occupancy Agreements prior to the Closing Date. If after the Closing Date, Purchaser determines that a third party consent or precondition must be satisfied in order to transfer an Unscheduled Occupancy Agreement, Sellers shall obtain such third party consent or satisfy such precondition and execute any documents necessary to effectuate such transfer pursuant to Sellers' obligations in Section 2.05.

**Section 7.09. Unscheduled Real Property.** The Parties acknowledge that Seller may own interests in or have the legal right to use or occupy Real Property or other real property pursuant to Real Property Leases that are necessary or essential to the operation of the System and that are not specifically identified in Schedules 7.01(a)(i) through (iv) (collectively, the "Unscheduled Real Property"). In the event the Parties discover prior to or after the Closing Date, one or more parcels of Unscheduled Real Property, the discovering party shall give written notice of such discovery to the non-discovering party. In addition to their obligations in Section 2.05, Sellers shall have the obligation to convey, assign or otherwise transfer any rights to each parcel of Unscheduled Real Property in such a manner as to provide Purchaser with reasonable assurances that it shall have the right to use or occupy the Unscheduled Real Property
at issue as it was used by Sellers as of the Effective Date. Any sums that Sellers pay to third
parties to satisfy its obligations under this Section 7.09 shall be subject to the limitations
described in Section 9.05. The obligations and rights of the Parties under this Section 7.09 shall
survive the Closing.

Section 7.10. **Belmont Treatment Plant Access Agreement.** In addition to the
rights retained pursuant to Section 7.07, at Closing, Sellers and Purchaser shall execute an
easement agreement in recordable form and otherwise reasonably acceptable to Sellers and
Purchaser, which provides (i) Sellers with access to the roads located at the Belmont Wastewater
Treatment Plant for purposes of using and maintaining assets retained by Sellers and (ii) fair and
proportionate maintenance obligations with regard to such roads (the "Belmont Road
Easement"). With respect to the private roads at Belmont Wastewater Treatment Plant that are
identified on Schedule 2.02(e) ("City Roads"), Sellers and Purchaser shall execute at closing an
easement agreement in recordable form and otherwise acceptable to Sellers and Purchaser which
provides Purchaser with access to the City Roads.

Section 7.11. **Public Access to Real Property.** To the extent the Sellers have
granted, permitted or allowed the public access to any of the Real Property prior to March 9,
2010, Purchaser shall continue to permit or allow similar public access to the applicable Real
Property after the Closing; provided that Purchaser shall have the right to modify, restrict or deny
such public access rights if Purchaser, in its reasonable discretion, determines that doing so is
necessary for the prudent operation, safety or security of the System.

**ARTICLE VIII.**

**OTHER AGREEMENTS**

Section 8.01. **Taxes.** The Sellers shall pay any and all Taxes, if any, arising out of
the ownership of the Acquired Assets and out of the operation of the System before the Closing.
Any special assessments on the Real Property incurred prior to the Closing Date, whether or not
currently due and payable, shall be paid by the Sellers in accordance with their terms.

Section 8.02. **Cooperation on Tax Matters.** The Sellers shall furnish or cause to be
furnished to Purchaser, as promptly as practicable, whether before or after the Closing Date, such
information and assistance relating to the System as is reasonably necessary for the preparation
and filing by Purchaser of any filings relating to any Tax matters.

Section 8.03. **Files and Records.** After the Closing Date, upon reasonable notice
and during normal business hours, Sellers shall provide access to Purchaser and its attorneys,
accountants and other representatives, at Purchaser's expense, to Files and Records that remain in
Sellers' possession as Purchaser may reasonably deem necessary to properly prepare for, file,
prove, answer, prosecute, and/or defend any such return, filing, audit, protest, claim, suit, inquiry
or other proceeding. To the extent of Sellers' rights to do so, Sellers shall cause the Contractors
to make Contractors' Files and Records available on the same basis and for the same reasons.

Section 8.04. **Management Agreements.** Purchaser, Citizens and Sellers shall
negotiate for the assignment, amendment or termination of, and full release of all liabilities and
obligations of the Sellers under, the United Agreement and Veolia Agreement. To the extent
consistent with the goals of Purchaser and Citizens as expressed in their memoranda of understanding with each of Veolia and United Water, to maximize synergies and to optimize the System. Purchaser, Citizens and Sellers shall use commercially reasonable efforts to mitigate any liabilities, obligations or damages associated with such assignment, amendment or termination, and release. If, despite such commercially reasonable efforts, any Party incurs liabilities, obligations or damages associated with such assignment, amendment or termination, any liabilities, obligations or damages resulting from the assignment, amendment or termination of the United Agreement and Veolia Agreement shall be funded solely from the Cash Escrow Amount pursuant to the Cash Escrow Agreement. The terms of any assignment, amendment or termination of the United Agreement and Veolia Agreement shall be at the sole discretion of Purchaser. Sellers agree to cooperate in connection with any such assignment, amendment, or termination and release, including without limitation providing cross-releases; provided, however, neither Seller will be obligated to release United Water or Veolia from their respective obligations to indemnify the Sellers as provided in the United Agreement or Veolia Agreement, as applicable. To the extent the City's obligations, liabilities or damages associated with the assignment, amendment or termination of the United Agreement exceed the Cash Escrow Amount, Purchaser shall indemnify and hold Sellers harmless for the amount exceeding the balance of the Cash Escrow Amount.

Section 8.05. Employee Matters.

(a) Schedule 8.05(a) lists by division all of the Sellers' active and inactive salaried and hourly Personnel as of the Effective Date. With respect to inactive Personnel of the Sellers, the Sellers will provide to Purchaser the reasons such employees are not currently actively employed (e.g., short-term disability, Family Medical Leave Act, etc.), which information the Parties shall treat as confidential and nonpublic given the privacy issues associated with the employee information contained therein. As soon as practical after the Effective Date, Purchaser and Sellers shall supplement this confidential information with the name, job title, job classification, unused vacation, current base salary or hourly wage, date of hire and assigned location of each Personnel. At the Closing, Sellers shall provide to Purchaser an updated confidential list, which shall disclose all the information required under the preceding sentence as of the most recent practicable date prior to Closing.

(b) The Parties agree to work together to address the transition of Personnel to ensure the Personnel either have an opportunity to be employed by Purchaser or remain employed by the City. Purchaser agrees, subject to applicable Law, to offer employment to thirty-four (34) of the System's full-time equivalent (FTE) Personnel; the remaining Personnel shall continue to be employed by the Sellers. Such Personnel who accept employment with Purchaser are herein referred to as the "Hired Personnel" and their employment with Sellers shall end on the Closing Date. Hired Personnel shall be employees-at-will of Purchaser. Purchaser shall provide each Hired Personnel compensation and benefits which are substantially comparable to the compensation and benefits then provided to similarly situated employees of Purchaser.

(c) With respect to Contractor Personnel who, immediately prior to the Closing Date, are employed by United Water and represented by the American Federation of State, County & Municipal Employees Indiana Council 62 and Local 725, AFL-CIO ("AFSCME"), Purchaser agrees that such Contractor Personnel will not lose employment as a result of the Closing.
of employment resulting from attrition or termination for cause shall not constitute loss of employment as a result of the Closing. Loss of employment due to attrition shall include without limitation resignation, retirement, death and disability, but shall not include layoff due to outsourcing or subcontracting. If, as a result of the Closing, any Contractor Personnel who, immediately prior to the Closing Date, is employed by United Water and represented by AFSCME, becomes employed by Purchaser due to elimination or removal of said individual's bargaining unit position, Purchaser will endeavor, subject to applicable law, to provide to said individual compensation and benefits then provided to similarly situated employees of Purchaser.

(d) No later than the Closing Date, Sellers shall transfer all records pertaining to the employment of Sellers' Personnel to Purchaser including, but not limited to, all personnel and human resources Files and Records.

(e) Sellers shall be responsible for providing all appropriate notices to their Personnel in connection with the transactions contemplated by this Agreement, including, but not limited to, any notice required under the WARN Act and COBRA prior to the Closing Date.

(f) Nothing contained in this Agreement shall confer upon any Personnel of Sellers any rights or remedies of any nature or kind whatsoever under or by reason of the transactions contemplated by this Agreement, or restrict Purchaser in the exercise of its independent business judgment in establishing or modifying any of the terms or conditions of the employment of its Personnel.

(g) Notwithstanding anything in this Agreement to the contrary, it is expressly understood that Purchaser shall not acquire any asset, or assume any liability or obligation in connection with the transactions contemplated by this Agreement relating to any of Sellers' Plans, Sellers' Benefit Obligations or any plan or benefit described in the schedules referenced in Section 4.14 or Section 4.15 of this Agreement. Sellers shall be solely responsible for any liability, claim or expense arising from or relating to the Sellers' Plans or Sellers' Benefit Obligations either prior to, on, or after Closing including, without limitation, any post-retirement benefit obligations or plans.

(h) Except as provided in Section 8.05(b), nothing in this Agreement shall require Purchaser or Citizens to provide any particular form or type of employee benefit programs, plans, or policies to any Hired Personnel as a result of the transactions contemplated by this Agreement.

Section 8.06. System Service to the Sellers; Payments to the Sellers.
Notwithstanding anything in this Agreement or under any applicable Law to the contrary, including without limitation, Indiana Code 8-1-11.1, after the Closing, (a) Sellers and their Affiliates shall purchase or receive services of the System in the same manner and at the same cost as Sellers and their Affiliates received such services prior to the Closing and (b) except as otherwise provided in this Agreement, Purchaser and Citizens shall be required to make payments to the Sellers and their Affiliates for System-related fees, licenses, permits, assessments and other similar charges, only to the extent that the Sellers and their Affiliates have received such payments due to the operation of the System prior to the Closing.
Section 8.07. Public Charitable Trust Status. The Parties agree that Purchaser will hold and operate the System for the exclusive and perpetual benefit of the inhabitants of the City in furtherance of a public charitable trust the purposes of which are: (a) to provide reasonable wastewater services at reasonable cost, with such reasonableness in each case, to be determined by the IURC, to the inhabitants of the City, as beneficiaries of the trust, in substantially the same manner as the public charitable trust providing gas, steam and chilled water services currently held and operated by Citizens Energy Group and (b) to protect the City and its inhabitants against further sale or disposition of the System or Acquired Assets, and forever from private ownership, control or partisan political governance; and further coordinate with other utility properties that may be held, owned and/or operated by the Citizens Board or its Affiliates for the achievement of synergies. The System shall be operated in the same manner as the existing public charitable trust and any financial benefits shall be retained or utilized exclusively for the beneficiaries of the trust. Except for the operation, maintenance or improvement of the System or to satisfy Purchaser's obligations hereunder to the Sellers, Purchaser shall not seek rates and charges pursuant to Indiana Code 8-1.5-3-8(e) or any successor thereto. For the avoidance of doubt, the Parties agree that the System shall be subject at all times to the provisions of Indiana Code 8-1-11.1 and all other Indiana Code sections, including but not limited to:

(i) Indiana Code 8-1-11.1-14, requiring that Purchaser provide a quarterly accounting and reporting to the City controller;

(ii) Indiana Code 8-1-11.1-16, requiring that Purchaser furnish an annual budget to the City's controller;

(iii) Indiana Code 8-1-11.1-17, providing that Purchaser and the System shall be subject to examination, audit and supervision by the state board of accounts to the same extent as the books, accounts, records and transactions of other municipal governments or officers or departments of municipal governments are subject thereto;

(iv) Indiana Code 5-11-13-1, requiring Purchaser to file an annual report with the state board of accounts identifying all of the System's employees and listing their compensation; and


Notwithstanding this Section 8.07 or Section 8.08, Purchaser may sell, lease, or otherwise dispose of property that is no longer necessary for the operation of the System and therefore to fulfill the purposes of the public charitable trust ("Surplus Property"); provided that the proceeds from sale of Surplus Property shall be utilized for the benefit of the trust beneficiaries. Purchaser agrees that during the two year term of the survival of representations and warranties, it will not sell, lease or otherwise dispose any material property determined to be Surplus Property.

Section 8.08. Restrictions on Sale or Lease of System; Right of First Refusal; IURC Regulation. Purchaser and Citizens hereby acknowledge and agree that:
(a) The System will never be transferred to, or owned by, a for-profit entity or for the benefit and profit of private investors or shareholders.

(b) The terms of the public charitable trust referenced in Section 8.07 restrict ownership and operation of the System such that none of the Acquired Assets, except for Surplus Property, can be sold, leased or disposed.

(c) The System will be subject to IURC jurisdiction and neither Purchaser nor Citizens shall withdraw or attempt to withdraw the System from IURC regulation over rates and charges and terms and conditions of service.

(d) Among the purposes of the public charitable trust in which the System and Acquired Assets shall be held as provided in Section 8.07, is the protection of the City and its inhabitants against further sale or disposition of the System, and forever from private ownership, control or partisan political governance; nevertheless, the City has requested a right of first refusal to purchase the System and all or substantially all of the Acquired Assets if Purchaser for any reason, was ever able to, and elected to, sell or dispose of the same. Because Purchaser and Citizens believes such a sale or disposition outside of the public charitable trust would be prohibited anyway absent a determination that fulfillment of the trust purposes is impossible or impracticable, Purchaser and Citizens agree that in the event of any such sale or disposition the City shall have a right of first refusal to purchase the System at its then fair market value, which shall include provisions for the assumption or the full payment of any outstanding bond financings or other interest bearing obligations.

Section 8.09. Future Rates. Purchaser and Citizens hereby agree that rates charged to the ratepayers of the System shall increase no more than 10.75% annually through 2013 (i.e., the rate structure set forth in the Revised Code of Consolidated City and County Section 671-102), subject to any need for emergency rate relief under Indiana Code 8-1-2-113 or necessary increases in rates to avoid a default under coverage or other covenants of Purchaser or Citizens set forth in any applicable bond indenture and Purchaser shall request any future rates as necessary, in compliance with Section 8.15.

Section 8.10. Use of and Repair of Public Rights of Way. In using public rights of way in the operation and maintenance of the System, Purchaser agrees to comply with all applicable Laws of the City of such rights of way. In the event that Purchaser in operating, maintaining, and extending the System installs or repairs facilities in public rights of way, including but not limited to roads or sidewalks, Purchaser will comply with all applicable Laws of the City with respect to restoration of such rights of way, including but not limited to roads and sidewalks, at Purchaser's cost (subject to any reimbursement provided or allowed by federal, state or local Laws).

Section 8.11. MBE/WBE/VBE Opportunities. To the extent consistent with applicable Law, Purchaser will establish policies and procedures designed to provide minority business enterprises ("MBEs"), women-owned business enterprises ("WBEs"), veteran-owned business enterprises ("VBEs") and local firms the maximum practicable opportunity to compete for work related to the System. To the extent consistent with applicable Law, Purchaser will establish annual goals for MBE, WBE and VBE utilization of the purchases/contracts available for placement on an annual basis with respect to the System. The minimum annual goal shall be
MBE (15%), WBE (8%) and VBE (3%) of addressable spend. Such goal shall be calculated utilizing a method substantially similar to that used with regard to Citizen Energy Group's gas, steam and chilled water utilities. Purchaser shall recognize certification of at least the following: State of Indiana; City of Indianapolis; Indiana Minority Supplier Development Council; and Women's Business Enterprise National Council.

Section 8.12. **Property Tax Exemption.** Purchaser and Citizens shall take no action to have the System subjected to property tax under Indiana law and shall use their commercially reasonable best efforts to ensure the real property of the System maintains its tax exempt status for purposes of property taxes; and agree not to take any action that would reduce or attempt to reduce the PILOT Payments. In furtherance of this objective, Purchaser, Citizens and the City will cooperate to ensure that the System remains exempt from property tax.

Section 8.13. **Compliance with Laws Relating to Customers.** Purchaser shall comply with all applicable Laws relating to customer billing, credit and collections including, but not limited to, 170 IAC 5-1-16-(d)-1(D).

Section 8.14. **Stormwater Operations and Maintenance.** Recognizing the benefits of leveraging a single operator for the Stormwater System Assets and the System, the City and Purchaser will negotiate in good faith regarding the possible joint operation of the System and the operation and maintenance of the Stormwater System Assets in a manner that benefits both the City and Purchaser, provided that Purchaser shall not be required to subsidize the operations and maintenance of the Stormwater System Assets.

Section 8.15. **Adequate Rates.** To the extent necessary, Purchaser shall from time to time request IURC approval of rates and charges that produce sufficient revenues to pay and fulfill its indemnification obligations, the CSO Control Measures, PILOT Payments and all other Assumed Liabilities and other statutory obligations and obligations under this Agreement.

**ARTICLE IX.**

**DISPUTE RESOLUTION; INDEMNIFICATION**

Section 9.01. **Survival.** All representations and warranties contained in this Agreement shall survive for a period of two (2) years after the execution, delivery and performance of this Agreement, notwithstanding any investigation conducted at any time, except that: (a) representations and warranties made in any of Section 4.07 (Tax Matters), Section 4.14 (Employee Benefit Plans) and 4.16 (Environmental Compliance) shall survive until the expiration of the statutory period of limitations applicable to the subject matter addressed in each section and (b) representations and warranties made in Section 4.02 (Authorization and Validity of Agreement), Section 5.02 (Authorization and Validity of Agreement) and Section 4.22 (Title to Acquired Assets) will not expire.

Section 9.02. **Dispute Resolution.**

(a) Any and all disputes relating in any way to the creation, interpretation, operation, performance, breach or enforcement of this Agreement, including but not limited to any challenge to the validity or legality of this Agreement under any state or federal law, (the
"Dispute") that cannot be resolved in the ordinary course of business shall be resolved exclusively pursuant to this dispute resolution process. Time is of the essence with respect to resolving any Dispute under this Agreement.

(b) The Parties hereby agree that certain Disputes which arise after Closing which would have a financial impact to any Party of less than One Million Dollars ($1,000,000) will be referred to an independent panel with expertise in the subject area of the applicable Dispute (for example, financial, real estate) (each, a "Standing Panel"). Each Standing Panel shall have final, binding, non-appealable authority to resolve any dispute referred to it, and each of the Parties hereby agrees to be bound by the decisions of each Standing Panel. Prior to the Closing, the Parties will agree to the subject matter which will be referred to the Standing Panels, the composition of each Standing Panel and the scope of each Standing Panel's authority. In the event the Parties are unable to agree on the identity of a Standing Panel, Sellers shall select one (1) member of such Standing Panel, Purchaser shall select one (1) member of such Standing Panel, and those two (2) individuals will select a third (3rd) member of such Standing Panel. The Parties hereby agree to the Standing Panels set forth in Schedule 9.02(b). In the event the Parties are unable to agree on the subject matter to be referred to a Standing Panel or the Standing Panels, or the authority of a Standing Panel or the Standing Panels, such disagreement shall be a Dispute not subject to this Section 9.02(b) and shall be subject to the other provisions described in this Section 9.02.

(c) Except as provided in this Section, and as a prerequisite before any proceeding regarding a Dispute is initiated in a court or in an arbitration, the following mandatory dispute resolution process shall be followed:

(i) Service of Notices. All notices required or allowed under this Section shall be served as provided for in Section 16.07 of this Agreement with copies as provided for in Section 16.07.

(ii) First Notice of Claim. Any Dispute shall first be set forth in writing in a "First Notice of Claim" which shall state the exact nature of the claims, the applicable dates relative to the dispute, the precise amount of any dollar amount at issue, the identification of any specific applicable documents that are alleged to govern the dispute, the names of any individuals involved in the Dispute, the identification of any relevant third parties to the Dispute, any other information that will help facilitate the prompt resolution of the Dispute, and a proposed resolution (the "Proposed Resolution").

(iii) Response. Within seven (7) calendar days of receipt of any First Notice of Claim, the Party receiving the First Notice of Claim shall respond in writing to the First Notice of Claim either with an Acceptance of the Proposed Resolution or with a response (the "Response") which shall include any additional information not included in the First Notice of Claim that will facilitate the prompt resolution of the Dispute and a counterproposal (the "Counterproposal").

(iv) Face-to-Face Meeting. If a Counterproposal is provided, the Party serving the Counterproposal shall arrange for a face-to-face meeting (the "Face-to-Face Meeting") to be held within ten (10) calendar days of the service of the Counterproposal. Each Party shall send to the Face-to-Face Meeting a person with authority to negotiate
and resolve the dispute, subject to any board approval that is otherwise required. The Parties shall negotiate in good faith to resolve such Dispute promptly by negotiation. All negotiations pursuant to this Section 9.02(c) shall be deemed confidential and, with respect to claims involving litigation or anticipated litigation with third parties, shall be treated as compromise and settlement negotiations pursuant to the Federal Rules of Civil Procedure or other applicable rules of civil procedure.

(v) **Top Executive Negotiation.** If the Parties are unable to resolve a dispute at the Face-to-Face Meeting, the Dispute shall be referred to and resolved by the CEO, President or another top executive of Purchaser, and the Mayor or Deputy Mayor of the City, (the "Designated Parties"), depending on the nature of the Dispute (the "Top Executive Negotiation"). The First Notice of Claim, Response and all information relevant to the Dispute shall be provide to the Designated Parties which shall meet and confer within ten (10) Business Days in a final effort to resolve the Dispute.

(vi) **Independent Mediator.** The Parties may choose to engage an independent mediator to assist in the negotiations of the Face-to-Face Meeting or the Top Executive Negotiation, and the Parties may adjourn any meeting, as necessary, to facilitate any resolution. Any resolution shall be immediately reduced to writing and signed and dated by the Party representative with the authority to execute the resolution and engage the mediator, if any.

(vii) **Failure to Resolve Dispute.** If the Parties are unable to resolve the Dispute through this mandatory process, then any Party may proceed immediately to binding arbitration. If any Party fails for any reason to participate in any part of the mandatory dispute resolution process, then the other Party may proceed immediately to binding arbitration or may seek an injunction in court to require the other Party to participate in the mandatory dispute resolution proceeding.

(d) The binding arbitration procedures shall be as follows:

(i) An arbitration process to decide any Dispute under this Agreement shall be initiated by providing a written demand for arbitration (the "Arbitration Demand") to the person designated to receive notice under Section 16.07 with a courtesy copy sent by hand-delivery or next day delivery with a courtesy electronic copy to the Person designated to receive a copy in Section 16.07. Any Arbitration Demand shall state specifically the nature of the claim(s), the relevant time periods, the relevant and controlling document(s), if any, the names of any relevant known witnesses associated with either of the parties, the identification of any third parties that may be relevant to the dispute, a specific dollar amount alleged to be owing, if any, and any other specific information that may be necessary to define the nature of the dispute. The Party receiving the Arbitration Demand shall provide a written response (the "Arbitration Response") within ten (10) calendar days after receiving the Arbitration Demand. The Arbitration Response may be a simple denial or may set forth in writing any counterclaims including the same type of information required in an original Arbitration Demand. If an Arbitration Response includes any counterclaims, then the Party originally demanding the arbitration may reply within ten (10) calendar days after receiving the Arbitration Response. If any Party fails to respond to any claim or
counterclaim, the Party shall be deemed to deny the demand. No claims or counterclaims may be added to the arbitration without the written approval of the arbitration panel.

(ii) Any Dispute submitted to arbitration shall be decided by a single arbitrator unless the Parties are unable to agree upon a single arbitrator, or within five (5) calendar days of the date when an Arbitration Response is served or due (if no Arbitration Response is served), any Party demands that the Dispute be decided by a panel of three (3) arbitrators. If the parties are unable to agree on a single neutral arbitrator within fifteen (15) days when an Arbitration Response is served or due (if no Arbitration Response is served), then each Party shall then have an additional ten (10) calendar days to appoint one arbitrator and the two appointed arbitrators ("Arbitrators") shall within ten (10) calendar days appoint a third, neutral arbitrator (the "Neutral Arbitrator"). The Arbitrators and the Neutral Arbitrator shall serve as a panel of three arbitrators (the "Panel") which shall jointly decide all issues. The Neutral Arbitrator shall be a lawyer who has been engaged in the practice of law for at least fifteen (15) years with experience in commercial disputes involving public utilities. The Party appointing an Arbitrator shall pay all of the fees and expenses of that Arbitrator, in each case, and the fees and expenses of the Neutral Arbitrator shall be paid in equal shares by the Parties, unless the Arbitration Award provides differently. If for any reason a Neutral Arbitrator cannot be selected by agreement, either Party may petition a court of competent jurisdiction for the appointment of a Neutral Arbitrator.

(iii) The arbitration shall be held at a neutral location in Indianapolis, Indiana as soon as possible and in any event shall commence within ninety (90) calendar days after the selection of the sole arbitrator or Neutral Arbitrator. The arbitration may be adjourned as necessary as determined by the sole arbitrator or the Panel presiding over the arbitration.

(iv) Each Party shall have the right to engage in reasonable pre-arbitration discovery in the form of requests for production of documents and depositions as allowed by the arbitration panel. Presentation of the case shall include: opening statements, testimony of necessary witnesses, stipulated or properly authenticated documents and closing statements. No documents may be submitted as evidence unless the documents have been provided to the opposing party in advance of the arbitration as allowed by the arbitrators' panel. Either Party may demand that a transcript of the hearing be prepared. If such a demand is made, then the Parties shall pay in equal shares for the cost of the transcript.

(v) The Panel shall issue a reasoned decision within thirty (30) days of the conclusion of the arbitration and the decision shall include written findings of fact and any conclusions of law. Indiana law shall be used by the Panel to decide all questions and claims that are a part of the Disputes, notwithstanding any choice of law provisions to the contrary. The Panel shall have the authority to order the losing party to pay some or all of the fees, costs, or expenses (such as expenses for expert witnesses, deposition transcripts, travel, etc.) of the arbitration proceeding to the prevailing party as part of the arbitration award (the "Arbitration Award"). The Panel shall not have the authority to award any consequential or punitive damages to any party, but may order interest at the
statutory rate. The Arbitration Award shall be final and binding on the Parties, except that either Party may, within ten (10) days of the Arbitration Award request the Panel for a reconsideration of the any issue if it appears from Arbitration Award that an Indiana law has been incorrectly interpreted or applied or it appears from the reasoned decision that any monetary award was incorrectly calculated. Otherwise, any Party may appeal an Arbitration Award only as provided in the Indiana Uniform Arbitration Act or the Federal Arbitration Act. The Arbitration Award may be enforced in any court having proper jurisdiction over the parties and the subject matter.

(e) Any Party may initiate an action in court (i) for injunctive relief if the injunctive relief is deemed necessary to preserve the status quo and to prevent irreparable harm from occurring before or during the pendency of the arbitration, or (ii) to enforce the mandatory dispute resolution provisions or the arbitration required in this Section, or (iii) to obtain the subpoena power of the court if necessary to compel witnesses at a deposition or at the arbitration, or to obtain allowed documents, (iv) to obtain assistance in the appointment of an arbitrator, or (v) to enforce any arbitration award. Any action initiated in court shall be filed and litigated (including all discovery proceedings) exclusively in a state or federal court located in Marion County, Indiana, and all objections as to personal jurisdiction and venue are waived, except an action to subpoena a witness or to obtain documents in a foreign jurisdiction may be filed in the county where the person or documents are located. The fees, costs and expenses of seeking or defending a claim for injunction or obtaining the assistance of any court in discovery or enforcement may be added to the allowed recovery in any arbitration related to the subject matter of the injunction.

Section 9.03. Indemnification by the Sellers. To the maximum extent permitted by applicable Law, the Sellers jointly and severally agree to indemnify, defend and hold harmless, and cause to be paid out of the Cash Escrow Amount to protect, Purchaser and Citizens and their successors and Affiliates and their respective employees, officers, directors, trustees and agents (the "Purchaser Indemnified Persons"), from and against any and all claims for Damages (each a "Claim") arising from or relating to: (a) any misrepresentation, breach of the representations and warranties or nonfulfillment of any of the covenants or agreements of the Sellers contained in this Agreement, in any of the Related Agreements or in any exhibit, schedule, certificate or other instrument or document furnished or to be furnished by the Sellers pursuant to this Agreement; (b) subject to Section 9.08, any Excluded Liability, other than an Excluded Liability described in subparagraph (vi) of the definition of "Excluded Liability"; (c) any investigation, civil, criminal or administrative action with respect to the Sellers' Benefit Obligations or the Sellers' Plans (including, without limitation, any claim for benefits by any Personnel); (d) any COBRA obligation of the Sellers arising from any qualifying event as defined under COBRA occurring before the Closing Date; (e) any Environmental Expenses for any Environmental Claim or Environmental Condition arising or existing prior to the Closing, to the extent not covered by the Environmental Insurance Policy; (f) Sellers' obligations under Section 7.04(c); and (g) any and all actions, suits, investigations, proceedings, demands, assessments, audits and judgments arising out of any of the foregoing.

Section 9.04. Indemnification by Purchaser. To the maximum extent permitted by applicable Law, Purchaser and Citizens (to the extent of the assets of the System in the public charitable trust for wastewater services), jointly and severally, agree to defend, indemnify and
hold harmless the Sellers and their successors and Affiliates and each of their respective employees, officers, directors and agents (the "Sellers Indemnified Persons") from and against any and all Claims arising from or relating to: (a) any misrepresentation, breach of the representations and warranties or nonfulfillment of any of the covenants or agreements of Purchaser or Citizens contained in this Agreement, in any of the Related Agreements or in any exhibit, schedule, certificate or other instrument or document furnished or to be furnished by Purchaser or Citizens pursuant to this Agreement; (b) any Assumed Liability (except to the extent the Sellers are otherwise indemnified by a Person other than Purchaser or Citizens for Damages resulting from such Claim), including any liability related to any CSO Control Measures undertaken by or under the supervision of Purchaser after Closing; (c) any obligation or liability as provided in Section 8.04; (d) subject to Section 9.09, any Excluded Liability described in subparagraph (vi) of the definition of "Excluded Liability" pursuant to which the Sellers incur Damages for which they are not indemnified by a third party or (e) any and all suits, actions, investigations, proceedings, demands, assessments, audits and judgments arising out of any of the foregoing. Any indemnification obligation of Purchaser or Citizens hereunder shall be limited by or subordinate to any debt service obligations or payments relating to the financing of the Purchase Price, including the Assumed Debt Obligations.

Section 9.05. Procedure.

(a) Promptly (and in any event within fifteen (15) days after the service of any citation or summons) after acquiring Knowledge of any Claim for which one of the Parties hereto (the "Indemnified Party") may seek indemnification against another Party (the "Indemnifying Party") pursuant to this Article IX, the Indemnified Party shall give written notice thereof to the Indemnifying Party. Failure to provide written notice shall not relieve the Indemnifying Party of its obligations under this Article IX except to the extent that the Indemnifying Party demonstrates actual damage caused by that failure. The Indemnifying Party shall have the right to assume the defense of any Claim with counsel reasonably acceptable to the Indemnified Party upon delivery of written notice to that effect to the Indemnified Party. If the Indemnifying Party, after written notice from the Indemnified Party, fails to take timely action to defend the action resulting from the Claim, the Indemnified Party shall have the right to defend the action resulting from the Claim by counsel of its own choosing, but at the cost and expense of the Indemnifying Party. The Indemnified Party shall have the right to settle or compromise any Claim against it, and, as the case may be, recover from the Indemnifying Party any amount paid in settlement or compromise thereof, if it has given written notice thereof to the Indemnifying Party and the Indemnifying Party has failed to take timely action to defend the same. The Indemnifying Party shall have the right to settle or compromise any claim against the Indemnified Party without the consent of the Indemnified Party provided that the terms of the settlement or compromise provide for the unconditional release of the Indemnified Party and require the payment of monetary damages only.

(b) Upon satisfaction of a Claim by the Indemnifying Party pursuant to this Article IX, the Indemnified Party shall deliver to the Indemnifying Party such documents as the Indemnifying Party may reasonably request assigning to the Indemnifying Party any and all rights, to the extent the Indemnified Party has been indemnified, that the Indemnified Party may have against third parties with respect to the Claim for which indemnification was received.
(c) In the event Purchaser or Citizens (or their Affiliates) is owed any amount pursuant to the indemnification obligations set forth in Section 9.03, Purchaser's, Citizens' (or their Affiliates') sole remedy shall be to recover such amount from the Cash Escrow Amount pursuant to the Cash Escrow Agreement. Other than as provided in Section 9.06, in no event shall any amount due to Purchaser, Citizens or Citizens Energy Group, in the aggregate, for Damages under this Agreement, including this Article IX, and under the Water Purchase Agreement exceed Forty Million Dollars ($40,000,000) (the "Liability Cap"). Upon termination of the Cash Escrow Agreement, Purchaser shall be entitled to a distribution of the lesser of Fifteen Million Dollars ($15,000,000) or Thirty-Seven and One-Half Percent (37.5%) of the remaining balance of the Cash Escrow Amount and Sellers shall be entitled to the remainder, as provided in the Cash Escrow Agreement.

(d) In the event any indemnification Claim involves the claim of any third party, the Indemnified Party shall cooperate (and shall cause its Affiliates to cooperate) with the Indemnifying Party in the defense of any such Claim. Without limiting the generality of the foregoing, the Indemnified Party shall furnish the Indemnifying Party with such documentary or other evidence as is then in its or any of its Affiliates' possession as may be reasonably requested by the Indemnifying Party for the purpose of defending against such Claim. Whether or not the Indemnifying Party chooses to defend or prosecute any Claim involving a third party, all the Parties shall cooperate in the defense or prosecution thereof and shall furnish such records, information and testimony, and attend such conferences, discovery proceedings, hearing, trials and appeals, as may be reasonably requested in connection therewith.

Section 9.06. Limitations on Indemnification Obligations.

(a) Other than as provided in this Section 9.06, neither Purchaser or Citizens nor Purchaser Indemnified Persons shall be entitled to indemnification pursuant to Section 9.03 (other than for an intentional breach of any agreement or covenant contained in this Agreement) unless the aggregate amount of Damages incurred by (i) Purchaser, Citizens or such Purchaser Indemnified Persons under this Agreement, or (ii) Citizens public charitable trust for water under the Water Purchase Agreement, exceeds One Million Dollars ($1,000,000) in the aggregate (the "Threshold Amount"), in which case Sellers shall then be liable for Damages in excess of the Threshold Amount.

(b) Other than as provided in this Section 9.06, neither Sellers nor the Sellers Indemnified Persons shall be entitled to indemnification pursuant to Section 9.04 (other than for an intentional breach of any agreement or covenant contained in this Agreement) unless the aggregate amount of Damages incurred by (i) Sellers and such Sellers Indemnified Persons under this Agreement or (ii) the City and the Department of Waterworks under the Water Purchase Agreement, exceeds the Threshold Amount, in which case Purchaser or Citizens shall then be liable for Damages in excess of the Threshold Amount.

(c) Other than as provided in this Section 9.06, the cumulative, combined, aggregate indemnity obligation or liability for Damages of the Sellers under this Agreement and the City and the Department of Waterworks under the Water Purchase Agreement, all combined, shall not exceed the Liability Cap.
(d) The Threshold Amount and the Liability Cap shall not apply to Sellers' obligations to indemnify (i) pursuant to Section 9.03(b) due to the failure to pay or discharge an Excluded Liability, (ii) to the extent due to an intentional breach of any agreement or covenant contained in this Agreement, (iii) for any Claim under Sections 9.03(c) or (d) or (iv) if related to a Claim for breach of a representation under Section 4.02 (Authorization and Validity of Agreement), Section 4.07 (Tax Matters), Section 4.14 (Employee Benefit Plans), Section 4.22 (Title to Acquired Assets) or Section 8.01 (Taxes). The Threshold Amount shall not apply to Sellers' obligations under Section 7.04(b) (Real Estate Cure Obligations).

(e) The rights of the Sellers set forth in this Article IX shall be the sole and exclusive remedy available to Sellers for any Claim for Damages pursued under this Agreement.

(f) The rights of Purchaser or Citizens set forth in this Article IX shall be the sole and exclusive remedy available to Purchaser or Citizens for any Claim for Damages pursued under this Agreement.

(g) For purposes of determining any breach of, and calculating the amount of Damages incurred by the Indemnified Party arising out of or resulting from any breach of, a representation, covenant or agreement by any Party hereto, the references to a "Material Adverse Effect" or materiality shall be disregarded.

Section 9.07. Knowledge of Breach. Each Party acknowledges that, if prior to the Closing such Party has Knowledge that any representation and warranty made herein by the other Party is inaccurate or untrue, or that any covenant in Article X (with respect to Sellers' pre-Closing covenants) or Article XI (with respect to Purchaser's pre-Closing covenants) to be performed by the other Party prior to the Closing has been breached, and such Party nonetheless elects to proceed with the Closing, (a) such Party shall not have the right to rely on such representation or warranty, and (b) any claim for breach of such representation, warranty or covenant shall be deemed waived.

Section 9.08. Tort Claims. Purchaser shall reimburse the Sellers for Damages related to any Tort Claims. The procedures for the Sellers' defense of such Tort Claims shall be detailed in the Transition Services Agreement.

Section 9.09. Indemnified Claims. Sellers, pursuant to subparagraph (vi) of the definition of "Excluded Liability" have agreed to retain certain indemnification rights thereunder; provided that Purchaser shall hold Sellers harmless with respect to any resulting Damages and Purchaser shall pay on behalf of the Sellers, any cost, expense, liability or Damages as a result of the assertion of any indemnification right. In furtherance of the foregoing, Purchaser shall either assume and assert such claim or, if the Sellers assert such claim, pay any Damages on an "as incurred" basis. The procedures for implementing this Section 9.09 shall be further detailed in the Transition Services Agreement.
ARTICLE X.

PRE-CLOSING COVENANTS OF THE SELLERS

Section 10.01. Operation of the System.

(a) The Sellers covenant and agree that between the Effective Date and the earlier of the Closing or the termination of this Agreement in accordance with the terms hereof, the Sellers shall conduct (and shall to the extent of its rights under the United Agreement, cause United Water to conduct) the System only in the ordinary course of business in accordance with past practices and procedures and use (and shall to the extent of its rights under the United Agreement cause United Water to use) commercially reasonable efforts to maintain the business and assets of the System, including the Acquired Assets.

(b) Prior to Closing, Sellers and Purchaser shall work together to develop a long term collection and billing system consistent with the Sellers' current billing contract and Purchaser's transition plan ("Improved Billing System Plan"). The goal of the Improved Billing System Plan is to reduce the Sellers' bad debt level prior to Closing, as well as improved collection of debts owed after Closing. The Improved Billing System Plan, among other items, will include detail regarding the collection of accounts remaining unpaid after ninety (90) days, obtaining deposits from customers with accounts remaining unpaid after sixty (60) days and will target a 2% improvement in percentage of outstanding account balances collected.

Section 10.02. Prior Purchaser Approval. Except as permitted in this Agreement or a Related Agreement, prior to Closing, the Sellers shall not (and shall to the extent of its rights under the United Agreement cause United Water to not), without the prior written consent of Purchaser:

(a) dispose of or incur material liabilities with respect to, pledge, mortgage, grant a security interest in or encumber any Acquired Assets;

(b) materially increase the base compensation of any Personnel or grant any unusual or extraordinary bonuses, benefits or other forms of direct or indirect compensation to any Personnel;

(c) enter into, amend or modify any employment or severance agreement or increase, terminate, amend or otherwise modify in any respect any plan or arrangement for the benefit of employees of the System;

(d) increase any liabilities or obligations of the System in a manner inconsistent with the written expense projections provided to Purchaser or Citizens, including without limitation any capital expenditure programs;

(e) use the Construction Funds other than in accordance with the revised capital investment plan for 2010, attached as Schedule 10.02(e) (the "CIP Plan");

(f) modify or amend the existing United Agreement;
(g) other than in the ordinary course of business consistent with past practice, increase the value of the Sanitary District's Sanitation General Fund (also known as Sanitation Liquid Waste Fund); or

(h) fail to use Sanitary District's Sanitation General Fund (also known as Sanitation Liquid Waste Fund) to pay into reserves for capital improvement, bond or construction reserves to the extent doing so would be in the ordinary course of business consistent with past practice.

Section 10.03. Due Diligence. Sellers shall cooperate (and to the extent of its rights cause United Water to cooperate) with Purchaser's due diligence procedures and shall provide Purchaser and its representatives with reasonable access to its Files and Records and any facilities or properties upon request during normal business hours.

Section 10.04. Cooperation. Sellers shall generally cooperate (and to the extent of its rights under the United Agreement, cause United Water to cooperate) with Purchaser and Citizens and their employees, attorneys, accountants and other agents and, generally, act in reasonably and good faith to timely effectuate the purposes of this Agreement and the consummation of the transactions contemplated by this Agreement.

Section 10.05. Exclusivity. In light of the Sellers' obligation to sell the Acquired Assets to Purchaser pursuant to the terms and conditions of this Agreement and except as otherwise provided in this Agreement, none of the Sellers or any of the City's departments shall, through any employee, representative, agent or otherwise, directly or indirectly, (a) solicit, initiate or encourage submission of any inquiry, proposal or offer from any Person relating to any transaction involving any sale or transfer of any of the Acquired Assets or the System, (b) enter into, participate in or continue any discussions or negotiations (except with Purchaser, Citizens or Citizens Energy Group) regarding, or furnish any information to or cooperate with any Person (other than Purchaser, Citizens or Citizens Energy Group) with respect to, any transaction involving any of the Acquired Assets or the System, or (c) enter into any agreement (except with Purchaser, Citizens or Citizens Energy Group) relating in any manner to any transaction involving any sale or transfer of any of the Acquired Assets or the System.

Section 10.06. Notification of Certain Matters. Sellers shall give prompt notice to Purchaser of:

(a) the occurrence, or failure to occur, of any event which occurrence or failure would, to the Sellers' Knowledge, be likely to cause any representation or warranty of Sellers contained in this Agreement to be untrue or inaccurate in any material respect at any time from the Effective Date to the Closing Date; and

(b) any failure of Sellers to comply with or satisfy in any material respect any covenant, condition, or agreement to be complied with or satisfied by Sellers hereunder. Sellers shall use commercially reasonable efforts to remedy promptly any such failure.

Section 10.07. Supplements and Updates to Representations and Warranties and Related Disclosure Schedules. Upon any notice pursuant to Section 10.06, the Sellers shall deliver to Purchaser any supplemental information updating the information set forth in the representations and warranties set forth in Article IV of this Agreement so that such
representations and warranties as supplemented by such information will be true and correct as of the Closing Date as if then made; provided that no supplemental information added to or deleted from the representations and warranties of the Sellers and the updated disclosure schedules after the Effective Date shall impair Purchaser's right to assert failure of a condition precedent to Purchaser's obligations to consummate the transactions contemplated by this Agreement and/or a claim for a breach of the Sellers' representations and warranties made on the Effective Date, and any Damages accruing to Purchaser shall be paid as provided in the indemnification provisions of this Agreement. At least ten (10) Business Days prior to the Closing Date, each of the Sellers shall advise Purchaser of any facts which would constitute a breach of a representation or warranty as of the date made or a default in a covenant contained herein.

Section 10.08. Governmental Approvals. Promptly after the execution of this Agreement, or as required by Law, the Sellers shall file all applications and reports that are required to be filed by Sellers with any Governmental Authority as provided on Schedule 4.04. Sellers shall also promptly provide all information that any Governmental Authority may require in connection with any such application or report. The Sellers shall use all commercially reasonable efforts to obtain all consents and approvals of any kind from any person in connection with the transactions contemplated hereby. All authorizations of any Governmental Authority necessary to consummate the transactions contemplated by this Agreement shall have been obtained in form and content reasonably satisfactory to Purchaser and the Sellers prior to Closing and shall be final and non appealable. The Sellers shall cooperate with Purchaser to secure the required approvals of the Indianapolis Bond Bank for the assumption of the Assumed Debt Obligations in the manner described in Section 2.04(a).

ARTICLE XL

PRE-CLOSING COVENANTS OF PURCHASER AND CITIZENS

Each of Purchaser and, as applicable, Citizens, covenants and agrees to comply with the following provisions:

Section 11.01. Actions Before the Closing Date. Neither Purchaser nor Citizens shall take any action which shall cause either of them to be in breach of any representation, warranty, covenant or agreement contained in this Agreement or cause it to be unable to perform in any material respect its obligations hereunder, and Purchaser and Citizens shall use commercially reasonable best efforts (subject to any conditions set forth in this Agreement) to perform and satisfy all conditions to Closing to be performed or satisfied by Purchaser or Citizens under this Agreement, including action necessary to obtain all consents and approvals of third parties required to be obtained by Purchaser or Citizens to effect the transactions contemplated by this Agreement.

Section 11.02. Governmental Approvals. Promptly after the execution of this Agreement, or as required by law, Purchaser and Citizens shall file all applications and reports which are required to be filed by Purchaser and Citizens with any Governmental Authority as provided on Schedule 5.04. Purchaser and Citizens shall also promptly provide all information that any Governmental Authority may reasonably require in connection with any such application or report. Purchaser shall use all commercially reasonable efforts to obtain all
required consents and approvals of any kind from any person in connection with the transactions contemplated hereby. All authorizations of any Governmental Authority necessary to the consummation of the transactions contemplated by this Agreement shall have been obtained in form and content reasonably satisfactory to the Sellers prior to Closing and shall be final and non appealable.

Section 11.03. Cooperation. Purchaser and Citizens shall generally cooperate with the Sellers and their employees, attorneys, accountants and other agents and, generally, do such other acts and things in good faith as may be reasonable to timely effectuate the purposes of this Agreement and the consummation of the transactions contemplated in accordance with the provisions of this Agreement.

Section 11.04. Notification of Certain Matters. Purchaser and Citizens shall give prompt notice to the Sellers of:

(a) the occurrence, or failure to occur, of any event which occurrence or failure would, to the Knowledge of Purchaser, be likely to cause any representation or warranty of Purchaser or Citizens contained in this Agreement to be untrue or inaccurate in any material respect at any time from the Effective Date to the Closing Date; and

(b) any failure of Purchaser or Citizens to comply with or satisfy in any material respect any covenant, condition, or agreement to be complied with or satisfied by Purchaser or Citizens hereunder. Purchaser and Citizens shall use commercially reasonable efforts to remedy promptly any such failure.

Section 11.05. Supplements and Updates to Representations and Warranties and Related Disclosure Schedules. Upon notice pursuant to Section 11.04, Purchaser shall deliver to the Sellers any supplemental information updating the information set forth in the representations and warranties set forth in Article V of this Agreement so that such representations and warranties as supplemented by such information will be true and correct as of the Closing Date as if then made; provided that no supplemental information added to or deleted from the representations and warranties of Purchaser and the updated disclosure schedules after the Effective Date shall impair the Sellers' right to assert failure of a condition precedent to Sellers' obligations to consummate the transactions contemplated by this Agreement and/or a claim for a breach of Purchaser's representations and warranties made on the Effective Date, and any Damages accruing to the Sellers shall be paid as provided in the indemnification provisions of this Agreement. At least ten (10) Business Days prior to the Closing Date, Purchaser shall advise the Sellers of any facts which would constitute a breach of a representation or warranty as of the date made or a default in a covenant contained herein.

ARTICLE XII.

CONDITIONS PRECEDENT TO OBLIGATIONS OF THE SELLERS

The obligation of the Sellers to consummate the transactions provided for in this Agreement is subject to the satisfaction, at or before the Closing, of the following conditions, any one or more of which may be waived in writing by the Sellers in their sole discretion:
Section 12.01. **Consents and Approvals.** Receipt of all required material, non-governmental third party consents and any other approvals necessary to consummate the transactions contemplated by this Agreement and all consents, waivers, authorizations and approvals of any Governmental Authority or any third party necessary to permit the consummation of the transactions contemplated by this Agreement shall have been duly obtained and shall be in full force and effect on the Closing Date;

Section 12.02. **Representations and Warranties of Purchaser and Citizens.** All representations and warranties made by Purchaser and Citizens in this Agreement shall be true and correct in all material respects on and as of the Closing Date as if made by Purchaser and Citizens on and as of that date, and the Sellers shall have received a certificate to that effect from Purchaser and Citizens dated the Closing Date;

Section 12.03. **IURC Transactional Approval.** IURC approval of the terms and conditions of this Agreement and the transactions contemplated by this Agreement, on terms reasonably acceptable to Sellers, including but not limited to the PILOT Payments as provided in Section 3.05;

Section 12.04. **Management Agreement.** Assignment, amendment or termination of the existing United Agreement upon terms reasonably acceptable to the Sellers;

Section 12.05. **Environmental Approvals.** The receipt of any required EPA and IDEM approvals, including without limitation those related to the Consent Decree and any NPDES permits;

Section 12.06. **Assignment of Contracts Relating to CSO Control Measures.** The assignment of the Assigned Contracts relating to the CSO Control Measures shall have been completed on terms reasonably acceptable to Sellers;

Section 12.07. **No Injunctions.** None of the Sellers or Purchaser or Citizens shall be subject to any injunction, preliminary restraining order or other similar decree of a court of competent jurisdiction prohibiting the consummation of the transactions contemplated by this Agreement;

Section 12.08. **Legal Opinions.** Appropriate legal opinions, closing instruments, certificates and other documentation shall have been executed and delivered by Purchaser and Purchaser's legal counsel, as applicable;

Section 12.09. **Release of Assumed Debt Obligations.** The Sellers and their Affiliates shall have been released from its obligations (including any moral obligation of the City) with respect to the Assumed Debt Obligations as contemplated under Section 2.04(a) and the Sellers;

Section 12.10. **Performance of the Obligations of Purchaser.** Purchaser shall have performed in all material respects all obligations required under this Agreement to be performed by Purchaser on or before the Closing Date, and the Sellers shall have received a certificate to that effect from Purchaser dated the Closing Date;
Section 12.11. **Deliveries by Purchaser.** Purchaser shall have made delivery to the Sellers of the documents and items specified in Section 14.03 herein;

Section 12.12. **SRF Release of Sanitary District.** SRF shall have released the Sanitary District from all of its obligations with respect to any System interest-bearing debt issued by the City and payable to the Indianapolis Bond Bank;

Section 12.13. **Moral Obligation.** The Sellers shall not be required to provide as security its moral obligation for any of the Assumed Debt Obligations or any indebtedness that replaces the Assumed Debt Obligations;


Section 12.15. **IRS Determination.** The receipt of an Internal Revenue Service determination that Purchaser is a tax-exempt instrumentality of Citizens exempt from taxation under Section 115 of the Code; and

Section 12.16. **Simultaneous Closing.** Sellers shall be satisfied that Citizens has satisfied all conditions precedent with respect to that certain Asset Purchase Agreement by and between the City, the City's Department of Waterworks and Citizens Energy Group or its designee dated as of the Effective Date ("Water Purchase Agreement") and that the transactions contemplated by the Water Purchase Agreement have closed simultaneously with the transactions contemplated by this Agreement.

ARTICLE XIII.

**CONDITIONS PRECEDENT TO OBLIGATIONS OF PURCHASER**

The obligation of Purchaser and Citizens to consummate the transactions provided for in this Agreement is subject to the satisfaction, at or before the Closing, of the following conditions, any one or more of which may be waived in writing by Purchaser or Citizens in each of their sole discretion:

Section 13.01. **Consents and Approvals.** Receipt of all required material, non-governmental third party consents and any other approvals necessary or advisable to consummate the transactions contemplated by this Agreement and all consents, waivers, authorizations and approvals of any Governmental Authority or any third party necessary to permit the consummation of the transactions contemplated by this Agreement shall have been duly obtained and shall be in full force and effect on the Closing Date, including without limitation, the resolutions of Purchaser's Board of Directors and the Citizens Board approving the transactions described herein;

Section 13.02. **Representations and Warranties of Purchaser.** All representations and warranties made by Sellers in this Agreement shall be true and correct in all material respects on and as of the Closing Date as if made by Sellers on and as of that date, and the Sellers shall have received a certificate to that effect from Sellers dated the Closing Date;
Section 13.03. **IURC Transactional Approval.** IURC approval of the terms and conditions of this Agreement and the transactions contemplated by this Agreement, including but not limited to Purchaser's proposed allocation of recognized operating and/or capital expenditure savings among the affected utilities;

Section 13.04. **IURC Approval of Purchaser Items.** IURC approval of Purchaser's application (submitted at Purchaser's expense):

(a) to have the IURC assume rate approval jurisdiction over the rates for the System;

(b) to include as a revenue requirement in future wastewater rates, in addition to all other recoverable costs, the issuance of debt in respect of the Assumed Debt Obligations and any other debt service assumed or incurred in order to complete the transactions contemplated by this Agreement, and the PILOT Payments payable as provided on Section 3.05; and

(c) to the extent necessary, of Purchaser's assumption of or issuance of debt, in the manner determined by Purchaser;

Section 13.05. **IURC Approval of Rates.** IURC approval of the City's then current wastewater rates as approved by the City-County Council, which rates shall increase no more than 10.75% annually through 2013, subject to any need for emergency rate relief under Indiana Code 8-1-2-113 or necessary increases in rates to avoid a default under coverage or other covenants of Purchaser or Citizens set forth in any applicable bond indenture;

Section 13.06. **SRF Approval.** Approval by the SRF of:

(a) Purchaser's assumption or replacement of any System interest-bearing debt issued by the City and payable to the Indianapolis Bond Bank or SRF with the same payment amounts, payment dates, redemption features and security provisions as currently apply to all such applicable debt, or other mutually agreed upon terms between SRF, Citizens and Purchaser; and

(b) the transfer to Purchaser or for its benefit of related funds under the indenture(s) being held by the City or SRF (e.g., debt service funds, debt service reserve funds, construction funds, policies, etc.);

Section 13.07. **Management Agreement.** Assignment, amendment or termination of the United Agreement upon terms reasonably acceptable to Purchaser;

Section 13.08. **IRS Determination.** The receipt of an Internal Revenue Service determination that Purchaser is a tax-exempt political subdivision or instrumentality of Citizens exempt from federal income taxation; that Purchaser shall be authorized to issue the tax exempt bonds in the manner acceptable to Purchaser, that Purchaser may finance the Purchase Price by tax exempt acquisition debt;

Section 13.09. **Environmental Approvals.** The receipt of any required EPA and IDEM approvals, including without limitation those related to the Consent Decree and any NPDES permits on terms reasonably acceptable to Purchaser;
Section 13.10. **Construction Fund.** The City shall have only expended the
Construction Fund proceeds and Line of Credit proceeds consistent with the CIP Plan, except for
any expenditures for STEP projects as agreed by Purchaser or Citizens, and further shall have
spent the Construction Fund proceeds, to the extent permissible with the SRF, before any Line of
Credit is issued and the proceeds thereof expended;

Section 13.11. **Assignment of Contracts Relating to CSO Control Measures.** The
assignment of the Assigned Contracts relating to the CSO Control Measures shall have been
completed on terms reasonably acceptable to Purchaser;

Section 13.12. **DSRF Surety Debt Issues and Bond Insurer.** All counterparties to
debt service reserve surety obligations and bond insurers relating to the Assumed Debt
Obligations, whose consent is required to the transactions contemplated herein, shall have given
such consent;

Section 13.13. **Indianapolis Bond Bank.** The Indianapolis Bond Bank shall have
consented to the replacement of the Assumed Debt Obligations that are owed to the Indianapolis
Bond Bank on terms satisfactory to Purchaser and the SRF;

Section 13.14. **Vesting of Power and Authority.** To the maximum extent permitted
by Law, the Sellers shall have transferred to and vested in Purchaser and Citizens all powers and
authority that the Sellers have with respect to the operation of the System (other than taxing
power and taxing authority) and all requisite amendments, changes or modifications of the Civil
Code of the City and Marion County and other ordinances and resolutions of either Seller or any
Seller Affiliate necessary for such purpose or to enable Purchaser and Citizens to operate the
System shall have been completed and will be effective to the satisfaction of Purchaser and
Citizens;

Section 13.15. **Financing.** Completion of financing so that Purchaser may finance the
Purchase Price and the assumption or replacement of the Assumed Debt Obligations on terms
reasonably acceptable to Purchaser;

Section 13.16. **Paygo.** Sellers shall have delivered to Purchaser evidence satisfactory
to Purchaser that Sellers have expended at least Five Million Twenty-Three Thousand Three
Hundred Seventy Dollars ($5,023,370) through the end of 2010 from the Sanitary District's
Sanitation General Fund (also known as the Sanitation Liquid Waste Fund), in a fashion
commonly called paygo, for capital improvements to the System as contemplated by the CIP
Plan; Sellers shall have delivered to Purchaser evidence satisfactory to Purchaser that Sellers
have expended at least One Million Six Hundred Five Thousand Fifteen Dollars ($1,605,015) for
2011 from the Sanitary District's Sanitation General Fund (also known as the Sanitation Liquid
Waste Fund), in a fashion commonly called paygo, for capital improvements to the System as
contemplated by the CIP Plan;

Section 13.17. **Due Diligence.** Purchaser shall have completed its due diligence
review and shall have found the results reasonably satisfactory;
Section 13.18. **No Injunctions.** None of the Sellers or Purchaser shall be subject to any injunction, preliminary restraining order or other similar decree of a court of competent jurisdiction prohibiting the consummation of the transactions contemplated by this Agreement;

Section 13.19. **No Material Adverse Effect.** There shall not have occurred any event or condition which gives rise to a Material Adverse Effect with respect to the Acquired Assets or the System;

Section 13.20. **Environmental Compliance.** Purchaser shall be satisfied with the Environmental Reports and determined not to exercise Purchaser's right not to close under Section 6.01(b);

Section 13.21. **Laboratory Audit.** Purchaser shall be satisfied with the results of an audit of the System conducted by a nationally recognized independent firm with requisite expertise regarding the procedures, practices, quality control and quality assurances currently in effect with regard to the System;

Section 13.22. **Environmental Insurance.** Sellers shall have obtained an Environmental Insurance Policy as provided in Section 6.02;

Section 13.23. **Legal Opinions.** Appropriate legal opinions, closing instruments, certificates and other documentation shall have been executed and delivered by Sellers and Sellers' legal counsel, as applicable;

Section 13.24. **Deliveries by Sellers.** Sellers shall have made delivery to Purchaser of the documents and items specified in Section 14.02 herein;

Section 13.25. **Performance of the Obligations of Sellers.** Sellers shall have performed in all material respects all obligations required under this Agreement to be performed by Sellers on or before the Closing Date, and Purchaser shall have received a certificate to that effect from Sellers dated the Closing Date;

Section 13.26. **Improvement of Bad Debt Ratio.** Purchaser shall be satisfied with the results of Sellers bad debt collection plan and efforts in terms of achievement of the goals set forth in accordance with Section 10.01(b); and

Section 13.27. **Simultaneous Closing.** Purchaser shall be satisfied that the City and the City's Department of Waterworks have satisfied all conditions precedent with respect to the Water Purchase Agreement and that the transactions contemplated by the Water Purchase Agreement have closed simultaneously with the transactions contemplated by this Agreement.

ARTICLE XIV.

CLOSING

Section 14.01. **Closing Date.** The Closing shall take place at the offices of Ice Miller LLP, at One American Square, Indianapolis, Indiana, at 10:00 a.m. eastern standard time on the earliest agreed upon date (but not earlier than six (6) months after the implementation of the rates
approved in the Rate Case (or the next succeeding Business Day if such day is not a Business Day)) after the date upon which all the conditions precedent to Closing described in this Agreement have been fulfilled or waived and Purchaser and the Sellers receive the last of the required consents, waivers, authorizations and approvals from the Governmental Authorities, in each case, for the transactions contemplated by this Agreement, or at such other place and time, or on such other date, as may be mutually agreed to by the Parties (the "Closing Date"). The Closing shall be effective at 12:01 a.m., Indianapolis time, on the Closing Date (the "Closing Effective Time").

Section 14.02. Deliveries by the Sellers. At the Closing, the Sellers shall have delivered to Purchaser executed copies of the following agreements, documents and other items:

(a) A Bill of Sale transferring all of the Acquired Assets comprising personal property;

(b) Possession of the Acquired Assets, including without limitation, the Real Property and the Leased Real Property;

(c) A duly executed counterpart to an Assignment and Assumption Agreement with respect to the Assumed Liabilities, Occupancy Agreements and Leased Real Property (the "Assignment and Assumption Agreement");

(d) A duly executed counterpart to a Transition Services Agreement;

(e) A duly executed counterpart to the Cash Escrow Agreement;

(f) Copies of each consent, waiver, authorization and approval required pursuant to Section 4.04 of this Agreement;

(g) The consents to transfer all of the Assigned Contracts, Intellectual Property and Licenses and Permits (including environmental Permits), to the extent required hereunder;

(h) Title certificates to any motor vehicles included in the Acquired Assets, duly executed by the applicable Seller (together with any transfer forms necessary to transfer title to such vehicles);

(i) One or more special warranty deeds in recordable form reasonably acceptable to Purchaser transferring fee simple title of Real Property that is scheduled as Priority One Property to Purchaser; one or more quit claim deeds in recordable form reasonably acceptable to Purchaser transferring fee simple title of Real Property that is scheduled as Priority Two, Three or Four Property to Purchaser;

(j) All Related Agreements, duly executed by Sellers;

(k) The easements referenced in Section 7.10, duly executed by the parties thereto;

(l) An opinion letter of counsel for the Sellers, in a form mutually agreed to prior to Closing;
(m) Certificates of the Sellers pursuant to Section 13.02 of this Agreement;

(n) Certificates of the Sellers pursuant to Section 13.24 of this Agreement;

(o) Evidence of approval of EPA and IDEM as contemplated in Section 13.09, including the amendment to the Consent Decree set forth on Schedule 4.16(i);

(p) Copies or originals of all Files and Records, materials, documents and records in possession of the Sellers relating to the Real Property, Leased Real Property or the Assigned Contracts;

(q) Any documents duly executed by Sellers required by the Title Company to issue final owner's title policies in accordance with the procedures set forth in Article VII; and

(r) All such other instruments of conveyance or other documents as shall, in the reasonable opinion of Purchaser and its counsel, be necessary to transfer the Acquired Assets in accordance with this Agreement or to carry out the terms of this Agreement, duly executed and acknowledged by Sellers, if necessary, and in a recordable form.

Section 14.03. Deliveries by Purchaser. At the Closing, Purchaser shall—have delivered to the Sellers the following agreements, documents and other items:

(a) Wire transfer of immediately available funds in an amount equal to the Closing Amount;

(b) A duly executed counterpart to the Assignment and Assumption Agreement;

(c) A duly executed counterpart to the Cash Escrow Agreement;

(d) An opinion letter of counsel for Purchaser, in a form mutually agreed to prior to Closing;

(e) A duly executed counterpart to the Transition Services Agreement;

(f) All Related Agreements, duly executed by Purchaser;

(g) The easements referenced in Section 7.10, duly executed by the parties thereto;

(h) Certificates of Purchaser pursuant to Section 12.02 of this Agreement;

(i) Certificates of Purchaser pursuant to Section 12.10 of this Agreement; and

(j) All such other instruments of assumption as shall, in the reasonable opinion of Sellers and their counsel, be necessary for Purchaser to assume the Assumed Liabilities in accordance with this Agreement.
ARTICLE XV.
TERMINATION

Section 15.01. Events of Termination. This Agreement may, by notice given in the manner hereinafter provided, be terminated and abandoned at any time prior to completion of the Closing:

(a) by the Sellers if there has been a material misrepresentation or a material default or breach by Purchaser or Citizens with respect to Purchaser's or Citizens' representations and warranties in Article V of this Agreement or the due and timely performance of any of the material covenants or agreements of Purchaser or Citizens contained in this Agreement, and in the case of a covenant or agreement default or breach, such default or breach shall not have been cured within ninety (90) days after receipt by Purchaser or Citizens of notice specifying particularly such default or breach;

(b) by Purchaser if there has been a material misrepresentation or a material default or breach by any of the Sellers with respect to the Sellers' representations and warranties in Article IV of this Agreement or the due and timely performance of any of the material covenants and agreements of the Sellers contained in this Agreement, and in the case of a covenant or agreement default or breach, such default or breach shall not have been cured within ninety (90) days after receipt by the Sellers of notice specifying particularly such default or breach;

(c) by Purchaser if, in the judgment of Purchaser, a Material Adverse Effect has occurred since the Effective Date and the effect of such Material Adverse Effect has not been cured by the Sellers within ninety (90) days after receipt by the Sellers of notice specifying particularly such Material Adverse Effect;

(d) by Sellers if Sellers are not satisfied with Purchaser's ability to finance the Purchase Price, including but not limited to the ability to finance and secure the Deferred Amount;

(e) by Purchaser if, prior to the Closing Date, Purchaser is not satisfied with its business, financial, legal, environmental, regulatory and similar due diligence to Purchaser's satisfaction;

(f) by the Sellers or Purchaser at any time after the Outside Date, if the Closing has not occurred and the Party seeking to terminate this Agreement is not in breach or default of any provisions of this Agreement;

(g) by the Sellers or Purchaser if (i) any Governmental Authority (other than the City, the Sanitary District or the City's Department of Waterworks) the consent from or approval by which is a condition to the obligations of the Parties to consummate the transactions contemplated hereby shall have determined not to grant its consent or approval as applicable and all appeals of such determination have been taken and have been unsuccessful; or (ii) any court of competent jurisdiction shall have issued an order, judgment or decree (other than a temporary restraining order) restraining, enjoining or otherwise prohibiting the transactions contemplated hereby and such order, judgment or decree shall have become final and nonappealable; or
by mutual agreement of the Sellers and Purchaser.

This Agreement may not be terminated after completion of the Closing.

Section 15.02. Effect of Termination. In the event this Agreement is terminated pursuant to Section 15.01(c)-(h) of this Agreement, all obligations of the Parties shall terminate without any liability of a Party to the other Party; provided, however, that the obligations of the Parties set forth in Sections 16.01, 16.02 and 16.03 of this Agreement shall indefinitely survive the termination of this Agreement. Nothing in this Section 15.02 shall be deemed to release either Purchaser or Sellers from any liability for any willful breach by such Party of the terms of this Agreement.

ARTICLE XVI.

MISCELLANEOUS

Section 16.01. Confidentiality. Except as and to the extent required by law (including but not limited to the Indiana access to public record law at Indiana Code §5-14-3) or pursuant to an order of a court of competent jurisdiction, no Party hereto shall, directly or indirectly, disclose or use (and no party shall permit its representatives to disclose or use) any Confidential Information (as defined below) with respect to any other Party furnished, or to be furnished, by such other Party hereto or its shareholders, directors, officers, agents, or representatives to any other Party hereto or its employees, directors, officers, agents or representatives in connection herewith at any time or in any manner other than in connection with the completion of the transactions contemplated by this Agreement and related transactions. For purposes of this paragraph, the term "Confidential Information" means any information about Purchaser, Sellers or the System related to the transactions contemplated by this Agreement; provided, however, that such term does not include information which the receiving Party can demonstrate (a) is generally available to or known by the public other than as a result of improper disclosure by the receiving Party, (b) is obtained by the receiving Party from a source other than the disclosing Party, provided that such source was not bound by a duty of confidentiality to the disclosing Party with respect to such information, or (c) is legally in the public domain.

Section 16.02. Public Announcements. Subject to applicable law, any public announcement relating to the transactions contemplated by this Agreement will be mutually agreed upon and jointly made by the Parties.

Section 16.03. Expenses; Brokers.

(a) Except as otherwise provided in this Section 16.03, Purchaser and Sellers shall be responsible for and bear all of their respective costs and expenses incurred in connection with this Agreement, including, without limitation, any legal, accounting or other representative or advisor costs and expenses. Should a condition precedent to the transactions contemplated by this Agreement not be met through no fault of either Party and Purchaser is nonetheless ready, willing and able to grant an extension to the Outside Date but Sellers decline to do so, and thereafter either Seller executes a definitive agreement or agreements for the sale, transfer, or long-term lease of the System or completes any transaction(s) similar to the transactions described herein or takes definitive action to consolidate the Water System and the System
within twelve (12) months of the later of (i) the receipt by Purchaser of a notice by Sellers to terminate this Agreement in accordance with Article XV or (ii) the Outside Date; and the economic terms are more favorable to Sellers than those of this Agreement, then the City shall purchase, or cause the acquirer(s) of the System to purchase, from Purchaser those studies, analyses, reports and data compilations relating to the System prepared or obtained by Purchaser, at Purchaser's costs thereof, within ninety (90) days from the date either Seller executes a definitive agreement for the sale, transfer, or long-term lease of the System or any transaction similar to the transactions described in this Agreement or takes definitive action to consolidate the Water System and the System.

(b) Each Party will be responsible for any fees or expenses of any financial advisor, broker or finder retained by such Party payable upon consummation of the transactions contemplated by this Agreement.

Section 16.04. Utilities Proration. Purchaser shall be solely responsible for all utility charges with respect to the System on and after the Closing Date. The Sellers shall use commercially reasonable efforts to have meters for electricity, telephone, gas and water read as of the close of business on the day before the Closing Date or the opening of business on the Closing Date and for bills to be rendered to Seller based upon such readings. To the extent such meter readings are not used as the basis for calculating all such charges, the electricity, telephone, gas and water utility charges shall be pro-rated as of the closing of business on the Closing Date between the Sellers and Purchaser (based upon the number of days in applicable pre-Closing and post-Closing periods.)

Section 16.05. Risk of Loss. The risk of loss of or damage to any of the Acquired Assets shall be on the Sellers at all times prior to the Closing Effective Time. In the event of any such loss or damage, the Sellers shall repair or replace the lost or damaged assets as soon as possible at their sole cost and expense.

Section 16.06. Reasonable Efforts; Cooperation. Subject to the terms and conditions of this Agreement, each Party will use its commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary or desirable to consummate the transactions contemplated by this Agreement and the Related Agreements. The Parties each agree to execute and deliver such other documents, certificates, agreements and other writings and to take such other actions as may be necessary or desirable in order to consummate or implement expeditiously the transactions contemplated by this Agreement and the Related Agreements, and from time to time, upon the request of the other Parties to this Agreement and without further consideration, to execute, acknowledge and deliver in proper form any further instruments, and take such other action as the other Parties may reasonably require, in order to effectively carry out the intent of this Agreement and the Related Agreements.

Section 16.07. Notices. All notices, requests, demands and other communications that are required or may be given pursuant to the terms of this Agreement or any of the Related Agreements shall be in writing, and delivery shall be deemed sufficient in all respects and to have been duly given as follows: (a) on the actual date of service if delivered personally; (b) at the time of receipt of confirmation by the transmitting party if by facsimile transmission; (c) at the time of receipt if given by electronic mail, provided that a Party sending notice by electronic
delivery shall bear the burden of authentication and of proving transmittal, receipt and time of receipt; (d) on the third day after mailing if mailed by first-class mail return receipt requested, postage prepaid and properly addressed as set forth in this Section 16.07; or (e) on the day after delivery to a nationally recognized overnight courier service during its business hours or the Express Mail service maintained by the United States Postal Service during its business hours for overnight delivery against receipt, and properly addressed as set forth in this Section:

If to Sellers, to:

City of Indianapolis  
Office of the Mayor  
2501 City-County Building  
200 East Washington Street  
Attention: Gregory A. Ballard, Mayor of the City

with a copy to (which copy alone shall not constitute notice for the purposes of this Agreement):

City of Indianapolis  
Office of Corporation Counsel  
1601 City-County Building  
200 East Washington Street  
Attention: Samantha Karn, Corporation Counsel

If to Purchaser, to:

Citizens Energy Group  
2020 N. Meridian Street  
Indianapolis, IN 46202  
Attention: Carey Lykins, President and Chief Executive Officer

with a copy to (which copy alone shall not constitute notice for the purposes of this Agreement):

Citizens Energy Group  
2020 N. Meridian Street  
Indianapolis, IN 46202  
Attention: John Whitaker, General Counsel

Any Party may change its address and preferred recipient or other contact information for notice by giving notice to each other Party in accordance with the terms of this Section 16.07. In no event will delivery to a copied Person alone constitute delivery to the Party represented by such copied Person.

Section 16.08. **Heading.** The article, section and paragraph headings in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.
Section 16.09. Construction.

(a) The Parties have participated jointly in the negotiation and drafting of this Agreement, and, in the event of an ambiguity or a question of intent or a need for 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.

(b) Except as otherwise specifically provided in this Agreement (such as by "sole," "absolute discretion," "complete discretion," or words of similar import), if any provision of this Agreement requires or provides for the consent, waiver or approval of a Party, such consent, waiver and/or approval shall not be unreasonably withheld, conditioned or delayed.

(c) The Parties intend that each representation, warranty and covenant herein shall have independent significance. If any Party has breached any representation, warranty or covenant contained herein in any respect, the fact that there exists another representation, warranty, or covenant relating to the same subject matter (regardless of the relative levels of specificity) which the Party has not breached shall not detract from or mitigate the fact that the Party is in breach of the first representation, warranty or covenant, as the case may be.

(d) Words of any gender used in this Agreement shall be held and construed to include any other gender; words in the singular shall be held to include the plural; and words in the plural shall be held to include the singular; unless and only to the extent the context indicates otherwise.

(e) Reference to any Law means such Law as amended, modified, codified, replaced or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder, and reference to any section or other provision of any Law means that provision of such Law from time to time in effect and constituting the substantive amendment, modification, codification, replacement or reenactment of such section or other provision.

(f) The word "including" means "including, without limitation."

(g) References to documents, instruments or agreements shall be deemed to refer as well to all addenda, appendices, exhibits, schedules or amendments thereto.

(h) Any reference to a "Seller" or the "Sellers" means both, either or any of the Sellers.

Section 16.10. Severability. If any term, provision, covenant or restriction contained in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions contained in this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

Section 16.11. Entire Agreement. This Agreement and the Related Agreements represent the entire agreement among the Parties with respect to the subject matter hereof thereof and supersede all prior or contemporaneous written or oral agreements or understandings of any
kind among the parties hereto and thereto with respect to the subject matter hereof and thereof, including without limitation, the MOU. All Exhibits and Schedules hereto are expressly made a part of this Agreement as fully as though completely set forth herein.

Section 16.12. Amendments; Waivers. This Agreement may be amended or modified, and any of the terms, covenants, representations, warranties or conditions hereof may be waived, only by a written instrument executed by the Parties hereto, or in the case of a waiver, by the Party waiving compliance. Any waiver by any Party of any condition, or of the breach of any provision, term, covenant, representation or warranty contained in this Agreement, in any one or more instances, shall not be deemed to be or construed as a further or continuing waiver of any condition or of the breach of any other provision, term, covenant, representation or warranty of this Agreement.

Section 16.13. Parties in Interest. Nothing in this Agreement is intended to confer any rights, remedies or obligations under or by reason of this Agreement on any Person other than the Sellers, Purchaser and Citizens and their respective Affiliates, successors and permitted assigns, and the stated beneficiaries of the public charitable trust in which the System shall be held. For the avoidance of doubt, the Parties intend that only the Sellers, Purchaser and Citizens shall have any rights, remedies or obligations to each other under this Agreement. In no event shall any Affiliate of Sellers, Purchaser or Citizens have any right, remedy or obligation under this Agreement or any Related Agreement unless otherwise expressly set forth herein. This Agreement is being consummated simultaneously with the Water Purchase Agreement and it is understood that the obligations of Purchaser and Citizens under this Agreement are imposed only on the System and do not obligate the Water System, the Citizens Board, in its capacity as the trustee of the public charitable trust for the gas, steam and/or chilled water systems, the Citizens Board, in its capacity as the trustee of the public charitable trust for the Water System, or the Citizens Board, in its individual capacity.

Section 16.14. Successors and Assigns. No Party hereto shall assign or delegate this Agreement or any rights or obligations hereunder without the prior written consent of the other Parties hereto, and any attempted assignment or delegation without prior written consent shall be void and of no force or effect. This Agreement shall inure to the benefit of and shall be binding upon the successors and permitted assigns of the Parties hereto.

Section 16.15. Governing Law; Jurisdiction. This Agreement shall be construed and enforced in accordance with, and governed by, the laws of the State of Indiana (without giving effect to the principles of conflicts of laws thereof). Subject to Section 9.02, the Parties hereto irrevocably agree and consent to the jurisdiction of the courts of the State of Indiana and the federal courts of the United States, sitting in Indianapolis, Indiana, for the adjudication of any matters arising under or in connection with this Agreement. Any action initiated in court shall be filed and litigated (including all discovery proceedings) exclusively in a state or federal court located in Marion County, Indiana, and all objections as to personal jurisdiction and venue are waived.

Section 16.16. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall together constitute the same instrument.
IN WITNESS WHEREOF, the Parties hereto have executed, or caused to be executed by their duly authorized representatives, this Agreement as of the date first above written.

"SELLERS"

CITY OF INDIANAPOLIS

By: [Signature]

Printed: Gregory A. Ballard

Its: Mayor

"SANITARY DISTRICT"

SANITARY DISTRICT OF THE CITY OF INDIANAPOLIS

By: [Signature]

Printed: David R. Sherman

Its: Director

APPROVED AS TO FORM AND LEGALITY:

By: [Signature]

Name: Samantha S. Karn

Title: Corporation Counsel, City of Indianapolis

"PURCHASER"

CWA AUTHORITY, INC.

By: [Signature]

Printed: Carey B. Lykins

Its: President and Chief Executive Officer

"CITIZENS"

THE BOARD OF DIRECTORS FOR UTILITIES OF THE DEPARTMENT OF PUBLIC UTILITIES FOR THE CITY OF INDIANAPOLIS, AS TRUSTEE, IN FURTHERANCE OF THE PUBLIC CHARITABLE TRUST FOR THE WASTEWATER SYSTEM

By: [Signature]

Printed: Carey B. Lykins

Its: President and Chief Executive Officer