



# Liberty Utilities

August 12, 2015

Mr. Ron Carr  
City of Perris  
24 South D Street  
Perris, CA 92570

**Subject: Acquisition of the Utility Assets and Business of the City of Perris' North Perris Water System, Downtown Water System and Downtown Sewer System**

Dear Mr. Carr:

This letter sets forth the principal terms and conditions under which Liberty Utilities (Park Water) Corp ("Liberty Park") intends to purchase, and City of Perris ("Perris") intends to sell, free and clear of any and all rights, liens, claims, encumbrances, liabilities, obligations or interests of any kind of any person or entity (except such rights, liens, claims, encumbrances, liabilities, obligations or interests as may be specifically described in the Purchase Agreement described below and as Liberty Park agrees to assume), the water and sewer utility assets and business of Perris' North Perris Water System, Downtown Water System and Downtown Sewer System ("Utility Assets") (collectively the three utility systems will be referred to as "Utility Systems"), including, without limitation, all plant, property and assets, real, personal, tangible and intangible, all water rights, water wells, water works, sewer works and all books and records used in the conduct of the water and sewer utility business.

The purchase and sale of the Utility Assets is referred to in this letter as the "Acquisition." The Acquisition will be accomplished through a definitive agreement to be negotiated between and executed by Liberty Park and Perris incorporating the terms set forth in this letter and other reasonable terms, conditions, representations, warranties and indemnifications that are customary in transactions similar to the Acquisition ("Purchase Agreement").

Liberty Park has assumed that water and sewer rates for the next ten years will be no higher than the Eastern Municipal Water District ("EMWD") rates over the same time period in accordance with the guidance provided in the July 26, 2016 email from Stetson Engineers to Liberty Park. Attached to this letter are calculations of the average monthly bill for a residential customer residing in the Perris-North district using 18 CCF of water per month and a residential customer in the Perris-Downtown district using 23.5 CCF of water per month using projected EMWD 2017 water rates. These usage-per-customer levels are derived from information in the "Buyer's Notebook" provided with the Request for Proposal.

## 1. Purchase Price

The total consideration to be paid by Liberty Park to Perris for the Utility Assets will consist of cash paid on the closing date in the amount of sixteen million dollars (\$16,000,000) ("Purchase Price"). The Purchase Price is based on a 3.7% annual increase in the revenue requirement for the utility systems over the next five to ten years also in accordance with the the guidance provide in the August 9, 2016 email from Stetson Engineers to Liberty Park.

## 2. Conditions

The Closing is subject to customary conditions, including (i) negotiation and execution of the Purchase Agreement; (ii) satisfactory completion by Liberty Park of its due diligence investigation; (iii) completion of an independent replacement cost new less depreciation study of the Utility Assets ("RCNLD Study") by Liberty Park and prior to the filing of the California Public Utilities Commission ("CPUC") application; (iv) completion of phase 1 environmental assessments of all real property and remedy of any environmental deficiencies; (v) CPUC approval of the Acquisition, including establishing a rate base for the Utility Assets equal to the Purchase Price; (vi) State Water Resources Control Board approval of the Acquisition; (vii) approval of the Acquisition by the Board of Directors of Liberty Park and the Perris City Council; (viii) approval of the Acquisition by through a public vote process; and (ix) other conditions precedent to be agreed to in the Purchase Agreement.

## 3. Expenses and Taxes

Each party will be responsible for its own expenses incurred in connection with the Acquisition, including all applicable federal and state taxes.

## 4. Expiration of the Offer

This offer will terminate at 5:00 P.M. on September 12, 2016 unless Perris accepts the offer in writing as provided below or unless it is otherwise extended or terminated in writing by Liberty Park prior to the acceptance of the offer by Perris.

## 5. Termination

The terms and conditions of this letter will automatically terminate and be of no further force and effect upon the earlier of (i) execution of the Purchase Agreement by Liberty Park and Perris; (ii) the mutual agreement of Liberty Park and Perris; or (iii) 90 days from the date of execution of this letter. Notwithstanding anything in the previous sentence, paragraphs 2, 3 and 6 shall survive the termination of this letter, and the termination of this letter shall not affect any rights any party has with respect to the breach of this letter by another party prior to such termination.

## 6. Confidentiality

This letter is confidential to Liberty Park and Perris and their representatives, and Liberty Park and Perris will not, and will cause their representatives not to disclose the contents of this letter to any other persons or entities.

## 7. Access to Information

Perris will afford and cause its affiliates, officers and agents to provide Liberty Park and its representatives full and complete access to the respective properties, business, personnel and financial, legal, real estate, tax and other data and information of the Systems as reasonably requested by Liberty Park and its representatives during the period that begins with the date this letter is executed by Perris and the date this letter is no longer in force.

**8. Governing Law**

This letter shall be governed by and construed in accordance with internal laws of the State of California, without giving effect to any choice or conflict of law provision or rule (whether of the State of California or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State of California.


**9. Miscellaneous**

This letter may be signed in counterparts and will constitute one and the same agreement.

If the foregoing conditions are satisfactory, please confirm your acceptance and agreement by signing and returning one copy or PDF of this letter to me.

Very truly yours,

LIBERTY UTILITIES (PARK WATER) CORP.

  
\_\_\_\_\_  
Greg Sorensen  
President

Accepted and agreed to as this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

CITY OF PERRIS

\_\_\_\_\_

# Rate Comparison

**EMWD RATES**

	Usage	Charges
<b>EMWD</b>		36 ccf
Bi-Monthly		
1.898 14 ccf	14	26.572
3.473 24ccf	22	76.406
6.224 >36ccf	0	0
<b>Per Month</b>		
0.389 Daily	60.8	23.66417
3.25 Monthly	2	6.5
<b>TOTAL</b>		<b>\$133.14</b>

**PERRIS-NORTH RATES  
Year 1**

	Usage	Charges
<b>NORTH</b>		36 ccf
Bi-Monthly		
2.358 18ccf	18	42.444
2.712 >18ccf	18	48.816
<b>Per Month Service</b>		
1	20.94	5/8"
1.5	31.41	3/4"
2.5	52.35	1"
5.0	104.70	1-1/2"
8.0	167.52	2"
15.0	314.10	3"
25.0	523.50	4"
50.0	1,047.00	6"
80.0	1,675.20	8"
115.0	2,408.10	10"
165.0	3,455.10	12"
<b>TOTAL</b>		<b>\$133.14</b>
<b>EMWD</b>		<b>\$133.14</b>
<b>Difference</b>		<b>\$0.00</b>

**PERRIS-NORTH RATES**  
Year 2

	Usage	Charges	
<b>NORTH</b>		36 ccf	
Bi-Monthly			
2.445 18ccf	18	44.01	
2.812 >18ccf	18	50.616	
Per Month Service			
21.71 5/8"	2.0	43.42	
32.57 3/4"			
54.28 1"			
108.55 1-1/2"			
173.68 2"			
325.65 3"			
542.75 4"			
1,085.50 6"			
1,736.80 8"			
2,496.65 10"			
3,582.15 12"			
	<b>TOTAL</b>	<b>\$138.05</b>	
	EMWD	\$138.07	
	Difference	-\$0.02	
	Increase	3.70%	

**PERRIS-NORTH RATES**  
Year 3

	Usage	Charges	
<b>NORTH</b>		36 ccf	
Bi-Monthly			
2.536 18ccf	18	45.648	
2.917 >18ccf	18	52.506	
Per Month Service			
22.51 5/8"	2.0	45.02	
33.77 3/4"			
56.28 1"			
112.55 1-1/2"			
180.08 2"			
337.65 3"			
562.75 4"			
1,125.50 6"			
1,800.80 8"			
2,588.65 10"			
3,714.15 12"			
	<b>TOTAL</b>	<b>\$143.17</b>	
	EMWD	\$143.18	
	Difference	\$0.00	
	Increase	3.70%	

**PERRIS-NORTH RATES**

Year 4

	Usage	Charges	
<b>NORTH</b>		36 ccf	
Bi-Monthly			
2.63 18ccf	18	47.34	
3.025 >18ccf	18	54.45	
Per Month Service			
23.34 5/8"	2.0	46.68	
35.01 3/4"			
58.35 1"			
116.70 1-1/2"			
186.72 2"			
350.10 3"			
583.50 4"			
1,167.00 6"			
1,867.20 8"			
2,684.10 10"			
3,851.10 12"			
	<b>TOTAL</b>	<b>\$148.47</b>	
	EMWD	\$148.47	
	Difference	\$0.00	
	Increase	3.70%	

**PERRIS-NORTH RATES**

Year 5

	Usage	Charges	
<b>NORTH</b>		36 ccf	
Bi-Monthly			
2.727 18ccf	18	49.086	
3.136 >18ccf	18	56.448	
Per Month Service			
24.20 5/8"	2.0	48.4	
36.30 3/4"			
60.50 1"			
121.00 1-1/2"			
193.60 2"			
363.00 3"			
605.00 4"			
1,210.00 6"			
1,936.00 8"			
2,783.00 10"			
3,993.00 12"			
	<b>TOTAL</b>	<b>\$153.93</b>	
	EMWD	\$153.97	
	Difference	-\$0.03	
	Increase	3.70%	

PERRIS-NORTH RATES

Year 6

	Usage	Charges	
<b>NORTH</b>		<b>36 ccf</b>	
<b>Bi-Monthly</b>			
2.828 18ccf	18	50.904	
3.253 >18ccf	18	58.554	
<b>Per Month Service</b>			
25.10 5/8"	2.0	50.2	
37.65 3/4"			
62.75 1"			
125.50 1-1/2"			
200.80 2"			
376.50 3"			
627.50 4"			
1,255.00 6"			
2,008.00 8"			
2,886.50 10"			
4,141.50 12"			
	<b>TOTAL</b>	<b>\$159.66</b>	
	EMWD	\$159.66	
	Difference	-\$0.01	
	Increase	3.70%	

PERRIS-NORTH RATES

Year 7

	Usage	Charges	
<b>NORTH</b>		<b>36 ccf</b>	
<b>Bi-Monthly</b>			
2.933 18ccf	18	52.794	
3.373 >18ccf	18	60.714	
<b>Per Month Service</b>			
26.03 5/8"	2.0	52.06	
39.05 3/4"			
65.08 1"			
130.15 1-1/2"			
208.24 2"			
390.45 3"			
650.75 4"			
1,301.50 6"			
2,082.40 8"			
2,993.45 10"			
4,294.95 12"			
	<b>TOTAL</b>	<b>\$165.57</b>	
	EMWD	\$165.57	
	Difference	\$0.00	
	Increase	3.70%	



**PERRIS-NORTH RATES**  
Year 8

	Usage	Charges	
<b>NORTH</b>		36 ccf	
Bi-Monthly			
3.041 18ccf	18	54.738	
3.498 >18ccf	18	62.964	
 Per Month Service			
26.99 5/8"	2.0	53.98	
40.49 3/4"			
67.48 1"			
134.95 1-1/2"			
215.92 2"			
404.85 3"			
674.75 4"			
1,349.50 6"			
2,159.20 8"			
3,103.85 10"			
4,453.35 12"			
	<b>TOTAL</b>	<b>\$171.68</b>	
	EMWD	\$171.70	
	Difference	-\$0.02	
	Increase	3.70%	

**PERRIS-NORTH RATES**  
Year 9

	Usage	Charges	
<b>NORTH</b>		36 ccf	
Bi-Monthly			
3.153 18ccf	18	56.754	
3.626 >18ccf	18	65.268	
 Per Month Service			
27.99 5/8"	2.0	55.98	
41.99 3/4"			
69.98 1"			
139.95 1-1/2"			
223.92 2"			
419.85 3"			
699.75 4"			
1,399.50 6"			
2,239.20 8"			
3,218.85 10"			
4,618.35 12"			
	<b>TOTAL</b>	<b>\$178.00</b>	
	EMWD	\$178.05	
	Difference	-\$0.05	
	Increase	3.70%	

**PERRIS-NORTH RATES**

Year 10

	Usage	Charges
<b>NORTH</b>		<b>36 ccf</b>
<b>Bi-Monthly</b>		
3.27 18ccf	18	58.86
3.761 >18ccf	18	67.698
<b>Per Month Service</b>		
29.03 5/8"	2.0	58.06
43.55 3/4"		
72.58 1"		
145.15 1-1/2"		
232.24 2"		
435.45 3"		
725.75 4"		
1,451.50 6"		
2,322.40 8"		
3,338.45 10"		
4,789.95 12"		
	<b>TOTAL</b>	<b>\$184.62</b>
	EMWD	\$184.64
	Difference	-\$0.02
	Increase	3.70%

**EMWD RATES**

	Usage	Charges
<b>EMWD</b>		47 ccf
<b>Bi-Monthly</b>		
1.898 14 ccf	14	26.572
3.473 24ccf	24	83.352
6.224 >36ccf	9	56.016
<b>Per Month</b>		
0.389 Daily	60.8	23.66417
3.25 Monthly	2	6.5
<b>TOTAL</b>		<b>\$196.10</b>

**PERRIS-DOWNTOWN RATES  
Year 1**

	Usage	Charges
<b>DOWNTOWN</b>		47 ccf
<b>Bi-Monthly</b>		
3.003 18ccf	18	54.054
3.454 >18ccf	29	100.166
<b>Per Month Service</b>		
20.94 5/8"	2.0	41.88
31.41 3/4"		
52.35 1"		
104.70 1-1/2"		
167.52 2"		
314.10 3"		
523.50 4"		
1,047.00 6"		
1,675.20 8"		
2,408.10 10"		
3,455.10 12"		
<b>TOTAL</b>		<b>\$196.10</b>
<b>EMWD</b>		<b>\$196.10</b>
<b>Difference</b>		<b>\$0.00</b>

PERRIS-DOWNTOWN RATES

Year 2

	Usage	Charges	
<b>DOWNTOWN</b>		47 ccf	
<b>Bi-Monthly</b>			
3.114 18ccf	18	56.052	
3.582 >18ccf	29	103.878	
<b>Per Month Service</b>			
21.71 5/8"	2.0	43.42	
32.57 3/4"			
54.28 1"			
108.55 1-1/2"			
173.68 2"			
325.65 3"			
542.75 4"			
1,085.50 6"			
1,736.80 8"			
2,496.65 10"			
3,582.15 12"			
	<b>TOTAL</b>	<b>\$203.35</b>	
	EMWD	\$203.36	
	Difference	-\$0.01	
	Increase	3.70%	

PERRIS-DOWNTOWN RATES

Year 3

	Usage	Charges	
<b>DOWNTOWN</b>		47 ccf	
<b>Bi-Monthly</b>			
3.229 18ccf	18	58.122	
3.714 >18ccf	29	107.706	
<b>Per Month Service</b>			
22.51 5/8"	2.0	45.02	
33.77 3/4"			
56.28 1"			
112.55 1-1/2"			
180.08 2"			
337.65 3"			
562.75 4"			
1,125.50 6"			
1,800.80 8"			
2,588.65 10"			
3,714.15 12"			
	<b>TOTAL</b>	<b>\$210.85</b>	
	EMWD	\$210.88	
	Difference	-\$0.04	
	Increase	3.70%	

**PERRIS-DOWNTOWN RATES**

Year 4

	Usage	Charges	
<b>DOWNTOWN</b>		47 ccf	
<b>Bi-Monthly</b>			
3.349 18ccf	18	60.282	
3.852 >18ccf	29	111.708	
<b>Per Month Service</b>			
23.34 5/8"	2.0	46.68	
35.01 3/4"			
58.35 1"			
116.70 1-1/2"			
186.72 2"			
350.10 3"			
583.50 4"			
1,167.00 6"			
1,867.20 8"			
2,684.10 10"			
3,851.10 12"			
	<b>TOTAL</b>	<b>\$218.67</b>	
	EMWD	\$218.69	
	Difference	-\$0.02	
	Increase	3.70%	

**PERRIS-DOWNTOWN RATES**

Year 5

	Usage	Charges	
<b>DOWNTOWN</b>		47 ccf	
<b>Bi-Monthly</b>			
3.473 18ccf	18	62.514	
3.994 >18ccf	29	115.826	
<b>Per Month Service</b>			
24.20 5/8"	2.0	48.4	
36.30 3/4"			
60.50 1"			
121.00 1-1/2"			
193.60 2"			
363.00 3"			
605.00 4"			
1,210.00 6"			
1,936.00 8"			
2,783.00 10"			
3,993.00 12"			
	<b>TOTAL</b>	<b>\$226.74</b>	
	EMWD	\$226.78	
	Difference	-\$0.04	
	Increase	3.70%	

PERRIS-DOWNTOWN RATES

Year 6

	Usage	Charges	
<b>DOWNTOWN</b>		47 ccf	
Bi-Monthly			
3.601 18ccf	18	64.818	
4.142 >18ccf	29	120.118	
Per Month Service			
25.10 5/8"	2.0	50.2	
37.65 3/4"			
62.75 1"			
125.50 1-1/2"			
200.80 2"			
376.50 3"			
627.50 4"			
1,255.00 6"			
2,008.00 8"			
2,886.50 10"			
4,141.50 12"			
	<b>TOTAL</b>	<b>\$235.14</b>	
	EMWD	\$235.17	
	Difference	-\$0.03	
	Increase	3.70%	

PERRIS-DOWNTOWN RATES

Year 7

	Usage	Charges	
<b>DOWNTOWN</b>		47 ccf	
Bi-Monthly			
3.735 18ccf	18	67.23	
4.296 >18ccf	29	124.584	
Per Month Service			
26.03 5/8"	2.0	52.06	
39.05 3/4"			
65.08 1"			
130.15 1-1/2"			
208.24 2"			
390.45 3"			
650.75 4"			
1,301.50 6"			
2,082.40 8"			
2,993.45 10"			
4,294.95 12"			
	<b>TOTAL</b>	<b>\$243.87</b>	
	EMWD	\$243.87	
	Difference	\$0.00	
	Increase	3.70%	

PERRIS-DOWNTOWN RATES

Year 8

	Usage	Charges	
<b>DOWNTOWN</b>		47 ccf	
Bi-Monthly			
3.873 18ccf		18	69.714
4.454 >18ccf		29	129.166
<b>Per Month Service</b>			
26.99 5/8"	2.0	53.98	
40.49 3/4"			
67.48 1"			
134.95 1-1/2"			
215.92 2"			
404.85 3"			
674.75 4"			
1,349.50 6"			
2,159.20 8"			
3,103.85 10"			
4,453.35 12"			
	<b>TOTAL</b>	<b>\$252.86</b>	
	EMWD	\$252.89	
	Difference	-\$0.03	
	Increase	3.70%	

PERRIS-DOWNTOWN RATES

Year 9

	Usage	Charges	
<b>DOWNTOWN</b>		47 ccf	
Bi-Monthly			
4.016 18ccf		18	72.288
4.619 >18ccf		29	133.951
<b>Per Month Service</b>			
27.99 5/8"	2.0	55.98	
41.99 3/4"			
69.98 1"			
139.95 1-1/2"			
223.92 2"			
419.85 3"			
699.75 4"			
1,399.50 6"			
2,239.20 8"			
3,218.85 10"			
4,618.35 12"			
	<b>TOTAL</b>	<b>\$262.22</b>	
	EMWD	\$262.25	
	Difference	-\$0.03	
	Increase	3.70%	

**PERRIS-DOWNTOWN RATES**

year 10

	Usage	Charges
<b>DOWNTOWN</b>		47 ccf
<b>Bi-Monthly</b>		
4.165 18ccf	18	74.97
4.79 >18ccf	29	138.91
<b>Per Month Service</b>		
29.03 5/8"	2.0	58.06
43.55 3/4"		
72.58 1"		
145.15 1-1/2"		
232.24 2"		
435.45 3"		
725.75 4"		
1,451.50 6"		
2,322.40 8"		
3,338.45 10"		
4,789.95 12"		
	<b>TOTAL</b>	<b>\$271.94</b>
	EMWD	\$271.95
	Difference	-\$0.01
	Increase	3.70%



**EMWD RATES**

	Usage	Charges
<b>EMWD</b>		
1.1 Daily	60.8	66.88
2.25 Monthly	2	4.5
<b>TOTAL</b>		<b>71.38</b>

**PERRIS-SEWERS RATES  
Year 1**

	Usage	Charges
<b>SEWERS</b>		
1.1 Daily	60.8	66.88
2.25 Monthly	2	4.5
<b>TOTAL</b>		<b>71.38</b>
EMWD		\$71.38
Difference		\$0.00

**PERRIS-SEWERS RATES  
Year 2**

	Usage	Charges
<b>SEWERS</b>		
1.141 Daily	60.8	69.37
2.324 Monthly	2	4.65
<b>TOTAL</b>		<b>74.02</b>
EMWD		\$74.02
Difference		\$0.00
Increase		3.70%

**PERRIS-SEWERS RATES  
Year 3**

	Usage	Charges
<b>SEWERS</b>		
1.183 Daily	60.8	71.93
2.41 Monthly	2	4.82
<b>TOTAL</b>		<b>76.75</b>
EMWD		\$76.76
Difference		-\$0.01
Increase		3.70%

**PERRIS-SEWERS RATES**

Year 4

	Usage	Charges
<b>SEWERS</b>		
1.227 Daily	60.8	74.6
2.495 Monthly	2	4.99
<b>TOTAL</b>		<b>79.59</b>
EMWD		\$79.59
Difference		\$0.00
Increase		3.70%

**PERRIS-SEWERS RATES**

Year 5

	Usage	Charges
<b>SEWERS</b>		
1.272 Daily	60.8	77.34
2.587 Monthly	2	5.17
<b>TOTAL</b>		<b>82.51</b>
EMWD		\$82.53
Difference		-\$0.02
Increase		3.70%

**PERRIS-SEWERS RATES**

Year 6

	Usage	Charges
<b>SEWERS</b>		
1.319 Daily	60.8	80.2
2.679 Monthly	2	5.36
<b>TOTAL</b>		<b>85.56</b>
EMWD		\$85.56
Difference		\$0.00
Increase		3.70%

**PERRIS-SEWERS RATES**

Year 7

	Usage	Charges
<b>SEWERS</b>		
1.368 Daily	60.8	83.17
2.778 Monthly	2	5.56
<b>TOTAL</b>		<b>88.73</b>
EMWD		\$88.73
Difference		\$0.00
Increase		3.70%

**PERRIS-SEWERS RATES**

**Year 8**

	Usage	Charges
<b>SEWERS</b>		
1.419 Daily	60.8	86.28
2.867 Monthly	2	5.73
<b>TOTAL</b>		<b>92.01</b>
EMWD		\$92.01
Difference		\$0.00
Increase		3.70%

**PERRIS-SEWERS RATES**

**Year 9**

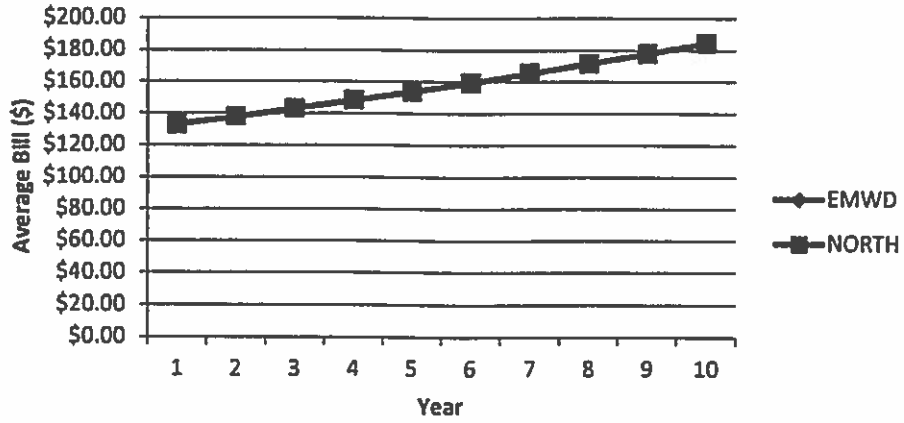
	Usage	Charges
<b>SEWERS</b>		
1.472 Daily	60.8	89.5
2.957 Monthly	2	5.91
<b>TOTAL</b>		<b>95.41</b>
EMWD		\$95.41
Difference		\$0.00
Increase		3.70%

**PERRIS-SEWERS RATES**

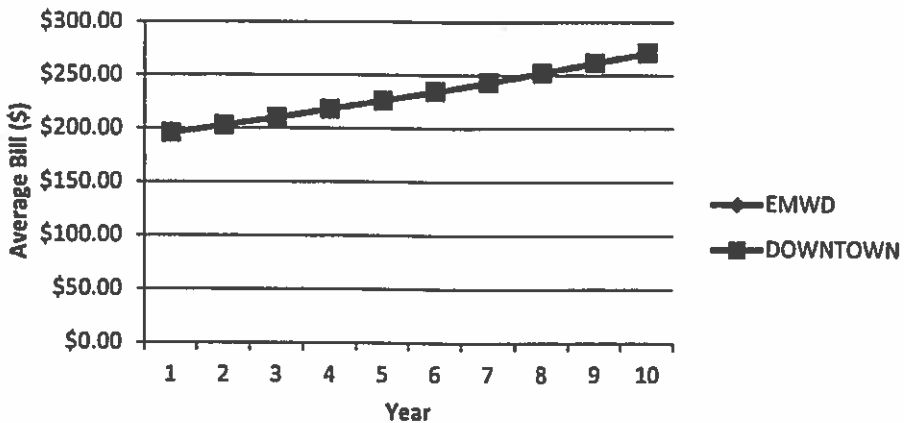
**Year 10**

	Usage	Charges
<b>SEWERS</b>		
1.526 Daily	60.8	92.78
3.066 Monthly	2	6.13
<b>TOTAL</b>		<b>98.91</b>
EMWD		\$98.94
Difference		-\$0.03
Increase		3.70%

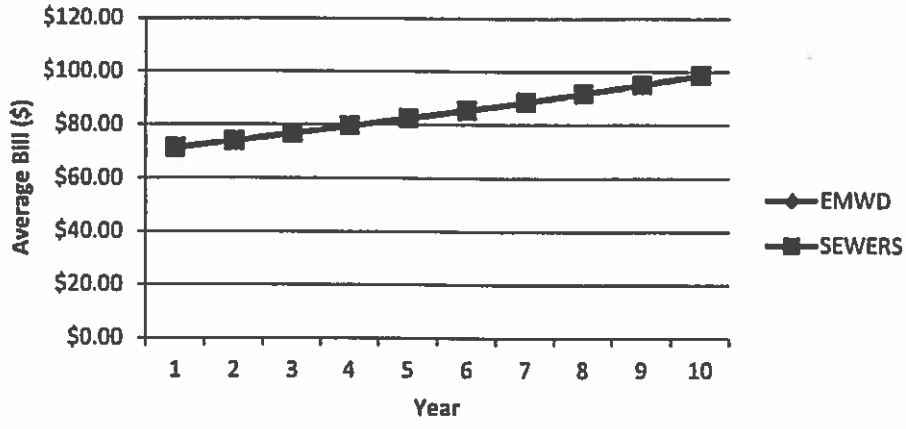
### EMWD vs. Perris-NORTH

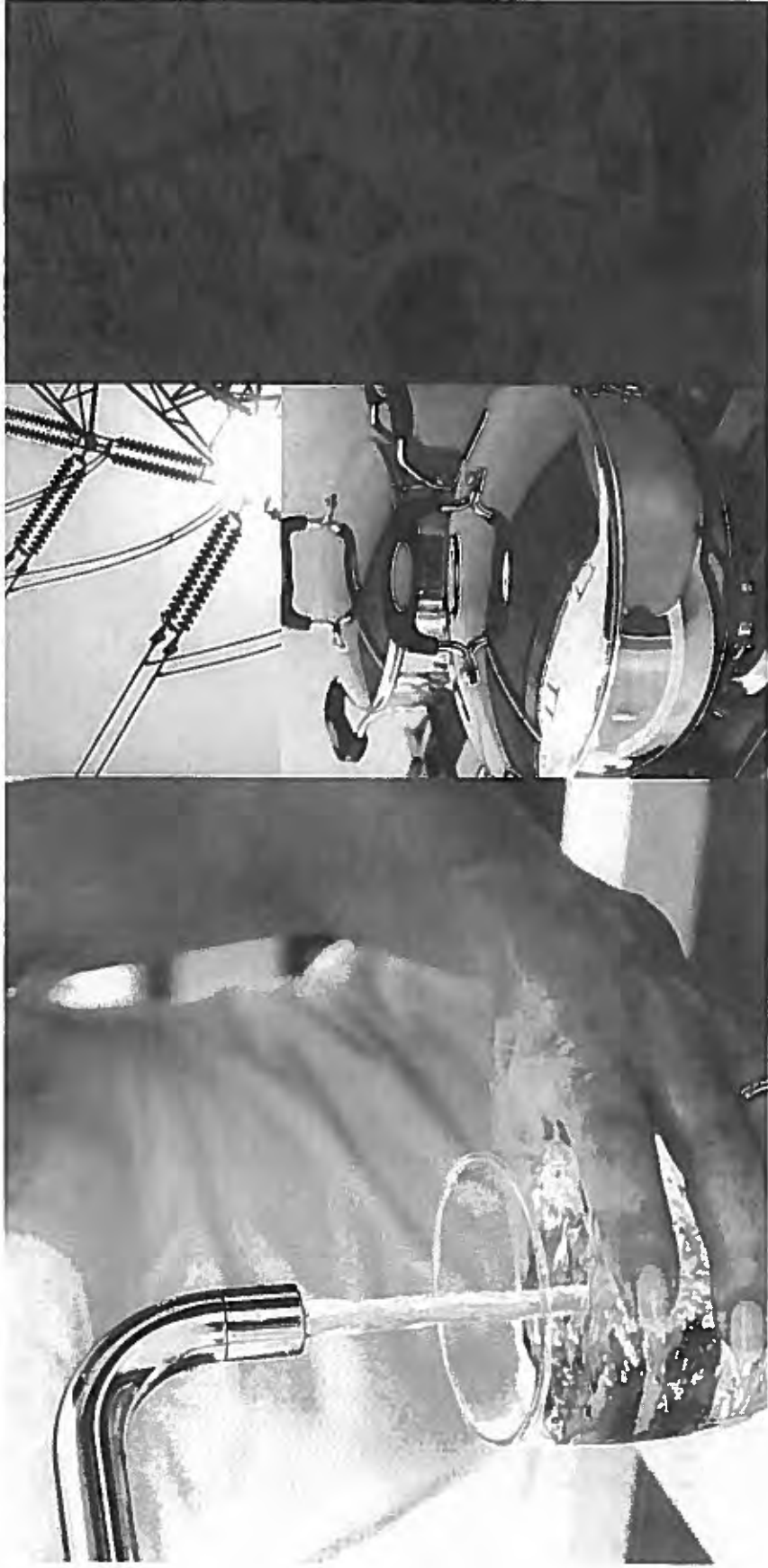


### EMWD vs. Perris-DOWNTOWN



### EMWD vs. Perris-SEWERS





# Liberty Utilities (Park Water) Corp. Overview

April 2016



# Liberty Utilities

- We provide regulated water, natural gas, and electric transmission and distribution
- Our approach is local
- We measure our success in terms of:
  - Reliable service,
  - Customer experience satisfaction, and
  - Public and workplace safety

1,450  
EMPLOYEES

OPERATING IN  
11 STATES AND  
33  
COMMUNITIES

OVER 560,000  
CUSTOMERS

STATE  
REGULATED  
100% U.S.



# Liberty Utilities California

## Liberty Utilities Cal Peco

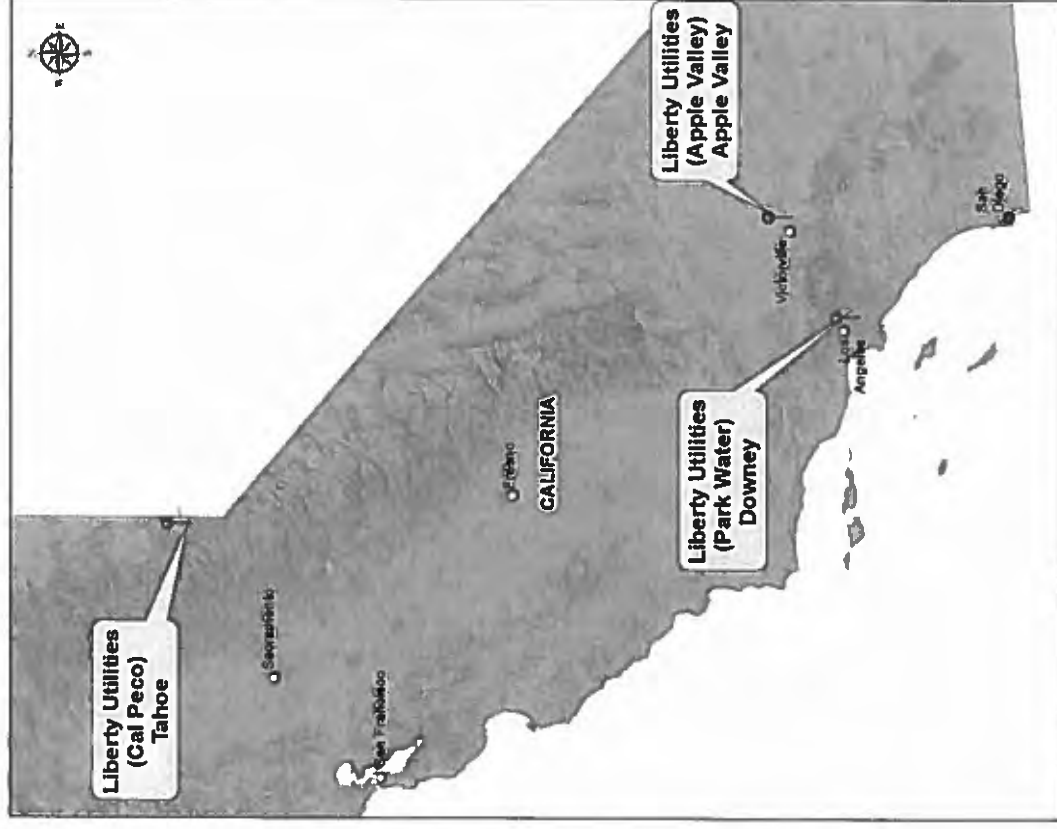
- Provides electricity to 49,200 connections

## Liberty Park Water

- Provides potable and recycled to 28,200 connections
- Supply: Imported 62%, Groundwater 36%, Recycled 2%

## Liberty Apple Valley

- Provides potable water to 20,200 connections
- Supply: Groundwater 100%





# Liberty Utilities California Water Operations

Facilities	Liberty Park Water	Liberty Apple Valley
------------	--------------------	----------------------

Active Wells 7 21

Production Capacity (gpm) 7,860 28,200

Imported Water Connections 6 0

Reservoirs 3 11

Storage Capacity (million gal) 2.65 12

Miles of pipe 253 477

# Our Values

Our **Values** are the underpinning of our company **culture** and provide helpful guidance in the decisions we make each and every day.

- Quality
- Efficiency
- Care

*“Safety is the key to admission”*



# Engage and Invest Locally



## ■“Local Utility” Feeling

- Local decision making
- Walk in service center
- Notable presence in our communities
- Creating local jobs

## ■Responsive

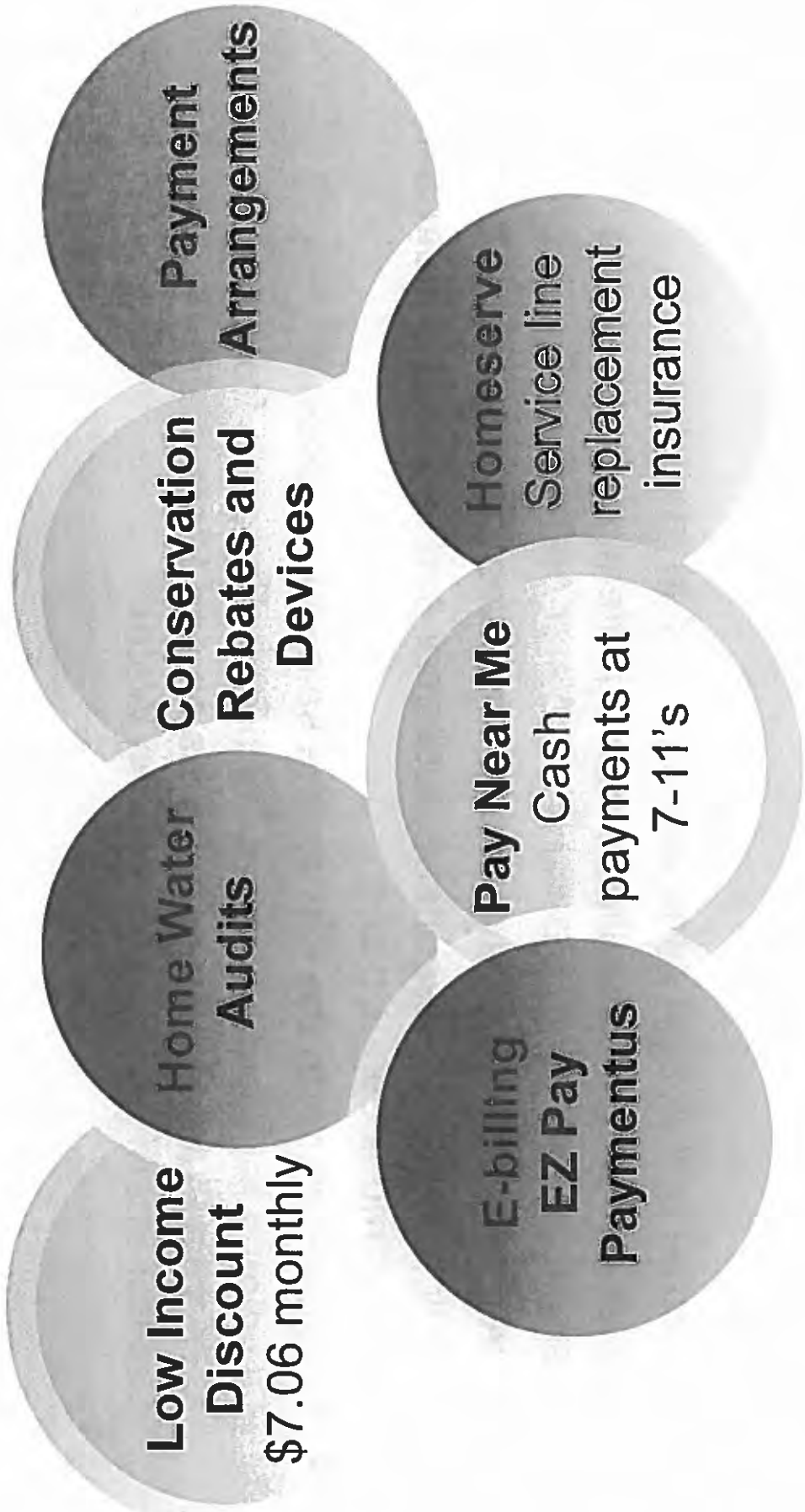
- Regional management capabilities
- Supported standardized systems / processes
- Reward superior service and empowerment



## ■We Care

- Customer centricity reinforced through survey
- Strong community presence
- Disciplined safety and training standards

# Customer Service Programs



## **Factors for a Successful Transaction**

---

- Structure and design a fair and reasonable rate plan
- Develop a plan to consolidate management, operations and customer service into Liberty Park Water operations
- Develop a comprehensive capital improvement plan
- Develop local and responsive customer and community outreach and communications plans
- Provide support to the City for the sale of the systems
- Develop a regulatory strategy for timely approvals from the California Public Utilities Commission and State Water Resources Control Board Division of Drinking Water

# What to Expect

- Quality, Efficiency, Care
  - Safe and reliable service
  - Positive customer experience
  - Regulatory compliance
  - Commitment to the community
  - National support system and expertise





**Suburban  
Water Systems**

A SouthWest Water Company

1325 N. Grand Avenue  
Suite 100  
Covina, CA 91724-4044  
Phone 626.543.2500  
Fax 626.331.4848  
[www.swwc.com](http://www.swwc.com)

August 22, 2016

City of Perris  
Attn: Ron Carr  
24 South D Street, Suite 100  
Perris, CA 92570

**RE: City of Perris – Indicative Bidder Request**

Dear Mr. Carr,

SouthWest Water Company (SWWC) would like to thank the City of Perris (City) for allowing SWWC to participate in the request for Indicative Price Proposals for the North Perris Water System, Downtown Water System and Downtown Sewer System. We are very excited at the prospect of providing water and wastewater services to the City and becoming a long-term partner with the community.

SWWC is based in Covina, California and is an investor owned utility. SWWC is focused on ownership and operation of regulated water and wastewater systems serving over half a million residential and business customers in five states: Alabama, California, Oklahoma, South Carolina, and Texas. SWWC has been in the water and wastewater business since the early 1900s. Throughout its history, SWWC has provided high quality customer service, community citizenship and environmental stewardship. SWWC is owned by an open-ended, perpetual life investment fund with a long-term "hold" investment strategy. The open-ended nature of the Fund affects its investment strategy by placing emphasis on mature entities and low volatility. Its investors, which include pension funds and other entities looking for stable, long-term investments, share this long-term "hold" investment philosophy.

Suburban Water Systems (SWS) is SWWC's California utility. SWS serves a population of 300,000 customers with 75,000 water connections in Southern California. SWS currently serves customers in the cities of Buena Park, City of Industry, Covina, Glendora, Hacienda Heights, La Habra, La Mirada, La Puente, Walnut, West Covina and portions of both Unincorporated Los Angeles and Orange Counties. SWS is regulated by the California Public Utilities Commission (CPUC). SWS was successful in purchasing the City of West Covina's water system in 1997. Prior to exiting the contract operations business, SWWC provided maintenance and operation services to the City of Perris for its water and wastewater systems.

### **City Objectives**

We understand the City is seeking to achieve several important objectives in the process of selling its water and wastewater systems. Namely, receive sufficient proceeds to retire indebtedness associated with the systems; minimize future rate increases for its customers; receive value for the additional water rights obtained associated with the North Perris system; protect the employment status of City employees who provide customer service for the systems; receive a franchise fee on system revenue; select an operator who will maintain and operate the system safely and reliably on a sustainable basis; and have a long-term partner for the community. We believe SWWC is best placed to achieve those objectives for the City.

### **Purchase Price**

SWWC Indicative Price Proposal is fourteen million three hundred thousand dollars (\$14,300,000) for current assets of North Perris Water System, Downtown Water System and Downtown Sewer System and an additional 450 acre-feet of water rights. The two water systems would be valued at eleven million dollars (\$11,000,000), the Downtown Sewer system would be valued at one million three hundred thousand dollars (\$1,300,000) and the additional 450 acre-feet of water rights would be valued at two million dollars (\$2,000,000).

We believe this price will meet the City's goals to retire its liabilities on the three public utility systems, provide new franchise fee revenue source and minimize future rate increases for the City's current customers. The purchase price also includes the following:

- SWWC hiring the City's current two Customer Service Representatives
- A 2% franchise fee in the first two years, increasing 1% per year up to a maximum of 5% annual fee thereafter
- A two year rate plan with 3.7% rate increase per year

### **Transition Plan**

SWWC would provide the operational resources, technical support and management services to complete the transition. Based on our understanding of the Public Utilities Code Sections (PUCS) 10051-10061, we believe the transition would require three separate ballot measures on the sale of each system on the next regularly scheduled election or at a special election called for the purpose to sell the systems. Our proposal is based on purchasing the 450 acre-feet of additional water rights, North Perris Water System and Downtown Water System under PUCS 10061. We understand the Downtown Sewer System would need to follow PUCS 10051-10060. Once the Downtown Sewer System has been approved by the voters, SWWC will submit an updated bid for this system at that time to be compliant with the requirements of the relevant PUCS.



**Transition Process**- The transition process for the two water systems would be in three phases. Phase 1 would be post award through contract execution. Phase 2 would be voter and regulatory approval. Phase 3 would be closing and post-closing activities.

Phase 1-This phase would require SWWC and the City work together to address all necessary technical, customer service, and legal activities required to draft and execute a purchase and sale agreement. This period would also include additional due diligence to review the assets and require Environmental Phase One site assessments be completed.

Phase 2-This phase will require SWWC and the City to develop a voter education plan, assist in public outreach to customers to listen and to explain the referendum, meet with key stakeholders and support a public information campaign. SWWC would also begin to work with the CPUC and once the referendum is approved by the voters and the contract is executed, the formal CPUC filing would be made.

Phase-3-This phase will include onboarding of the two City employees, customer records transfer and closing activities.

**Customer Benefits**

SWWC is committed to providing our customers with dependable, high-quality water that meets all federal and state health and safety standards. We also provide our customers with quality, courteous and responsive service. We offer convenient online payment options including credit cards and electronic billing.

Once approved by the CPUC, the City of Perris residential customers who qualify would be able to participate in SWS's low-income rate assistance program which has been established for all of its customer base.

The CPUC has a statutory duty to set just and reasonable rates for the customers. Companies regulated by the CPUC must file a general rate case every three years so the CPUC can ensure the utility is operating efficiently and their rate structure is a balance of affordability, safety, conservation, and system reliability.

SouthWest Water Company is well positioned to provide the City's customers with excellent service and make the necessary investments to ensure safe, clean and reliable water service to the residents and future generations of the City of Perris.

Sincerely,



Richard Rich  
General Manager

**ASSET PURCHASE AGREEMENT**  
**BETWEEN**  
**LIBERTY UTILITIES (PARK WATER) CORP.**  
**AND**  
**THE CITY OF PERRIS, CALIFORNIA**  
**DATED AS OF [\*\*Month Day\*\*], 2017**

**TABLE OF CONTENTS**

	<u>Page</u>
ARTICLE I DEFINITIONS .....	1
ARTICLE II PURCHASE AND SALE .....	9
2.1 Purchase and Sale of Assets .....	9
2.2 Excluded Assets.....	10
2.3 Sale Free of Encumbrances .....	10
2.4 Assumed Liabilities .....	10
2.5 Excluded Liabilities .....	11
2.6 Purchase Price.....	12
2.7 Purchase Price Adjustment .....	12
ARTICLE III CLOSING .....	14
3.1 Closing.....	14
3.2 Closing Deliverables.....	14
3.3 Transfer of Customers .....	15
3.4 Separation and Transfer.....	15
ARTICLE IV REPRESENTATIONS AND WARRANTIES OF SELLER .....	16
4.1 Organization and Qualification of Seller.....	16
4.2 Authority of Seller .....	16
4.3 No Conflicts; Consents; Governmental Approvals .....	16
4.4 Financial Statements .....	17
4.5 Undisclosed Liabilities .....	17
4.6 Absence of Certain Changes, Events and Conditions .....	17
4.7 Contracts and Commitments.....	18
4.8 Title to Purchased Assets.....	18
4.9 Condition and Sufficiency of the Purchased Assets .....	18
4.10 Real Property .....	19
4.11 Inventory .....	20
4.12 Accounts Receivable .....	20
4.13 Legal Proceedings; Governmental Orders .....	20
4.14 Compliance with Laws; Permits .....	21
4.15 Environmental Matters .....	21

4.16	Employee Benefit Plans.....	22
4.17	Tax Matters.....	22
4.18	Insurance; Risk of Loss .....	22
4.19	Brokers.....	22
4.20	Disclosure .....	22
4.21	No Other Representations or Warranties.....	23
<b>ARTICLE V REPRESENTATIONS AND WARRANTIES OF BUYER.....</b>		<b>23</b>
5.1	Organization of Buyer .....	23
5.2	Authority of Buyer.....	23
5.3	No Conflicts; Consents .....	23
5.4	Legal Proceedings.....	24
5.5	Brokers.....	24
5.6	Sufficiency of Funds.....	24
<b>ARTICLE VI COVENANTS .....</b>		<b>24</b>
6.1	Conduct of Business Prior to the Closing.....	24
6.2	Access to Information and Investigation .....	25
6.3	No Solicitation of Other Bids .....	26
6.4	Notice of Certain Events.....	26
6.5	Employees.....	27
6.6	Governmental Approvals and Consents .....	27
6.7	Taxes and Transfer or Assignment Cost.....	28
6.8	Procurement of Easements and Rights-of-Way.....	28
6.9	Title and Survey.....	28
6.10	Due Diligence Review .....	30
6.11	Transition and Non-Disparagement.....	30
6.12	Further Assurances .....	31
<b>ARTICLE VII CONDITIONS TO CLOSING.....</b>		<b>31</b>
7.1	Conditions to Obligations of All Parties.....	31
7.2	Conditions to Obligations of Buyer.....	31
7.3	Conditions to Obligations of Seller .....	33
<b>ARTICLE VIII INDEMNIFICATION.....</b>		<b>34</b>
8.1	Survival.....	34
8.2	Indemnification by Seller .....	34

8.3	Indemnification by Buyer .....	34
8.4	Indemnification Procedures .....	34
8.5	Payments .....	36
8.6	Tax Treatment of Indemnification Payments .....	36
8.7	Effect of Investigation .....	36
8.8	Exclusive Remedies.....	36
<b>ARTICLE IX TERMINATION .....</b>		<b>36</b>
9.1	Termination.....	36
9.2	Deposit Amount.....	37
9.3	Effect of Termination .....	38
<b>ARTICLE X MISCELLANEOUS .....</b>		<b>38</b>
10.1	Expenses .....	38
10.2	Notices .....	38
10.3	Interpretation.....	39
10.4	Headings .....	39
10.5	Severability .....	39
10.6	Entire Agreement.....	39
10.7	Successors and Assigns .....	40
10.8	No Third-party Beneficiaries.....	40
10.9	Amendment and Modification; Waiver.....	40
10.10	Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.....	40
10.11	Limitation of Remedies .....	41
10.12	Specific Performance.....	41
10.13	Attorneys' Fees.....	41
10.14	Counterparts.....	42

**SCHEDULES**

Schedule 2.1(b)	Certain Distribution Facilities
Schedule 2.1(f)	Assigned Contracts
Schedule 2.2(d)	Certain Excluded Assets
Schedule 2.4(c)	Certain Assumed Liabilities
Schedule 2.7(a)	Form of Closing Working Capital Statement

**EXHIBITS**

Exhibit A  
Exhibit B  
Exhibit C

Form of Assignment and Assumption Agreement  
Form of Bill of Sale  
Form of Escrow Agreement

DRAFT

## ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (the "Agreement") is made and entered into as of **[\*\*Month Day\*\*]**, 2017 (the "Effective Date"), by and between Liberty Utilities (Park Water) Corp., a California corporation (the "Buyer"), and the City of Perris, a California municipal corporation (the "City" or the "Seller"). Buyer and Seller are sometimes referred to herein as a "Party" and collectively as the "Parties."

WHEREAS, Seller owns and operates a water distribution system located entirely inside the northeast boundary of the City of Perris (the "North System"), which system formerly was owned by a component unit of the City, the Perris Public Utility Authority ("PPUA"); and

WHEREAS, Seller owns and operates a water distribution system located entirely within the central downtown area of the City of Perris (the "Downtown System" and, collectively with the North System, the "Water Systems"); and

WHEREAS, Seller desires to sell and assign to Buyer, and Buyer desires to purchase and assume from the Seller, substantially all of the assets used in the Water Systems, on the terms and subject to the conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants, representations, warranties and agreements and the conditions set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

### ARTICLE I DEFINITIONS

For purposes of this Agreement, the following terms used herein will have the following meaning when used with initial capitalization, whether singular or plural:

"Accounts Payable" has the meaning set forth in Section 2.4(a).

"Accounts Receivable" has the meaning set forth in Section 2.1(d).

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

"Affiliate" of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"Agreement" has the meaning set forth in the preamble hereto.

“Applicable Law” means all Laws that apply to or relate to the Parties, the Water systems, the Purchased Assets, this Agreement or the rights, responsibilities and obligations arising from the transaction made the subject of this Agreement.

“Assigned Contracts” has the meaning set forth in Section 2.1(f).

“Assignment and Assumption Agreement” means the Assignment and Assumption Agreement in the form of Exhibit A attached hereto.

“Bill of Sale” means the Bill of Sale in the form of Exhibit B attached hereto.

“Books and Records” has the meaning set forth in Section 2.1.

“Business Day” means any day other than a Saturday or Sunday or any day on which banks in New York City, New York or Toronto, Ontario are authorized or required by Law to be closed.

“Buyer” has the meaning set forth in the preamble hereto.

“Buyer Closing Certificate” has the meaning set forth in Section 7.3.

“Buyer Indemnitees” has the meaning set forth in Section 8.2.

“Closing” has the meaning set forth in Section 3.1.

“Closing Date” has the meaning set forth in Section 3.1.

“Closing Working Capital” means: (a) Current Assets, less (b) Current Liabilities, determined as of the open of business on the Closing Date.

“Closing Working Capital Statement” has the meaning set forth in Section 2.7.

“Contract” means any contract, lease, deed, mortgage, license, instrument, note, commitment, undertaking, indenture, joint venture and all other agreements, commitments and legally binding arrangements, whether written or oral.

“Cure Notice” has the meaning set forth in Section 6.9.

“Current Assets” means the current assets of the Water systems included in the line items set forth on Schedule 2.7(a) and only to the extent acquired pursuant to the terms of this Agreement.

“Current Liabilities” means the current liabilities of the Water systems included in the line items set forth on Schedule 2.7(a) and only to the extent assumed pursuant to the terms of this Agreement.

“Customer Information” has the meaning set forth in Section 2.1(e).

“Deposit Amount” means One Million Dollars (\$1,000,000).



“Direct Claim” has the meaning set forth in Section 8.4(c).

“Distribution Facilities” has the meaning set forth in Section 2.1(b).

“Downtown System” has the meaning set forth in the Recitals hereto.

“Easements” means all easements, rights of way, permits and licenses, whether or not of record, used or held for use by Seller in the operation of the Water systems.

“Effective Date” has the meaning set forth in the preamble hereto.

“Encumbrance” means any charge, claim, community property interest, pledge, condition, equitable interest, lien (statutory or other), option, security interest, mortgage, easement, encroachment, right of way, right of first refusal, or restriction of any kind, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership.

“Environment” means all forms of plant and animal life, natural resources, soil, sediments, land, ground, surface and subsurface strata (whether above or below water), water (including, without limitation, territorial, coastal, and inland surface waters, groundwater, streams, and water in drains), air (including, ambient, workplace, outdoor and indoor air), soil vapor, and or any other environmental medium, and “Environmental” shall be construed as pertaining to the “Environment.”

“Environmental Claim” means any Action, Governmental Order, lien, fine, penalty, or, as to each, any notice of a proposed violation or any settlement or judgment arising therefrom, by or from any Person alleging in any manner liability of whatever kind or nature (including liability or responsibility for the costs of enforcement proceedings, investigations, testing, sampling, assessing, monitoring, cleanup, governmental response, removal or remediation, natural resources damages, property damages, personal injuries, medical monitoring, penalties, contribution, indemnification and injunctive relief) arising out of, based on or resulting from an Environmental Condition.

“Environmental Condition” means a condition or circumstance resulting from one or more related actions, omissions, or events that exists or may exist which (a) relates to the actual or potential presence, Release of, or exposure to, any Hazardous Substance; or (b) is or is alleged to be an actual or potential violation or in non-compliance with applicable Environmental Law or term or condition of any Environmental Permit or any required Governmental Order, or which is subject to remedy under Environmental Law; or (c) which is or is alleged to be damaging or to pose an actual or potential threat to the Environment, property, natural resources, human health, welfare, or safety.

“Environmental Law” means any and every Law pertaining to, regulating, relating to or imposing liability, standards or obligations of conduct concerning pollution, contaminants, or pathogens, or protection of health, safety (including the health and safety of workers under the U.S. Occupational Safety and Health Act of 1970 (29 U.S.C. §§ 651 et seq.)), flora and fauna, the Environment or protection, allocation, use, preservation, or control of the quantity or quality of natural resources, including without limitation (a) any Law relating to any actual or threatened

Release, manufacture, processing, distribution, use, treatment, storage, transport, or handling of any Hazardous Substance, (b) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §§ 9601 *et seq.*) (“CERCLA”), the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 *et seq.*); the Clean Air Act (42 U.S.C. §§ 7401 *et seq.*); the Clean Water Act (33 U.S.C. §§ 1251 *et seq.*) the Toxic Substances Control Act (15 U.S.C. §§ 2601 *et seq.*); the Emergency Planning and Community Right to Know Act (42 U.S.C. §§ 11001 *et seq.*); the Oil Pollution Act of 1990 (33 U.S.C. §§ 2701 *et seq.*); and the Hazardous Materials Transportation Uniform Safety Act (49 U.S.C. §§ 5101 *et seq.*), the National Environmental Policy Act (42 U.S.C. §§ 4321 *et seq.*), the Migratory Bird Treaty Act (16 U.S.C. §§ 701 *et seq.*), the Bald and Golden Eagle Protection Act (16 U.S.C. §§ 668 *et seq.*) and the Endangered Species Act of 1973 (16 U.S.C. §§ 1531 *et seq.*) with any amendments or reauthorization thereto or thereof, and any and all regulations promulgated thereunder, and all analogous state and local counterparts or equivalents; (c) any Law relating to maximum contaminant levels for drinking water distributed by public water systems and criteria, procedures, and treatment techniques for ensuring compliance with such levels, including but not limited to the Safe Drinking Water Act, 42 U.S.C. §§ 300f *et seq.* and any and all regulations promulgated thereunder, and all analogous state and local counterparts or equivalents, including but not limited to the California Safe Drinking Water Act (California Health and Safety Code §116270 *et seq.*; (d) and any other state, county, municipal, local or other statute, law, ordinance or regulation which may relate to or deal with human health or the environment or dangerous toxic or hazardous substances, all as may be from time to time amended; and (e) all Environmental Permits issued under such Law.

“Environmental Notice” means any directive, notice of violation or infraction, or notice respecting any Environmental Claim, whether in written or oral form.

“Environmental Permit” means any Permit, letter, clearance, consent, waiver, closure, exemption, decision or other action required under or issued, granted, given, authorized by or made pursuant to any Environmental Law.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and the applicable regulations thereunder.

“Escrow Agent” means [**\*\* to be agreed\*\***].

“Escrow Agreement” that certain escrow agreement among Seller, Buyer and Escrow Agent dated as of the Effective Date, and in the form of Exhibit C.

“Excluded Assets” has the meaning set forth in Section 2.2.

“Excluded Liabilities” has the meaning set forth in Section 2.5.

“Franchise Agreement” means that certain Franchise Agreement, as shown in Exhibit C, and to be executed at Closing by and between Seller and Buyer.

“GAAP” means generally accepted accounting principles for financial reporting in the United States.

“Good Utility Practice” means those practices, methods and acts which: (a) when engaged in are commonly used in engineering and operations to operate water distribution or wastewater treatment equipment, as the case may be, and associated mechanical and other facilities lawfully and with safety, reliability, efficiency and expedition or (b) in the exercise of reasonable judgment considering the facts known when engaged in, could have been expected to achieve the desired result consistent with Applicable Law, safety, reliability, efficiency and expedition. Good Utility Practice is not limited to the optimum practice, method or act, but rather a spectrum of possible practices, methods or acts.

“Governmental Authority” means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any arbitrator, court or tribunal of competent jurisdiction.

“Governmental Order” means any consent, approval, order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

“Hazardous Substance” means: (a) any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, mineral or gas, in each case, whether naturally occurring or manmade, that is hazardous, acutely hazardous, toxic, or words of similar import or regulatory effect under any Environmental Law, including but not limited to any hazardous waste as defined by 42 U.S.C. § 6903(5), hazardous substance as defined by 42 U.S.C. § 9601(14), hazardous material as defined by 49 U.S.C. § 5102(2), toxic pollutant as listed pursuant to 33 U.S.C. § 1317, or pollutant or contaminant as defined in 42 U.S.C. § 9601(33); and (b) any petroleum or petroleum-derived products including but not limited to any oil as defined by 33 U.S.C. § 2701(23), radon, radioactive materials or wastes, asbestos in any form, lead or lead-containing materials, urea formaldehyde foam insulation, polychlorinated biphenyls, or constituents that are regulated, controlled or restricted under any Environmental Law or by any Governmental Authority, or which may cause, contribute to or result in an Environmental Claim.

“Indemnified Party” has the meaning set forth in Section 8.4.

“Indemnifying Party” has the meaning set forth in Section 8.4.

“Interim Balance Sheet” has the meaning set forth in Section 4.4.

“Interim Balance Sheet Date” has the meaning set forth in Section 4.4.

“Interim Financial Statements” has the meaning set forth in Section 4.4.

“Inventory” has the meaning set forth in Section 2.1(c).

“Knowledge” An individual will be deemed to have Knowledge of a particular fact or other matter if:

(a) That individual is actually aware of that fact or matter; or

(b) A prudent individual would be expected to discover or otherwise become aware of that fact or matter in the course of conducting a reasonably comprehensive investigation regarding the accuracy of any representation or warranty contained in this Agreement.

A Person (other than an individual) will be deemed to have Knowledge of a particular fact or other matter if any individual who is currently serving as a director, officer, official (elected or appointed), employee, partner, executor or trustee of that Person (or in any similar capacity) has, or at any time had, Knowledge of that fact or other matter (as set forth in (a) and (b) above).

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

“Leased Real Property” has the meaning set forth in Section 4.10.

“Liability” or “Liabilities” means any financial liability, legal liability, obligation, judgment or fine of any kind, character or description, whether known or unknown, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due, vested or unvested, executory, determined, determinable or otherwise, and whether or not the same is required to be accrued on the financial statements of such Person.

“Losses” means losses, damages, liabilities, deficiencies, Actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys’ fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers; provided, however, that “Losses” shall not include punitive damages, except in the case of fraud or to the extent actually awarded to a Governmental Authority or other third party.

“Material Adverse Effect” means a material adverse change in the Purchased Assets, Liabilities, financial condition, operating results, customer, employee or supplier relations, business condition or prospects of Seller affecting or related to the Purchased Assets, System Customers or the Water systems.

“Material Defect” means a defect identified by Buyer necessary to be cured in order to operate the Purchased Assets in accordance with all Applicable Law and Buyer’s standards.

“Municipal Election” means the City of Perris, California, municipal special election to be held in November 2017.

“North System” has the meaning set forth in the Recitals hereto.

“Objections” has the meaning set forth in Section 6.9.

“Opinion of Counsel” has the meaning set forth in Section 7.2.

“Ordinary Course of Operations” means an action taken by or on behalf of Seller shall be deemed to have been taken in the “Ordinary Course of Operations” if, and only if:

(a) such action is recurring in nature, is consistent in nature, scope and magnitude with the past practices of Seller and is taken in the ordinary course of the normal day-to-day operations of the Water Systems;

(b) such action is taken in accordance with Good Utility Practice;

(c) such action is not required to be authorized by the city council, mayor, chief executive, or chairman of Seller or other governing, managing, or administrative body thereof, or any committee, board, agency or the city council of Seller and that does not require any other separate or special authorization of any nature; and

(d) such action is similar in nature, scope and magnitude to actions customarily taken, without any separate or special authorization, in the ordinary course of the normal, day-to-day operations of other water and wastewater systems operated by California municipalities, water authorities, utility boards or other non-investor-owned water and wastewater systems in California.

“Owned Real Property” has the meaning set forth in Section 4.10.

“Parties” and “Party” have the meanings set forth in the preamble hereto.

“Permits” means all permits, licenses, franchises, approvals, consents, authorizations, registrations, certificates, variances, waivers, and similar rights obtained, or required to be obtained, from Governmental Authorities.

“Permitted Encumbrances” has the meaning set forth in Section 4.8.

“Permitted Exceptions” has the meaning set forth in Section 6.10.

“Person” means an individual, partnership, a corporation, an association, a limited liability company, a joint stock company, a trust, a joint venture, an unincorporated organization, an inter-local cooperative, a Governmental Authority, or any department, agency or political subdivision thereof or any other entity.

“Plans” shall mean all employee benefit plans (as that term is defined in ERISA) together with any other employee benefit plans, retirement plans, savings plans or other similar plans maintained by Seller.

“PPUA” has the meaning set forth in the recitals.

“PPUA Transfer” means the transfer of ownership of the North System from the PPUA to Seller which occurred effective **[\*\*Date\*\*]**, 2017.<sup>1</sup>

---

<sup>1</sup> PPUA Transfer to occur prior to execution of the APA.

“Purchase Price” has the meaning set forth in Section 2.6.

“Purchased Assets” has the meaning set forth in Section 2.1.

“Real Property” has the meaning set forth in Section 2.1(a).

“Real Property Assignment Agreements” means, collectively, General Warranty Deeds, Assignments of Leases, and Assignments of Easements, as applicable, and all other documents reasonably necessary to transfer and/or assign Real Property from the Seller to the Buyer, in a recordable form agreed upon by Seller and Buyer.

“Release” means any release, spilling, leaking, pumping, pouring, emitting, depositing, emptying, discharging, injecting, escaping, leaching, dumping, abandonment, disposing or allowing to disperse or migrate into or through the Environment.

“Representatives” means, with respect to any Person, any and all directors, officers, employees, consultants, financial advisors, counsel, accountants and other agents of such Person.

“Returns” has the meaning set forth in Section 4.17.

“Seller” has the meaning set forth in the preamble hereto.

“Seller Closing Certificate” has the meaning set forth in Section 7.2.

“Seller Indemnitees” has the meaning set forth in Section 8.3.

“Survey” has the meaning set forth in Section 6.9(a).

“System Customers” means those customers receiving service from Seller utilizing the Water Systems on or before the Transfer Time.

“System Map” means that certain map titled \_\_\_\_\_ dated \_\_\_\_, \_\_\_\_ provided by Seller to Buyer describing and depicting the layout of the Water Systems including the water distribution lines, customer service lines, valves, wells, pumps, and treatment facilities.<sup>2</sup>

“Target Working Capital Amount” means \_\_\_\_\_ Dollars (\$\_\_\_\_\_).

“Taxes” means all taxes, charges, fees, levies or other assessments, including, without limitation, all net income, gross income, gross receipts, sales, use, ad valorem, transfer, franchise, profits, license, withholding, payroll, employment, social security, unemployment, excise, estimated, severance, stamp, occupation, property or other taxes, customs duties, fees assessments or charges of any kind whatsoever, including, without limitation, all interests and penalties thereon and additions to tax or additional amounts imposed by any taxing authority.

“Third Party Claim” has the meaning set forth in Section 8.4.

---

<sup>2</sup> To be modified depending on systems maps in existence or developed.

“Title and Survey Review Period” has the meaning set forth in Section 6.9(c).

“Title Commitment” has the meaning set forth in Section 6.9(b).

“Title Documents” has the meaning set forth in Section 6.9(b).

“Transfer Taxes” has the meaning set forth in Section 6.7.

“Transfer Time” has the meaning set forth in Section 3.3.

“Transaction Documents” means this Agreement, the Escrow Agreement, the Bill of Sale, the Assignment and Assumption Agreement, the Real Property Assignment Agreements, the Franchise Agreement, and the other agreements, instruments and documents required to be delivered at the Closing.

“WARN Act” means the federal Worker Adjustment and Retraining Notification Act of 1988, and similar state, local and foreign laws related to plant closings, relocations, mass layoffs and employment losses, all as may be from time to time amended.

“Water Systems” has the meaning set forth in the Recitals hereto.

## **ARTICLE II PURCHASE AND SALE**

2.1 Purchase and Sale of Assets. On the terms and subject to the conditions set forth in this Agreement, at the Closing, Seller shall sell, transfer, convey, assign and deliver to Buyer, and Buyer shall purchase from Seller, free and clear of all Encumbrances other than Permitted Encumbrances, all of Seller’s right, title and interest in, to and under all of the assets, properties and rights of every kind and nature, whether real, personal or mixed, tangible or intangible, wherever located (other than Excluded Assets) which relate to, or are used or held for use in connection with, the Water Systems (the “Purchased Assets”), including without limitation the following:

(a) The Owned Real Property, Easements, and other interests in real property (together with the improvements and fixtures thereon) used or held for use by Seller in the operation of the Water Systems (collectively, the “Real Property”);

(b) The Water Systems and all related and appurtenant facilities, equipment, and personal property currently used by Seller for delivery of services to the System Customers, including the distribution systems described or depicted in the System Map and those assets set forth on Schedule 2.1(b) (the “Distribution Facilities”);

(c) All of the inventory, and supplies used or held for use in connection with the Water Systems (collectively, the “Inventory”);

(d) All accounts or notes receivable held by Seller arising out of operation of the Water Systems, and any security, claim, remedy or other right related to any of the foregoing (“Accounts Receivable”).

(e) All customer-related information owned by or otherwise controlled by Seller and used in connection with the Water Systems, including, without limitation, all customer lists, billing history, rate classifications and revenue calculations (collectively, the “Customer Information”);

(f) All Contracts set forth on Schedule 2.1(f) (the “Assigned Contracts”);

(g) All Permits, including Environmental Permits, set forth on Schedule 4.14(b);

(h) All of Seller’s records and other documents, instruments and information relating to the Water Systems and the Purchased Assets (collectively, the “Books and Records”) and the System Map; and

(i) All of Seller’s rights, claims, and causes of action relating to the Purchased Assets.

2.2 Excluded Assets. Notwithstanding anything to the contrary in this Agreement, the following assets of Seller related to the Water Systems (collectively, the “Excluded Assets”) are not part of the sale and purchase contemplated hereunder and shall remain the property of Seller after the Closing:

(a) Cash;

(b) Customer deposits;

(c) Contracts that are not Assigned Contracts, including (i) the Settlement Agreement and Mutual Release among the Seller, the PPUA, the Villages of Avalon Community Association and the Amelia Square Homeowners Association dated [**\*\*on or about December 4, 2012\*\***], and (ii) the Settlement Agreement and Mutual Release among BAI Investor, LLC, the Seller and PPUA dated [**\*\*on or about April 14, 2015\*\***] (collectively, the “Excluded Contracts”);<sup>3</sup> and

(d) The assets, properties and rights specifically set forth on Schedule 2.2(d).

2.3 Sale Free of Encumbrances. The Purchased Assets shall be as of the Closing free and clear of all Encumbrances other than Permitted Encumbrances acceptable to Buyer. Notwithstanding Section 2.6, amounts necessary to clear the Purchased Assets of Encumbrances will be deducted from the Closing Amount and paid to the persons entitled thereto.

2.4 Assumed Liabilities. Subject to the terms and conditions set forth herein, Buyer shall assume and agree to pay, perform and discharge only the following Liabilities of Seller (collectively, the “Assumed Liabilities”), and no other Liabilities:

(a) all trade accounts payable of Seller to third parties in connection with the Water Systems that remain unpaid and are not delinquent as of the Closing Date and that

---

<sup>3</sup> Seller to provide fully executed copies of 2012 and 2015 Settlement Agreements.



either are (i) reflected on the Interim Balance Sheet, or (ii) arose in the ordinary course of business consistent with past practice since the Interim Balance Sheet Date ("Accounts Payable");

(b) all Liabilities in respect of the Assigned Contracts but only to the extent that such Liabilities thereunder are required to be performed after the Closing Date, were incurred in the ordinary course of business and do not relate to any failure to perform, improper performance, warranty or other breach, default or violation by Seller on or prior to the Closing; and

(c) those Liabilities of Seller set forth on Schedule 2.4(c).

2.5 Excluded Liabilities. Notwithstanding the provisions of Section 2.4 or any other provision in this Agreement to the contrary, Buyer shall not assume and shall not be responsible to pay, perform or discharge any Liabilities of Seller of any kind or nature whatsoever other than the Assumed Liabilities (the "Excluded Liabilities"). Seller shall pay and satisfy in due course all Excluded Liabilities which it is obligated to pay and satisfy. Without limiting the generality of the foregoing, the Excluded Liabilities shall include, but not be limited to, the following:

(a) any Liabilities of Seller arising or incurred in connection with the negotiation, preparation, investigation and performance of this Agreement, and the transactions contemplated hereby;

(b) any Liability for (i) Taxes of Seller or relating to the Water Systems, the Purchased Assets or the Assumed Liabilities for any pre-Closing period; (ii) Taxes that arise out of the consummation of the transactions contemplated hereby or that are the responsibility of Seller pursuant to Section 6.8; or (iii) other Taxes of Seller or the Water Systems of any kind or description that become a Liability of Buyer under any common law doctrine, transferee or successor liability, or otherwise by operation of contract or Law;

(c) any Liabilities relating to or arising out of the Excluded Assets;

(d) any Liabilities in respect of any pending or threatened Action arising out of, relating to or otherwise in respect of the operation of the Water Systems or the Purchased Assets to the extent such Action relates to such operation on or prior to the Closing Date;

(e) any Liabilities of Seller arising under or in connection with any Plan providing benefits to any present or former employee of Seller;

(f) any Liabilities of Seller to any present or former employees, officers, directors, retirees, independent contractors or consultants of Seller, including, without limitation, any Liabilities associated with any claims for wages or other benefits, bonuses, accrued vacation, workers' compensation, severance, retention, termination or other payments;

(g) any Environmental Claims or other Liabilities under any Environmental Law, to the extent arising out of or relating to facts, circumstances or conditions existing on

or prior to the Closing or otherwise to the extent arising out of any actions or omissions of Seller;

(h) any trade accounts payable of Seller (i) to the extent not accounted for on the Interim Balance Sheet; (ii) which constitute debt, loans or credit facilities to financial institutions; or (iii) which did not arise in the ordinary course of business;

(i) any Liabilities under or associated with the Excluded Contracts or any other Contracts (i) which are not validly and effectively assigned to Buyer pursuant to this Agreement; (ii) which do not conform to the representations and warranties with respect thereto contained in this Agreement; or (iii) to the extent such Liabilities arise out of or relate to a breach by Seller of such Contracts prior to Closing;

(j) any Liabilities associated with debt, loans or credit facilities of Seller and/or the Water Systems;

(k) any Liabilities arising out of, in respect of or in connection with the failure by Seller to comply with any Law or Governmental Order; and

(l) any Liabilities or obligations under or associated with the Promissory Note dated December 16, 2008, by PPUA to the order of McCanna Ranch Water Company.

**2.6 Purchase Price.** The aggregate purchase price for the Purchased Assets shall be Eleven Million Five Hundred Thousand Dollars (\$11,500,000) (the "Closing Amount"), subject to adjustment pursuant to Section 2.7 hereof (as adjusted, the "Purchase Price"), plus the assumption of the Assumed Liabilities. The Purchase Price shall be paid as follows:

(a) Within ten (10) Business Days after the Effective Date, Buyer shall deposit an amount equal to the Deposit Amount with the Escrow Agent, to be held and distributed (i) at the Closing to the Seller, or (ii) otherwise in accordance with Section 9.2 and the Escrow Agreement;

(b) Subject to Section 2.3, the Closing Amount less the Deposit Amount shall be paid at the Closing by wire transfer of immediately available funds to an account designated in writing by Seller to Buyer, with such notification provided no later than two (2) Business Days prior to the Closing Date; and

(c) The Purchase Price Adjustment shall be determined and paid in accordance with Section 2.7.

**2.7 Purchase Price Adjustment.**

(a) Post-Closing Adjustment.

i. Within sixty (60) days after the Closing Date, Buyer shall prepare and deliver to Seller (A) a statement setting forth its calculation of Closing Working Capital, which statement shall be substantially in the form of Schedule 2.7(a) (the "Closing Working Capital Statement").

ii. The “Post-Closing Adjustment” shall be an amount equal to the Closing Working Capital minus the Target Working Capital Amount. If the Post-Closing Adjustment is a positive number, Buyer shall pay to Seller an amount equal to the Post-Closing Adjustment. If the Post-Closing Adjustment is a negative number, Seller shall pay to Buyer an amount equal to the Post-Closing Adjustment.

(b) Examination and Review.

i. Examination. After receipt of the Closing Working Capital Statement, Seller shall have thirty (30) days (the “Review Period”) to review the Closing Working Capital Statement. During the Review Period, Seller and Seller’s Representatives shall have access to the relevant books and records of Buyer to the extent that they relate to the Closing Working Capital Statement, and are reasonably necessary to prepare a Statement of Objections (defined below), provided, that such access shall be in a manner that does not unreasonably interfere with the normal business operations of Buyer.

ii. Objection. On or prior to the last day of the Review Period, Seller may object to the Closing Working Capital Statement by delivering to Buyer a written statement setting forth Seller’s objections in reasonable detail, indicating each disputed item or amount and the basis for Seller’s disagreement therewith (the “Statement of Objections”). If Seller fails to deliver the Statement of Objections before the expiration of the Review Period, the Closing Working Capital Statement and the Post-Closing Adjustment reflected in the Closing Working Capital Statement shall be deemed to have been accepted by Seller. If Seller delivers the Statement of Objections before the expiration of the Review Period, Buyer and Seller shall negotiate in good faith to resolve such objections within twenty (20) days after the delivery of the Statement of Objections (the “Resolution Period”), and, if the same are so resolved within the Resolution Period, the Post-Closing Adjustment and the Closing Working Capital Statement with such changes as may have been previously agreed in writing by Buyer and Seller, shall be final and binding.

iii. Resolution of Disputes. If Seller and Buyer fail to reach an agreement with respect to all of the matters set forth in the Statement of Objections before expiration of the Resolution Period, then any amounts remaining in dispute (“Disputed Amounts” and any amounts not so disputed, the “Undisputed Amounts”) shall be submitted for resolution to the office of a mutually acceptable firm of impartial and independent certified public accountants (the “Independent Accountant”) who, acting as experts and not arbitrators, shall resolve the Disputed Amounts only and make any adjustments to the Post-Closing Adjustment, as the case may be, and the Closing Working Capital Statement. The parties hereto agree that all adjustments shall be made without regard to materiality. The Independent Accountant shall only decide the specific items under dispute by the parties and their decision for each Disputed Amount must be within the range of values assigned to each such item in the Closing Working Capital Statement and the Statement of Objections, respectively.

iv. Fees of the Independent Accountant. The fees and expenses of the Independent Accountant shall be split and paid equally by Seller, on the one hand, and Buyer, on the other hand.

v. Determination by Independent Accountant. The Independent Accountant shall make a determination as soon as practicable within thirty (30) days (or such other time as the parties hereto shall agree in writing) after their engagement, and their resolution of the Disputed Amounts and their adjustments to the Closing Working Capital Statement and/or the Post-Closing Adjustment shall be conclusive and binding upon the parties hereto.

vi. Payments of Post-Closing Adjustment. Except as otherwise provided herein, any payment of the Post-Closing Adjustment, together with interest calculated as set forth below, shall (A) be due (x) within five (5) Business Days of acceptance of the applicable Closing Working Capital Statement or (y) if there are Disputed Amounts, then within five (5) Business Days of the resolution described in clause (v) above; and (B) be paid by wire transfer of immediately available funds to such account as is directed by Buyer or Seller, as the case may be. The amount of any Post-Closing Adjustment shall bear interest from and including the Closing Date to and including the date of payment at a rate per annum equal to ten percent (10%). Such interest shall be calculated daily on the basis of a 365 day year and the actual number of days elapsed, without compounding.

vii. Adjustments for Tax Purposes. Any payments made pursuant to this Section 2.7 shall be treated as an adjustment to the Purchase Price for tax purposes, unless otherwise required by Law.

### ARTICLE III CLOSING

3.1 Closing. Subject to the terms and conditions of this Agreement, the consummation of the transactions contemplated by this Agreement (the “Closing”) shall take place at the offices of the Buyer, 9750 Washburn Road, Downey, CA 90241, at 10:00 a.m., local time, on the third Business Day after all of the conditions to Closing set forth in Article VII are either satisfied or waived (other than conditions which, by their nature, are to be satisfied on the Closing Date), or at such other time, date or place as Seller and Buyer may mutually agree upon in writing. The date on which the Closing is to occur is herein referred to as the “Closing Date”.

#### 3.2 Closing Deliverables.

(a) At the Closing, Seller will execute (where applicable) and deliver to Buyer the following:

- i. the Bill of Sale;
- ii. the Assignment and Assumption Agreement;

- Contracts;
- iii. any consents necessary for valid assignment of the Assigned
  - iv. any Real Property Assignment Agreements;
  - v. the Franchise Agreement;
  - vi. the Opinion of Counsel;
  - vii. the Seller Closing Certificate; and
  - viii. such other certificates, documents and instruments of sale, transfer, conveyance and assignment as Buyer may reasonably request.

(b) At the Closing, Buyer will execute (where applicable) and deliver to Seller the following:

- i. the Closing Amount less the Deposit Amount (as adjusted);
- ii. the Bill of Sale;
- iii. the Assignment and Assumption Agreement;
- iv. any Real Property Assignment Agreements;
- v. the Franchise Agreement;
- vi. the Buyer Closing Certificate; and
- vii. such other certificates, documents and instruments of sale, transfer, conveyance and assignment as Seller may reasonably request.

**3.3 Transfer of Customers.** Seller shall relinquish water distribution service to the System Customers at 11:59 p.m. on the Closing Date (the "Transfer Time"), unless the Parties otherwise agree in writing, in accordance with this Agreement. Seller shall be obligated to continue to provide service and entitled to receive payment from the sale and delivery of utility service up to the Transfer Time and Buyer shall have the authority and the obligation to provide utility service to the System Customers and shall be entitled to receive payment from the System Customers for service from and after 11:59 p.m. on the Closing Date, unless otherwise agreed to by the Parties in writing. From and after the Transfer Time, service to the System Customers shall be provided by Buyer in accordance with the terms and conditions of all applicable tariffs and schedules.

**3.4 Separation and Transfer.** The Parties agree upon the following procedures for transferring possession and operation of the Purchased Assets:

(a) Unless the Parties otherwise agree in writing, Seller shall read its meters before the Closing Date and issue a final billing to its customers for any services used prior to the final meter read. Seller shall provide the final meter reads to Buyer at the Closing. To

the extent that there are any missing meter reads or any adjustments required to any meter reads, Buyer and Seller agree to cooperate to promptly estimate or otherwise resolve such meter reads.

(b) Immediately upon the Transfer Time, Buyer shall be responsible for the reliable provision of water distribution service to, and all billings and collections from, the System Customers and for any and all maintenance obligations of the Purchased Assets.

#### **ARTICLE IV REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller represents and warrants to Buyer that the statements contained in this Article IV are true and correct as of the date hereof:

4.1 Organization and Qualification of Seller. Seller is a municipal corporation duly organized, validly existing and in good standing under the Laws of the state of California and has full corporate power and authority to own, operate or lease the Purchased Assets now owned, operated or leased by it and to conduct the operations of the Water Systems as currently conducted. Section 4.1 of the Disclosure Schedule sets forth each jurisdiction in which Seller is licensed or qualified to do business, and Seller is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the ownership of the Purchased Assets or the operation of the Water Systems as currently conducted makes such licensing or qualification necessary.

4.2 Authority of Seller. Seller has full corporate power and authority to enter into this Agreement and the other Transaction Documents to which Seller is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Seller of this Agreement and any other Transaction Document to which Seller is a party, the performance by Seller of its obligations hereunder and thereunder and the consummation by Seller of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate or governmental action on the part of Seller. This Agreement has been duly executed and delivered by Seller, and (assuming due authorization, execution and delivery by Buyer) this Agreement constitutes a legal, valid and binding obligation of Seller enforceable against Seller in accordance with its terms. When each other Transaction Document to which Seller is or will be a party has been duly executed and delivered by Seller (assuming due authorization, execution and delivery by each other party thereto), such Transaction Document will constitute a legal and binding obligation of Seller enforceable against it in accordance with its terms.

4.3 No Conflicts; Consents; Governmental Approvals.

(a) The execution, delivery and performance by Seller of this Agreement and the other Transaction Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) conflict with or result in a violation or breach of, or default under, any provision of the certificate of incorporation, by-laws or other charter or organizational documents of Seller; (b) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to Seller,

the Water Systems or the Purchased Assets; (c) except as set forth in Section 4.3(a) of the Disclosure Schedule, require the consent, notice or other action by any Person under, conflict with, result in a violation or breach of, constitute a default or an event that, with or without notice or lapse of time or both, would constitute a default under, result in the acceleration of or create in any party the right to accelerate, terminate, modify or cancel any Contract or Permit to which Seller is a party or by which Seller or the Water Systems is bound or to which any of the Purchased Assets are subject (including any Assigned Contract); or (d) result in the creation or imposition of any Encumbrance on the Purchased Assets.

(b) Except as set forth in Section 4.3(b) of the Disclosure Schedule, no consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority or under Seller's charter or organizational documents is required by or with respect to Seller in connection with the execution and delivery of this Agreement or any of the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby.

(c) Except for approval by a majority of all voters voting on the issue in the Municipal Election as contemplated by California Public Utilities Code § 10061, no consent or approval of voters or other governmental process is required by or with respect to Seller in connection with the execution and delivery of this Agreement or any of the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby.

4.4 Financial Statements. Seller has delivered to Buyer (a) audited balance sheets of Seller and PPUA as at June 30 in each of the fiscal years [**\*\*2013\*\***] through 2016, and the related unaudited statements of income and changes in cash flows for each of the fiscal years then ended, including in each case the notes thereto (the "Annual Financial Statements"), and (b) unaudited balance sheets of Seller and PPUA as at \_\_\_\_\_, 2017 (the "Interim Balance Sheet Date") and the related unaudited statements of income for the \_\_\_\_\_ (\_\_\_\_\_) months then ended (the "Interim Financial Statements"). Such financial statements delivered by Seller to Buyer pursuant to this Section 4.4 have been prepared in accordance with GAAP, consistently applied, and properly and accurately reflect the revenues and costs incurred in the operation of the Water Systems in respect of the periods covered by such financial statements.

4.5 Undisclosed Liabilities. Seller has no Liabilities with respect to the Water Systems, except (a) those which are adequately reflected or reserved against in the Interim Financial Statements, and (b) those which have been incurred in the Ordinary Course of Operations since the Interim Balance Sheet Date and which are not, individually or in the aggregate, material in amount.

4.6 Absence of Certain Changes, Events and Conditions. Since the Interim Balance Sheet Date:

(a) there has not been any event, occurrence or development that has had, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect;

(b) Seller has not subjected the Purchased Assets to any Encumbrance, entered into any Contract with respect to the Water Systems or Purchased Assets outside the Ordinary Course of Operations or taken any other action or entered into any other transaction with respect to the Water Systems or Purchased Assets other than in the Ordinary Course of Operations and in accordance with regular past custom and practice.

#### 4.7 Contracts and Commitments.

(a) Prior to the date of this Agreement, Buyer has been supplied with a true and correct copy of (i) each unique material written agreement, Contract or commitment which relates to or arises from the Water Systems or the Purchased Assets, and (ii) the form of each of its standard form written agreements or Contracts which relates to or arises from the Water Systems or the Purchased Assets, and a list of the names, billing addresses and service addresses of each counterparty to a standard form written agreement or Contract, together with all amendments, waivers or other changes thereto.

4.8 Title to Purchased Assets. The PPUA Transfer is legal, valid and binding, and Seller has good and valid title to, or a valid leasehold interest in, all of the Purchased Assets. All such Purchased Assets (including leasehold interests) are free and clear of Encumbrances except for the following (collectively referred to as "Permitted Encumbrances"):<sup>4</sup>

(a) those items set forth in Section 4.8 of the Disclosure Schedule;

(b) liens for Taxes not yet due and payable;

(c) mechanics', carriers', workmen's, repairmen's or other like liens arising or incurred in the ordinary course of business consistent with past practice or amounts that are not delinquent and which are not, individually or in the aggregate, material to the Water Systems or the Purchased Assets; or

(d) easements, rights of way, zoning ordinances and other similar encumbrances affecting Real Property which are not, individually or in the aggregate, material to the Water Systems or the Purchased Assets, which do not prohibit or interfere with the current operation of any Real Property and which do not render title to any Real Property unmarketable.

#### 4.9 Condition and Sufficiency of the Purchased Assets; Water Systems Map.

(a) To the Knowledge of Seller, except as set forth in Section 4.9 of the Disclosure Schedule, the Distribution Facilities and other items of tangible personal property included in the Purchased Assets are structurally sound, are in good operating condition and repair, and are adequate for the uses to which they are being put, and none of such Distribution Facilities or other items of tangible personal property is in need of maintenance or repairs except for ordinary, routine maintenance and repairs that are not material in nature or cost. The Purchased Assets are sufficient for the continued conduct of the operations of the Water Systems after the Closing in substantially the same manner as conducted prior to

---

<sup>4</sup> Pending review of Disclosure Schedule.



the Closing and constitute all of the rights, property and assets necessary to conduct the operations of the Water Systems as currently conducted. None of the Excluded Assets are material to the Water Systems.

(b) The System Map accurately describes and depicts the layout of the Water Systems including the water distribution lines, customer service lines, valves, wells, pumps, and treatment facilities.

#### 4.10 Real Property.

(a) Section 4.10(a) of the Disclosure Schedule sets forth each parcel, if any, of real property owned by Seller and used in or necessary for the conduct of the operations of the Water Systems as currently conducted (together with all buildings, fixtures, structures and improvements situated thereon and all easements, rights-of-way and other rights and privileges appurtenant thereto, collectively, the "Owned Real Property"). With respect to each parcel of Owned Real Property listed on Section 4.10(a) of the Disclosure Schedule:

i. Seller has good and marketable fee simple title, free and clear of all Encumbrances, except for (A) Permitted Encumbrances, and (B) those Encumbrances set forth on Section 4.10(a)(i) of the Disclosure Schedule;

ii. except as set forth on Section 4.10(a)(ii) of the Disclosure Schedule, Seller has not leased or otherwise granted to any Person the right to use or occupy such Owned Real Property or any portion thereof; and

iii. there are no unrecorded outstanding options, rights of first offer or rights of first refusal to purchase such Owned Real Property or any portion thereof or interest therein.

(b) There are no parcels of real property leased by Seller and used in or necessary for the conduct of the operations of the Water Systems ("Leased Real Property").

(c) Section 4.10(c)(i) of the Disclosure Schedule sets forth each Easement (other than Easements appurtenant to Owned Real Property and transferred with such Owned Real Property), if any, used in or necessary for the conduct of the operations of the Water Systems as currently conducted, and there are no Easements used in or necessary to the operations of the Water Systems except those listed on Section 4.10(c)(i) of the Disclosure Schedule. Except as listed on Section 4.10(c)(ii) of the Disclosure Schedule, with respect to the Easements listed on Section 4.10(c)i of the Disclosure Schedule:

i. Seller owns or possesses all Easements necessary to conduct the operations of the Water Systems as now being conducted, without any known conflict with the rights of others;

ii. Seller is in compliance with the terms and conditions of all Easements; and

iii. Seller has not received nor given any notice of any default or event that with notice or lapse of time, or both, would constitute a default by the grantor or any other party under any of the Easements and, to the Knowledge of Seller, no other party is in default thereof, and no party to any Easement has exercised any termination rights with respect thereto.

(d) Seller has not received any written notice of (i) violations of building codes and/or zoning ordinances or other governmental or regulatory Laws affecting the Real Property, (ii) existing, pending or threatened condemnation proceedings affecting the Real Property, or (iii) existing, pending or threatened zoning, building code or other moratorium proceedings, or similar matters which could reasonably be expected to adversely affect the ability to operate the Water systems as currently operated.

(e) The Real Property listed on Section 4.10(a), Section 4.10(b), and Section 4.10(c) of the Disclosure Schedule constitutes all of the real property and real property rights necessary to conduct the operation of the Water Systems as currently conducted.

4.11 Inventory. Seller's Inventory consists of items of a quality and quantity usable in the Ordinary Course of Operations.

4.12 Accounts Receivable. The Accounts Receivable reflected on the Interim Balance Sheet and the Accounts Receivable arising after the date thereof (a) have arisen from bona fide transactions entered into by Seller or PPUA involving the sale of goods or the rendering of services in the Ordinary Course of Operations, consistent with past practice; (b) constitute only valid, undisputed claims of Seller not subject to claims of set-off or other defenses or counterclaims and (c) subject to a reserve for bad debts shown on the Interim Balance Sheet or, with respect to Accounts Receivable arising after the Interim Balance Sheet Date, on the accounting records of the Water Systems, are collectible in full within ninety (90) days after billing. The reserve for bad debts shown on the Interim Balance Sheet or, with respect to Accounts Receivable arising after the Interim Balance Sheet Date, on the accounting records of the Water Systems have been determined in accordance with GAAP, consistently applied, subject to normal year-end adjustments.

4.13 Legal Proceedings; Governmental Orders.

(a) Except as set forth on Section 4.13(a) of the Disclosure Schedule, there are no notices of proposed violation, reports, audits or investigations (in each case, issued, undertaken, pending or to Seller's knowledge, threatened) by any Governmental Authority, or Actions pending or, to Seller's Knowledge, threatened against or by Seller (i) relating to or affecting the Water Systems, the Purchased Assets or the Assumed Liabilities; or (b) that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. No event has occurred or circumstances exist that may give rise to, or serve as a basis for, any such Action.

(b) Except as set forth on Section 4.13(b) of the Disclosure Schedule, there are no outstanding Governmental Orders and no unsatisfied judgments, penalties or awards against, relating to or affecting the Water Systems. Seller is in compliance with the terms of

each Governmental Order set forth on Section 4.13(b) of the Disclosure Schedule, and no event has occurred or circumstances exist that may constitute or result in (with or without notice or lapse of time) a violation of any such Governmental Order.

4.14 Compliance with Laws; Permits.

(a) Except as set forth on Section 4.14(a) of the Disclosure Schedule, Seller has complied, and is now complying, with all Laws applicable to the conduct of the operations of the Water Systems as currently conducted or the ownership and use of the Purchased Assets.

(b) All Permits (including Environmental Permits) required for Seller to conduct the operations of the Water Systems as currently conducted or for the ownership and use of the Purchased Assets have been obtained by Seller and are valid and in full force and effect. All fees and charges with respect to such Permits as of the date hereof have been paid in full. Section 4.14(b) of the Disclosure Schedule lists all current Permits (including Environmental Permits) issued to Seller which are related to the conduct of the operations of the Water Systems as currently conducted or the ownership and use of the Purchased Assets, including the names of the Permits and their respective dates of issuance and expiration. No event has occurred that, with or without notice or lapse of time or both, would reasonably be expected to result in the revocation, suspension, lapse or limitation of any Permit set forth in Section 4.14(b) of the Disclosure Schedule.

4.15 Environmental Matters.

(a) Seller and the operations of Seller with respect to the Water Systems and the Purchased Assets are currently and have been in compliance with all Environmental Laws.

(b) Seller and the operations of Seller with respect to the Water Systems and the Purchased Assets are in material compliance with all Environmental Permits (each of which is disclosed on Section 4.14(b) of the Disclosure Schedule) necessary for the conduct of the operations of the Water Systems as currently conducted or the ownership, lease, operation or use of the Purchased Assets and all such Environmental Permits are in full force and effect and shall be maintained in full force and effect by Seller through the Closing Date in accordance with Environmental Law; and Seller is not aware of any condition, event or circumstance that might result in noncompliance with any Environmental Permit or prevent or impede, after the Closing Date, the conduct of the operations of the Water Systems as currently conducted or the ownership, lease, operation or use of the Purchased Assets.

(c) Seller has not received from any Person any (i) Environmental Notice or Environmental Claim with respect to the Water Systems, the Purchased Assets, or the Real Property; or (ii) written request for information pursuant to Environmental Law, which, in each case, either remains pending or unresolved, or is the source of ongoing obligations or requirements as of the Closing Date.

(d) To the Knowledge of Seller, no expenditure will be required at the time of Closing in order for Buyer to comply with any Environmental Law in effect at the Transfer

Time in connection with the operation or continued operation of the Water Systems or the ownership or use of the Purchased Assets in a manner consistent with current operation thereof by Seller, except for any permit, transfer, registration, or similar fees associated with the required approvals described in Section 5.3(b).

(e) The Real Property listed on Section 4.10(a), Section 4.10(b) and Section 4.10(c) of the Disclosure Schedule has never been listed on the United States Environmental Protection Agency's National Priorities List of Hazardous Waste Sites or on or in any other list, schedule, law, inventory of record of hazardous or solid waste sites maintained by any Governmental Authority.

(f) Any real property owned, leased, or otherwise controlled by the Seller not listed on Section 4.10(a), Section 4.10(b) or Section 4.10(c) of the Disclosure Schedule and used in to operate the Water Systems as currently operated or granted to Buyer through the Franchise Agreement has never been listed on the United States Environmental Protection Agency's National Priorities List of Hazardous Waste Sites or on or in any other list, schedule, law, inventory or record of hazardous or solid waste sites maintained by any Government Authority.

4.16 Employee Benefit Plans. The acquisition of the Purchased Assets and the operation of the Water Systems by Buyer following the Closing will not result in any Liabilities (pursuant to ERISA, any federal or state employee benefit or retirement laws or otherwise) to Buyer or otherwise resulting from any Plans maintained (or required to be maintained) by Seller.

4.17 Tax Matters. Seller has duly filed all Tax returns required to be filed by it in respect of any Taxes ("Returns"), and all Taxes owed by Seller shown thereon with respect to the Purchased Assets and the Water Systems have been paid. All Returns filed by Seller with respect to the Purchased Assets and the Water Systems are accurate in all material respects. There are no Encumbrances with respect to Taxes upon any of the Purchased Assets. All Taxes owed by Seller as a result of its ownership of the Water Systems and the Purchased Assets have been paid. The acquisition and operation of the Water Systems by Buyer will not result in any Taxes being levied upon Buyer that are due from or owing by Seller.

4.18 Insurance; Risk of Loss. Seller has in full force and effect insurance policies with reputable insurance carrier(s), insuring against such hazards, risks and insurable Liabilities to any persons and/or property, including the Water Systems, Distribution Facilities, Purchased Assets, and Real Property, to the extent and in the manner customary for Persons in similar businesses similarly situated. Seller shall bear the risk of loss or damage to the Purchased Assets prior to the Transfer Time.

4.19 Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or any other Transaction Document based upon arrangements made by or on behalf of Seller.

4.20 Disclosure. No representation or warranty by Seller in this Agreement and no statement contained in the Schedules or Disclosure Schedule to this Agreement or any certificate

or other document furnished or to be furnished to Buyer pursuant to this Agreement contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements contained therein, in light of the circumstances in which they are made, not misleading.

4.21 No Other Representations or Warranties. Except as expressly set forth in this Article IV (including the Disclosure Schedule), Seller makes no other representation or warranty regarding the Water Systems or the Purchased Assets. Except for the express representations and warranties contained in this Article IV (including the Disclosure Schedule), the Purchased Assets are sold “as-is, where-is” and “with all faults”.

## **ARTICLE V REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants to Seller that the statements contained in this Article V are true and correct as of the date hereof:

5.1 Organization of Buyer. Buyer is a corporation duly organized, validly existing and in good standing under the Laws of the State of California.

5.2 Authority of Buyer. Buyer has full corporate power and authority to enter into this Agreement and the other Transaction Documents to which Buyer is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Buyer of this Agreement and any other Transaction Document to which Buyer is a party, the performance by Buyer of its obligations hereunder and thereunder and the consummation by Buyer of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of Buyer. This Agreement has been duly executed and delivered by Buyer, and (assuming due authorization, execution and delivery by Seller) this Agreement constitutes a legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms. When each other Transaction Document to which Buyer is or will be a party has been duly executed and delivered by Buyer (assuming due authorization, execution and delivery by each other party thereto), such Transaction Document will constitute a legal and binding obligation of Buyer enforceable against it in accordance with its terms.

5.3 No Conflicts; Consents.

(a) The execution, delivery and performance by Buyer of this Agreement and the other Transaction Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) conflict with or result in a violation or breach of, or default under, any provision of the certificate of incorporation, by-laws or other organizational documents of Buyer; (b) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to Buyer; or (c) require the consent, notice or other action by any Person under any Contract to which Buyer is a party.

(b) Except for approval of the transactions contemplated by this Agreement by the California Public Utilities Commission and the California State Water Resources

Control Board,<sup>5</sup> no consent, authorization, order, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Buyer in connection with the execution and delivery of this Agreement and the other Transaction Documents and the performance of its obligations and the consummation of the transactions contemplated hereby and thereby, including but not limited to operating the Water Systems and owning, leasing, operating, or using the Purchased Assets.

5.4 Legal Proceedings. There are no Actions pending or, to Buyer's knowledge, threatened against or by Buyer or any Affiliate of Buyer that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. No event has occurred or circumstances exist that may give rise or serve as a basis for any such Action.

5.5 Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or any other Transaction Document based upon arrangements made by or on behalf of Buyer.

5.6 Sufficiency of Funds. Buyer has sufficient cash on hand or other sources of immediately available funds to enable it to make payment of the Purchase Price and consummate the transactions contemplated by this Agreement.

## **ARTICLE VI COVENANTS**

6.1 Conduct of Business Prior to the Closing. From the date of this Agreement until the Closing, except as otherwise provided in this Agreement or consented to in writing by Buyer (which consent shall not be unreasonably withheld or delayed), Seller shall (x) operate the Water Systems in the Ordinary Course of Operations consistent with past practice; and (y) use reasonable best efforts to maintain and preserve intact the Water Systems and its operations and to preserve the rights, franchises, goodwill and relationships of the employees, customers, suppliers, regulators and others having relationships with the Water Systems. Without limiting the foregoing, from the date hereof until the Closing Date, Seller shall:

(a) maintain the Water Systems and the Purchased Assets in the Ordinary Course of Operations but in any event consistent with Good Utility Practices and Applicable Law, including but not limited to, maintenance, repair, replacement or changes to the Purchased Assets;

(b) pay or otherwise satisfy in the Ordinary Course of Operations all of its Liabilities and obligations;

(c) confer with Buyer prior to implementing operational decisions of a material nature;

(d) respond within five (5) days to reasonable inquiries of Buyer concerning the status of the Water Systems, operations and finances;

---

<sup>5</sup> NTD: Under review.

(e) keep in full force and effect, without amendment, all material rights relating to the Water Systems;

(f) comply with all Applicable Law and contractual obligations applicable to the operations of the Water Systems;

(g) continue in full force and effect the Water Systems' insurance coverage;

(h) cooperate with Buyer and assist Buyer in identifying the consents, authorizations, orders, approvals, Permits, Governmental Orders, declarations or filings with, or notices to, all Governmental Authorities required by Buyer to operate the Water Systems and own the Purchased Assets from and after the Closing and either transferring existing governmental authorizations of Seller to Buyer, where permissible, or obtaining new governmental authorizations for Buyer;

(i) upon request from time to time, execute and deliver all documents, make all truthful oaths, testify in any legal or administrative proceedings and do all other acts that may be reasonably necessary or desirable in the opinion of Buyer to consummate the contemplated transactions, all without further consideration;

(j) maintain all books and records of Seller relating to the Water Systems in the Ordinary Course of Operations, including, without limitation, all maps, service line locations and customer records;

(k) complete all construction work on any new facilities such that no work will be in progress at Closing or at the Transfer Time and pay any and all outstanding invoices related to such work prior to Closing;

(l) give Buyer prompt notice of any event or condition of any kind learned by Seller between the Effective Date of this Agreement and the Closing pertaining to and adversely affecting the Purchased Assets, excepting events or conditions affecting the water distribution business generally; and

(m) perform all of its obligations under all Assigned Contracts.

6.2 Access to Information and Investigation. From the date of this Agreement until the Closing:

(a) Seller shall (i) afford Buyer and its Representatives full and free access to and the right to inspect all of the Water Systems, the Purchased Assets, and other documents and data related to the Water Systems; (ii) furnish Buyer and its Representatives with such financial, operating and other data and information related to the Water Systems as Buyer or any of its Representatives may reasonably request; and (iii) instruct the Representatives of Seller and PPUA to cooperate with Buyer in its investigation.

(b) Without limiting the foregoing, Buyer shall have the right to enter upon Seller's property to conduct physical inspections and testing of the Distribution Facilities, surveys, environmental assessments and sampling, site analysis, engineering studies, and

other investigations it deems reasonably necessary with respect to the Water Systems and the Purchased Assets.

(c) Buyer shall, within a reasonable time prior to Closing, notify Seller of all Material Defects in the Purchased Assets and adverse Environmental Conditions associated with the Purchased Assets. Upon such notification the Parties shall cooperate in good faith to negotiate to their mutual satisfaction the manner in which such Material Defects or Environmental Condition shall be cured or addressed before or after Closing.

(d) Any investigation pursuant to this Section 6.2 shall be conducted in such manner as not to interfere unreasonably with the conduct of the operations of the Water Systems or any other business of Seller. No investigation by Buyer or other information received by Buyer shall operate as a waiver or otherwise affect any representation, warranty or agreement given or made by Seller in this Agreement.

**6.3 No Solicitation of Other Bids.** Seller shall not directly or indirectly solicit, initiate, encourage or entertain any inquiries or proposals from, discuss or negotiate with, or provide any nonpublic information to, any Person (other than Buyer) relating to any transactions involving the Purchased Assets or the Water Systems, except as otherwise required by law. Seller shall notify Buyer of any written inquiry or proposal as soon as practicable, but no more than ten (10) Business Days of receipt of the same by Seller by delivery of a true and complete copy of such written inquiry or proposal.

**6.4 Notice of Certain Events.**

(a) From the date of this Agreement until the Closing, Seller shall promptly notify Buyer in writing if it becomes aware of:

i. any fact, circumstance, event or action the existence, occurrence or taking of which (A) has had, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (B) has resulted in, or could reasonably be expected to result in, any representation or warranty made by Seller hereunder not being true and correct or (C) has resulted in, or could reasonably be expected to result in, the failure of any of the conditions set forth in Section 7.2;

ii. any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement;

iii. any notice or other communication from any Governmental Authority in connection with the transactions contemplated by this Agreement; and

iv. any Action commenced or, to Seller's Knowledge, threatened against, relating to or involving or otherwise affecting the Water Systems, the Purchased Assets or the Assumed Liabilities that, if pending on the date of this Agreement, would have been required to have been disclosed pursuant to Section 4.13 or that relates to the consummation of the transactions contemplated by this Agreement.



(b) Buyer's receipt of information pursuant to this Section 6.4 shall not operate as a waiver or otherwise affect any representation, warranty or agreement given or made by Seller in this Agreement and shall not be deemed to amend or supplement the Schedules to this Agreement.

6.5 Employees. Buyer may offer, but will not be obligated to offer, employment to any of Seller's former or current employees, and Buyer will not assume any employee-related Liabilities.

6.6 Governmental Approvals and Consents.

(a) Each party hereto shall, as promptly as possible, (i) make, or cause to be made, all filings and submissions required under any Law applicable to such party or any of its Affiliates; and (ii) cooperate fully with the other party and its Affiliates and otherwise use reasonable best efforts to promptly obtain, or cause to be obtained, all consents, authorizations, orders, approvals, Permits, Governmental Orders, declarations or filings with, or notices to, all Governmental Authorities that may be or become necessary for its execution and delivery of this Agreement and the other Transaction Documents and the performance of its obligations and the consummation of the transactions contemplated hereby and thereby.

(b) Seller and Buyer shall use reasonable best efforts to give all notices to, and obtain all consents from, all third parties that are described in Schedule 4.3(a).

(c) All analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals made by or on behalf of either party before any Governmental Authority or the staff or regulators of any Governmental Authority, in connection with the transactions contemplated hereunder (but, for the avoidance of doubt, not including any interactions between Seller or Buyer with Governmental Authorities in the ordinary course of business, any disclosure which is not permitted by Law or any disclosure containing confidential information) shall be disclosed to the other party hereunder in advance of any filing, submission or attendance, it being the intent that the parties will consult and cooperate with one another, and consider in good faith the views of one another, in connection with any such analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals. Each party shall give notice to the other party with respect to any meeting, discussion, appearance or contact with any Governmental Authority or the staff or regulators of any Governmental Authority, with such notice being sufficient to provide the other party with the opportunity to attend and participate in such meeting, discussion, appearance or contact.

(d) Notwithstanding the foregoing and except as set forth in Subsection (e) below, nothing in this Section 6.6 shall require, or be construed to require, Buyer or any of its Affiliates to agree to (i) sell, hold, divest, discontinue or limit, before or after the Closing Date, any assets, businesses or interests of Buyer or any of its Affiliates, or to consent to dispose of any part of or make changes to the Water systems; (ii) any conditions relating to, or changes or restrictions in, the operations of any such assets, businesses or interests which, in either case, could reasonably be expected to result in a Material Adverse Effect or materially and adversely impact the economic or business benefits to Buyer of the

transactions contemplated by this Agreement and the other Transaction Documents; or (iii) any material modification or waiver of the terms and conditions of this Agreement.

(e) Each Party shall add, or cause to be added, to regulatory filings and submissions expected to be made to the CPUC for approval of the transactions contemplated by this Agreement, conditions with respect to rates for water services to be charged to System Customers such that the rates shall be adjusted effective on the Closing Date to the rates of Eastern Municipal Water District (“EMWD”) then in effect for comparable customer classes, and shall be adjusted each year thereafter for a period of ten (10) years at the greater of (i) the percentage increase in EMWD rates, or (ii) three and three-tenths percent (3.3%), plus in either case (i) or case (ii) any rate increases attributable to (A) changes in supply arrangements to serve System Customers, (B) changes in the cost of wholesale water to serve System Customers that exceed changes in EMWD customer rates, (C) changes in Law, or (D) damage to or destruction of assets comprising the Water Systems (ordinary wear and tear excepted).

(f) Seller shall make, or cause to be made, all filings and submissions required under any Law with respect to, and shall submit for approval at the Municipal Election, in accordance with California Public Utilities Code § 10061, a ballot measure to approve the transactions contemplated by this Agreement.

**6.7 Taxes and Transfer or Assignment Cost.** Any sales, transfer, purchase, use, or similar tax or fees (other than capital gains tax) that may be payable by reason of the sale of all or a portion of the Purchased Assets (“Transfer Taxes”) shall be borne by the Party who is liable for such tax under the law. Seller shall pay the cost for the transfer or assignment to Buyer for any license, permit, right-of-way, easement or other similar right that may be required by any third party.

**6.8 Procurement of Easements and Rights-of-Way.** Seller agrees to use its best efforts to assist Buyer, and its successors and assigns, in the necessary procurement or acquisition of easements or rights-of-way within the corporate areas of Seller, as it exists or may hereafter exist, if such easements or rights-of-way are necessary and prudent for the supply of utility service to System Customers.

**6.9 Title and Survey.**

(a) Survey. For any Real Property listed on Section 4.10(a) or Section 4.10(c) of the Disclosure Schedule, within ten (10) days after the Effective Date, Seller shall cause to be delivered to Buyer, Seller’s most current as-built land title surveys of the Real Property. Seller shall, at Seller’s sole cost and expense, as soon as reasonably possible, but not later than thirty (30) days following the Effective Date, cause to be delivered to Buyer current as-built ALTA/NSPS surveys of any Owned Real Property, certified to Buyer and the Title Company. All surveys described in this paragraph are hereinafter referred to as the “Surveys”.

(b) Title Commitment. For any Real Property listed on Section 4.10(a) or Section 4.10(c) of the Disclosure Schedule, within ten (10) days after the Effective Date,

Seller, at Seller's sole cost and expense, shall furnish to Buyer current commitments (the "Title Commitments") for the issuance of one or more Owner's Policies of Title Insurance with respect to the Owned Real Property and Easements, insuring that Seller holds good and marketable fee simple title to the Owned Real Property, valid and insurable easement interests in the Easements, together with legible copies of all documents (the "Title Documents") constituting exceptions to Seller's title as reflected in the Title Commitments, including legible copies of the current plats, if any, filed in the map and plat records. The Surveys and the Title Commitments shall form the basis for the legal descriptions of the Real Property.

(c) Title and Survey Review. For any Survey or Title Commitment delivered to Buyer as a result of (a) or (b) above:

i. Buyer shall have a period of thirty (30) days (the "Title and Survey Review Period") after receipt of both the updated Surveys and the Title Commitments, with legible copies of the Title Documents referenced in the Title Commitments, to review the Title Commitments and Surveys and to provide notice in writing to Seller as to any matters therein to which Buyer objects (the "Objections"). If Buyer fails to provide such notice prior to the expiration of the Title and Survey Review Period, Buyer shall be deemed to have approved and accepted title and survey and all matters set forth in the Title Documents shall be deemed permitted exceptions (referred to as "Permitted Exceptions"), and Buyer shall accept title to the Real Property subject to such Permitted Exceptions.

ii. If Buyer notifies Seller in writing of any Objections prior to the expiration of the Title and Survey Review Period, Seller shall then have a period of fifteen (15) days after its receipt of such notice (i) to use its reasonable efforts to cure the Objections, or (ii) to notify Buyer in writing of any Objections Seller cannot or will not cure (the "Cure Notice").

iii. Upon Buyer's receipt of the Cure Notice, or if Seller does not deliver a Cure Notice within the 15-day period, Buyer shall have until Closing to either (i) terminate this Agreement by written notice to Seller, with neither Party being thereafter obligated to the other, except as to those provisions that expressly survive hereunder, or (ii) waive the Objections by written notice to Seller and proceed to Closing with all uncured Objections constituting Permitted Exceptions. Notwithstanding any other provision of this Agreement, in the event of termination by Buyer as permitted under this Section 6.9(c), unless Buyer is in default, the Deposit Amount will be refunded to Buyer.

iv. Notwithstanding anything contained herein to the contrary, Seller may not, at any time after the Effective Date, place any encumbrances and/or restrictions on the Real Property without the prior written consent of Buyer.

(d) Title Policy. For any Real Property listed on Section 4.10(a) or Section 4.10(c) of the Disclosure Schedule, on or before the Closing Date, Seller shall furnish Buyer, at Seller's cost and expense (excluding any additional premium for the survey exception

deletion), with an Owner's Policy of Title Insurance (the "Title Policy") issued through the Title Company on the standard form in use in the State of California from a title insurance underwriter reasonably acceptable to Buyer, insuring good, marketable and indefeasible fee title to the Owned Real Property, and valid and insurable easement interests in the Easements, to be granted to Buyer, subject only to the Permitted Exceptions. The parties hereby specifically agree that the Title Policies shall be issued with all "standard exceptions" being deleted therefrom. The "standard exceptions" to be deleted shall include the mechanic's lien exception and the unsettled taxes exception.

6.10 Due Diligence Review. Without in any way limiting the scope of the due diligence review by Buyer, Seller shall deliver to Buyer, within ten (10) days after the Effective Date, at Seller's sole cost and expense, the following:

(a) Copies of the deeds and other instruments (as recorded) by which Seller acquired each parcel of Owned Real Property (if any), and copies of all title insurance policies, opinions, abstracts and surveys in the possession of Seller with respect to such parcels.

(b) A listing of all easements or similar instruments under which Seller is the grantee where the easement or real property right evidenced is utilized in any manner by Seller for the placement, maintenance, repair, operation or improvement of the Water Systems.

(c) Copies of all environmental reports and investigations that Seller owns, has obtained, or has ordered with respect to the Water Systems, the Purchased Assets or the Real Property.

(d) A complete inventory of all tangible personal property owned or leased by Seller and used in connection with the Water Systems;

(e) Copies of any reports or other correspondence related to the condition of property utilized in respect of the business carried on by the Water Systems;

(f) Copies of all certificates of occupancy and other governmental licenses or approvals relating to any portion of the Water Systems, including any necessary distribution systems operating permits and all other Permits;

(g) Copies of any service records or bills for repairs to any part of the Water Systems for the prior three (3) years;

(h) Copies of all warranties relating to the Water Systems; and

(i) Sufficient documentation to support the book value of the Purchased Assets.

6.11 Transition and Non-Disparagement.

(a) Seller will not take any action that is designed or intended to have the effect of discouraging any lessor, customer, supplier or other business associate of Seller from maintaining the same business relationships with Buyer after the Closing as it maintained with Seller prior to the Closing. Seller will refer all inquiries or requests relating to the Water Systems or the Purchased Assets (or any portion thereof) to Buyer from and after the Closing.

(b) Seller will cooperate with Buyer to transition the Purchased Assets to Buyer including facilitating deployment of facilities and equipment that are, in Buyer's sole discretion, necessary and convenient to aid in increasing the Purchased Assets' compatibility with Buyer's existing systems.

(c) For a period of five (5) years after the Closing, neither Party will disparage in any manner the other Party or its Representatives, the Purchased Assets, the Water Systems, the business conducted by the other Party using the Purchased Assets, or any of the products, services or business practices of the other Party.

6.12 Further Assurances. Following the Closing, each of the parties hereto shall, and shall cause their respective Affiliates to, execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement and the other Transaction Documents.

## **ARTICLE VII CONDITIONS TO CLOSING**

7.1 Conditions to Obligations of All Parties. The obligations of each Party to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment, at or prior to the Closing, of each of the following conditions:

(a) No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Governmental Order which is in effect and has the effect of making the transactions contemplated by this Agreement illegal, otherwise restraining or prohibiting consummation of such transactions or causing any of the transactions contemplated hereunder to be rescinded following completion thereof.

(b) The transactions contemplated by this Agreement shall have been approved by a majority of votes cast on the measure at the Municipal Election, as certified by the Registrar of Voters.

(c) The Parties have reached an agreement for the City's use of certain of the Purchased Assets for water rights that may be granted by the California State Water Resources Control Board under Application No. 31799.

7.2 Conditions to Obligations of Buyer. The obligations of Buyer to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Buyer's waiver, at or prior to the Closing, of each of the following conditions:

(a) the representations and warranties of Seller contained in this Agreement, the other Transaction Documents and any certificate or other writing delivered pursuant hereto shall be true and correct in all material respects on and as of the date hereof and on and as of the Closing Date.

(b) Seller shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the other Transaction Documents to be performed or complied with by it prior to or on the Closing Date.

(c) No Action shall have been commenced or threatened (i) involving any challenge to, or seeking damages or other relief in connection with, the PPUA Transfer, the Municipal Election or any of the transactions contemplated by this Agreement, or (ii) that may have the effect of preventing, delaying, making illegal, imposing limitations or conditions or otherwise interfering with any of the transactions contemplated by this Agreement.

(d) Buyer shall have received all consents, authorizations, orders, approvals, Permits, Governmental Orders, declarations or filings with, or notices to, the Governmental Authorities referred to in Section 5.3(b), in each case final, non-appealable, and in form and substance satisfactory to Buyer in its sole discretion, and no such consent, authorization, order or approval shall have been revoked.

(e) From the date of this Agreement, there shall not have occurred any Material Adverse Effect, nor shall any event or events have occurred that, individually or in the aggregate, with or without the lapse of time, could reasonably be expected to result in a Material Adverse Effect.

(f) The results of Buyer's investigation of the Water Systems and the Purchased Assets, including the results of an independent "replacement cost new less depreciation" study of the Water Utility Assets, shall have been received by Buyer and shall be satisfactory in all respects to Buyer in its sole discretion.

(g) Material Defects identified by Buyer in the Purchased Assets, or adverse Environmental Conditions associated with the Purchased Assets, shall have been cured and be satisfactory in all respects to Buyer in its sole discretion.

(h) Buyer shall have received all Permits that are necessary for it to conduct the operations of the Water Systems as conducted by Seller as of the Closing Date.

(i) For any Real Property listed on Section 4.10(a), Section 4.10(b), or Section 4.10(c) of the Disclosure Schedule, Buyer shall have received (at Seller's expense) one or more Title Policies with respect to each parcel of Owned Real Property, Easement, and Leasehold Real Property issued by a nationally recognized title insurance company acceptable to Buyer, written as of the Closing Date, insuring Buyer in such amounts and together with such endorsements, and otherwise in such form, as Buyer shall require. Such Title Policies shall insure fee simple title to each Owned Real Property, free and clear of all Encumbrances other than Permitted Encumbrances and those listed on Section 4.10(a)(i) of

the Disclosure Schedule, valid and insurable easement interests in each Easement, free and clear of all Encumbrances other than Permitted Encumbrances and those listed on Section 4.10(c) of the Disclosure Schedule, free and clear of all Encumbrances other than Permitted Encumbrances and those listed on Section 4.10(b) of the Disclosure Schedule. Buyer shall have received (at Seller's expense) appropriately certified ALTA/NSPS Land Title Surveys showing no Encumbrances other than the Permitted Encumbrances and those listed on Section 4.10(a)(i) of the Disclosure Schedule, and otherwise in form and substance satisfactory to Buyer, for each of the Owned Real Properties.

(j) Evidence of remediation and resolution of all matters reflected, or required to be reflected, on Section 4.13 or Section 4.14 of the Disclosure Schedule shall have been received and be satisfactory in all respects to Buyer in its sole discretion.

(k) Buyer shall have received a favorable opinion of Seller's counsel, in form and substance acceptable to Buyer, as to Seller's corporate status, power and action, enforceability, no conflicts, consents and approvals, and such other matters as Buyer shall reasonably request (the "Opinion of Counsel").

(l) Buyer shall have received a certificate, dated the Closing Date and signed by a duly authorized officer of Seller, that each of the conditions set forth in Section 7.2(a) and Section 7.2(b) have been satisfied (the "Seller Closing Certificate").

(m) Seller shall have delivered to Buyer such other documents or instruments as Buyer reasonably requests and are reasonably necessary to consummate the transactions contemplated by this Agreement (including an affidavit of non-foreign status if determined to be necessary).

**7.3 Conditions to Obligations of Seller.** The obligations of Seller to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Seller's waiver, at or prior to the Closing, of each of the following conditions:

(a) the representations and warranties of Buyer contained in this Agreement, the other Transaction Documents and any certificate or other writing delivered pursuant hereto shall be true and correct in all material respects on and as of the date hereof and on and as of the Closing Date.

(b) Buyer shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the other Transaction Documents to be performed or complied with by it prior to or on the Closing Date.

(c) Seller shall have received all consents, authorizations, orders and approvals from the Governmental Authorities referred to on Section 4.3(b) of the Disclosure Schedule, in each case final, non-appealable, and in form and substance reasonably satisfactory to Seller, and no such consent, authorization, order or approval shall have been revoked.

(d) Seller shall have received a certificate, dated the Closing Date and signed by a duly authorized officer of Buyer, that each of the conditions set forth in Section 7.3(a) and Section 7.3(b) have been satisfied (the “Buyer Closing Certificate”)

(e) Buyer shall have delivered to Seller such other documents or instruments as Seller reasonably requests and are reasonably necessary to consummate the transactions contemplated by this Agreement.

## ARTICLE VIII INDEMNIFICATION

8.1 Survival. Subject to the limitations and other provisions of this Agreement, the representations and warranties contained herein shall survive the Closing indefinitely. All covenants and agreements of the Parties contained herein shall survive the Closing indefinitely or for the period explicitly specified therein.

8.2 Indemnification by Seller. Subject to the other terms and conditions of this Article VIII, Seller shall indemnify and defend each of Buyer and its Affiliates and their respective Representatives (collectively, the “Buyer Indemnitees”) against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Buyer Indemnitees based upon, arising out of, with respect to or by reason of:

(a) any Third Party Claim based upon, resulting from or arising out of the business, operations, properties, assets or obligations of Seller, PPUA or the Water Systems (other than Assumed Liabilities) conducted, existing or arising on or prior to the Closing Date.

8.3 Indemnification by Buyer. Subject to the other terms and conditions of this Article VIII, Buyer shall indemnify and defend each of Seller and its Affiliates and their respective Representatives (collectively, the “Seller Indemnitees”) against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Seller Indemnitees based upon, arising out of, with respect to or by reason of:

(a) any Third Party Claim based upon, resulting from or arising out of the business, operations, properties, assets or obligations of Buyer or the Water Systems conducted or arising after the Closing Date.

8.4 Indemnification Procedures. The party making a claim under this Article VIII is referred to as the “Indemnified Party”, and the party against whom such claims are asserted under this Article VIII is referred to as the “Indemnifying Party”.

(a) Third Party Claims. If any Indemnified Party receives notice of the assertion or commencement of any Action made or brought by any Person who is not a Party to this Agreement or an Affiliate of a Party to this Agreement or a Representative of the foregoing (a “Third Party Claim”) against such Indemnified Party with respect to which the Indemnifying Party is obligated to provide indemnification under this Agreement, the



Indemnified Party shall give the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than thirty (30) calendar days after receipt of such notice of such Third Party Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Third Party Claim in reasonable detail and indicate an estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have the right to participate in, or by giving written notice to the Indemnified Party, to assume the defense of any Third Party Claim at the Indemnifying Party's expense and by the Indemnifying Party's own counsel, and the Indemnified Party shall cooperate in good faith in such defense; provided, that if the Indemnifying Party is Seller, such Indemnifying Party shall not have the right to defend or direct the defense of any such Third Party Claim that (x) is asserted directly by or on behalf of a Person that is a Water Systems Customer, or (y) seeks an injunction or other equitable relief against the Indemnified Party. In the event that the Indemnifying Party assumes the defense of any Third Party Claim, subject to Section 8.4(b), it shall have the right to take such action as it deems necessary to avoid, dispute, defend, appeal or make counterclaims pertaining to any such Third Party Claim in the name and on behalf of the Indemnified Party. The Indemnified Party shall have the right to participate in the defense of any Third Party Claim with counsel selected by it subject to the Indemnifying Party's right to control the defense thereof. The fees and disbursements of such counsel shall be at the expense of the Indemnified Party, provided, that if in the reasonable opinion of counsel to the Indemnified Party, (A) there are legal defenses available to an Indemnified Party that are different from or additional to those available to the Indemnifying Party; or (B) there exists a conflict of interest between the Indemnifying Party and the Indemnified Party that cannot be waived, the Indemnifying Party shall be liable for the reasonable fees and expenses of counsel to the Indemnified Party. If the Indemnifying Party elects not to compromise or defend such Third Party Claim, fails to promptly notify the Indemnified Party in writing of its election to defend as provided in this Agreement, or fails to diligently prosecute the defense of such Third Party Claim, the Indemnified Party may, subject to Section 8.4(b), pay, compromise, defend such Third Party Claim and seek indemnification for any and all Losses based upon, arising from or relating to such Third Party Claim. Seller and Buyer shall cooperate with each other in all reasonable respects in connection with the defense of any Third Party Claim, including making available records relating to such Third Party Claim and furnishing, without expense (other than reimbursement of actual out-of-pocket expenses) to the defending party, employees of the non-defending party as may be reasonably necessary for the preparation of the defense of such Third Party Claim.

(b) Settlement of Third Party Claims. Notwithstanding any other provision of this Agreement, the Indemnifying Party shall not enter into settlement of any Third Party Claim without the prior written consent of the Indemnified Party, except as provided in this Section 8.4(b). If a firm offer is made to settle a Third Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnified Party and provides, in customary form, for the unconditional release of each Indemnified Party from all liabilities and obligations in connection with such Third Party Claim and the Indemnifying Party desires to accept and agree to such offer, the Indemnifying Party shall give written notice to that effect to the Indemnified Party. If the Indemnified Party fails to

consent to such firm offer within ten (10) days after its receipt of such notice, the Indemnified Party may continue to contest or defend such Third Party Claim and in such event, the maximum liability of the Indemnifying Party as to such Third Party Claim shall not exceed the amount of such settlement offer. If the Indemnified Party fails to consent to such firm offer and also fails to assume defense of such Third Party Claim, the Indemnifying Party may settle the Third Party Claim upon the terms set forth in such firm offer to settle such Third Party Claim. If the Indemnified Party has assumed the defense pursuant to Section 8.4(b), it shall not agree to any settlement without the written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

8.5 Payments. Once a Loss is agreed to by the Indemnifying Party or finally adjudicated to be payable pursuant to this Article VIII, the Indemnifying Party shall satisfy its obligations within fifteen (15) Business Days of such final, non-appealable adjudication by wire transfer of immediately available funds.

8.6 Tax Treatment of Indemnification Payments. All indemnification payments made under this Agreement shall be treated by the Parties as an adjustment to the Purchase Price for tax purposes, unless otherwise required by Law.

8.7 Effect of Investigation. The representations, warranties and covenants of the Indemnifying Party, and the Indemnified Party's right to indemnification with respect thereto, shall not be affected or deemed waived by reason of any investigation made by or on behalf of the Indemnified Party (including by any of its Representatives) or by reason of the fact that the Indemnified Party or any of its Representatives knew or should have known that any such representation or warranty is, was or might be inaccurate or by reason of the Indemnified Party's waiver of any condition set forth in Section 7.2 or Section 7.3, as the case may be.

8.8 Exclusive Remedies. Subject to Section 10.12, the Parties acknowledge and agree that their sole and exclusive remedy with respect to any and all claims (other than claims arising from fraud, criminal activity or intentional misconduct on the part of a Party hereto in connection with the transactions contemplated by this Agreement) for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement, shall be pursuant to the indemnification provisions set forth in this Article VIII. In furtherance of the foregoing, each party hereby waives, to the fullest extent permitted under Law, any and all rights, claims and causes of action for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement it may have against the other parties hereto and their Affiliates and each of their respective Representatives arising under or based upon any Law, except pursuant to the indemnification provisions set forth in this Article VIII. Nothing in this Section 8.8 shall limit any Person's right to seek and obtain any equitable relief to which any Person shall be entitled or to seek any remedy on account of any party's fraudulent, criminal or intentional misconduct.

## ARTICLE IX TERMINATION

9.1 Termination. This Agreement may be terminated at any time prior to the Closing:

(a) by the mutual written consent of Seller and Buyer;

(b) by Buyer by written notice to Seller if:

i. Buyer is not then in material breach of any provision of this Agreement and there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Seller pursuant to this Agreement that would give rise to the failure of any of the conditions specified in Section 7.1 or Section 7.2 and such breach, inaccuracy or failure is incapable of being cured by **[\*\*DROP DEAD DATE\*\*]** or, if capable of being cured, has not been cured by Seller within ten (10) days of Seller's receipt of written notice of such breach from Buyer; or

ii. any of the conditions set forth in Section 7.1 or Section 7.2 shall not have been, or if it becomes apparent that any of such conditions will not be, fulfilled by **[\*\*DROP DEAD DATE\*\*]**, unless such failure shall be due to the failure of Buyer to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing;

(c) by Seller by written notice to Buyer if:

i. Seller is not then in material breach of any provision of this Agreement and there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Buyer pursuant to this Agreement that would give rise to the failure of any of the conditions specified in Section 7.1 or Section 7.3 and such breach, inaccuracy or failure is incapable of being cured by **[\*\*DROP DEAD DATE\*\*]** or, if capable of being cured, has not been cured by Buyer within ten (10) days of Buyer's receipt of written notice of such breach from Seller; or

ii. any of the conditions set forth in Section 7.1 or Section 7.3 shall not have been, or if it becomes apparent that any of such conditions will not be, fulfilled by **[\*\*DROP DEAD DATE\*\*]**, unless such failure shall be due to the failure of Seller to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing;

(d) by Buyer or Seller in the event that (i) there shall be any Law that makes consummation of the transactions contemplated by this Agreement illegal or otherwise prohibited or (ii) any Governmental Authority shall have issued a Governmental Order restraining or enjoining the transactions contemplated by this Agreement, and such Governmental Order shall have become final and non-appealable; provided, however, that neither party shall have any obligation to appeal a Governmental Order, and neither party shall have the power to compel the other party to appeal a Governmental Order.

## 9.2 Deposit Amount.

(a) If Seller terminates this Agreement pursuant to (i) Section 9.1(c)(i); or (ii) Section 9.1(c)(ii) (other than for failure of the condition set forth in Section 7.3(c)), and in the case of this clause (ii), all of the conditions to Buyer's obligations to consummate the Closing under Section 7.1 and Section 7.2 have been satisfied (other than any such conditions

which by their nature are to be satisfied by the Closing Date), the Parties agree that Seller shall have suffered a loss and value to the Water Systems of an indeterminable amount, unrecoverable in law, and Seller shall be entitled to retain the Deposit Amount and shall be distributed the Deposit Amount pursuant to the Escrow Agreement.

(b) Notwithstanding anything to the contrary in this Agreement, Seller's right to retain the Deposit Amount pursuant to this Section 9.2 shall be the sole and exclusive remedy of Seller or any of its Affiliates against Buyer or any of its Affiliates or any of their respective stockholders, partners, members or Representatives for any and all losses that may be suffered based upon, resulting from or arising out of the circumstances giving rise to such termination, and upon receipt of the Deposit Amount in accordance with this Section 9.2, none of the Buyer or any of its Affiliates or any of their respective stockholders, partners, members or Representatives shall have any further liability or obligation relating to or arising out of this Agreement or any of the Transaction Documents or the transactions contemplated by this Agreement or any of the Transaction Documents.

9.3 Effect of Termination. In the event of the termination of this Agreement in accordance with this Article IX, this Agreement shall forthwith become void and there shall be no liability on the part of any Party except:

(a) as set forth in this Article IX and Article X hereof; and

(b) that, subject in all cases to Section 9.2, nothing herein shall relieve any Party hereto from liability for any intentional breach of any provision of this Agreement which results in a termination pursuant to Section 9.1(a), Section 9.1(b), or Section 9.1(d).

## ARTICLE X MISCELLANEOUS

10.1 Expenses. Except as otherwise expressly provided herein, all costs and expenses, including, without limitation, fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses, whether or not the Closing shall have occurred.

10.2 Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); or (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested). Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 10.2):

Notices to Buyer:	Liberty Utilities (Park Water) Corp. c/o Algonquin Power & Utilities Corp. 345 Davis Road Oakville, ON L6J 2X1 Attn: Chief Legal Counsel
-------------------	--

With a copy (which shall not constitute notice) to: Husch Blackwell LLP  
4800 Main Street, Suite 1000  
Kansas City, Missouri 64112  
Attn: Michael J. Eason

Notices to Seller: City of Perris  
101 North D Street  
Perris, CA 92570  
Attn: City Manager

With a copy (which shall not constitute notice) to: Aleshire & Wynder, LLP  
3880 Lemon Street, Suite 520  
Riverside, California 92501  
Attn: Eric L. Dunn

10.3 Interpretation. For purposes of this Agreement, (a) the words “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; and (c) the words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to Articles, Sections, Schedules and Exhibits mean the Articles and Sections of, and Schedules and Exhibits attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Schedules, Disclosure Schedule and Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

10.4 Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

10.5 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

10.6 Entire Agreement. This Agreement and the other Transaction Documents constitute the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous

understandings and agreements, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement and those in the other Transaction Documents, the Exhibits and Schedules (other than an exception expressly set forth as such in the Schedules), the statements in the body of this Agreement will control.

10.7 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns. Neither Party may assign its rights or obligations hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed; provided, however, that prior to the Closing Date, Buyer may, without the prior written consent of Seller, assign all or any portion of its rights under this Agreement to one or more of its direct or indirect wholly-owned subsidiaries. No assignment shall relieve the assigning party of any of its obligations hereunder.

10.8 No Third-party Beneficiaries. Except as provided in Article VIII, this Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

10.9 Amendment and Modification; Waiver. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each Party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

10.10 Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.

(a) This Agreement shall be governed by and construed in accordance with the internal laws of the State of California without giving effect to any choice or conflict of law provision or rule (whether of the State of California or any other jurisdiction).

**(b) ANY LEGAL SUIT, ACTION OR PROCEEDING ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY MAY BE INSTITUTED IN THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA OR THE COURTS OF THE STATE OF CALIFORNIA IN EACH CASE IN OR FOR RIVERSIDE COUNTY, CALIFORNIA, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR ANY PROCEEDING IN SUCH**

**COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.**

**(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR THE OTHER TRANSACTION DOCUMENTS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.10(c).**

**10.11 Limitation of Remedies. UNDER NO CIRCUMSTANCES (SAVE FOR FRAUD) SHALL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, EXEMPLARY, PUNITIVE, SPECIAL, INDIRECT OR INCIDENTAL DAMAGES, LOST PROFITS OR ECONOMIC LOSSES ARISING OUT OF ANY CLAIM, DEMAND, OR ACTION BROUGHT WITH RESPECT TO THIS AGREEMENT.**

**10.12 Specific Performance. The Parties agree that irreparable damage would occur if any provision of this Agreement were not performed by Seller in accordance with the specific terms hereof or were otherwise breached by Seller. It is accordingly agreed that Buyer shall be entitled, without posting a bond or similar indemnity, to an injunction or injunctions to prevent breaches of this Agreement or to enforce specifically the performance of the terms and provisions hereof, in addition to any other remedy to which it is entitled at law or in equity. Notwithstanding anything to the contrary in this Agreement, the Parties agree that Seller shall not be entitled to an injunction, specific performance or other equitable relief to prevent breaches of this Agreement or to enforce specifically the terms hereof.**

**10.13 Attorneys' Fees. Except as and to the extent stated otherwise in this Agreement, if a Party commences an action against the other Party because of a breach by that Party of its obligations under this Agreement or any documents executed in consummation of the transactions contemplated by this Agreement, the prevailing Party in any such action shall be entitled to recover from the losing Party its expenses, including reasonable attorneys' fees, incurred in connection with the prosecution or defense of such action, and any appeal thereof.**

10.14 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

*[Signature page follows.]*

DRAFT



IN WITNESS WHEREOF, the Parties have executed this Asset Purchase Agreement as of the day and year first above written.

**SELLER:**

**City of Perris, California**

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

**BUYER:**

**Liberty Utilities (Park Water) Corp.**

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

DRAFT

**Schedule 2.1(b)**

**Distribution Facilities**

[To be separately circulated - material from Stetson RCNLD to be inserted]

DRAFT

**Schedule 2.1(f)**

**Assigned Contracts**

[EMWD water supply agreement for Downtown System]

DRAFT

**Schedule 2.2(d)**

**Certain Excluded Assets**

City of Perris / PPUA Application No. 31799 seeking to divert 1,087 acre feet of water (pending before the California State Water Resources Control Board)

DRAFT

**Schedule 2.4(c)**

**Certain Assumed Liabilities**

[None.]

DRAFT

**Schedule 2.7(a)**

**Form of Closing Working Capital Statement**

Accounts Receivable <sup>6</sup>	\$
Less: Accounts Payable	_____
Closing Working Capital	
Target Working Capital Amount	\$
Less: Closing Working Capital	_____
Post-Closing Adjustment	

DRAFT

---

<sup>6</sup> Under review; should tie to City's chart of accounts.