



TOWN COUNCIL
Public Hearing & Special Meeting
November 10, 2022
Cape Charles Civic Center
6:30 PM

1. Call to Order
 - A. Roll Call
 - B. Establish quorum
2. Moment of Silence and Pledge of Allegiance
3. Public Hearing:
 - A. [Proposed Sale of Public Utilities – Water and Wastewater Systems \(“Town Facilities”\), and Granting of Franchise for the Use of Public Places to Acquire, Maintain and Operate the Water and Wastewater Systems](#)
4. Order of Business
 - A. Opening of Bids for Proposed Franchise for Use of Public Places to Acquire, Maintain and Operate the Water and Wastewater Systems
 - *B. [Town Council Vote re: Comprehensive Asset Purchase Agreement](#)
 - *C. [Town Council Vote re: Sale of Water & Wastewater Systems](#)
 - *D. [Town Council Vote re: Granting of Franchise for the Use of Public Places to Acquire, Maintain and Operate the Water and Wastewater Systems](#)
 - *E. [Approval of Transition Contract with Virginia American Water for Consultation of Wastewater Treatment Plant Maintenance and Operations](#)
5. Town Manager Comments
6. Mayor & Council Comments (5 minutes per speaker)
7. Adjournment

CAPE CHARLES TOWN COUNCIL
NOTICE OF PUBLIC HEARING &
INVITATION FOR BIDS FOR PROPOSED FRANCHISE
OF THE TOWN FACILITIES

The Town of Cape Charles hereby gives notice that the Town Council will hold a public hearing concerning:

- A. Proposed sale of the public utilities – water and wastewater systems (“Town Facilities”), and granting of franchise for the use of public places to acquire, maintain and operate the water and wastewater systems

The public hearing will be held before the Town Council at 6:30 p.m. on November 10, 2022, at the Cape Charles Civic Center, 500 Tazewell Avenue, Cape Charles, Virginia 23310.

This notice is advertised pursuant to § 15.2-1800, § 15.2-1813, and § 15.2-2101 of the Code of Virginia. Interested persons may appear at the public hearing and present their views. Written comments may also be submitted via email to clerk@capecharles.org.

Additional information regarding the proposed sale of the public utility systems and granting of the franchise is available for review at www.capecharles.org under Agenda and Minutes, Town Council or in the Clerk’s Office at 2 Plum Street, Cape Charles.

The proposed sale and franchise of the Town Facilities are in conjunction with and an integral part of a Comprehensive Asset Purchase Agreement for the Facilities in a manner consistent with the requirements of Virginia Code § 56.575.9 of the Public Private Education Facilities and Infrastructure Act of 2002, Virginia Code § 56-575.1 et seq. (the “PPEA”), which is also posted on the Town website (www.capecharles.org), and for which the Town is hosting meetings for public comment.

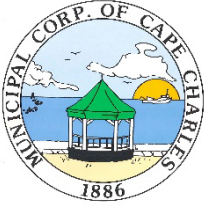
A copy of the full text of the franchise ordinance is on file in the office of the clerk of the Town Council and is also posted on the Town website.

The Town invites bids for the franchise proposed to be granted in the ordinance. The bids shall be in writing and delivered to the Town Clerk by November 10, 2022, 11:00 a.m. local prevailing time. The bids shall be opened in public session and marked for identification by the Town Clerk. The Town shall have the right to reject any and all bids.

These items will be discussed and brought to a vote by the Town Council at a special meeting immediately following the public hearing.

AD PLACED: Eastern Shore Post on October 18, 2022

AD TO RUN: Friday, October 21, 2022 and Friday, October 28, 2022 (Weekly paper published on Fridays)

 TOWN OF CAPE CHARLES	AGENDA TITLE: Resolution 20221110 – Approval of Comprehensive Asset Purchase Agreement with Virginia American Water Company		AGENDA DATE November 10, 2022
	SUBJECT/PROPOSAL/REQUEST: Approval of Comprehensive Asset Purchase Agreement for the sale of the Town's utilities		ITEM NUMBER: 4B
	ATTACHMENTS: Resolution 20221110; Comprehensive Asset Purchase Agreement		FOR COUNCIL: Action (X) Information ()
	STAFF CONTACT (s): John Hozey, Town Manager	REVIEWED BY: John Hozey, Town Manager	

BACKGROUND:

In May of 2020 the Town received an unsolicited proposal from a private utility company to acquire and operate the Town's water and wastewater utilities. This was unexpected, and started a lengthy process to: first, develop procurement guidelines associated with the Public-Private Education Facilities and Infrastructure Act (PPEA), and then provide appropriate public notice. As a result, of that public notice the Town received a second proposal.

To help evaluate these two proposals, the Town then solicited expert help in the form of a consultant to conduct the necessary due diligence. This due diligence took most of a year. But following that process, the Council chose one of the proposals to move on to the next phase of the evaluation, which included robust public consultation. Virginia American Water (VAW) was ultimately chosen as the successful proposer to move on.

ITEM SPECIFICS:

After receiving input at multiple public meetings earlier this year on the VAW proposal, the Council authorized the town manager to negotiate potential agreements that addressed the public comments and affected the transfer of our utilities. These draft agreements were developed and presented for public consideration at two town hall meetings in October, where public comments and questions were addressed. There was no significant opposition to these agreements offered at that time.

The next step was to publish the required public notice for a public hearing on this matter. That notice was conducted, and a public hearing held prior to this special meeting. The matter is now ripe for Town Council's consideration.

This is a complex transaction, with several parts. The first is this resolution to adopt the Comprehensive Asset Purchase agreement that contains the terms and conditions of the sale. However, because this action divests the Town of real property, it also requires adoption of an ordinance authorizing same. Both the resolution and ordinance require super majority support of the Town Council for adoption.

Following successful consideration of this transaction, a franchise agreement will then also be considered.

RECOMMENDATION:

Staff recommends consideration of public hearing testimony, and if deemed in the best interest of the Town, adopt resolution 20221110 by roll call vote.

RESOLUTION 20221110

Approving the Comprehensive Asset Purchase Agreement With Virginia-American Water Company

WHEREAS, in November 2020 Virginia-American Water Company, a Virginia corporation, submitted a proposal, under the Virginia Public-Private Education Facilities and Infrastructure Act of 2002 (the “PPEA”) to purchase the Town of Cape Charles water treatment facility and distribution system and wastewater treatment facility and collection system as described in the Comprehensive Asset Purchase Agreement; and

WHEREAS, the Town Council and staff of the Town of Cape Charles, Virginia along with NewGen Strategies & Solutions, the Town’s PPEA consultant, have performed their due diligence evaluating the potential sale; and

WHEREAS, the Town Council and staff of the Town of Cape Charles have held a series of Town Hall meetings to provide information to the citizens and business owners of the Town and solicit their comments; and

WHEREAS, at their special meeting on March 3, 2022, the Town Council of the Town of Cape Charles approved moving forward to the next phase of the PPEA process and authorized the town manager to begin negotiations with Virginia-American Water Company; and

WHEREAS, the negotiations resulted in the drafting of the Comprehensive Asset Purchase Agreement which outlines the terms of the transaction. This Comprehensive Asset Purchase Agreement was disseminated to the public on October 1, 2022 and two Town Hall meetings were held on October 5 and 8, 2022 to review the Agreement with the public and solicit their comments and questions; now

THEREFORE, BE IT RESOLVED by the Town Council of the Town of Cape Charles, Virginia to approve and authorize the town manager to execute the Comprehensive Asset Purchase Agreement with Virginia-American Water Company.

Adopted by the Town Council of the Town of Cape Charles on November 10, 2022.

By: _____
Mayor William “Smitty” Dize

Attest:

Town Clerk

COMPREHENSIVE ASSET PURCHASE AGREEMENT

This Comprehensive Asset Purchase Agreement (the “Agreement”) is made and entered into on the ____ day of _____, 2022 by and between Virginia-American Water Company, a Virginia corporation (“Buyer”), and Town of Cape Charles, a Virginia municipal corporation (“Seller”). Hereinafter, Buyer and Seller may be referred to individually as a “Party” or together as the “Parties”.

RECITALS:

A. Seller currently owns and operates a water treatment facility and distribution system and a wastewater treatment facility and collection system (collectively, the “System”) in or near the Town of Cape Charles, Northampton County, Virginia.

B. Seller desires to sell substantially all of the assets that constitute or are used in furtherance of the System to Buyer pursuant to the terms and conditions of this Agreement, and in a manner consistent with the requirements of VA Code § 56-575.9 of the Public Private Education Facilities and Infrastructure Act of 2002, VA Code § 56-575.1 *et seq.* (the “PPEA”).

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

ARTICLE 1

Definitions and Related Matters

For purposes of this Agreement, the capitalized terms used herein shall have the meanings assigned to them herein or in the attached Exhibit 1 and, for purposes of this Agreement and all other documents executed in connection herewith, the rules of construction set forth in Exhibit 1 shall govern.

ARTICLE 2

Purchase and Sale of Assets; Closing

2.1 Transfer of Assets. On and subject to the terms and conditions of this Agreement, at the Closing on the Closing Date and effective as of the Effective Time, Buyer shall purchase, acquire and accept from Seller, and Seller shall sell, convey, transfer, assign and deliver to Buyer, free and clear of all Encumbrances, the Acquired Assets. Notwithstanding anything to the contrary contained in this Section 2.1 or elsewhere in this Agreement, the Excluded Assets are not part of the sale and purchase contemplated hereunder, are excluded from the Acquired Assets, and shall remain the exclusive property of Seller subsequent to the Closing.

2.2 Consideration.

(a) The consideration for the System and the Acquired Assets (the “Purchase Price”) shall be as follows: the lesser of Fifteen Million Dollars (\$15,000,000.00 USD) and the fair market value of the System as determined pursuant to the appraisal process set forth in VA Code § 56-90.2 (“FMV Legislation”) and 20 VAC5-210-10, *et seq.* (“FMV Rule”); provided, however, that if the Purchase Price is below Fourteen Million Dollars (\$14,000,000.00 USD), then Seller shall have the option not to move forward with Closing under this Agreement. In the event that Seller opts not to move forward with Closing under this Agreement pursuant to this Section 2.2(a), Seller shall reimburse Buyer for fifty percent (50%) of Buyer’s costs incurred associated with pursuing the Contemplated Transactions, in an amount not to

exceed One Hundred Thousand Dollars (\$100,000.00 USD). At Closing, Buyer shall pay to the Seller [and such other payees set forth on [Schedule 2.2]], in accordance with wire transfer instructions to be provided by the Seller to Buyer at least ten (10) Business Days prior to the Closing Date, in immediately available funds, an aggregate amount equal to the Purchase Price less the Escrow Amount (as defined below).

(b) At Closing, five percent (5%) of the Purchase Price shall be deposited in escrow (the “Escrow Amount”) with the Escrow Agent pursuant to an escrow agreement in the form of Exhibit 6, by and among the Seller, the Buyer, and the Escrow Agent (the “Escrow Agreement”) to provide a fund for payment of Seller’s obligations under Section 7.3, if any. The Escrow Amount shall be released in accordance with the Escrow Agreement.

(c) Held for future use.

(d) Buyer shall prepare the Allocation, which Allocation shall be binding upon Seller. The Parties shall report, act, and file Tax Returns in all respects and for all Tax purposes consistent with the Allocation. No Party shall take any Tax position (whether in audits, Tax Returns, or otherwise) that is inconsistent with or contrary to the Allocation. In the event that the Allocation is disputed by any Governmental Authority, the Party receiving notice of such dispute will promptly notify the other Party, and the Parties will consult in good faith as to how to resolve such dispute in a manner consistent with the Allocation.

2.3 No Assumption of Liabilities. Any and all Liabilities of Seller, whether or not incurred in connection with the operation of the System, shall remain the sole responsibility of and shall be retained, paid, performed and discharged solely by Seller. Notwithstanding anything to the contrary contained in this Agreement, Buyer will not assume or be deemed to assume, and shall have no liability or obligation with respect to, any Liability of Seller, none of which Liabilities are part of the Contemplated Transactions.

2.4 Closing. Unless this Agreement is first terminated pursuant to Article 8 hereof, and subject to the satisfaction or, if permissible, waiver of each of the conditions set forth in Article 5 hereof, the Closing will take place at the offices of Buyer or such other place or by such other means (e.g., e-mail/PDF or facsimile and overnight delivery of original execution documents) as is agreed to by the Parties at 10:00 A.M., Eastern time, on (a) such date as is three (3) Business Days after the date on which all of the conditions set forth in Article 5 hereof shall have been satisfied or (to the extent permissible) waived (other than those conditions which, by their nature are to be satisfied or waived at Closing but subject to their satisfaction or waiver at Closing) or, if Buyer shall so elect, the final day of Seller’s billing period of which such date is a part or (b) such other date as the Parties hereto may agree upon in writing. In any event, the Closing shall be effective as of the Effective Time.

2.5 Closing Obligations.

In addition to any other documents to be delivered under other provisions of this Agreement:

(a) Seller shall deliver or cause to be delivered to Buyer the following documents at or prior to Closing:

- (i) the Bill of Sale, duly executed by Seller;
- (ii) the Intangible Assignments, duly executed by Seller, if any;

(iii) all Consents and approvals from Governmental Authorities, and third parties under Contracts, necessary to ensure that Buyer will continue to have the same full rights with respect to the Acquired Assets as Seller had immediately prior to the consummation of the Contemplated Transactions, including the written Consents, in form and substance reasonably acceptable to Buyer, of the Governmental Authorities and third parties set forth in Schedule 2.5(a)(iii);

(iv) a payoff letter from each lender identified in Schedule 2.5(a)(iv) from which Seller has incurred indebtedness for borrowed money which is outstanding, if any[, and from each person or entity listed on Schedule 2.2], and a release of all Encumbrances relating to the Acquired Assets executed, filed and/or recorded by the holder of or parties to each such Encumbrance (including without limitation any violations cited by Virginia Department of Health, or any other Governmental Authority with authority over the System or the Acquired Assets), if any, in each case in substance and form reasonably satisfactory to Buyer and its counsel;

(v) a satisfaction letter from each Government Agency identified in Schedule 2.5(a)(v) from which Seller has procured a grant or has incurred indebtedness for borrowed money which is outstanding, if any, and a release of all Encumbrances relating to the Acquired Assets executed, filed and/or recorded by the holder of or parties to each such Encumbrance (including without limitation the Virginia Department of Health, United States Department of Agriculture, or any other Governmental Authority with authority over the System or the Acquired Assets), if any, in each case in substance and form reasonably satisfactory to Buyer and its counsel;

(vi) for each interest in Real Property and each easement and/or right-of-way affecting any Real Property or Acquired Asset, whether or not identified on Schedule 3.4, a recordable warranty deed or such other appropriate document or instrument of transfer or approval, as the case may require, each in form and substance reasonably satisfactory to Buyer;

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

(viii) a copy of each permit, license, easement, land-right and other necessary authority for the operation of the System and the Acquired Assets, in each case validly issued in the name of the Seller and in full force and effect;

(ix) the Franchise Agreement, duly executed by Seller;

(x) certificate contemplated by Section 5.1(d);

(xi) a legal opinion of Seller's legal counsel, as acceptable to legal counsel appointed by the Town Council, affirmatively opining to such matters as Buyer or its legal counsel may reasonably request, including but not limited to the due authorization and execution of this Agreement by Seller, and the enforceability thereof;

(xii) a certificate, dated as of the Closing Date, by the Town Manager of the Town of Cape Charles and Seller's legal counsel certifying as to all requisite resolutions, ordinances, to include the ordinance approving the sale of the System in accordance with VA Code § 15.2-2100, and actions of Seller's Town Council approving the execution and delivery of the Agreement and the consummation of the Contemplated Transaction Documents on behalf of Seller;

(xiii) to the extent such transfer is requested by Buyer, evidence satisfactory to Buyer of the transfer of all utilities with respect to the System from Seller to Buyer;

(xiv) evidence satisfactory to Buyer of the effectuation of any change in rate base which is contemplated by this Agreement, if applicable;

(xv) all other documents, instruments and writings required or reasonably requested by Buyer to be delivered at or prior to the Closing pursuant to this Agreement or otherwise required in connection herewith; and

(xvi) the Escrow Agreement, duly executed by Seller and the Escrow Agent.

(b) At or prior to the Closing, Buyer shall deliver the following:

(i) to the Seller [and such other payees set forth on Schedule 2.2], in accordance with wire transfer instructions to be provided by the Seller to Buyer at least ten (10) Business Days prior to the Closing Date, in immediately available funds, an aggregate amount equal to the Purchase Price;

(ii) to the Seller, the Intangible Assignments, duly executed by Buyer, if any;

(iii) the Franchise Agreement, duly executed by Buyer;

(iv) to the Seller, all other documents, instruments and writings required or reasonably requested by Seller to be delivered at or prior to the Closing pursuant to this Agreement or otherwise required in connection herewith; and

(v) the Escrow Agreement, duly executed by Buyer.

ARTICLE 3

Representations and Warranties of Seller

Seller hereby makes the following representations and warranties to Buyer, each of which is true and correct on the date hereof, will be true and correct at Closing and shall survive the Closing and the Contemplated Transactions hereby to the extent set forth herein:

3.1 Organization of Seller; Power and Authority. Seller is a municipal corporation duly organized, validly existing and in good standing under the Laws of the Commonwealth of Virginia. Seller has full power and authority to conduct the Business and the System as they are now being conducted and to own, lease and operate the System and the Acquired Assets.

3.2 Enforcement; Authority; No Conflict.

(a) This Agreement constitutes the legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms except as such enforcement may be limited by bankruptcy, insolvency or other similar Laws affecting the rights of creditors generally and by general principles of equity. Seller has the absolute and unrestricted right, power and authority to execute and deliver this Agreement and the Transaction Documents and to consummate the Contemplated Transactions. The Town Manager and Town Council of Seller have duly authorized the execution, delivery, and performance of this Agreement by Seller and no other municipal proceeding on the part of Seller is necessary to

authorize the execution, delivery and performance of this Agreement; provided, however, that final Town Council votes and a public hearing shall be required prior to Closing to authorize the Franchise Agreement.

(b) This Agreement has been, and the Transaction Documents will be, duly executed and delivered by Seller.

(c) Neither the execution, delivery or performance by Seller of this Agreement or the Transaction Documents nor the consummation by it of the Contemplated Transactions will (i) contravene, conflict with or result in a violation of any ordinance, regulation, resolution or other governing law of the Seller, (ii) contravene, conflict with or result in a violation of or give any Governmental Authority or other Person the legal basis to challenge any of the Contemplated Transactions or to exercise any remedy or obtain any relief under any Laws or any Order to which Seller or any of the Acquired Assets may be subject, (iii) contravene, conflict with or result in a violation of any of the terms or requirements of or give any Governmental Authority the right to revoke, withdraw, suspend, cancel, terminate or modify any Permit or other authorization by a Governmental Authority that is held by Seller or that otherwise relates to the System or any of the Acquired Assets, (iv) contravene, conflict with or result in a violation or breach of any provision of, require the Consent of any Person under, or give any Person the right to declare a default or exercise any remedy under or to accelerate the maturity or performance of or to cancel, terminate or modify any Contract, indenture, mortgage, note, lease or other instrument or document to which Seller is a party or by which any of the Acquired Assets are bound or (v) result in the imposition or creation of any Encumbrance upon or with respect to any of the Acquired Assets.

(d) Except as set forth on Schedule 3.2(d) and those approvals required pursuant to Section 5.1(g), no filings or registrations with, notifications to, or authorizations, Consents or approvals of, a Governmental Authority or third party are required to be obtained or made by Seller in connection with the execution, delivery or performance by Seller of this Agreement or the Transaction Documents or the consummation by Seller of the Contemplated Transactions. Neither the Contemplated Transactions nor the Transaction Documents will result in the creation of any Encumbrance against any of the Acquired Assets.

3.3 Assets. Seller has clear, good, and marketable title to, or a valid leasehold interest in, all of the Acquired Assets, free and clear of all Encumbrances. None of the Acquired Assets are leased or on loan by Seller to any third party. The Acquired Assets constitute all of the assets and property that, together with the rights granted or conveyed under the Transaction Documents, are necessary for the operation of the System, the Business and the Acquired Assets as conducted as of the date hereof. Upon the Closing, Buyer shall continue to be vested with good title or a valid leasehold interest in the System and all of the Acquired Assets. The Business constitutes all of the business conducted by any Person in connection with the System.

3.4 Real Property; Easements.

(a) Seller owns and has good and marketable title to the Real Property, free and clear of all options, leases, covenants, conditions, easements, agreements, claims, and other Encumbrances of every kind and there exists no restriction on the use or transfer of such property, in each case except as set forth on Schedule 3.4(b)(i) or Schedule 3.4(b)(ii). Set forth on Schedule 3.4(a) is a complete and accurate listing of all Real Property. Except as set forth in Exhibit 2 regarding Assumed Contracts, Seller is not the lessor or lessee of any Real Property, and there are no outstanding options, rights of first refusal or rights of first offer to purchase any of the Real Property or any portion thereof or interest therein. Seller has made available to Buyer copies of all title reports, surveys, title policies and appraisals relating to the Real Property. At and after the Closing, Buyer shall have the right to maintain or use the Real Property, including the space, facilities or appurtenances outside the building lines, whether on, over or under the

ground, and to conduct such activities thereon as maintained, used or conducted by Seller on the date hereof and such right is not subject to revocation. At and after the Closing, Buyer shall have all rights, easements and agreements necessary for the use and maintenance of water, sewer or other utility pipelines, poles, wires, conduits or other like facilities, and appurtenances thereto, over, across and under the Real Property necessary to operate the System.

(b) The Real Property is properly classified under applicable zoning Laws, ordinances, and regulations for the current and continued operation of the System on the Real Property. No Proceeding is pending or threatened which could adversely affect the zoning classification of the Real Property. There are sufficient parking spaces, loading docks and other facilities at such Real Property to comply with such zoning Laws, ordinances, and regulations and Seller's use or occupancy of the Real Property is not dependent on any permitted non-conforming use or similar variance, exemption, or approval from any Governmental Authority. Seller's current use and occupancy of the Real Property and its operation of the System thereon does not violate any easement, covenant, condition, restriction or similar provision in any instrument of record or other unrecorded agreement affecting such Real Property. The present use and operation of the Real Property does not constitute a non-conforming use and is not subject to a variance. Seller has not received any notice of violation of any easements, covenants, restrictions or similar instruments and there is no basis for the issuance of any such notice or the taking of any action for such violation. Set forth on Schedule 3.4(b)(i) hereto is a true, correct and complete list of all easements relating to the Real Property or the Acquired Assets. All of such easements are valid and will be transferred to Buyer and remain in full force as of the Closing. Set forth on Schedule 3.4(b)(ii) hereto is a true, correct and complete list of all rights of way relating to the Real Property or the Acquired Assets. All of such rights of way are valid and will be transferred to Buyer and remain in full force as of the Closing. Set forth in Schedule 3.4(b)(ii) hereto is a true, correct and complete lists of all rights of way relating to the Real Property or the Acquired Assets. All of such rights of way are valid and will be transferred to Buyer and remain in full force as of the Closing. All Improvements located on, and the use presently being made of, the Real Property comply with all applicable zoning and building codes, ordinances and regulations and all applicable fire, environmental, occupational safety and health standards and similar standards established by Law and the same use thereof by Buyer following Closing will not result in any violation of any such code, ordinance, regulation or standard. There is no proposed, pending or threatened change in any of the Town of Cape Charles' code, ordinances, regulations or standards which would adversely affect the Business, the System or the Acquired Assets. Seller agrees that in the event any such change is proposed, pending or threatened prior to Closing, Seller shall provide notice to Buyer of such change within ten (10) calendar days of such change being proposed or threatened. If Buyer determines, in its sole discretion, that it cannot proceed with the Contemplated Transactions as a result of any such change, Buyer may terminate this Agreement in accordance with Section 8.1 hereof.

(c) No Improvements encroach on any land that is not included in the Real Property or on any easements affecting such Real Property, or violate any building lines or set-back lines, and there are no encroachments onto the Real Property, or any portion thereof, which would interfere with the use or occupancy of such Real Property or the continued operation of the System as currently conducted.

(d) There is no unpaid property Tax, levy or assessment against the Real Property (except for Encumbrances relating to Taxes not yet due and payable), nor is there pending or threatened any condemnation Proceeding against the Real Property or any portion thereof.

(e) Except as set forth in Schedule 3.4(e), there is no condition affecting the Real Property or the Improvements located thereon which requires repair or correction to restore the same to reasonable operating condition.

(f) All of the foregoing representations and warranties apply except to the extent, if any, that a private entity is subject to different standards than Seller. If Buyer is subject to different standards than Seller regarding compliance with code, ordinances, regulations or standards, then Seller shall reasonably cooperate with Buyer to achieve compliance with such code, ordinances, regulations or standards.

3.5 Personal Property. Set forth on Schedule 3.5(a) is a complete and accurate listing of all Acquired Assets which are personal property. Except as set forth in Schedule 3.5(b): (i) no Acquired Asset which is personal property is in the possession of others (other than immaterial items temporarily in the possession of others for maintenance or repair), (ii) neither Seller nor any of its Affiliates holds any such property on consignment, and (iii) each item of such Acquired Assets has been maintained in accordance with normal industry practice, is in good operating condition and repair (subject to normal wear and tear) and is suitable for the purposes for which it is presently used.

3.6 No Undisclosed Liabilities. Except (a) to the extent and for the amount reflected as a Liability on the balance sheet included in the Unaudited Financial Statements, (b) Liabilities incurred in the Ordinary Course of Business since the date of the balance sheet included in the Unaudited Financial Statements (none of which will or may reasonably be expected to have an adverse effect upon the Business), or (c) as set forth on Schedule 3.6, Seller does not have any Liabilities in relation to the ownership and operation of the System and the Business other than the aforementioned, known or unknown, asserted or unasserted, liquidated or unliquidated, accrued, absolute, contingent, or otherwise, there is no basis for any claim against Seller, the System or any of the Acquired Assets for any such Liability and there is no basis for any such Liability to become the Liability of Buyer from and after the Closing.

3.7 Tax Matters.

(a) Seller has timely and properly filed all Tax Returns that it was required to file. All such Tax Returns were complete and correct in all respects and were prepared in compliance with all applicable Laws. All Taxes owed by Seller have been paid. Seller is not the beneficiary of any extensions of time within which to file any Tax Return. No claim has ever been made by an authority in a jurisdiction where Seller does not file Tax Returns that Seller is or may be subject to taxation by that jurisdiction. There are no Encumbrances on any of the Acquired Assets that arose in connection with any failure (or alleged failure) to pay any Tax.

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

(c) There are no audits or examinations of any Tax Returns pending or threatened that relate to Seller's operation of the System or the Acquired Assets. Seller is not a party to any action or Proceeding by any Governmental Authority for the assessment or collection of Taxes relating to the operation of the System or Acquired Assets, nor has such event been asserted or threatened. There is no waiver or tolling of any statute of limitations in effect with respect to any Tax Returns relating to Seller's operation of the System or the Acquired Assets.

(d) None of the Acquired Assets (i) has been or could be treated as a partnership or corporation for United States federal income Tax purposes or (ii) is property that is required to be treated for Tax purposes as being owned by any other Person (other than those Acquired Assets that are leased).

(e) None of the Acquired Assets represent property or obligations of Seller, including but not limited to uncashed checks to vendors, customers or employees, non-refunded overpayments or unclaimed

subscription balances, that is escheatable to any Governmental Authority under any applicable escheatment Laws as of the date hereof or that may at any time after the date hereof become escheatable to any Governmental Authority under any applicable escheatment Law.

3.8 Contracts. Set forth on Schedule 3.8 is a complete and correct list of all Contracts related to the System to which Seller is a party or is otherwise bound. Seller has delivered or caused to be delivered to Buyer correct and complete copies of each such Contract (including any and all amendments), a description of the terms of each such Contract which is not in writing, if any, and all documents affecting the rights or obligations of any party thereto.

3.9 Environmental Matters.

(a) Seller is and at all times has been in full compliance with and has not been and is not in violation of or liable under any applicable Environmental Law. Seller has no basis to expect nor has it received any actual or threatened Order, notice or other communication from any Governmental Authority or other Person of any actual or potential violation or failure to comply with any Environmental Law or of any actual or threatened obligation to undertake or bear the cost of any Environmental, Health and Safety Liabilities with respect to the Real Property or any other properties or assets (whether real, personal or mixed) in which Seller has or has had an interest or with respect to the Real Property or any other real property at or to which Hazardous Materials were generated, manufactured, refined, transferred, imported, used or processed by Seller or any other Person for whose conduct it is or may be held responsible, or from which Hazardous Materials have been transported, treated, stored, handled, transferred, disposed, recycled or received.

(b) There are no pending or threatened claims, Encumbrances or other restrictions of any nature, resulting from any Environmental, Health and Safety Liabilities or arising under or pursuant to any Environmental Law with respect to or affecting the Real Property or any other properties and assets (whether real, personal or mixed) in which Seller has or had an interest.

(c) Neither Seller nor any other Person for whose conduct it is or may be held to be responsible has any Environmental, Health and Safety Liabilities with respect to the Real Property or with respect to any other properties and assets (whether real, personal or mixed) in which Seller (or any predecessor) has or has had an interest or at any property geologically or hydrologically adjoining the Real Property or any such other property or assets that could reasonably be expected to have a material adverse effect thereon.

(d) There are no Hazardous Materials, except those used in connection with the operation of the System and set forth in the list on Schedule 3.9(d), present on or in the Environment at the Real Property or at any geologically or hydrologically adjoining property, including any Hazardous Materials contained in barrels, above or underground storage tanks, landfills, land deposits, dumps, equipment (whether moveable or fixed) or other containers, either temporary or permanent and deposited or located in land, water, sumps or any other part of the Real Property or such adjoining property or incorporated into any structure therein or thereon. Neither Seller nor any other Person for whose conduct it is or may be held to be responsible has permitted or conducted, or is aware of, any Hazardous Activity conducted with respect to the Real Property or any other properties or assets (whether real, personal or mixed) in which Seller has or has had an interest except in material compliance with all applicable Environmental Laws. There has been no Release or threat of Release, of any Hazardous Materials at or from the Real Property or from or by any other properties and assets (whether real, personal or mixed) in which Seller has or has had an interest, or any geologically or hydrologically adjoining property, whether by Seller or any other Person.

(e) Except as set forth in Schedule 3.9(e), none of the following exists at the System or on the Real Property: (1) underground storage tanks; (2) asbestos-containing material in any form; (3) materials

or equipment containing polychlorinated biphenyl; (4) groundwater monitoring wells; or (5) landfills, surface impoundments, or disposal areas.

(f) Except as set forth in Schedule 3.9(f) neither Seller nor any of its Affiliates is obligated to provide financial assurance in consideration of the System under Environmental Law.

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

(h) Seller will cooperate with Buyer regarding any revisions reasonably requested by Buyer to Chapters 70, 71 and 72 of the Town Code of Cape Charles to address environmental compliance matters, including but not limited to prohibited discharges, exclusion of storm water runoff, back flow prevention, and drought restrictions.

3.10 Permits. Set forth on Schedule 3.10 is a complete and correct list of all Permits used by Seller in the continuing operation of the System. Such Permits constitute all those necessary for the continuing operation of the System and are all valid and subsisting and in full force and effect. No fact or circumstance exists which is reasonably likely to cause any such Permit to be revoked or materially altered subsequent to the execution of this Agreement and the Closing Date. Neither the execution of this Agreement nor the Closing do or will constitute or result in a default under or violation of any such Permit.

3.11 Insurance. Seller maintains and has maintained appropriate insurance necessary for the full protection of all of its assets, properties, the System, operations, products and services. All such policies are in full force and effect and Seller will use commercially reasonable efforts to cause such policies to be outstanding and in full force and effect as of Closing and immediately following the execution of this Agreement and the consummation of the Contemplated Transactions. There are no pending Proceedings arising out of, based upon or with respect to any of such policies of insurance and, to Seller's Knowledge, no basis for any such Proceedings exists. Seller is not in default with respect to any provisions contained in any such insurance policies and no insurance provider is in default with respect to such insurance policies. Set forth in Schedule 3.11 is a true and accurate list of all such insurance policies Seller maintains, and the premiums therefor have been paid in full as they have become due and payable. Upon Closing, Buyer will be responsible for acquiring and maintaining appropriate insurance for the protection of the Acquired Assets, including for the avoidance of doubt maintaining such insurance coverage with respect to Buyer's liability to the public, if any, consistent with the requirements of applicable Law and the terms of Buyer's tariff on file with the Virginia State Corporation Commission.

3.12 Absence of Certain Changes. There has not been any occurrence or event which, individually or in the aggregate, has had or is reasonably expected to have any Material Adverse Effect. Seller has continually operated the System and the Business only in the Ordinary Course of Business. Without limitation of the foregoing, Seller has not entered into, amended, terminated or received notice of termination of any Permit necessary for the continued operation of the System except as set forth in Schedule 3.12. In addition, Seller has not taken any action in connection with the System or the Business which, if taken on or after the date hereof, would have required the prior written Consent of Buyer pursuant to Section 6.5 hereof.

3.13 Litigation and Proceedings. There are no Proceedings, either pending or threatened, anticipated or contemplated, against Seller or involving the operation of the System, any of the Acquired

Assets, or any of Seller's agents or other personnel in their capacity as such, which could directly affect any of the Acquired Assets or the System. Seller has not been charged with, nor is it under investigation with respect to, any charge which has not been resolved to its favor concerning any violation of any applicable Law with respect to any of the Acquired Assets or the System and there is no valid basis for any such charge or investigation. Neither Seller nor any of its Affiliates has been subject to or threatened to be subject to any Proceeding or Order relating to personal injury, death or property or economic damage arising from products sold, licensed or leased and services performed by Seller or any of its Affiliates with respect to the System or the Business. No judgment, Order, writ, injunction, decree, assessment or other command of any Governmental Authority affecting Seller or any of the Acquired Assets or the System has been entered which is presently in effect. There is no Proceeding pending or, to Seller's Knowledge, threatened which challenges the validity of this Agreement or the Contemplated Transactions or otherwise seeks to prevent, directly or indirectly, the consummation of the Contemplated Transactions, nor is there any valid basis for any such Proceeding.

3.14 Compliance with Laws. Seller is in compliance with all Laws, Permits, Orders, ordinances, rules and regulations, whether civil or criminal, of any federal, state, local or foreign governmental authority applicable to the System or the Business and has not committed any violation of any Law or any provision of its charter or ordinances (or equivalent governing documents) applicable to the Acquired Assets and/or the operation of the System. Except as set forth in Schedule 3.14 neither Seller nor any of its Affiliates has received any notice alleging such default, breach or violation.

3.15 Financial Statements. Attached as Schedule 3.15 are the Financial Statements. The Financial Statements have been prepared in accordance with GAAP and the Accounting Methodologies, subject in the case of the Unaudited Financial Statements to normal year-end adjustments and the absence of footnotes. The Financial Statements were derived from the books and records of Seller, are true, correct and complete in all material respects and present fairly in all material respects the financial condition, operating results and cash flows of Seller as of the dates and during the periods indicated therein (subject, in the case of the Unaudited Financial Statements, to normal year-end adjustments and the absence of footnotes). From and after the Closing Date, Buyer shall provide to Seller such financial statements as are required pursuant to Section 18 of the Franchise Agreement.

3.16 Transactions with Related Parties. Except as set forth on Schedule 3.16, no member of Town Council, authorized representative or Affiliate of Seller has any financial interest, direct or indirect, in any supplier or customer of, or other business which has any transactions or other business relationship with, Seller. Without limiting the generality of the foregoing, neither Seller nor any of its Affiliates nor any member of Town Council or authorized representative of Seller, any of its Affiliates or the Business owns, directly or indirectly, any interest in or is an owner, sole proprietor, member, stockholder, partner, director, officer, employee, consultant or agent of any Person which is a lessor, lessee, customer, licensee, or supplier of the Business and none of the employees of or servicing the Business owns, directly or indirectly, in whole or in part, any tangible property, patent, trademark, service mark, trade name, copyright, franchise, invention, Permit or license which was developed by or is used and necessary for the operation of the Business.

3.17 Indebtedness and Grants.

(a) Except as identified in Schedule 2.5(a)(iv), there is no lender from which Seller has incurred indebtedness for borrowed money which is outstanding in connection with the design, construction, operation, maintenance or replacement of the System or the Acquired Assets, no obligation on the part of Seller for the payment or repayment of money, whether as principal or as surety and whether present or future, actual or contingent, and no encumbrance of the System or the Acquired Assets executed, filed and/or recorded.

(b) Except as identified in Schedule 2.5(a)(v), Seller has not procured a grant from any Governmental Authority or other entity in connection with the design, construction, operation, maintenance or replacement of the System or the Acquired Assets, and Seller will not be obligated to return any grant funds to any Governmental Authority or other entity in connection with the sale or transfer of the System or the Acquired Assets.

3.18 Customer Advances. Set forth on Schedule 3.18 is a complete and accurate list of all unexpired Extension Deposit Agreements (or similar agreements) to which Seller is a party (each an “Extension Deposit Agreement”) and which contain unexpired obligations of Seller to provide for the payment of periodic refunds to parties making advances for the construction of facilities for water or wastewater service. Seller will provide to Buyer within 15 days of the execution of this Agreement (to be updated at Closing), true and complete copies of each such Extension Deposit Agreement. All records of Seller relating to each Extension Deposit Agreement is complete and accurate in all material respects and, together with the relevant Extension Deposit Agreement, is all the information reasonably required to determine Seller’s, and, consequently, Buyer’s obligations to each party to the Extension Deposit Agreements; and there are no disputes or disagreements with any party to an Extension Deposit Agreement relating to the amount due under that agreement or the method of calculating that amount. Schedule 3.18 may be updated at Closing only with the mutual consent of the parties.

3.19 Accounts Receivable. Set forth on Schedule 3.19 is a list of all the accounts receivable of Seller with respect to the System, an aging schedule related thereto and a list of facility fees paid to Seller, as of [_____, 2022. Such accounts receivable and facility fees, together with any such accounts receivable arising, or facility fees paid to Seller, between such date and the Closing Date (collectively, the “Accounts Receivable”), are (to the extent not yet paid in full) valid, genuine and existing and arose or will have arisen from bona fide sales of products or services actually made in the Ordinary Course of Business. The Accounts Receivable are not subject to, and Seller has received no notice of, any counterclaim, set-off, defense or Encumbrance with respect to the Accounts Receivable. Except to the extent paid prior to Closing, the Accounts Receivable are and will be current and fully collectible by Buyer. Seller shall retain all Accounts Receivables paid prior to Closing. No agreement for deduction, free goods, discount or deferred price or quantity adjustment has been made with respect to any Accounts Receivable.

3.20 Brokers, Finders. No finder, broker, agent or other intermediary, acting on behalf of Seller or any of Seller’s Affiliates, is entitled to a commission, fee or other compensation in connection with the negotiation or consummation of this Agreement or any of the transactions contemplated hereby.

ARTICLE 4

Representations and Warranties of Buyer

Buyer hereby makes the following representations and warranties to Seller:

4.1 Organization. Buyer is a duly organized and validly existing corporation in good standing under the Laws of the Commonwealth of Virginia and has the power and authority to own, lease and operate its assets and properties.

4.2 Enforcement; Authority; No Conflict.

(a) This Agreement constitutes the legal, valid and binding obligation of Buyer and is enforceable against Buyer in accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency or other similar Laws affecting the rights of creditors generally and by general principles of equity. Buyer has the absolute and unrestricted right, power and authority to execute and

deliver this Agreement and the Transaction Documents to which it is a party and to perform its obligations hereunder and thereunder.

(b) Neither the execution or delivery of this Agreement nor the consummation of the Contemplated Transactions shall result in: (i) a violation of or a conflict with any provision of the articles of incorporation or the bylaws of Buyer; (ii) a material breach of or default under any term, condition or provision of any Contract to which Buyer is a party, or an event which, with the giving of notice, lapse of time, or both, would result in any such breach or default; or (iii) a material violation of any applicable Law, Order, judgment, writ, injunction, decree or award or any event which, with the giving of notice, lapse of time, or both, would result in any such violation.

4.3 Brokers, Finders. No finder, broker, agent or other intermediary, acting on behalf of Buyer or any of Buyer's Affiliates, is entitled to a commission, fee or other compensation in connection with the negotiation or consummation of this Agreement or any of the transactions contemplated hereby.

ARTICLE 5

Conditions Precedent to Closing

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

(a) Authorization of Contemplated Transactions. Buyer shall have obtained by March 31, 2023 all necessary corporate approvals to consummate the Contemplated Transactions, including but not limited to the approval of its Board of Directors;

(b) Representations and Warranties. Each of the representations and warranties of Seller contained in this Agreement or in any Transaction Document shall have been true, correct and accurate in all respects on and as of the date hereof and shall also be true, correct and accurate in all material respects (other than Section 3.5 and representations and warranties qualified as to materiality, which shall have been true, correct and accurate in all respects) on and as of the Closing Date with the same force and effect as though made by Seller on and as of the Closing Date (except to the extent that any such representation or warranty is made solely as of the date hereof or as of another date earlier than the Closing Date, which shall be accurate as of such date);

(c) Covenants. Seller shall have performed, observed and complied in all material respects with all of its obligations, covenants, undertakings and agreements contained in this Agreement or any Transaction Document and required to be performed, observed or complied with by Seller prior to or at the Closing;

(d) Certificates. Seller shall have delivered to Buyer a certificate, dated as of the Closing Date and executed by an officer or other duly authorized representative of Seller, to the effect that the conditions set forth in Sections 5.1(b), (c) and (i) have been satisfied;

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

(f) Closing Deliveries. Seller shall have delivered or caused to be delivered to Buyer each of the items set forth in Section 2.5(a);

(g) Governmental and Third-Party Approvals. (i) Buyer shall have obtained all necessary regulatory approvals by the Virginia State Corporation Commission, or any other applicable regulatory body, and all other applicable Consents and approvals from Governmental Authorities to include approval of the Town Council of the Town of Cape Charles in accordance with VA Code § 15.2-2100, and other third parties, if any, which are required in connection with the Contemplated Transactions, each in form and substance (including without limitation with respect to the terms and conditions contained in any such approval) acceptable to Buyer in its sole and absolute discretion, and (ii) any waiting periods under existing Laws, and all extensions thereof, the passing of which is necessary to consummate the Contemplated Transactions, shall have expired;

(h) Due Diligence. Buyer shall have completed and be satisfied, in its sole and absolute discretion, with the results of its due diligence review of the Acquired Assets and Seller, including without limitation with the results of any Phase I Environmental Site Assessment or other environmental assessment performed with respect to the Real Property or the Acquired Assets or chain of title search, all material contracts and operating permits and licenses of the System, and the Seller's operations, contracts, employment practices, compliance, accounting and other items as Buyer deems necessary, as each of the foregoing items relate to the System or the Acquired Assets;

(i) Permits. All permits, licenses, easements, and land-rights, and any other necessary authority for the operation of the System and the Acquired Assets shall be validly issued in the name of Seller and in full force as of the Closing Date, and Buyer shall have received a copy of each such instrument;

(j) No Encumbrances. The System and the Acquired Assets shall be free and clear of any and all Encumbrances, including without limitation any violations cited by the Virginia Department of Health or any other Governmental Authority with authority over the System or the Acquired Assets;

(k) No Material Adverse Effect. Buyer shall have determined that there shall not have occurred any event or circumstance which, individually or in the aggregate, has had or could reasonably be expected to have a Material Adverse Effect;

(l) Escrow Agreement. The Escrow Agreement has been duly executed by Seller and Escrow Agent;

(m) Franchise Agreement. Seller has approved the Franchise Agreement in accordance with VA Code § 15.2-2100, et seq. and executed such Franchise Agreement; and

(n) Submission to Auditor of Public Accounts. Seller shall have submitted, within thirty (30) days after the date hereof, a copy of this Agreement to the Auditor of Public Accounts in accordance with VA Code § 56-575.9(F) of the PPEA.

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

(a) Representations and Warranties. Each of the representations and warranties of Buyer contained in this Agreement or in any Transaction Document shall have been true, correct and accurate in

all respects on and as of the date hereof and shall also be true, correct and accurate in all material respects (other than representations and warranties qualified as to materiality, which shall have been true, correct and accurate in all respects) on and as of the Closing Date with the same force and effect as though made by Buyer on and as of the Closing Date (except to the extent that any such representation or warranty is made solely as of the date hereof or as of another date earlier than the Closing Date, which shall be accurate as of such date);

(b) Covenants. Buyer shall have performed, observed and complied in all material respects with all of its obligations, covenants, undertakings and agreements contained in this Agreement or any Transaction Document and required to be performed, observed or complied with by Buyer prior to or at the Closing;

(c) Proceedings. No provision of any Law or Order shall be in effect which would prevent consummation of the Contemplated Transactions;

(d) Closing Deliveries. Buyer shall have delivered or caused to be delivered to Seller each of the items set forth in Section 2.5(b);

(e) Escrow Agreement. The Escrow Agreement has been duly executed by Seller and Escrow Agent; and

(f) Annexation Agreement. Seller shall have concluded to its satisfaction its negotiations with Preserve Communities regarding settlement of liabilities associated with the annexation by Seller of real property located within the Preserve Communities.

ARTICLE 6

Covenants and Special Agreements

6.1 Access to Information; Confidentiality

(a) Access. Between the date of this Agreement and the Closing Date, Buyer may, directly and through its representatives, make such confirmatory investigation of the System and the Acquired Assets as each deems necessary or advisable. In furtherance of the foregoing, Buyer and its representatives shall have reasonable access, upon reasonable notice during normal business hours, to all employees, properties, books, Contracts, customer lists, commitments and records of the Business, and Seller shall furnish and cause to be furnished to Buyer and its representatives such financial and operating data and other information as may from time to time be reasonably requested relating to the System, shall permit Buyer or its representatives to conduct such physical inspections and environmental audits of the Real Property as requested by Buyer and shall permit Buyer or its representatives to conduct interviews of employees of or servicing the Business. Seller and the management, employees, accountants and attorneys of or servicing the Business shall cooperate fully with Buyer and its representatives in connection with such investigation.

(b) Confidentiality.

(i) Prior to Closing, each Party shall ensure that all Confidential Information which such Party or any of its respective officers, directors, employees, counsel, agents, or accountants may have obtained, or may hereafter obtain, from the other Party (or create using any such information) relating to the financial condition, results of operations, System, properties, assets, Liabilities or future prospects of the other Party, any Related Person of the other Party or any customer or supplier of such other Party or

any such Related Person shall not be published, disclosed or made accessible by any of them to any other Person at any time or used by any of them, in each case without the prior written Consent of the other Party; provided, however, that the restrictions of this sentence shall not apply (i) as may otherwise be required by Law, (ii) to the extent such Confidential Information shall have otherwise become publicly available, and (iii) as to Buyer, to disclosure by or on its behalf to regulatory authorities or other third parties whose Consent or approval may be required to consummate the Contemplated Transactions and to its lenders and professionals for the purpose of obtaining financing of such transactions. Following Closing, Seller shall ensure that all Confidential Information relating to the financial condition, results of operations, System, properties, assets, Liabilities or future prospects of the Buyer, any Related Person of the Buyer or any customer or supplier of the Buyer or any such Related Person shall not be published, disclosed or made accessible by any of them to any other Person at any time or used by any of them, in each case without the prior written Consent of the Buyer; provided, however, that the restrictions of this sentence shall not apply (i) as may otherwise be required by Law, (ii) to the extent such Confidential Information shall have otherwise become publicly available, and (iii) as to Buyer, to disclosure by or on its behalf to regulatory authorities or other third parties whose Consent or approval may be required to consummate the Contemplated Transactions and to its lenders and professionals for the purpose of obtaining financing of such transactions.

(ii) To the extent permitted by Law, in the event of termination of negotiations or failure of the Contemplated Transactions to close for any reason whatsoever, each Party promptly will destroy or deliver to the other Party and will not retain any documents, work papers and other material (and any reproductions thereof) obtained by each Party or on its behalf from such other Party or its subsidiaries as a result of this proposal or in connection therewith, whether so obtained before or after the execution hereof, and will not use any information so obtained and will cause any information so obtained to be kept confidential and not used in any way detrimental to such other Party.

6.2 Reserved for future use.

6.3 Cooperation. Subject to the terms and conditions of this Agreement, the Parties shall cooperate fully with each other and their respective counsel and accountants in connection with, and take or cause to be taken and do or cause to be done, any actions required to be taken under applicable Law to make effective the Contemplated Transactions as promptly as practicable. Prior to the Closing, the Parties shall proceed expeditiously and in good faith to make such filings and take such other actions as may be reasonably necessary to satisfy the conditions to Closing set forth in Section 5.1(g). Any and all filing fees imposed by the Virginia State Corporation Commission or the Town Council of the Town of Cape Charles in respect of such filings shall be paid by Seller. From and after the Closing, the Parties shall do such acts and execute such documents and instruments as may be reasonably required to make effective the transactions contemplated hereby. On or after the Closing Date, the Parties shall, on request, cooperate with one another by furnishing any additional information, executing and delivering any additional documents and instruments, including contract assignments, and doing any and all such other things as may be reasonably required by the Parties or their counsel to consummate or otherwise implement the transactions contemplated by this Agreement. Should Seller, in its reasonable discretion, determine after the Closing that books, records or other materials constituting Acquired Assets are still in the possession of Seller, Seller shall promptly deliver them to Buyer at no cost to Buyer. Seller hereby agrees to cooperate with Buyer to ensure a proper transition of all customers with respect to billing and customer service activities. Buyer shall take the lead in obtaining the required regulatory approvals with respect to the Contemplated Transactions.

6.4 Exclusivity. Seller will not and will not permit its employees or other agents or representatives to, when acting within the course of their employment or agency within the Town, at any time prior to the termination of this Agreement, directly or indirectly, (i) take any action to solicit, initiate

or encourage the making of any Acquisition Proposal, or (ii) discuss or engage in negotiations concerning any Acquisition Proposal with, or further disclose any non-public information relating to Seller to, any person or entity in connection with an Acquisition Proposal, in each case, other than Buyer and its representatives.

6.5 No Inconsistent Action. Prior to the Closing Date, no Party shall take any action, and each Party will use its commercially reasonable efforts to prevent the occurrence of any event (but excluding events which occur in the Ordinary Course of Business and events over which such Party has no control), which would result in any of its representations, warranties or covenants contained in this Agreement or in any Transaction Document not to be true and correct, or not to be performed as contemplated, at and as of the time immediately after the occurrence of such action or event. If at any time prior to the Closing Date, a Party obtains knowledge of any facts, circumstances or situation which constitutes a breach, or will with the passage of time or the giving of notice constitute a breach, of any representation, warranty or covenant of such Party under this Agreement or any Transaction Document or will result in the failure of any of the conditions contained in Article 5 to be satisfied, such Party shall give the other Party prompt written notice thereof; provided, however, that no such notice shall cure any breach of any representation, warranty or covenant contained herein or therein or will relieve any such Party of any obligations hereunder or thereunder unless specifically agreed to in writing by the other Party.

6.6 Conduct of Business. Between the date of this Agreement and the Closing Date, Seller shall carry on the operation of the System, the Business and the Acquired Assets in the Ordinary Course of Business and in compliance with Law, not introduce any materially new method of management or operation, use reasonable best efforts to preserve the System, the Business and the Acquired Assets, conserve the goodwill and relationships of its customers, suppliers, Governmental Authorities and others having business relations with it, maintain in full force and effect all policies of insurance now in effect for the benefit of Seller, maintain supplies at a level which is sufficient to operate the System in accordance with past practice and maintain the Acquired Assets in substantially the condition currently existing, normal wear and tear excepted. By way of illustration and not limitation, Seller will not, between the date hereof and the Closing Date, directly or indirectly do, or prepare to do, any of the following without the prior written Consent of Buyer, (a) sell, lease, transfer or otherwise dispose of, or license, mortgage or otherwise encumber, or give a security interest in or subject to any Encumbrances, any of the Acquired Assets, (b) merge or consolidate with or acquire, or agree to merge or consolidate with or acquire (by merging or consolidating with, or by purchasing a substantial portion of the stock or assets of, or by any other manner), any business or corporation, partnership, joint venture, association or other business organization or division thereof or otherwise change the overall character of the Business in any material way, (c) enter into any Contract other than in the Ordinary Course of Business, (d) abandon, sell, license, transfer, convey, assign, fail to maintain or otherwise dispose of any item of the transferred intellectual property, (e) make any change in any of its present accounting methods and practices, (f) make any new Tax election, or change or revoke any existing Tax election, or settle or compromise any Tax liability or file any income Tax Return prior to the last day (including extensions) prescribed by Law, in the case of any of the foregoing, material to the business, financial condition or results of operations of Seller, (g) engage in any transactions with any Related Person which would survive Closing, (h) pay, discharge, settle or satisfy any material claims or Liabilities (absolute, accrued, asserted or unasserted, contingent or otherwise), other than the payment, discharge or satisfaction, in the Ordinary Course of Business or in accordance with their terms, of Liabilities reflected or reserved against in the Financial Statements (or the notes thereto), or not required by GAAP to be so reflected or reserved, or incurred since December 31, 2021] in the Ordinary Course of Business, or waive any material benefits of, or agree to modify any material confidentiality, standstill, non-solicitation or similar agreement with respect to the Business to which Seller or any of its Affiliates is a party, (i) engage in any activity with the purpose or intent of (A) accelerating the collection of accounts receivable or (B) delaying the payment of the accounts payable, (j) enter into commitments for new capital expenditures in excess of \$25,000 in the aggregate, (k) create or issue or grant an option or other right to subscribe, purchase

or redeem any of its securities or other equity interests (other than with Buyer), (l) adopt a plan of complete or partial liquidation or resolutions providing for or authorizing such a liquidation or dissolution, merger, consolidation, restructuring, recapitalization or reorganization or (m) enter into any agreement (conditional or otherwise) to do any of the foregoing.

6.7 No Transfer at Odds with Law. Notwithstanding anything to the contrary contained herein, nothing in this Agreement shall be deemed to require the conveyance, assignment or transfer of any Acquired Asset that by operation of applicable Law cannot be conveyed, assigned, transferred or assumed. Each Party shall continue to use reasonable best efforts to obtain at the earliest practicable date all unobtained Consents or approvals required to be obtained by it in connection with the transfer of the Acquired Assets or performance of any Transaction Document. If and when any such Consents or approvals shall be obtained, then Seller shall promptly, and hereby does, assign its rights thereunder to Buyer without payment of consideration and Buyer shall, and hereby does, without the payment of any consideration therefor, (i) assume such rights or (ii) perform (or agree to perform) under such Transaction Document, as applicable. Each Party shall execute such good and sufficient instruments as may be necessary to evidence such assignment and assumption. The entire beneficial interest in and to, and the risk of loss with respect to, the Acquired Assets shall, regardless of when legal title thereto shall be transferred to Buyer, pass to Buyer at Closing as of the Effective Time, and Seller shall, without consideration therefor, pay, assign and remit to Buyer all monies, rights and other consideration received after the Effective Time in respect of such performance. To the extent permitted by Law, Seller shall exercise or exploit its rights in respect of such Acquired Assets only as directed by Buyer.

6.8 Release of Encumbrances. Seller promptly shall take such actions as shall be requested by Buyer to secure the release of all Encumbrances relating to the Acquired Assets, in each case in substance and form reasonably satisfactory to Buyer and its counsel.

6.9 Retention of Records. Subject to applicable Law and, subject to any applicable restrictions as to confidentiality (as to which Buyer does not provide indemnification, or the waiver of which Seller shall not have obtained after using reasonable best efforts), Seller shall preserve any books and records relating to the System or the Business that are not delivered to Buyer hereunder for a period no less than seven (7) years after the Closing Date (or such longer period as shall be required by applicable Law), and Seller shall make available such books and records for review and copying to Buyer and its authorized representatives following the Closing at Buyer's expense upon reasonable notice during normal business hours. During such period, Seller shall permit, to the extent permitted by applicable Law and upon request of Buyer, Buyer and any of its agents, representatives, advisors or consultants reasonable access to employees of or servicing the Business for information related to periods up to and including the Closing.

6.10 Tax Covenants.

(a) Reserved for future use.

(b) Each Party agrees to furnish or cause to be furnished to the other Party, upon request, as promptly as practical, such information (including reasonable access to books and records, Tax Returns and Tax filings) and assistance as is reasonably necessary for the filing of any Tax Return, the conduct of any Tax audit, and for the prosecution or defense of any claim, suit or Proceeding relating to any Tax matter. The Parties shall cooperate with each other in the conduct of any Tax audit or other Tax Proceedings and each shall execute and deliver such powers of attorney and other documents as are necessary to carry out the intent of this Section 6.10(b).

(c) **Buyer** shall pay all Taxes necessary for the transfer of the Acquired Assets, or the filing or recording of such transfer.

6.11 Termination of Intercompany Obligations. As of or prior to the Closing, Seller shall, and shall cause its Affiliates to, settle all intercompany accounts payable and accounts receivable between and among such Persons

6.12 Employment Matters.

(a) Subject to the obligations of Seller under applicable Laws and Buyer's rights and obligations set forth in this Section 6.12, Buyer shall offer employment effective on the Closing Date, to all active employees set forth in Schedule 6.12 ("Personnel") who are employed by Seller in operating the System as of the Closing Date, who have applied for a position with the Buyer, and who are available to commence work on the Closing Date on terms that will provide the Town employees with compensation and benefits that result in substantially comparable benefits, including take home wages no less than provided by the Seller at the time of execution of this Agreement, subject to Buyer's existing standard hiring policies and procedures applicable to new employees (including but not limited to, a criminal background check and drug screening and written acknowledgment of Buyer's Code of Conduct and other employment policies, if applicable, from all Personnel, except with respect to benefits as otherwise provided herein. Schedule 6.12 shall not be amended after the date this Agreement is executed without the prior written consent of the Buyer. The active Town employees who accept such offer of employment and commence employment with Buyer on the Closing Date, shall be referred to in this Agreement as the "Transferred Personnel." Buyer may make the required offer of employment at a reasonable time prior to the Closing Date to ensure there will be adequate staffing on the Closing Date. For purposes of clarity, nothing contained in this Section 6.12 limits, restricts or prohibits Buyer from interviewing the Personnel for informational purposes only in connection with the transfer of employment of the Personnel to Buyer as provided in this Section 6.12.

(b) Subject to the obligations of Seller under applicable Laws, Buyer's rights and obligations set forth in this Section 6.12, and Buyer's applicable employee benefit plan documents, with respect to employee benefit plans maintained by Buyer for the benefit of its employees (i.e., paid vacation leave, Buyer's 401k Savings Plan), effective as of the Closing, Buyer shall recognize the Transferred Personnel's length of service with Seller as if such service were with Buyer for eligibility and vesting under Buyer's employee benefit plans and programs (except where doing so would result in a duplication of benefits). Buyer's pension plans and retiree medical plans are excluded from the foregoing sentence.

(c) This Section 6.12 shall be binding upon and inure solely to the benefit of each of the parties to this Agreement, and nothing in this Section 6.12, express or implied, shall confer upon any other person any rights or remedies of any nature whatsoever under or by reason of this Section 6.12. The parties acknowledge and agree that the terms set forth in this Section 6.12 shall not create any right in any Personnel or any other person to any continued employment with Buyer or compensation or benefits of any nature or kind whatsoever, and shall not be deemed to restrict Buyer in the exercise of its independent business judgment in establishing or modifying any terms or conditions of the employment of the Transferred Personnel. Notwithstanding the foregoing, termination of employment of the Transferred Personnel by the Buyer will be limited to instances of willful or gross misconduct, poor work performance, moral turpitude, violation of the Buyer's Code of Ethics, failure to perform duties or breach of fiduciary duty. Nothing contained in this Section 6.12 shall constitute an amendment of, or an undertaking to amend, Seller's employee benefit plans, programs or arrangements maintained by Buyer or is intended to prevent Buyer from amending or terminating any such employee benefit plan, program or arrangement in accordance with its terms.

(d) Subject to applicable Laws and Buyer's rights and obligations set forth in this Section 6.12 with respect to Transferred Personnel, it is expressly understood that Buyer will not acquire any asset, or assume any liability or obligation in connection with the transactions contemplated by this Agreement

relating to any of Seller's Plans, Seller's Benefit Obligations, or any employment agreement. Seller shall be solely responsible for any liability, funding obligation, claim or expense arising from Seller's Plans, Seller's Benefit Obligations or any employment agreements, both prior to and after the Closing Date.

(e) No later than the Closing Date, Seller shall, upon obtaining the written consent of the Transferred Personnel, transfer all records pertaining to the employment of the Transferred Personnel to Buyer including all personnel and human resources files and records.

6.13 Capital Improvements. Buyer agrees to make capital improvements to the System within eight (8) years after Closing in an amount equal to Ten Million Dollars (\$10,000,000.00 USD), a portion of which will be used to address sewer capacity issues as reviewed and approved by the Virginia Department of Environmental Quality. Within the first twelve (12) months following Closing, the Buyer agrees to begin undertaking projects to address water quality and quantity. Specific capital improvements will be identified and prioritized based on the results of a comprehensive planning study. The Buyer agrees to provide, upon the completion of a capital planning study that will be initiated within the first twelve (12) months following Closing, a list of projects prioritized through the comprehensive planning study process for approval by the Seller following its completion; completion of capital planning studies typically occur 12 to 24 months from the initiation of such studies. The Seller shall be limited to a one-time approval of initial project priorities only and must provide feedback on the list of prioritized projects within thirty (30) days of receipt of the list. Nothing contained herein shall limit the Buyer's ability to make capital improvements or modify its project prioritization to address safety, compliance, reliability or efficiency of any of its operations.

6.14 Customer Rates. Buyer shall apply its current Tariff (Rules & Regulations and Rates (e.g., turn-off, late fees, etc.)), except for the fixed service and volumetric charges, to all customers connected to the System at Closing as well as any and all future customers that may connect to the System or extensions thereof. Buyer shall apply after Closing, the Seller's existing water and wastewater fixed and volumetric rates set forth in Schedule 6.14, subject to the approval of the Virginia State Corporation Commission. Such rates shall remain in effect until the Buyer's next general base rate case filed with the Virginia State Corporation Commission following the Closing. At that time, Buyer shall apply the rates set forth in its then current water and wastewater service tariffs, as approved by the Virginia State Corporation Commission. The Parties acknowledge that the Buyer is in the process of moving to fully consolidated rates as contemplated by Virginia Code 56-235.11 and intends to continue to do so in accordance with a partial stipulation of settlement approved by the Virginia State Corporation Commission in the Buyer's last general rate case (Case No. PUR-2018-00175).

6.15 Future Development. Buyer shall implement a process, substantially similar to that set forth in Schedule 6.15, for review of any request by a public utility authority to connect to the System for purposes of having sewerage collected and/or treated by the System, whereby the party requesting such a connection shall pay the cost of connecting to the System's sewer treatment facility, as well as its proportional share of the cost to expand the System's sewer treatment facility to treat the additional sewerage.

6.16 Cape Charles Water Tower. Buyer shall preserve and maintain the iconic design of the Cape Charles Lighthouse on the water tower that is serving the System as of the Effective Time. If at any time Buyer determines that it is appropriate to remove the tank from service and the Seller wants to continue to preserve the water tower, Seller shall have the option to take over the ownership and maintenance of the water tower. If Seller fails to do so in a timely manner, Buyer has the right to demolish the water tower and remove it from the property.

6.17 Operation of System. On and after the Effective Date, Buyer shall, in compliance with all applicable Laws, including for the avoidance of doubt VA Code § 56-575.9 of the PPEA, as applicable, operate the Business and System to serve the Town of Cape Charles. Nothing contained herein shall preclude the Buyer from improving, expanding or modifying the System to serve the Town of Cape Charles or customers outside of the Town of Cape Charles in the future. Seller shall be entitled to review plans and inspect and monitor Buyer's activities in relation to the operation of the System pursuant to Sections 3, 10, 18, and 19 of the Franchise Agreement. Buyer shall provide security pursuant to Section 22 of the Franchise Agreement.

6.18 Force Majeure. Seller shall not be responsible to Buyer, and Buyer shall not be responsible to Seller, for delays or failure to perform under this Agreement if such delays or failure to perform are covered by circumstances beyond its control, including, but not limited to, acts of God, pandemics, floods, storms, earthquakes, hurricanes, tornadoes, or other severe weather or climatic conditions, acts of public enemy, war, blockade, insurrection, actual or threatened acts of terrorism, vandalism or sabotage, fire, accident, wreck, derailment, washout or explosion, strike, lockout or labor disputes experienced by the Parties hereto, or embargoes.

ARTICLE 7

Survival of Representations and Warranties and Covenants; Escrow

7.1 Representations and Warranties and Covenants of Seller. All of the representations and warranties made by Seller in this Agreement, its Schedules, or any certificates or documents delivered hereunder shall survive the Closing Date and consummation of the Contemplated Transactions for a period of three (3) years; provided, however, that the representations and warranties contained in Sections 3.1, 3.2, 3.3, 3.5, 3.6, 3.7, 3.9 and 3.20 shall survive indefinitely; provided, however, that any obligations of Seller resulting in appropriations by the Town Council of Cape Charles shall survive Closing for a period of three years following Closing.

7.2 Representations and Warranties and Covenants of Buyer. All of the representations and warranties made by Buyer in Sections 6.12, 6.13, 6.14, 6.15, 6.16, and 6.17 shall survive the Closing Date and consummation of the Contemplated Transactions indefinitely.

7.3 Escrow. As set forth in the Escrow Agreement, the Escrow Amount shall be used to secure and pay Damages arising out of, resulting from, relating to or caused by: (i) any inaccuracy in or breach of (or any claim by any third party alleging or constituting an inaccuracy or breach of) any representation or warranty of, or any failure to perform or nonfulfillment of any provision or covenant contained in this Agreement or any other Transaction Document by, Seller; (ii) all Liabilities and/or duties of Seller, whether accruing prior to or after the Closing Date, and any Encumbrance affecting the Acquired Assets; (iii) assessments, charges and other similar claims due or owing, directly or indirectly, by Seller or otherwise as a result of or on account of the Acquired Assets or the System at any time prior to the Closing Date; (iv) the ownership and/or operation of any of the Acquired Assets or the System prior to Closing; (v) any Proceeding now existing or hereafter arising and relating to the Acquired Assets or the System and arising from events or matters occurring prior to the Closing Date, except as otherwise provided in Section 3.19; (vi) any Excluded Assets; (vii) intercompany accounts payable and accounts receivable by and among Seller and/or its Affiliates, except as otherwise provided in Section 3.19; (viii) transaction costs and expenses incurred by or on behalf of Seller in connection with this Agreement or the Contemplated Transactions, except as otherwise provided in Section 9.7; or (ix) any matters described on Schedule 7.3. For the avoidance of doubt, the Escrow Amount is not the Buyer's sole recourse with respect to providing for Seller's obligations with respect to the matters described in Section 7.3 to the extent the Escrow Amount is insufficient to pay Damages arising out of, resulting from, relating to or caused by such matters.

ARTICLE 8

Termination

8.1 Termination. This Agreement may be terminated at any time prior to the Closing only (a) by mutual written Consent of Seller and Buyer, (b) by Seller or Buyer upon written notice to the other, if the Closing shall not have occurred on or prior to December 31, 2023; provided, however, that the right to terminate this Agreement under this Section 8.1(b) shall not be available to any Party whose breach under this Agreement has caused or resulted in the failure of the Closing to occur on or before such date, (c) by Buyer, if Buyer is not in material breach of any of its representations, warranties, covenants and agreements under this Agreement and there has been a material breach of any representation, warranty, covenant or agreement contained in this Agreement on the part of Seller and Seller has not cured such breach within five (5) Business Days after receipt of notice of such breach (provided, however, that, no cure period shall be required for a breach which by its nature cannot be cured), (d) by Buyer, if, at any time before Closing, Buyer is not satisfied with the results of its due diligence review of the System and the Acquired Assets, (e) by Seller if Seller is not in material breach of any of its representations, warranties, covenants and agreements under this Agreement and there has been a material breach of any representation, warranty, covenant or agreement contained in this Agreement on the part of Buyer and Buyer has not cured such breach within five (5) Business Days after receipt of notice of such breach (provided, however, that, no cure period shall be required for a breach which by its nature cannot be cured), (f) by Seller or Buyer upon written notice to the other, if any court of competent jurisdiction or other competent Governmental Entity shall have issued a statute, rule, regulation, Order, decree or injunction or taken any other action permanently restraining, enjoining or otherwise prohibiting the Contemplated Transactions, and such statute, rule, regulation, Order, decree or injunction or other action shall have become final and non-appealable, (g) by Buyer, if all necessary regulatory approvals (including rate treatment, refunds and setting of rate base and all approvals described in Section 5.1(g)) contemplated hereby or otherwise necessary to close the Contemplated Transactions have not been obtained within one year of the date a completed application for approval of the Contemplated Transactions has been submitted to the Virginia State Corporation Commission, or (h) by Buyer if any Material Adverse Effect shall have occurred or, in the reasonable judgment of Buyer, shall be reasonably likely to occur. From and after Closing, the rights and responsibilities of the parties concerning default and termination with respect to the Acquired Assets shall be as set forth in Sections 21 and 22 of the Franchise Agreement.

8.2 Effect of Termination. The right of each Party to terminate this Agreement under Section 8.1 is in addition to any other rights such Party may have under this Agreement or otherwise, and the exercise of a right of termination will not be an election of remedies. If this Agreement is terminated pursuant to Section 8.1, all further obligations of the Parties under this Agreement will terminate, except that the obligations set forth in the Confidentiality Agreement, Section 6.1(b) (“Confidentiality”), this Section 8.2 (“Effect of Termination”) or Article 9 (“General Provisions”) will survive; provided, however, that if this Agreement is terminated by a Party because of the breach of the Agreement by another Party or because one or more of the conditions to the terminating Party’s obligations under this Agreement is not satisfied as a result of the other Party’s failure to comply with its obligations under this Agreement, the terminating Party’s right to pursue all legal remedies will survive such termination unimpaired.

ARTICLE 9

General Provisions

9.1 Amendment and Modification. No amendment, modification or supplement of any provision of this Agreement will be effective unless the same is in writing and is signed by the Parties.

9.2 Assignments. Seller may not assign or transfer any of its rights or obligations under this Agreement to any other Person without the prior written Consent of Buyer. Buyer may not assign its rights

and obligations under this Agreement to any third party, without the prior written Consent of Seller, but may assign its rights and obligations under this Agreement to any Related Person or successor in interest without the Consent of Seller. Subject to this Section 9.2, all provisions of this Agreement are binding upon, inure to the benefit of and are enforceable by or against the Parties hereto and their respective heirs, executors, administrators or other legal representatives and permitted successors and assigns.

9.3 Captions; Construction. Captions contained in this Agreement and any table of contents preceding this Agreement have been inserted herein only as a matter of convenience and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision hereof. In the event of an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provisions of this Agreement.

9.4 Counterparts; Facsimile. This Agreement may be executed by the Parties hereto on any number of separate counterparts, and all such counterparts so executed constitute one agreement binding on all the Parties hereto notwithstanding that all the Parties hereto are not signatories to the same counterpart. For purposes of this Agreement, a document (or signature page thereto) signed and transmitted by e-mail, facsimile machine or telecopier is to be treated as an original document.

9.5 Entire Agreement. This Agreement and the other Transaction Documents constitute the entire agreement among the Parties hereto pertaining to the subject matter hereof and supersede all prior agreements, letters of intent, understandings, negotiations and discussions of the Parties hereto, whether oral or written, executed by the Parties pertaining to the subject matter hereof. All of the Exhibits and Schedules attached to this Agreement are deemed incorporated herein by reference.

9.6 Governing Law. This Agreement and the rights and obligations of the Parties hereunder are to be governed by and construed and interpreted in accordance with the Laws of the Commonwealth of Virginia applicable to Contracts made and to be performed wholly within Virginia, without regard to choice or conflict of laws rules.

9.7 Legal Fees, Costs. Except as provided herein, all legal, consulting and advisory fees and other costs and expenses incurred in connection with this Agreement and the Contemplated Transactions are to be paid by the Party incurring such costs and expenses, provided, however, that Buyer shall reimburse the Seller for engineering, legal or consulting fees, publication costs and other expenses related to the Contemplated Transaction not to exceed Fifty Thousand Dollars (\$50,000)(the "Transaction Costs"). Prior to Closing, Seller shall provide commercially reasonable documentation for all Transaction Costs to Buyer for review prior to Buyer's payment of the Transaction Costs at Closing.

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

(a) if to Seller, (i) to Town of Cape Charles ("Seller"), 2 Plum Street, Cape Charles, VA 22310, Attn: John Hozey, Town Manager (townmanager@capecharles.org) and (ii) with a copy to [Law firm], [Insert address], Attn: [_____]([Insert e-mail address]), or

(b) if to Buyer, (i) to Virginia-American Water Company ("Buyer"), 2223 Duke Street, Alexandria, VA 22314, Attn: President, Barry L. Suits (barry.suits@amwater.com) and (ii) with a copy to

Virginia-American Water Company, 1 Water Street, Camden, NJ 08102, Attn: Debbie Albrecht (Debbie.albrecht@amwater.com),

or to such other address as any Party hereto may designate by notice to the other Parties in accordance with the terms of this Section.

9.9 Severability. This Agreement shall be deemed severable; the invalidity or unenforceability of any term or provision of this Agreement shall not affect the validity or enforceability of this Agreement or of any other term hereof, which shall remain in full force and effect, for so long as the economic or legal substance of the Contemplated Transactions is not affected in any manner materially adverse to any Party.

9.10 Specific Performance and Injunctive Relief; Remedies. The Parties hereto recognize that if any or all of them fail to perform, observe or discharge any of their respective obligations under this Agreement, a remedy at law may not provide adequate relief to the other Parties hereto. Therefore, in addition to any other remedy provided for in this Agreement or under applicable Law, any Party hereto may demand specific performance of this Agreement, and such Party shall be entitled to temporary and permanent injunctive relief, in a court of competent jurisdiction at any time when any of the other Parties hereto fail to comply with any of the provisions of this Agreement applicable to such Party. To the extent permitted by applicable Law, all Parties hereto hereby irrevocably waive any defense based on the adequacy of a remedy at law which might be asserted as a bar to such Party's remedy of specific performance or injunctive relief. Except as otherwise provided herein, all rights and remedies of the parties under this Agreement are cumulative and without prejudice to any other rights or remedies under Law. Nothing contained herein shall be construed as limiting the Parties' rights to redress for fraud.

9.11 No Third-Party Beneficiary. This Agreement is solely for the benefit of the Parties hereto and their respective successors and permitted assigns (and those Persons entitled to recover under the indemnity provisions hereof), and no other Person (other than those Persons entitled to recover under the indemnity provisions hereof) has any right, title, priority or interest under this Agreement or the existence of this Agreement.

9.12 Waiver of Compliance; Consents. Any failure of a Party to comply with any obligation, covenant, agreement or condition herein may be waived by the other Party only by a written instrument signed by the Party granting such waiver, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure. Whenever this Agreement requires or permits Consent by or on behalf of any Party hereto, such Consent shall be given in writing in a manner consistent with the requirements for a waiver of compliance as set forth in this Section 9.12.

9.13 Nondiscrimination. During the performance of this Agreement, Buyer agrees as follows:

(a) Buyer will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Buyer. Buyer agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

(b) Buyer in all solicitations or advertisements for employees place by or on behalf of Buyer will state that Buyer is an equal opportunity employer.

9.14 Drug-Free Workplace.

(a) During the performance of this Agreement, Buyer agrees to provide a drug-free workplace for Buyer's employees.

(b) For purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

9.15 Compliance with Laws and Regulations, and Immigration Law. Buyer agrees to and will comply with all applicable federal, state, and local laws, ordinances, and regulations, including, but not limited to all applicable licensing requirements and environmental regulations. Buyer further agrees that Buyer does not and shall not during the performance of this Agreement; knowingly employ an unauthorized alien as defined in the Federal Immigration Reform & Control Act of 1986.

9.16 Faith-Based Organizations. Pursuant to VA Code § 2.2-4343.1, be advised that Seller does not discriminate against faith-based organizations.

9.17 Jurisdiction; Venue; Consent to Service of Process. Each of the Parties irrevocably and unconditionally submits to the exclusive jurisdiction of the Northampton Circuit Court in Northampton County, Virginia or, if such court will not accept jurisdiction, the Supreme Court of the Commonwealth of Virginia or any court of competent civil jurisdiction sitting in Northampton County, Virginia. In any action, suit or other Proceeding, each of the Parties irrevocably and unconditionally waives and agrees not to assert by way of motion, as a defense or otherwise any claims that it is not subject to the jurisdiction of the above courts, that such action or suit is brought in an inconvenient forum or that the venue of such action, suit or other Proceeding is improper. Each of the Parties also hereby agrees that any final and unappealable judgment against a Party in connection with any action, suit or other Proceeding shall be conclusive and binding on such Party and that such award or judgment may be enforced in any court of competent jurisdiction, either within or outside of the United States. Each Party irrevocably consents to service of process in the manner provided for the giving of notices pursuant to Section 9.8. Nothing in this Section 9.17 shall affect the right of any Party to serve process in any other manner permitted under applicable Law.

9.18 WAIVER OF JURY TRIAL. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE CONTEMPLATED TRANSACTIONS.

[Remainder of page intentionally left blank; signature page attached.]

IN WITNESS WHEREOF, the Parties have executed this Comprehensive Asset Purchase Agreement as of the date first set forth above:

VIRGINIA-AMERICAN WATER COMPANY,
a Virginia corporation

TOWN of CAPE CHARLES, a Virginia
municipal corporation

By: _____

By: _____

Attest:

Attest:

Exhibits

Exhibit 1 – Definitions

Exhibit 2 – Assumed Contracts

Exhibit 3 – Held for future use

Exhibit 4 – Bill of Sale

Exhibit 5 – Franchise Agreement

Exhibit 6 – Form of Escrow Agreement

Schedules

Schedule 2.2 - List of Payees

Schedule 2.5(a)(iii) - List of Governmental Authorities and third parties requiring written consents

Schedule 2.5(a)(iv) – List of lenders requiring payoff letter

Schedule 2.5(a)(v) – List of governmental agencies requiring satisfaction letter

Schedule 3.2(d) – Necessary Approvals

Schedule 3.4(a) - Listing of all Real Property

Schedule 3.4(b)(i) – List of all easements relating to Real Property

Schedule 3.4(b)(ii) - List of Rights of Way relating to Real Property or Acquired Assets

Schedule 3.4(e) – List of any conditions affecting Real Property, Acquired Assets or Improvements

Schedule 3.5(a) – List of Personal Property

Schedule 3.5(b) - List of all Acquired Assets (Personal Property) in possession of others

Schedule 3.6 – Undisclosed Liabilities

Schedule 3.8 - List of Contracts

Schedule 3.9(d) - List of Hazardous Materials

Schedule 3.9(e) - List of underground storage tanks, asbestos, polychlorinated biphenyl, groundwater monitoring wells, landfills, surface impoundments, or disposal areas

Schedule 3.9(f) - Financial assurances under Environmental Law made by Seller

Schedule 3.10 - List of all permits used by Seller for operation of the System

Schedule 3.11 - Insurance Policies and Premiums

Schedule 3.12 – Activity Regarding Permits

Schedule 3.14 -List of notices of default, breach or violation of laws, permits, order, ordinances, rules and regulations

Schedule 3.15 - Financial Statements

Schedule 3.16 - Transaction with Related Parties

Schedule 3.17 – Customer Advances

Schedule 3.19 - List of all accounts receivable of Seller with respect to the System

Schedule 3.20 - List of brokers, agents or other intermediary acting on behalf of Seller

Schedule 6.12 – List of Personnel

Schedule 6.14 – Existing Cape Charles Rates

Schedule 6.15 – Process Related to Future Development

Schedule 7.2 - List of any indebtedness for a third-party Seller has guaranteed or indemnified

Schedule 7.3 – Escrow Matters

EXHIBIT 1

Definitions

“Acquired Assets” means all right, title, and interest in and to all of the assets which are owned or held by Seller as of the Effective Time that constitute the System or that are used in the operation thereof, including, with respect to the System, all of its (a) Real Property now used and required in the ongoing operation of the System, (b) Tangible Personal Property, (c) intellectual property, goodwill associated therewith, licenses and sublicenses granted and obtained with respect thereto, and rights thereunder, remedies against past, present, and future interests therein under the Laws of all jurisdictions, (d) leases, subleases, easements, rights of way, and rights thereunder, (e) all rights of Seller in and to any indentures, mortgages, instruments, Encumbrances, or guaranties secured for the operation of the System, (f) accounts, notes, and other receivables arising after the Effective Time, (g) claims, deposits, prepayments, refunds, causes of action, rights of recovery, rights of set-off, and rights of recoupment (including any such item relating to the payment of Taxes), (h) franchises, approvals, Permits, pending application for Permits and Permit renewals, exemptions from any Permits, licenses, Orders, registrations, certificates, variances, and similar rights obtained from governments and governmental agencies in each case to the extent assignable or transferable to Buyer, (i) books, data, records, ledgers, files, documents, correspondence, lists, plats, architectural plans, drawings, specifications, creative materials, studies, reports, and other printed or written materials related to Seller’s construction, maintenance, and operation of the System, and (j) all of the intangible rights and property, if any, of Seller utilized in the operation of the System, provided that Acquired Assets shall not include any Excluded Assets.

“Acquisition Proposal” means any offer or proposal, including a letter of intent, for the acquisition of Seller, the Acquired Assets or any portion thereof, whether by way of merger, consolidation or statutory share exchange or the acquisition of shares of capital stock, the acquisition of assets or similar transaction.

“Affiliate” means, with respect to any Person, any Person which, directly or indirectly controls, is controlled by, or is under common control with, such Person.

“Allocation” means a reasonable and supportable allocation of the Purchase Price among the Acquired Assets in accordance with Code section 1060 and the Treasury regulations thereunder (and any similar provisions of state or local Law, as appropriate).

“Bill of Sale” means a bill of sale for all of the Acquired Assets that are Tangible Personal Property substantially in the form of Exhibit 4 (the “Bill of Sale”).

“Business” means the water treatment and distribution business of Seller as the same is conducted by Seller as of the date hereof and as the same shall be conducted by Seller as of immediately prior to the Closing.

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

“Buyer” means Virginia-American Water Company, a Virginia corporation.

“Cleanup” means investigation, cleanup, removal, containment or other remediation or response actions.

“Closing” means the closing of the Contemplated Transactions.

“Closing Date” means the date on which the Closing actually occurs.

“Code” means the Internal Revenue Code of 1986, as amended, and the regulations and other guidance promulgated thereunder.

“Confidential Information” means (i) information not available to the general public concerning the System and financial affairs with respect to a Party hereto or its Affiliates, and (ii) analyses, compilations, forecasts, studies and other documents prepared on the basis of such information by the Parties or their agents, representatives, any Related Person, employees or consultants.

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

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

“Contract” means any agreement, contract, obligation, legally binding commitment or undertaking (whether written or oral and whether express or implied).

“Damages” means any and all claims, losses and other liabilities, plus reasonable attorneys’ fees and expenses, including court costs and expert witness fees and costs, incurred in connection with such claims, losses and other liabilities and/or enforcement of this Agreement.

“Effective Time” means 12:01 a.m. on the Closing Date.

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

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

“Environmental, Health and Safety Liabilities” means any cost, damages, expense, liability, obligation or other responsibility arising from or under Environmental Law or Occupational Safety and Health Law and consisting of or relating to (a) any environmental, health or safety matters or conditions (including on-site or off-site contamination, occupational safety and health and regulation of chemical substances or products), (b) fines, penalties, judgments, awards, settlements, legal or administrative Proceedings, damages, losses, claims, demands and response, investigative, remedial or inspection costs and expenses arising under Environmental Law or Occupational Safety and Health Law, (c) financial responsibility under Environmental Law or Occupational Safety and Health Law for cleanup costs or corrective action, including any Cleanup required by applicable Environmental Law or Occupational Safety and Health Law (whether or not such Cleanup has been required or requested by any Governmental Authority or any other Person) and for any natural resource damages, or (d) any other compliance, corrective, investigative or remedial measures required under Environmental Law or Occupational Safety and Health Law. The terms “removal,” “remedial,” and “response action,” include the types of activities covered by the United States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq., as amended, and the United States Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., as amended.

“Environmental Law” means any Law relating to pollution or protection of human health, safety, the environment, natural resources or Law relating to releases or threatened releases of Hazardous Materials into the indoor or outdoor environment (including, without limitation, ambient air, surface water, groundwater, land, surface and subsurface strata) or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, release, transport or handling of Hazardous Materials.

“Escrow Agent” has the meaning specified in Section 2.2.

“Escrow Agreement” has the meaning specified in Section 2.2.

“Escrow Amount” has the meaning specified in Section 2.2.

“Excluded Assets” means (a) all cash, cash equivalents and short-term investments of Seller, including all bank accounts, demand accounts, certificates of deposit, time deposits, marketable securities, negotiable instruments and the proceeds of accounts receivable paid prior to the Closing Date, other than deposits and funds included in the Acquired Assets, (b) all accounts receivable of Seller accrued and payable prior to the Effective Time, (c) all intercompany accounts receivable of Seller and notes for those accounts receivable, (d) all Contracts (other than the Assumed Contracts listed on Exhibit 2) to which the Seller is a party, including the Contracts listed on Schedule 3.8, (e) all equity interests owned or held by Seller, (f) all insurance policies of Seller and rights thereunder, (g) all causes of action, judgments, claims, reimbursements and demands of whatever nature (including rights under and pursuant to all warranties, representations and guarantees made by suppliers of products, materials or equipment, or components thereof) in favor of Seller to the extent related to any Excluded Asset, (h) all personnel Records and other Records that Seller is required by Law to retain in its possession, (i) all rights of Seller under this Agreement and the Transaction Documents and (j) all rights, properties and assets set forth on Schedule A.

“Financial Statements” means the Audited Financial Statements and the Unaudited Financial Statements.

“Franchise Agreement” means the franchise agreement granted by ordinance and approved and issued by Seller for which Seller grants Buyer the use of the streets, alleys and public grounds of Seller for the purpose of providing water and wastewater service, whose provisions setting forth the obligations of the Seller and the Buyer shall be substantially in the form of Exhibit 5.

“GAAP” means United States generally accepted accounting principles as in effect on the date hereof, applied on a consistent basis.

“Governmental Authority(ies)” means any (a) nation, state, county, city, village, district or other jurisdiction of any nature, (b) federal, state, local, municipal, foreign or other government, (c) governmental or quasi-governmental authority of any nature (including any governmental agency, branch, department, official or entity and any court or other tribunal), (d) multi-national organization or body or (e) body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power of any nature.

“Hazardous Activity” means the distribution, generation, handling, importing, management, manufacturing, processing, production, refinement, Release, storage, transfer, transportation, treatment or use (including any withdrawal or other use of groundwater) of Hazardous Materials in, on, under, about or from the System or any part thereof into the Environment, and any other act, system, operation or thing that increases the danger or risk of danger, or poses an unreasonable risk of harm to persons or property on or off the System, or that may affect the value of the System or the Business.

“Hazardous Materials” means any waste or other substance that is listed, defined, designated or classified as, or otherwise determined to be, hazardous, radioactive or toxic or a pollutant or a contaminant under or pursuant to any Environmental Law, including any admixture or solution thereof, and specifically including petroleum and all derivatives thereof or synthetic substitutes therefor and asbestos or asbestos-containing materials.

“Improvements” means all buildings, structures, fixtures, building systems and equipment, and all components thereof, including the roof, foundation, load-bearing walls, and other structural elements thereof, heating, ventilation, air conditioning, mechanical, electrical, plumbing, and other building systems, environmental control, remediation, and abatement systems, sewer, storm, and waste water systems, irrigation

and other water distribution systems, parking facilities, fire protections, security, and surveillance systems, and telecommunications, computer, wiring, and cable installations, included in the Real Property.

“Indemnified Persons” means Buyer and Buyer’s Affiliates and the past, present and future officers, directors, shareholders, partners, employees, agents, attorneys, representatives, successors and assigns of each of them in their capacities as such.

“Intangible Assignments” means the assignments of all of the Acquired Assets which are intangible personal property.

“Knowledge” means (i) the actual knowledge of a particular fact by any of the Persons listed on Schedule B (each, a “Knowledge Party”), and (ii) knowledge that would have been acquired by any Knowledge Party acting reasonably and diligently in the performance of such person’s role with and duties to Seller. The words “know,” “knowing” and “known” shall be construed accordingly.

“Law(s)” means any law, rule, regulation or ordinance of any federal, foreign, state or local Governmental Authority or other provisions having the force or effect of law, including all judicial or administrative Orders and determinations, and all common law.

“Liability” or “Liabilities” means any liability, indebtedness or obligation 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 a Person.

“Material Adverse Effect” means a material adverse effect on (a) the business, assets, Liabilities (contingent or otherwise), operations or condition (financial or otherwise) of the System, the Business and the Acquired Assets, taken as a whole; provided, however, that “Material Adverse Effect” shall not include any changes resulting from general business or economic conditions, including such conditions related to the industry in which the System is operated, which do not specifically relate to the System and which are not disproportionately adverse to the System than to other businesses being operated in the industries in which the System operates, or (b) the ability of Seller to consummate the Contemplated Transactions.

“Occupational Safety and Health Law” means any Law designed to provide safe and healthful working conditions and to reduce occupational safety and health hazards, and any program, whether governmental or private (including those promulgated or sponsored by industry associations and insurance companies), designed to provide safe and healthful working conditions.

“Order” means any award, decision, injunction, judgment, order, ruling, subpoena or verdict entered, issued, made or rendered by any court, administrative agency or other Governmental Authority or by any arbitrator.

“Ordinary Course of Business” means, with respect to the System and the Business, only the ordinary course of commercial operations customarily engaged in by the System and the Business consistent with past practices, including supply chain issues prevalent in the industry, and specifically does not include (a) activity (i) involving the purchase or sale of the System or the Business or any product line or business unit thereof, or (ii) that requires approval by the Town Council (or other governing persons)of Seller or any of its Affiliates, or (b) the incurrence of any Liability for any tort or any breach or violation of or default under any Contract or Law.

“Permit” means any approval, Consent, license, permit, waiver or other authorization issued, granted, given or otherwise made available by or under the authority of any Governmental Authority or pursuant to any Law.

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

“Preserve Communities” means Preserve Communities, developer of Bay Creek, originally Accawmacke Plantation.

“Proceeding” means any action, arbitration, audit, hearing, investigation, litigation or suit (whether civil, criminal, administrative, investigative or informal) commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Authority or arbitrator.

“Purchase Price” means the consideration for the System and the Acquired Assets as defined in Section 2.2.

“Real Property” means those parcels of real property and those easements or any right-of-way used in the operation of the System, together with all fixtures, fittings, buildings, structures and other Improvements erected therein or thereon.

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

“Related Person” means: (a) with respect to a particular individual, (i) each other member of such individual’s Family, (ii) any Person that is directly or indirectly controlled by such individual or one or more members of such individual’s Family, (iii) any Person in which such individual or members of such individual’s Family hold (individually or in the aggregate) a Material Interest; and (iv) any Person with respect to which such individual or one or more members of such individual’s Family serves as a director, officer, partner, executor or trustee (or in a similar capacity) and (b) with respect to a specified Person other than an individual, (i) any Person that directly or indirectly controls, is directly or indirectly controlled by, or is directly or indirectly under common control with such specified Person, (ii) any Person that holds a Material Interest in such specified Person, (iii) each Person that serves as a director, officer, partner, executor or trustee of such specified Person (or in a similar capacity), (iv) any Person in which such specified Person holds a Material Interest, (v) any Person with respect to which such specified Person serves as a general partner or a trustee (or in a similar capacity) and (vi) any Related Person of any individual described in clause (ii) or (iii). For purposes of this definition, (x) the “Family” of an individual includes (A) the individual, (B) the individual’s spouse, (C) any other natural person who is related to the individual or the individual’s spouse within the second degree, and (D) any other natural person who resides with such individual; and (y) “Material Interest” means direct or indirect beneficial ownership (as defined in Rule 13d-3 under the Securities Exchange Act of 1934) of voting securities or other voting interests representing at least five percent (5%) of the outstanding equity securities or equity interests in a Person.

“Release” means any spilling, leaking, emitting, discharging, depositing, escaping, leaching, dumping or other releasing into the Environment, whether intentional or unintentional.

“Seller” means Town of Cape Charles, a Virginia municipal corporation.

“Seller’s Benefit Obligations” means all material obligations, arrangements, or practices, whether or not legally enforceable, to provide benefits, other than salary or wages to present or former directors, employees or agents, (other than obligations, arrangements and practices that are Seller’s Plans), that are owed, adopted or followed by Seller. Seller’s Benefit Obligations also include consulting agreements under which the compensation paid does not depend upon the amount of service rendered, sabbatical policies, severance payment policies and fringe benefits within the meaning of Code § 132.

“Seller’s Plans” means each voluntary employees’ beneficiary association under Section 501(c)(9) of the Code whose members include any Personnel and any employee benefit plans or any other retirement,

pension, profit sharing, stock option, other post-employment benefits (OPEB) stock bonus, deferred compensation (including any “nonqualified deferred compensation plan” within the meaning of Section 409A of the Code), severance, sick leave or other material plan or arrangement providing benefits to current or former Personnel, in each case, if either currently in effect or terminated within the last six (6) years, to which Seller is a plan sponsor or to which Seller otherwise contributes or has contributed within the last six (6) years, or in which Seller otherwise participates or has participated within the last six (6) years.

“System” means water treatment facility and distribution system.

“Tangible Personal Property” means all machinery, equipment, tools, furniture, office equipment, computer hardware, supplies (including chemicals and spare parts), materials, vehicles and other items of tangible personal property of every kind owned or leased by Seller (wherever located and whether or not carried on Seller’s books), together with any express or implied warranty by the manufacturers or lessors of any item or component part thereof, and all maintenance records and other documents relating thereto.

“Tax” or “Taxes” means all taxes, charges, withholdings, fees, duties, levies, or other like assessments including, without limitation, income, gross receipts, ad valorem, value added, excise, property, sales, employment, withholding, social security, Pension Benefit Guaranty Corporation premium, environmental (under Section 59A of the Code) occupation, use, service, service use, license, payroll, franchise, transfer and recording taxes, fees and charges, windfall profits, severance, customs, import, export, employment or similar taxes, charges, fees, levies or other assessments, imposed by any Governmental Authority, whether computed on a separate, consolidated, unitary, combined or any other basis, and shall include any interest, fines, penalties, assessments, or additions to tax resulting from, attributable to, or incurred in connection with any such Tax or any contest or dispute thereof, and including any Liability for the Taxes of another Person under Treasury Regulation section 1.1502-6 (or any similar provisions of state, local, or foreign Law), as transferee or successor, by Contract or otherwise.

“Tax Return” or “Tax Returns” means any return, declaration, report, claim for refund, or information return or statement relating to, or required to be filed in connection with any Taxes, including any schedule or attachment thereto and including any amendment thereof.

“Third Person” means a claimant other than an indemnified person hereunder.

“Third Person Claim” means a claim alleged by a Third Person.

“Transaction Documents” means this Agreement, the Bill of Sale, the Intangible Assignments, the Franchise Agreement, and all other documents, certificates, assignments and agreements executed and/or delivered in connection with this Agreement in order to consummate the Contemplated Transactions, as the same may be amended, restated, modified or otherwise replaced from time to time.

“Unaudited Financial Statements” means the unaudited balance sheet of Seller as of [____], 201[] and the related compiled consolidated statements of income and cash flows for the [____] month period then ended.

“VA Code” means the Code of Virginia.

Rules of Construction

For purposes of this Agreement and the other documents executed in connection herewith, the following rules of construction shall apply, unless specifically indicated to the contrary: (i) wherever from the context it appears appropriate, each term stated in either the singular or plural shall include the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, the feminine and the neuter; (ii) the term “or” is not exclusive; (iii) the term “including” (or any form thereof) shall

not be limiting or exclusive; (iv) the terms “hereof,” “herein” and “herewith” and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole (including the Schedules and Exhibits hereto) and not to any particular provision of this Agreement; (v) all references to statutes and related regulations shall include any amendments of same and any successor statutes and regulations as well as all rules and regulations promulgated thereunder, unless the context otherwise requires; (vi) all references in this Agreement or in the Schedules to this Agreement to sections, schedules, exhibits and attachments shall refer to the corresponding sections, schedules, exhibits and attachments of or to this Agreement; (vii) all references to any instruments or agreements, including references to any of the documents executed in connection herewith, shall include any and all modifications or amendments thereto and any and all extensions or renewals thereof; and (viii) references to easements or rights of way are limited to easements or rights of way on private property for the water and wastewater treatment plants and associated collection and distribution systems.

Schedule 2.2

List of Payees

Schedule 2.5(a)(iii)

List of Governmental Authorities and third parties requiring written consents

Schedule 2.5(a)(iv)

List of lenders requiring payoff letters

Schedule 2.5(a)(v)

List of governmental agencies requiring satisfaction letters

Schedule 3.2(d)

Necessary Approvals

Schedule 3.4(a)

Listing of all Real Property

Schedule 3.4(b)(i)

List of all easements relating to Real Property

Schedule 3.4(b)(ii)

List of Rights of Way relating to Real Property or Acquired Assets

Schedule 3.4(e)

List of any conditions affecting Real Property and/or Acquired Assets or Improvements

Schedule 3.5(a)

List of Personal Property

Schedule 3.5(b)

List of all Acquired Assets (Personal Property) in possession of others

Schedule 3.6

Undisclosed Liabilities

Schedule 3.8

List of Contracts

Schedule 3.9(d)

List of Hazardous Materials

Schedule 3.9(e)

List of underground storage tanks, asbestos, polychlorinated biphenyl, groundwater monitoring wells, landfills, surface impoundments, or disposal areas

Schedule 3.9(f)

Financial assurances under Environmental Law made by Seller

Schedule 3.10

List of all permits used by Seller for operation of the System

Schedule 3.11

Insurance Policies and Premiums

Schedule 3.12

Activity Regarding Permits

Schedule 3.14

List of notices of default, breach or violation of laws, permits, order, ordinances, rules and regulations

Schedule 3.15

Financial Statements

Schedule 3.16

Transaction with Related Parties

Schedule 3.17

Customer Advances

Schedule 3.18

List of all accounts receivable of Seller with respect to the System

Schedule 3.20

List of brokers, agents or other intermediary acting on behalf of Seller

Schedule 6.13

Existing Cape Charles Rates

Schedule 6.15

Process Related to Future Development

Any public utility authority (“Authority”) that wishes to connect to the Town of Cape Charles wastewater treatment plant and collection system (“Wastewater System”) must provide notification to Virginia-American Water Company (“VAWC”) of the Authority’s intentions as soon as practicable. The notification must include the expected maximum daily flow and defined service area that will be connected to the Wastewater System.

Once a notification is received, VAWC will conduct one or more studies, at the expense of the requesting Authority, to determine if such connection is feasible and what improvements may need to be made to meet the requested maximum daily flow. The studies will identify any improvements needed to the Wastewater System and any permit or regulatory restrictions that may prevent expansion. A copy of the studies will be provided to the requesting Authority. VAWC will provide a cost estimate to the Authority to make the necessary improvements identified in the studies, provided that such expansion is approved and allowed by applicable local, state and federal regulatory permits and laws.

Note: VAWC makes no commitment that the Virginia Department of Environmental Quality or other local, state or federal entity will approve an expansion of the Wastewater System.

If the Authority chooses to proceed with the project, the Authority shall enter into an agreement with VAWC and provide the full amount of the cost estimate to VAWC at the time of execution of that agreement. VAWC will then proceed with the projects needed as identified in the studies. Upon completion, VAWC will provide the final project costs to the Authority. If a refund is due, VAWC will issue the refund once the project is placed in service. If the actual costs exceed the estimated project costs, the requesting Authority shall make payment to VAWC for the difference prior to connecting to the Wastewater System.

Each connection to the Wastewater System will be monitored by a flow meter and installed at the expense of the requesting Authority. Metered flow will be billed at VAWC’s Other Public Authority (“OPA”) rate. In the event that the Authority requires additional capacity above the initial daily flow requested, the process outlined above shall be the applicable governing procedure to determine the feasibility of further Wastewater System growth and the associated cost responsibility for any additional expansion.

Schedule 7.2

List of any indebtedness for a third-party Seller has guaranteed or indemnified

Schedule 7.3

Escrow Matters

Exhibit 5
Franchise Agreement

FRANCHISE AGREEMENT

The following provisions of the Franchise Agreement (Agreement”) are subject to implementation by ordinance consistent with the requirements of Va. Code §15.2-2101 *et seq.*, and this Agreement is in conjunction with and an integral part of a Comprehensive Asset Purchase Agreement for the Facilities in a manner consistent with the requirements of VA Code § 56-575.9 of the Public Private Education Facilities and Infrastructure Act of 2002, VA Code § 56-575.1 *et seq.* (the “PPEA”).

Section 1. That the exclusive right is hereby granted, insofar as and to the full extent that the Town can lawfully grant such right, unto VIRGINIA-AMERICAN WATER COMPANY (hereinafter referred to as the “Grantee”), its successors and assigns, for the term and subject to the conditions and limitations hereinafter stated, to use the streets, alleys, and other public places of the Town of Cape Charles (the “Town”); to acquire, maintain and operate a waterworks system; to acquire, maintain and operate a wastewater system; to lay, remove, repair, replace and maintain water and wastewater pipes, mains, service pipes, hydrants, fire hydrants, fixtures and appurtenances (“Facilities”) in the present and future streets, alleys and public places of the Town; to supply water and wastewater service for domestic, public, manufacturing and other purposes within the Town; and to transport through the Town to other municipalities and unincorporated areas where services may now or hereafter be furnished by means of the existing distribution and collection systems and mains or as the same be hereafter extended, replaced, relocated, or paralleled by additional mains from time to time.

Section 2. In exchange for the exclusive right granted herein, Grantee shall pay to the Town an annual fee equal to Fifty Thousand Dollars (\$50,000). Every five (5) years from the grant of this franchise, the Town shall have the right to review the fee set forth herein and make reasonable modifications thereto upon ninety (90) days’ prior written notice. In no event shall a modification to the annual fee pursuant to this Section 2 result in an increase in the annual fee that exceeds the increase in the CPI over the preceding five year period, where “CPI” means the consumer price index for all urban consumers (not seasonally adjusted) published by the U.S. Bureau of Labor Statistics.

Section 3. From and after the date on which this Agreement shall become effective, the water and wastewater lines and other structures in, under, and along the streets, alleys, and public places of the Town, authorized by this Agreement to be located and constructed, shall be located at reasonable, suitable, and convenient points for the purposes of the Town and Grantee, subject to the terms, provision, and conditions stated in this Agreement and, in addition, to the lawful exercise of the police powers of the Town. If and when requested by the Town Manager or other properly authorized administrative officer of the Town, the Grantee shall, from time to time, file with the Town plans showing the location of the proposed additional Facilities. The Grantee shall obtain any permit required by the Town or other governmental entities prior to their placement, construction, or installation in, under, and along the streets, alleys, public places and other public property of the Town. When plans showing the location of such water or wastewater pipes,

hydrants, fixtures, and other appurtenances shall have been presented to the Town and any necessary permits issued for the same, said plans as accepted by the Town shall be effective and binding to the same extent as if they were set out fully and at length in this Agreement. If the Town Manager or other properly authorized administrative officer reasonably determines that it is necessary for a public purpose, either in connection with the construction, repair, relocation, or improvement by the Town of a street, alley, or public place of the Town, or pursuant to the lawful exercise of police power or other valid power of the Town, to change the location of any Facilities, the Grantee shall remove or relocate the Facilities accordingly within a reasonable time after being requested by the Town in writing; but prior to so doing, the Grantee shall have the right to appeal from the Town Manager's or other properly authorized administrative officer's decision to the Town Council, and the decision of the Council on such appeal shall be final and binding as to the location of the Facilities. Grantee shall bear all costs of removal or relocation provided (1) the Town will obtain or cause to be obtained, without charge to the Grantee, suitable permits and/or easements as may be required by the Grantee for its relocated Facilities.; (2) that if removal and relocation of the Facilities is required in connection with work by, or in association with, any other person or corporation, another appropriate person or corporation, shall bear all costs of such removal and relocation and will obtain or cause to be obtained, without charge to the Grantee, suitable permits and/or easements; and (3) that if removal and relocation of the same Facilities is required on more than one occasion during the term of this Agreement for a given project, the Town shall bear all costs of such second or subsequent removal and relocation and will obtain or cause to be obtained, without charge to the Grantee, suitable permits and/or easements.

Section 4. Upon the annexation of any territory to the Town, the portion of the Grantee's facilities that may be located within such annexed territory and in, under, or upon the streets, alleys, and other public places of such annexed territory shall thereafter be subject to the conditions and limitations of this Agreement.

Section 5. The rights and privileges set forth herein are granted and conferred upon the Grantee upon the express condition and understanding on the part of the Grantee that it will render to the public in the Town, within the territory in which the Grantee by virtue of this Agreement is granted the right to furnish such service, and at all times during the term of this grant, reasonably adequate service and Facilities at reasonable and just rates, and that it will maintain its properties, works and structures located within the Town in good order throughout the term of the rights granted herein. The Grantee shall render reasonably adequate service, make repairs promptly, interrupt services only for good cause, and maintain operational telephone numbers such that the Grantee may be reached in the event of an emergency during all times of the term of this grant. Such service shall be in accordance with industry standards and all applicable laws and regulations. The Grantee by accepting this Agreement expressly agrees that the State Corporation Commission shall have jurisdiction, to the full extent and in the manner now or hereafter during the life of this Agreement provided by law, to require the Grantee to render reasonably adequate service, and to maintain its facilities in good order throughout the term of this Agreement. In the event of a material default by the Grantee in the service obligations set forth in this Section 5, the Town shall provide notice of such material default to the Grantee. If the material default is not corrected within 120 days, or such other period that provides the Grantee the reasonable opportunity to cure the material default, the Town may elect to take over the Facilities pursuant to Va. Code § 56-575.11 and Section VII B.18 of the *Town of Cape Charles Combined Guidelines for the Public-Private Education Facilities and Infrastructure Act of 2002, as revised and Public-Private*

Transportation Act of 1995, as revised (Adopted September 3, 2002) and as provided in Va. Code §§ 15.2-2109, 15.2-1906, 15.2-2146, and, to the extent applicable, § 25.1-102.

Section 6. The Grantee shall provide to the Town all water required for municipal purposes at its rates then in effect for municipal entities, provided, that the Grantee shall not charge the Town for firefighting, testing firefighting equipment, and flushing streets and gutters.

Section 7. The Town shall not permit any person, corporation, or other entity the right to install, extend, or maintain any water, gas, telephone, sewer, or other system, or any pipes, mains, conduits, or wires, so as to injure, damage, or interfere with the water or wastewater systems, pipes, hydrants, or mains of the Grantee. The Town shall not vacate or convey away any rights-of-way containing the Grantee's Facilities without said Grantee's prior approval or reservation of any easement providing a right to construct, operate, maintain, extend, or replace its Facilities. The Town shall not permit or grant to any person, corporation, or other entity the right to interfere in any way with any of the rights granted in this Agreement to the Grantee to construct, operate, install, extend, maintain, or replace its water or wastewater system or use the streets, alleys, and public places as provided herein.

Section 8. The Grantee shall inform the Town whenever there is a planned maintenance or construction project that has a significant impact on the water or wastewater system. The Grantee shall also notify the Town if it changes any treatment technique that changes the chemical qualities of the water distributed by the Grantee to the Town.

Section 9. The Grantee shall notify the Town, the Virginia Department of Transportation or any successor agency, and applicable homeowner's associations in advance of any planned project that requires opening up any streets, alleys or any other public place within the Town for performing work on its facilities, except in emergency situations where, in the Grantee's sole judgment, such advance notice would hinder the Grantee's ability to adequately address such emergency. Said Grantee shall repair and replace any street, alley or other right-of-way at its expense and shall place the paving or other surface back in the same or similar condition as prior to such opening as expeditiously as reasonably possible upon considering all relevant factors, including without limitation weather conditions. Said Grantee shall maintain such barriers, signs and warning signals as may be reasonably necessary to avoid injury or damage to life and property and as otherwise provided for in the Virginia Supplement to the 2009 Manual on Uniform Traffic Control Devices, as such manuals may, from time to time be in effect, or any successor provisions.

Section 10. During the term of this grant, the Town and Grantee, upon the request of the Town, shall meet quarterly with the Town Manager and annually with the Town Council. The Grantee shall provide a summary of activities affecting the Grantee's water and wastewater systems serving the Town, and each of the Town and the Grantee shall provide to the other relevant contact information, to include telephone numbers, to allow each of the Grantee and the Town to contact the other twenty-four (24) hours a day, three hundred sixty-five (365) days per year or three hundred sixty-six (366) day basis in the case of a leap year.

Section 11. The Town shall not permit or allow the public fire hydrants erected in its streets and public rights-of-way to be used for any purpose other than the extinguishment of fires, necessary and proper testing of its firefighting equipment, and necessary washing or flushing of

storm water sewers, and gutters; and the Town, at Grantee's request, will reasonably cooperate in any criminal prosecution or other legal action to afford protection to the property of said Grantee located within the Town. Except for emergency purposes, when water is used for the purposes expressly stated in this Section, the approval of the fire chief of the fire department of the Town for the use of the hydrant or hydrants shall first be obtained and the Grantee shall be notified of the time, place, estimated volume of water to be used, and the person employed by the Town or fire department who will be conducting each such use. No unauthorized person may use the hydrants for any purpose. Within one (1) calendar month of the approved usage, the Town or the fire department will advise the Grantee of the volume of water used. Any hydrant use authorized by the Grantee to be performed by any party other than the Town or its agents shall be measured using a hydrant meter installed and read by the Grantee before and after said use.

Section 12. The Town shall in no way be liable or responsible for any accident or damage that may occur in the construction, operation, or maintenance by the Grantee of its facilities, except as may be caused or contributed to by the negligence of the Town, its agents, employees, or of any other person or corporation. The Grantee hereby binds itself by the acceptance of this Agreement, to indemnify, keep and hold the Town free and harmless from any and all judgments, damages, losses, decrees, costs and expenses, which the Town may legally suffer, or which may be legally obtained against the Town for or by reasons related to the use and occupation of any street, alley, or other public place in the Town by the Grantee pursuant to the conditions and limitations set forth in this Agreement or legally resulting from the exercise by the Grantee of any of the privileges granted herein, except as may be caused or contributed to by the negligence of the Town, its agents, employees, or of any other person or corporation.

Section 13. The Town and the Grantee shall take all reasonable action to ensure that any person who shall maliciously or wrongfully tamper or interfere with, cut, injure or destroy any of the pipes, mains, services, meters or other property of said Grantee, constructed and maintained in accordance with the provisions of this Agreement, within the limits of the Town, shall be diligently prosecuted pursuant to any and all applicable provisions of the Virginia Code.

Section 14. The Town shall adopt no ordinance that shall conflict with any provision of this Agreement, except as required by the laws of the Commonwealth of Virginia or federal law.

Section 15. The Town shall permit the Grantee to abandon any underground franchise property in place so long as such property does not interfere with the use of the streets, alleys, public rights-of-way, or any other public spaces in or at which such property is located or with the use thereof by any public utility, other entity or person, and the Grantee shall, upon request, provide the Town with suitable maps and other documents, which shall identify the location of the abandoned property. If the Town determines that any such abandoned property does interfere with the use of the streets, alleys, public rights-of-way, or any other public spaces in or at which such property is located or with the use thereof by any public utility, other entity or person, then the Grantee shall remove the abandoned property from the streets, alleys, and public places of the Town, subject to the conditions regarding cost responsibility for the removal or relocation of Facilities set forth in Section 3, as applicable.

Section 16. The Grantee shall collect and process all gross receipts tax or any other surcharge of any kind levied or imposed by any appropriate taxing jurisdiction. In the event that the Town

should change or add any additional tax or surcharge, the Town shall give the Grantee at least sixty (60) days' notice of such change or addition. Payment of any tax or surcharge due to the Town shall be remitted to the Town within ninety (90) days of receipt by the Grantee except as otherwise provided by law.

Section 17. The Grantee shall pay property taxes to the Town on the property values assessed by the State Corporation Commission with the prevailing tax rate applied.

Section 18. The Grantee shall, upon request, meet on an annual basis with the Town Council at a regular meeting in order to provide information, including reasonably detailed financial statements concerning the Grantee's operation of the Facilities, and answer questions regarding the operation of the water and wastewater systems.

Section 19. The Grantee and the Town respectively agree that certain confidential and proprietary information relating to the operations, business, properties and assets of the water and wastewater systems (collectively, "Confidential Information") may be exchanged between the parties in order to comply with this Agreement. The Town hereby acknowledges that maintaining the confidence of this information is imperative to the security of the water and wastewater system. To that end, the parties hereby agree to maintain the Confidential Information to the extent allowed by law, in confidence, giving it the same degree of care, but no less than a reasonable degree of care, as the parties exercise with their own confidential or proprietary information. Neither party, without the prior written consent of the other party (which may be withheld in such other party's sole discretion), will disclose any portion of the Confidential Information to others, except to their employees, attorneys, agents, consultants or contractors having a need to know in order to accomplish the purpose of this Agreement and who are bound by a like obligation of confidentiality under this Agreement; provided, however, that the restrictions of this sentence shall not apply (a) as may otherwise be required by law, (b) to the extent necessary for regulatory purposes, including without limitation, the requirements of the Virginia State Corporation Commission, and (c) to the extent such information shall have otherwise become publicly available.

Section 20. All the rights and privileges hereby granted may be exercised by any successor or successors, assignee or assignees of the said Grantee, but said successor or successors, assignee or assignees shall be subject to all the provisions, obligations and stipulations and penalties herein prescribed.

Section 21. The rights and privileges hereby granted shall continue for the period of forty (40) years from and after the passage of the ordinance granting this Agreement, unless the same be sooner voluntarily surrendered by the Grantee, with the consent of the Town Council, or unless the same be sooner forfeited as provided by law. Upon the expiration of the term of this grant and upon the termination of the rights hereby granted, by surrender, forfeiture or otherwise, all of the facilities of the Grantee in the streets, alleys, public places and other public property of the Town shall remain the property of the Grantee and may be abandoned consistent with the provisions of Section 15, or it may be removed from the streets, alleys, public places and other public property of the Town at the option and at the expense of the Grantee within a reasonable timer after the expiration or termination of such rights and privileges; provided however, that, following such termination of the rights hereby granted, the Town may elect to pursue acquisition of the Facilities

consistent with applicable law, in exchange for payment of a fair market valuation for the Facilities to the Grantee consistent with applicable law and precedent. Any such fair market valuation of the Facilities shall be established as the simple average of the valuations provided by three qualified and impartial utility valuation experts qualified and licensed to perform such valuations in Virginia. The Town and the Grantee shall each retain one utility valuation expert and the third utility valuation expert shall be retained jointly by Town and Grantee.

Section 22. (a) This Agreement and the rights and privileges hereby granted and conferred shall not become effective unless and until the Grantee shall file with the Clerk of Council of the Town of Cape Charles its written acceptance hereof, in form satisfactory to the Town, and shall enter into a bond in the sum of Fifty Thousand Dollars (\$50,000.00) with surety satisfactory to the Town, conditioned to the effect that the Grantee will construct and maintain, or if constructed, will maintain, the facilities provided for herein and reasonably necessary for the exercise of the rights and privileges granted in and by this Agreement, and will maintain the same in good order throughout the term of this grant, and will comply with the terms, provisions and conditions of this Agreement in all respects. This bond shall satisfy all other obligations to provide individual performance bonds that may be required by the Town of Cape Charles for any acts or activities undertaken by the Grantee.

(b) Upon any breach or alleged breach of the obligations under this Agreement, the aggrieved party's exclusive remedy for such breach or alleged breach shall be to seek and enforce a writ of mandamus in the Northampton Circuit Court in Northampton County, Virginia, pursuant to Virginia Code § 15.2-2106 or any successor statute, except as otherwise provided in Sections 3 and 5 of this Agreement. The jurisdiction in mandamus shall not preclude any party from bringing any other suit or action which such party would be entitled to bring, at law or in equity.

Section 23. (a) This Agreement represents the entire franchise agreement between the parties. All acts, ordinances, and parts of acts heretofore passed inconsistent with this Agreement are hereby repealed.

(b) Should any provision of this Agreement require interpretation or construction, it is agreed by the parties that the court interpreting or construing this Agreement shall not apply a presumption that the provision be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agents prepared the same, it being agreed that the parties hereto and their respective attorneys and agents have fully participated in the preparation of all provisions hereof.

Exhibit 6

Escrow Agreement

ESCROW AGREEMENT

THIS ESCROW AGREEMENT (the “Agreement”) is entered into on _____, 2022 by Virginia-American Water Company, a Virginia corporation (“Buyer”), and Town of Cape Charles, a Virginia municipal corporation (“Seller”) and [_____], as escrow agent (the “Escrow Agent”).

BACKGROUND:

Buyer and Seller have entered into a certain Asset Purchase Agreement dated _____, 2022 (the “Asset Purchase Agreement”). Upon Closing of the transaction contemplated by the Asset Purchase Agreement, Buyer is required to deposit the amount of five percent (5%) of the Purchase Price into escrow (the “Escrow Amount”) in order to secure and fund Seller’s obligations under Section 7.3 of the Asset Purchase Agreement. Buyer and Seller are entering into this Agreement to establish the terms of the funding, management and distribution of the Escrow Amount as required by the Asset Purchase Agreement. This Agreement is referred to in the Asset Purchase Agreement as the “Escrow Agreement.”

Capitalized terms used in this Agreement but not defined herein have the meanings ascribed to them in the Asset Purchase Agreement.

NOW THEREFORE, in consideration of the premises and of the mutual covenants contained herein and in the Asset Purchase Agreement, the parties hereto agree as follows:

1. Acceptance by Escrow Agent. The Escrow Agent accepts the appointment as escrow agent pursuant to this Agreement and shall act on the terms and conditions set forth in this Agreement. Escrow Agent shall be paid from the Escrow Amount in accordance with the provisions of Exhibit I (the “Fees”).

2. Investment of Escrow Amount. Upon receipt by the Escrow Agent of the Escrow Amount at Closing, the Escrow Agent shall, subject to the terms hereof, retain the Escrow Amount and is empowered and directed to invest the Escrow Amount in a separate interest-bearing account, containing only the Escrow Amount and interest thereon, at an FDIC-insured bank as described more fully in Exhibit II. The Escrow Agent shall not be obligated to earn any particular yield or rate of return on the Escrow Amount. The Escrow Agent shall not have any legal or beneficial interest in the account described in this Section 2, but shall merely hold funds in such account and administer such account in accordance with the terms of this Agreement. All interest on the Escrow Amounts shall be retained by the Escrow Agent until disbursed in accordance with the terms hereof.

3. Rights and Responsibilities of Escrow Agent. The acceptance by the Escrow Agent of its duties hereunder is subject to the following terms and conditions, which shall govern and control with respect to the Escrow Agent’s rights, duties, liabilities and immunities:

a. The Escrow Agent shall act hereunder as a depository only, and it shall not be responsible or liable in any manner whatsoever for the sufficiency, correctness, genuineness or validity of any document furnished to the Escrow Agent or any asset deposited with it.

b. The Escrow Agent shall have no duties except those specifically set forth in this Agreement.

c. The Escrow Agent shall have the right any time it deems appropriate to seek an adjudication in a court of competent jurisdiction as to the respective rights of the parties hereto and shall not be held liable by any party hereto for the delay or the consequences of any delay occasioned by such resort to court.

d. The Escrow Agent: (i) shall not be responsible for any of the agreements referred to or described herein, or for determining or compelling compliance therewith, and shall not otherwise be bound thereby; (ii) shall be obligated only for the performance of such duties as are expressly and specifically set forth in this Agreement on its part to be performed, each of which is ministerial (and shall not be construed to be fiduciary) in nature, and no implied duties or obligations of any kind shall be read into this Agreement against or on the part of the Escrow Agent; (iii) shall not be obligated to take any legal or other action hereunder which might in its judgment involve or cause it to incur any expense or liability unless it shall have been furnished with acceptable indemnification; (iv) may rely on and shall be protected in acting or refraining from acting upon any written notice, instruction (including, without limitation, wire transfer instructions, whether incorporated herein or provided in a separate written instruction, only if verified orally with the party having provided such wire transfer instructions), instrument, statement, certificate, request or other document furnished to it hereunder and reasonably believed by it to be genuine and to have been signed or presented by the proper person, and shall have no responsibility or duty to make inquiry as to or to determine the genuineness, accuracy or validity thereof (or any signature appearing thereon), or of the authority of the person signing or presenting the same, and (v) may consult counsel satisfactory to it, including in-house counsel, and the opinion or advice of such counsel in any instance shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in accordance with the opinion or advice of such counsel. In the event of any conflict between the terms and provision of this Agreement, those of the Asset Purchase Agreement, any schedule or exhibit attached to the Agreement, or any other Agreement among the parties, the terms and conditions of this Agreement shall control.

e. The Escrow Agent shall not be liable to anyone for any action taken or omitted to be taken by it hereunder except in the case of the Escrow Agent's negligence or willful misconduct as determined by a court of competent jurisdiction as being the primary cause of any loss to either the Seller or Buyer. In the event that the Escrow Agent shall receive instructions, claims or demands from any party hereto which, in its opinion, conflict with any of the provisions of this Agreement, it shall be entitled to refrain from taking any action and its sole obligation shall be to keep safely all property held in escrow until it shall be given a direction in writing by the parties which eliminates such conflict or by a final and non-appealable court order. In no event shall the Escrow Agent be liable for indirect, punitive, special or consequential damage or loss (including but not limited to lost profits) whatsoever, even if the Escrow Agent has been informed of the likelihood of such loss or damage and regardless of the form of action.

f. <Intentionally omitted.>

g. Notwithstanding any term appearing in this Agreement to the contrary, in no instance shall the Escrow Agent be required or obligated to distribute any portion of the Escrow Amount (or take other action that may be called for hereunder to be taken by the Escrow Agent) sooner than two (2) business days after (i) it has received the applicable documents required under this Agreement in an acceptable form; or (ii) passage of the applicable time period (or both, as applicable under the terms of this Agreement), as the case may be.

h. Unless and except to the extent otherwise expressly set forth herein, all deposits and payments hereunder, or pursuant to the terms hereof shall be in U.S. dollars.

i. The Escrow Agent shall have the right at any time to resign for any reason and be discharged of its duties as Escrow Agent hereunder by giving written notice of its resignation to the parties hereto at least thirty (30) business days prior to the date specified for such resignation to take effect. All obligations of the Escrow Agent in this Agreement shall cease and terminate on the effective date of its resignation, provided that, prior to the effective date of resignation:

(i) if a successor escrow agent shall have been appointed and written notice thereof shall have been given to the resigning Escrow Agent by Buyer, Seller and the successor escrow agent, then the resigning Escrow Agent shall deliver the Escrow Amount to the successor escrow agent; or

(ii) if a successor escrow agent shall not have been appointed by Buyer and Seller, for any reason whatsoever, the resigning Escrow Agent shall deliver the Escrow Amount to a court of competent jurisdiction as set forth in Section 16 of this Agreement and give written notice of the same to the Buyer and Seller.

The resigning Escrow Agent shall be reimbursed from the Escrow Amount for any expenses incurred in connection with its resignation and transfer of the Escrow Amount pursuant to and in accordance with the provisions of this Section.

j. Each of the Seller and Buyer agrees, jointly and severally, (i) to assume any and all obligations imposed now or hereafter by any applicable tax law with respect to any payment or distribution of the Escrow Amount or performance of other activities under this Agreement, (ii) to instruct the Escrow Agent in writing with respect to the Escrow Agent's responsibility for withholding and other taxes, assessments or other governmental charges, and to instruct the Escrow Agent with respect to any certifications and governmental reporting that may be required under any laws or regulations that may be applicable in connection with its acting as Escrow Agent under this Agreement, and (iii) to indemnify and hold the Escrow Agent harmless from any liability or obligation on account of taxes, assessments, additions for late payment, interest, penalties, expenses and other governmental charges that may be assessed or asserted against the Escrow Agent in connection with, on account of or relating to the Escrow Amount, the management established hereby, any payment or distribution of or from the Escrow Amount pursuant to the terms hereof (other than with respect to the Fees) or other activities performed under the terms of this Agreement, including without limitation any liability for the withholding or deduction of (or the failure to withhold or deduct) the same, and any liability for failure to obtain proper certifications or to report properly to governmental authorities in connection with this Agreement, including costs and expenses (including reasonable attorneys' fees and expenses), interest and penalties. The foregoing

indemnification and agreement to hold harmless shall survive the resignation of the Escrow Agent or the termination of this Agreement.

4. Statements. During the term of this Agreement, the Escrow Agent shall provide Seller and Buyer with monthly statements containing the beginning balance in the escrow account as well as all principal and income transactions for the statement period. The Escrow Agent shall be forever released and discharged from all liability with respect to the accuracy of such statements, except with respect to any such act or transaction as to which Seller or Buyer shall, within ninety (90) days after the furnishing of the statement, file written objections with the Escrow Agent.

5. Obligations of Seller Secured. Subject to Sections 7 through 9 below, the Escrow Agent shall retain the Escrow Amount for a period of two (2) years following Closing Date (the "Escrow Term") to fund Seller's responsibilities under Section 7.3 of the Asset Purchase Agreement.

6. Distribution Procedures. Except as specifically provided in this Agreement, no distribution from the Escrow Amount shall be made except as follows:

- a. upon written notice executed jointly (or in counterparts) by Seller and Buyer (a "Joint Instruction"); or
- b. as may be necessary to comply with any final and unappealable judgment, decree or order of a court of competent jurisdiction.

7. Final Distribution. Within ten (10) days following the earlier to occur of: (1) the Escrow Agent's receipt of written notice from one of the parties advising the Escrow Agent that the Term has expired; and (2) the parties' Joint Instruction to terminate the Escrow Amount because all of Seller's obligations under Section 7.3 of the Asset Purchase Agreement secured by this Agreement have been discharged, the Escrow Agent shall release the balance of the Escrow Amount to Seller or as the Seller may otherwise direct in writing. The term of this Agreement shall expire upon the complete disbursement of the entire Escrow Amount, including any earnings thereon, in accordance with this Section 7.

8. Disbursement Instructions. In the event of any doubt or uncertainty by Escrow Agent as to the propriety of making periodic or final disbursements of the Escrow Amount, the Escrow Agent may retain the Escrow Amount, without penalty or liability, until the parties provide joint written instructions for the disbursement of the Escrow Amount or until a final adjudication is made as to its proper disposition. In this regard, Escrow Agent shall be entitled to rely absolutely on the advice of its counsel.

9. Tax Reporting. The Seller and Buyer hereby represent to the Escrow Agent that (a) there is no sale or transfer of a "United States Real Property Interest" as defined under Section 897(c) of the Internal Revenue Code, as the same may be amended from time to time (the "IRC") in the underlying transaction giving rise to this Agreement, and (b) such underlying transaction does not constitute an installment sale requiring tax reporting or withholding of imputed interest or original issue discount to the Internal Revenue Service ("IRS") or other taxing authority. The Seller and Buyer each agree that, for tax reporting purposes, all interest earned from the investment of the Escrow Amount shall be reported by the Escrow Agent as allocated to the Seller, and reported, as and to the extent required by law, by the Escrow Agent to the IRS, or any other taxing authority on IRS Form 1099 or 1042S (or other appropriate form) as income earned from the Escrow Amount by the Seller whether or not said income has been distributed during such year.

10. Certification of Taxpayer Identification Number. Each of the Seller and Buyer agree to provide the Escrow Agent with a certified tax identification number by signing and returning a Form W-9 to the Escrow Agent upon the execution and delivery of this Agreement. Each of the Seller and Buyer understand that, in the event their tax identification numbers are not certified to the Escrow Agent, the IRC may require withholding of a portion of any interest earned on the investment of the Escrow Amount.

11. Amendment; Waiver. The parties may amend this Agreement only by the parties' written agreement that identifies itself as an amendment to this Agreement. Any waiver of, or consent to depart from, the requirements of any provision of this Agreement will be effective only if it is in writing and signed by the parties giving it, and only in the specific instance and for the specific purpose for which it has been given. No failure on the part of any party to exercise, and no delay in exercising, any right under this Agreement will operate as a waiver of such right. No single or partial exercise of any such right shall preclude any other or further exercise of such right or the exercise of any other right.

12. Discharge. The Escrow Agent may be discharged from its duties as Escrow Agent under this Agreement upon thirty (30) days written notice from Buyer and Seller jointly and upon payment of any and all Fees and amounts due under this Agreement to Escrow Agent. In such event, the Escrow Agent shall be entitled to rely on instructions from Buyer and Seller jointly as to the disposition and delivery of the Escrow Amount.

13. Execution. This Agreement may be executed in any number of counterparts which, taken together, is one and the same agreement. This Agreement becomes effective when it has been executed by each party and delivered to all parties, provided, however, that this Agreement shall be effective as between Buyer and Seller when it has been executed by Buyer and Seller and delivered to each of Buyer and Seller. To evidence the fact that it has executed this Agreement, a party may send a copy of its executed counterpart to the other parties by facsimile or email transmission. Such party is deemed to have executed and delivered this Agreement on the date it sent such facsimile or email transmission if no execution date is otherwise specified in the Agreement. In such event, such party shall forthwith deliver to the other parties an original counterpart of this Agreement executed by such party.

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

15. Entire Agreement. This Agreement is the entire agreement among the parties pertaining to the subject matter hereof and supersedes all prior agreements, negotiations, discussions and understandings, written or oral, among the parties. There are no representations, warranties, conditions or other agreements, whether direct or collateral, or express or implied, that form part of or affect this Agreement, or that induced any party to enter into this Agreement or on which reliance is placed by any party, except as specifically set forth in this Agreement. The parties acknowledge and agree that (i) each has substantial business experience and is fully acquainted with the provisions of this Agreement, (ii) the provisions and language of this Agreement have been fully negotiated and (iii) no provision of this Agreement shall be construed in favor of any party or against any party by reason of such provision of this Agreement having been drafted on behalf of one party rather than the other parties.

16. Governing Law; Jurisdiction. This Agreement and the rights and obligations of the Parties hereunder are to be governed by and construed and interpreted in accordance with the Laws of the Commonwealth of Virginia applicable to Contracts made and to be performed wholly within Virginia, without regard to choice or conflict of laws rules. Each of the Parties irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Northampton Circuit Court in Northampton County, Virginia or, if such court will not accept jurisdiction, the Supreme Court of the Commonwealth of Virginia or any court of competent civil jurisdiction sitting in Northampton County, Virginia. In any action, suit or other Proceeding, each of the Parties irrevocably and unconditionally waives and agrees not to assert by way of motion, as a defense or otherwise any claims that it is not subject to the jurisdiction of the above courts, that such action or suit is brought in an inconvenient forum or that the venue of such action, suit or other Proceeding is improper. 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.

17. Parties in Interest; Third Party Beneficiaries. Except as hereinafter provided, this Agreement is not intended to and shall not be construed to create upon any Person other than the parties any rights or remedies hereunder.

18. Successors and Assigns. No party to this Agreement may assign any right or delegate any performance under this Agreement without the prior written consent of the other parties. A purported assignment or purported delegation without prior written consent is void.

19. Specific Performance. Irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms of this Agreement. Any party may seek specific performance of the terms of this Agreement, in addition to any other remedy to which such party is entitled at law or in equity if such party has performed in accordance with the terms of this Agreement.

20. Headings. The headings in this Agreement are for convenience of reference only and shall neither be considered as part of this Agreement, nor limit or otherwise affect the meaning hereof.

21. Notices. All notices, requests, demands and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given, made and received only when delivered (personally, by courier service such as Federal Express, or by other messenger) to the address set forth below:

in the case of the Seller:
Town of Cape Charles

2 Plum Street
Cape Charles, VA 23310
Attention: John Hozey, Town Manager (townmanager@capecharles.org)

with a copy to:

Thompson McMullan, P.C.
100 Shockoe Slip
Third Floor
Richmond, VA 23219
Attention: Cliona M. Robb, Esquire (crobb@t-mlaw.com)

in the case of the Buyer:

Virginia-American Water Company
2223 Duke Street
Alexandria, VA 22314
Attention: Barry L. Suits (barry.suits@amwater.com), President

with a copy to:

Virginia-American Water Company
1 Water Street
Camden, NJ 08102
Attention: Debbie Albrecht (Debbie.albrecht@amwater.com), Managing General Counsel

Any party may alter the address to which communications or copies are to be sent by giving notice of such change of address in conformity with the provisions of this paragraph for the giving of notice.

Signature page follows.

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

TOWN OF CAPE CHARLES

VIRGINIA-AMERICAN WATER COMPANY

By: _____

By: _____

Printed: _____

Printed: _____

Its:

Its: President

ATTEST:

ATTEST:

By: _____

By: _____

Name:

Name:

Its:

Its:

ESCROW AGENT:

[_____]

By: _____

Printed: _____

Title: _____

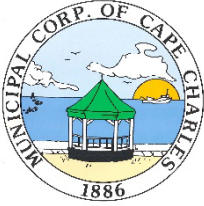
EXHIBIT I

Fee Schedule

EXHIBIT II

Terms of Escrow Account

The Escrow Amount shall be continuously invested in an interest-bearing account at _____ Bank.

 TOWN OF CAPE CHARLES	AGENDA TITLE: Ordinance 20221110A – Approval of Sale of the Town’s Water and Wastewater Systems to Virginia American Water		AGENDA DATE November 10, 2022
	SUBJECT/PROPOSAL/REQUEST: Approval of Ordinance authorizing the sale of the Town’s water and wastewater utilities		ITEM NUMBER: 4C
	ATTACHMENTS: Ordinance 20221110A		FOR COUNCIL: Action (X) Information ()
	STAFF CONTACT (s): John Hozey, Town Manager	REVIEWED BY: John Hozey, Town Manager	

BACKGROUND:

In May of 2020 the Town received an unsolicited proposal from a private utility company to acquire and operate the Town’s water and wastewater utilities. This was unexpected, and started a lengthy process to: first, develop procurement guidelines associated with the Public-Private Education Facilities and Infrastructure Act (PPEA), and then provide appropriate public notice. As a result, of that public notice the Town received a second proposal.

To help evaluate these two proposals, the Town then solicited expert help in the form of a consultant to conduct the necessary due diligence. This due diligence took most of a year. But following that process, the Council chose one of the proposals to move on to the next phase of the evaluation, which included robust public consultation. Virginia American Water (VAW) was ultimately chosen as the successful proposer to move on.

ITEM SPECIFICS:

After receiving input at multiple public meetings earlier this year on the VAW proposal, the Council authorized the town manager to negotiate potential agreements that addressed the public comments and affected the transfer of our utilities. These draft agreements were developed and presented for public consideration at two town hall meetings in October, where public comments and questions were addressed. There was no significant opposition to these agreements offered at that time.

The next step was to publish the required public notice for a public hearing on this matter. That notice was conducted, and a public hearing held prior to this special meeting. The matter is now ripe for Town Council’s consideration.

This is a complex transaction, with several parts. The first was a resolution to adopt the Comprehensive Asset Purchase agreement that contains the terms and conditions of the sale (previous agenda item). However, because this action divests the Town of real property, it also requires adoption of this ordinance authorizing same. Both the resolution and ordinance require super majority support of the Town Council for adoption.

Following successful consideration of this transaction, a franchise agreement will then also be considered.

RECOMMENDATION:

Staff recommends consideration of public hearing testimony, and if deemed in the best interest of the Town, adopt Ordinance 20221110A by roll call vote.

ORDINANCE 20221110A

ORDINANCE APPROVING THE SALE OF THE TOWN OF CAPE CHARLES WATERWORKS SYSTEM AND WASTEWATER SYSTEM TO VIRGINIA-AMERICAN WATER COMPANY

WHEREAS, the Town of Cape Charles ("Town") currently owns and operates a water treatment facility and distribution system and a wastewater treatment facility and collection system (collectively, the "System").

WHEREAS, Virginia-America Water Company, a Virginia corporation (together with its successors and/or assigns, "VAWC"), presented to the Town an unsolicited proposal under the Public Private Education Facilities and Infrastructure Act of 2002, VA Code § 56-575.1 *et seq.* to operate the System and to acquire substantially all of the assets that constitute or are used in furtherance of the System, which assets are defined as the Acquired Assets in the Comprehensive Agreement described below.

WHEREAS, the Acquired Assets include, among other things: all of the Town's (a) Real Property now used and required in the ongoing operation of the System, including the parcels of land owned by the Town and generally described on **Exhibit A** and **Exhibit B** attached hereto and incorporated herein on which the waterworks plant and the wastewater treatment plant, respectively, and related improvements and fixtures are located, (b) Tangible Personal Property, (c) intellectual property, goodwill associated therewith, licenses and sublicenses granted and obtained with respect thereto, and rights thereunder, remedies against past, present, and future interests therein under the Laws of all jurisdictions, (d) leases, subleases, easements, rights of way, and rights thereunder, (e) all rights of Seller in and to any indentures, mortgages, instruments, Encumbrances, or guaranties secured for the operation of the System, (f) accounts, notes, and other receivables arising after the Effective Time, (g) claims, deposits, prepayments, refunds, causes of action, rights of recovery, rights of set-off, and rights of recoupment (including any such item relating to the payment of Taxes), (h) franchises, approvals, Permits, pending application for Permits and Permit renewals, exemptions from any Permits, licenses, Orders, registrations, certificates, variances, and similar rights obtained from governments and governmental agencies in each case to the extent assignable or transferable to Buyer, (i) books, data, records, ledgers, files, documents, correspondence, lists, plats, architectural plans, drawings, specifications, creative materials, studies, reports, and other printed or written materials related to Seller's construction, maintenance, and operation of the System, and (j) all of the intangible rights and property, if any, of Seller utilized in the operation of the System, provided that Acquired Assets shall not include any Excluded Assets.

WHEREAS, the terms of the transaction are contained in the Comprehensive Asset Purchase Agreement between VAWC and the Town (including the exhibits and schedules attached or to be attached thereto, collectively the "Comprehensive Agreement"), and capitalized terms not otherwise defined in this Ordinance shall have the meanings set forth therein.

WHEREAS, at a meeting of the Town Council on November 10, 2022, the Town Council approved the Comprehensive Agreement and authorized the Town Manager to execute it, as set forth in Resolution 20221110.

WHEREAS, all documents, deeds, bills of sale, assignments, instruments, certificates, affidavits, and other items to be delivered by the Town pursuant to the Comprehensive Agreement are collectively called the "Transaction Documents."

WHEREAS, VAWC has submitted a bid for a franchise to operate the System as provided in the Comprehensive Agreement.

WHEREAS, the Town Council hereby finds that the sale of the Acquired Assets, including without limitation the Real Property, is in the public interest.

WHEREAS, a public hearing was held on November 10, 2022 as required by the Code of Virginia, Section 15.2-1800.

BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF CAPE CHARLES, VIRGINIA:

1. The sale of the Acquired Assets by the Town to VAWC is hereby approved and authorized.
2. If all contingencies under the Comprehensive Agreement are satisfied or waived and Closing is to occur, the Town Manager is authorized and directed to execute deeds conveying the Real Property and all other Transaction Documents as necessary or proper to complete the sale of the Acquired Assets to VAWC.
3. The Town Manager and Town staff (under the direction of the Town Manager) are authorized to execute such documents and take such actions as are necessary or proper to complete the sale of the Acquired Assets to VAWC substantially in accordance with the foregoing terms. Such actions include, without limitation, negotiating such revised or supplemental terms of the Comprehensive Agreement or other Transaction Documents as the Town Manager deems necessary or appropriate to complete the sale of the Acquired Assets, to the extent such revised or supplemental terms are not materially adverse to the Town's interests.
4. This Ordinance shall be effective from the date of its adoption.

**THIS ORDINANCE REQUIRES AN AFFIRMATIVE VOTE OF THREE-FOURTHS
OF ALL MEMBERS ELECTED TO COUNCIL.**

Adopted: November 10, 2022.

By: _____
Mayor of the Town of Cape Charles, Virginia

ATTEST:

Clerk of the Town of Cape Charles, Virginia

Exhibit A

Description of Real Property – Waterworks System

ALL THAT certain lot or parcel of land situated generally on the south side of Stone Road (State Road 184) in the Town of Cape Charles, Northampton County, Virginia, identified as Lots 40, 41, 42, and 46 as described in Quitclaim Deed dated October 3, 1985, recorded in Book 218 at page 432 of the land records of Northampton County, Virginia, between Accomack-Northampton Transportation District Commission and Canonic Atlantic Co, as further described in Schedule “A” in Plat Book 25 at pages 58 through 137 and in the Clerk’s Office of the Circuit Court of Northampton County, Virginia, as Exhibits to that certain Deed from the Penn Central Corporation to the Commission dated February 25, 1980, in Deed Book 204 at page 648.

AND

ALL THAT certain lot or parcel of land situated generally on the south side of Stone Road (State Road 184) in the Town of Cape Charles, Northampton County, Virginia, identified as Lots 43 and 44 as described in the Deed dated October 10, 1972, and recorded in Book 173 at page 255 of the land records of Northampton County, Virginia, between Thora Scott Ronalds McElroy and Donald A. McElroy, and the Town of Cape Charles, Virginia, and further described in the Plat as Lots 43 and 44 in Block B, “Sub-Division of the Estate of Mathilde Townsend Welles, Deceased, East End – Cape Charles, Northampton County, Virginia,” dated January and February, 1959, made by George H. Badger, C.S.

AND

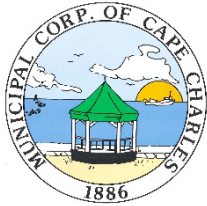
ALL THAT certain lot or parcel of land situated generally on the south side of Stone Road (State Road 184) in the Town of Cape Charles, Northampton County, Virginia, identified as Lot 45 as described in the Deed dated March 15, 1943, and recorded in Book 104 at page 156 of the land records of Northampton County, Virginia, between Mathilde T. Welles and Sumner Welles, and the Town of Cape Charles, Virginia, and further described in Plat Book 4, page 148 as “Cape Charles Virginia, Division of lots on Route U. S. 13.”

And all associated systems as referenced in the Schedules of the Comprehensive Asset Purchase Agreement.

Exhibit B

Description of Real Property – Wastewater System

ALL THAT certain lot or parcel of land situated generally on the west side of Old Cape Charles Road (State Route 642) in the Town of Cape Charles, Northampton County, Virginia, identified as Lot 2 on the plat entitled “SUBDIVISION & BOUNDARY LINE ADJUSTMENT PLAT OF Cape Charles Wastewater Treatment Plant & Cape Charles Rosenwald School,” etc., dated September 10, 2021 and prepared by Shoreline Surveyors, recorded on May 11, 2022 in the Clerk’s Office of Northampton County, Virginia as Instrument Number 220001334, to which reference is made. And all associated systems as referenced in the Schedules of the Comprehensive Asset Purchase Agreement.



**TOWN OF
CAPE CHARLES**

AGENDA TITLE: Ordinance 20221110AB – Granting Franchise to Virginia American Water to operate water and wastewater utility

AGENDA DATE
November 10, 2022

SUBJECT/PROPOSAL/REQUEST: Approval of Ordinance Granting Franchise to Virginia American Water to operate the Town's water and wastewater utilities

ITEM NUMBER:
4D

ATTACHMENTS: Ordinance 20221110B; Franchise Agreement

FOR COUNCIL:
Action (X)
Information ()

STAFF CONTACT (s):
John Hozey, Town Manager

REVIEWED BY:
John Hozey, Town Manager

BACKGROUND:

The Town has been engaged in a complex due diligence effort to evaluate the potential sale of the Town's water and wastewater utility for over two years. That process culminated with the Town Council's consideration of this sale in the previous agenda items at this special meeting.

ITEM SPECIFICS:

If earlier in this meeting, the Town Council rejected the utility sale to Virginia American Water (VAW), this ordinance is not required, and no action should be taken on this agenda item.

If, however, earlier in this meeting, the Town Council approved the utility sale to Virginia American Water (VAW), a franchise for exclusive rights to operate the systems is also needed. Virginia code requires a specific process to grant this franchise, which included advertisement and the solicitation of bids. This public notice was conducted, and bids were opened and read at this public meeting.

RECOMMENDATION:

Staff recommends consideration of bids received, and if a bid from VAW is deemed in the best interest of the Town, adopt Ordinance 20221110B by roll call vote.

TOWN OF CAPE CHARLES
ORDINANCE #20221110B

AN ORDINANCE GRANTING TO VIRGINIA-AMERICAN WATER COMPANY, ITS SUCCESSOR OR ASSIGNS THE EXCLUSIVE RIGHT, INsofar AS AND TO THE FULL EXTENT THAT THE TOWN CAN LAWFULLY GRANT SUCH RIGHT, FOR THE TERM AND UPON THE CONDITIONS HEREINSTATED, TO USE THE STREETS, ALLEYS AND PUBLIC PLACES OF THE TOWN OF CAPE CHARLES, TO ACQUIRE, MAINTAIN AND OPERATE A WATERWORKS SYSTEM AND A WASTEWATER SYSTEM IN SAID TOWN, TO LAY, REMOVE, REPAIR, REPLACE AND MAINTAIN WATER AND WASTEWATER PIPES, MAINS, SERVICE PIPES, HYDRANTS, FIRE HYDRANTS, FIXTURES AND APPURTENANCES IN THE PRESENT AND FUTURE STREETS, ALLEYS AND PUBLIC PLACES OF SAID TOWN, TO SUPPLY WATER AND WASTEWATER SERVICE FOR DOMESTIC, PUBLIC, MANUFACTURING AND OTHER PURPOSES WITHIN THE TOWN OF CAPE CHARLES AND TO TRANSPORT THROUGH THE TOWN TO OTHER MUNICIPALITIES AND UNINCORPORATED AREAS WHERE SERVICES MAY NOW OR HEREAFTER BE FURNISHED BY MEANS OF THE EXISTING DISTRIBUTION OR COLLECTION SYSTEMS AND MAINS OR AS THE SAME BE HEREAFTER EXTENDED, REPLACED, RELOCATED, OR PARALLELED BY ADDITIONAL MAINS FROM TIME TO TIME

WHEREAS, the Town Council of the Town of Cape Charles, Virginia has approved the sale of its water treatment facility and distribution system and a wastewater treatment facility and collection system (collectively, the “System”) as described in the Comprehensive Asset Purchase Agreement; and

WHEREAS, Virginia-American Water Company, a Virginia corporation, submitted a proposal to purchase the System, and has applied for a forty (40) year exclusive franchise to use the streets, alleys, and other public places of the Town of Cape Charles to acquire, maintain and operate the System; now, therefore

BE IT ORDAINED that the Town Council of the Town of Cape Charles, Virginia, that the following Ordinance is adopted and approved:

Section 1. VIRGINIA-AMERICAN WATER COMPANY (hereinafter referred to as the “Grantee”), its successors and assigns, as applied for a forty (40) year exclusive franchise, to use the streets, alleys, and other public places of the Town of Cape Charles (the “Town”); to acquire, maintain and operate a waterworks system; to acquire, maintain and operate a wastewater system; to lay, remove, repair, replace and maintain water and wastewater pipes, mains, service pipes, hydrants, fire hydrants, fixtures and appurtenances (“Facilities”) in the present and future streets, alleys and public places of the Town; to supply water and wastewater service for domestic, public, manufacturing and other purposes within the Town; and to transport through the Town to other municipalities and unincorporated areas where services may now or hereafter be furnished by means of the existing distribution and collection systems and mains or as the same be hereafter extended, replaced, relocated, or paralleled by additional mains from time to time.

Section 2. The Town Council hereby finds that the grant of the franchise is in the public interest. Therefore, the Town Manager is hereby authorized and directed to execute a franchise agreement between the Town and the Grantee, in substantially the same form as the agreement attached to this ordinance, and in conjunction with and as an integral part of a Comprehensive Asset Purchase Agreement for the Facilities in a manner consistent with the requirements of VA Code § 56-575.9 of the Public Private Education Facilities and Infrastructure Act of 2002, VA Code § 56-575.1 *et seq.* (the “PPEA”), which is subject to approval by the Town Council.

Section 3. This ordinance becomes effective immediately.

Adopted by the Cape Charles Town Council on November 10, 2022.

By: _____
Mayor

ATTEST:

Town Clerk

FRANCHISE AGREEMENT

The following provisions of the Franchise Agreement (Agreement”) are subject to implementation by ordinance consistent with the requirements of Va. Code §15.2-2101 *et seq.*, and this Agreement is in conjunction with and an integral part of a Comprehensive Asset Purchase Agreement for the Facilities in a manner consistent with the requirements of VA Code § 56-575.9 of the Public Private Education Facilities and Infrastructure Act of 2002, VA Code § 56-575.1 *et seq.* (the “PPEA”).

Section 1. That the exclusive right is hereby granted, insofar as and to the full extent that the Town can lawfully grant such right, unto VIRGINIA-AMERICAN WATER COMPANY (hereinafter referred to as the “Grantee”), its successors and assigns, for the term and subject to the conditions and limitations hereinafter stated, to use the streets, alleys, and other public places of the Town of Cape Charles (the “Town”); to acquire, maintain and operate a waterworks system; to acquire, maintain and operate a wastewater system; to lay, remove, repair, replace and maintain water and wastewater pipes, mains, service pipes, hydrants, fire hydrants, fixtures and appurtenances (“Facilities”) in the present and future streets, alleys and public places of the Town; to supply water and wastewater service for domestic, public, manufacturing and other purposes within the Town; and to transport through the Town to other municipalities and unincorporated areas where services may now or hereafter be furnished by means of the existing distribution and collection systems and mains or as the same be hereafter extended, replaced, relocated, or paralleled by additional mains from time to time.

Section 2. In exchange for the exclusive right granted herein, Grantee shall pay to the Town an annual fee equal to Fifty Thousand Dollars (\$50,000). Every five (5) years from the grant of this franchise, the Town shall have the right to review the fee set forth herein and make reasonable modifications thereto upon ninety (90) days’ prior written notice. In no event shall a modification to the annual fee pursuant to this Section 2 result in an increase in the annual fee that exceeds the increase in the CPI over the preceding five-year period, where “CPI” means the consumer price index for all urban consumers (not seasonally adjusted) published by the U.S. Bureau of Labor Statistics.

Section 3. From and after the date on which this Agreement shall become effective, the water and wastewater lines and other structures in, under, and along the streets, alleys, and public places of the Town, authorized by this Agreement to be located and constructed, shall be located at reasonable, suitable, and convenient points for the purposes of the Town and Grantee, subject to the terms, provision, and conditions stated in this Agreement and, in addition, to the lawful exercise of the police powers of the Town. If and when requested by the Town Manager or other properly authorized administrative officer of the Town, the Grantee shall, from time to time, file with the Town plans showing the location of the proposed additional Facilities. The Grantee shall obtain any permit required by the Town or other governmental entities prior to their placement, construction, or installation in, under, and along the streets, alleys, public places and other public property of the Town. When plans showing the location of such water or wastewater pipes,

hydrants, fixtures, and other appurtenances shall have been presented to the Town and any necessary permits issued for the same, said plans as accepted by the Town shall be effective and binding to the same extent as if they were set out fully and at length in this Agreement. If the Town Manager or other properly authorized administrative officer reasonably determines that it is necessary for a public purpose, either in connection with the construction, repair, relocation, or improvement by the Town of a street, alley, or public place of the Town, or pursuant to the lawful exercise of police power or other valid power of the Town, to change the location of any Facilities, the Grantee shall remove or relocate the Facilities accordingly within a reasonable time after being requested by the Town in writing; but prior to so doing, the Grantee shall have the right to appeal from the Town Manager's or other properly authorized administrative officer's decision to the Town Council, and the decision of the Council on such appeal shall be final and binding as to the location of the Facilities. Grantee shall bear all costs of removal or relocation provided (1) the Town will obtain or cause to be obtained, without charge to the Grantee, suitable permits and/or easements as may be required by the Grantee for its relocated Facilities.; (2) that if removal and relocation of the Facilities is required in connection with work by, or in association with, any other person or corporation, another appropriate person or corporation, shall bear all costs of such removal and relocation and will obtain or cause to be obtained, without charge to the Grantee, suitable permits and/or easements; and (3) that if removal and relocation of the same Facilities is required on more than one occasion during the term of this Agreement for a given project, the Town shall bear all costs of such second or subsequent removal and relocation and will obtain or cause to be obtained, without charge to the Grantee, suitable permits and/or easements.

Section 4. Upon the annexation of any territory to the Town, the portion of the Grantee's facilities that may be located within such annexed territory and in, under, or upon the streets, alleys, and other public places of such annexed territory shall thereafter be subject to the conditions and limitations of this Agreement.

Section 5. The rights and privileges set forth herein are granted and conferred upon the Grantee upon the express condition and understanding on the part of the Grantee that it will render to the public in the Town, within the territory in which the Grantee by virtue of this Agreement is granted the right to furnish such service, and at all times during the term of this grant, reasonably adequate service and Facilities at reasonable and just rates, and that it will maintain its properties, works and structures located within the Town in good order throughout the term of the rights granted herein. The Grantee shall render reasonably adequate service, make repairs promptly, interrupt services only for good cause, and maintain operational telephone numbers such that the Grantee may be reached in the event of an emergency during all times of the term of this grant. Such service shall be in accordance with industry standards and all applicable laws and regulations. The Grantee by accepting this Agreement expressly agrees that the State Corporation Commission shall have jurisdiction, to the full extent and in the manner now or hereafter during the life of this Agreement provided by law, to require the Grantee to render reasonably adequate service, and to maintain its facilities in good order throughout the term of this Agreement. In the event of a material default by the Grantee in the service obligations set forth in this Section 5, the Town shall provide notice of such material default to the Grantee. If the material default is not corrected within 120 days, or such other period that provides the Grantee the reasonable opportunity to cure the material default, the Town may elect to take over the Facilities pursuant to Va. Code § 56-575.11 and Section VII B.18 of the *Town of Cape Charles Combined Guidelines for the Public-Private Education Facilities and Infrastructure Act of 2002, as revised and Public-Private*

Transportation Act of 1995, as revised (Adopted September 3, 2002) and as provided in Va. Code §§ 15.2-2109, 15.2-1906, 15.2-2146, and, to the extent applicable, § 25.1-102.

Section 6. The Grantee shall provide to the Town all water required for municipal purposes at its rates then in effect for municipal entities, provided, that the Grantee shall not charge the Town for firefighting, testing firefighting equipment, and flushing streets and gutters.

Section 7. The Town shall not permit any person, corporation, or other entity the right to install, extend, or maintain any water, gas, telephone, sewer, or other system, or any pipes, mains, conduits, or wires, so as to injure, damage, or interfere with the water or wastewater systems, pipes, hydrants, or mains of the Grantee. The Town shall not vacate or convey away any rights-of-way containing the Grantee's Facilities without said Grantee's prior approval or reservation of any easement providing a right to construct, operate, maintain, extend, or replace its Facilities. The Town shall not permit or grant to any person, corporation, or other entity the right to interfere in any way with any of the rights granted in this Agreement to the Grantee to construct, operate, install, extend, maintain, or replace its water or wastewater system or use the streets, alleys, and public places as provided herein.

Section 8. The Grantee shall inform the Town whenever there is a planned maintenance or construction project that has a significant impact on the water or wastewater system. The Grantee shall also notify the Town if it changes any treatment technique that changes the chemical qualities of the water distributed by the Grantee to the Town.

Section 9. The Grantee shall notify the Town, the Virginia Department of Transportation or any successor agency, and applicable homeowner's associations in advance of any planned project that requires opening up any streets, alleys or any other public place within the Town for performing work on its facilities, except in emergency situations where, in the Grantee's sole judgment, such advance notice would hinder the Grantee's ability to adequately address such emergency. Said Grantee shall repair and replace any street, alley or other right-of-way at its expense and shall place the paving or other surface back in the same or similar condition as prior to such opening as expeditiously as reasonably possible upon considering all relevant factors, including without limitation weather conditions. Said Grantee shall maintain such barriers, signs and warning signals as may be reasonably necessary to avoid injury or damage to life and property and as otherwise provided for in the Virginia Supplement to the 2009 Manual on Uniform Traffic Control Devices, as such manuals may, from time to time be in effect, or any successor provisions.

Section 10. During the term of this grant, the Town and Grantee, upon the request of the Town, shall meet quarterly with the Town Manager and annually with the Town Council. The Grantee shall provide a summary of activities affecting the Grantee's water and wastewater systems serving the Town, and each of the Town and the Grantee shall provide to the other relevant contact information, to include telephone numbers, to allow each of the Grantee and the Town to contact the other twenty-four (24) hours a day, three hundred sixty-five (365) days per year or three hundred sixty-six (366) day basis in the case of a leap year.

Section 11. The Town shall not permit or allow the public fire hydrants erected in its streets and public rights-of-way to be used for any purpose other than the extinguishment of fires, necessary and proper testing of its firefighting equipment, and necessary washing or flushing of

storm water sewers, and gutters; and the Town, at Grantee's request, will reasonably cooperate in any criminal prosecution or other legal action to afford protection to the property of said Grantee located within the Town. Except for emergency purposes, when water is used for the purposes expressly stated in this Section, the approval of the fire chief of the fire department of the Town for the use of the hydrant or hydrants shall first be obtained and the Grantee shall be notified of the time, place, estimated volume of water to be used, and the person employed by the Town or fire department who will be conducting each such use. No unauthorized person may use the hydrants for any purpose. Within one (1) calendar month of the approved usage, the Town or the fire department will advise the Grantee of the volume of water used. Any hydrant use authorized by the Grantee to be performed by any party other than the Town or its agents shall be measured using a hydrant meter installed and read by the Grantee before and after said use.

Section 12. The Town shall in no way be liable or responsible for any accident or damage that may occur in the construction, operation, or maintenance by the Grantee of its facilities, except as may be caused or contributed to by the negligence of the Town, its agents, employees, or of any other person or corporation. The Grantee hereby binds itself by the acceptance of this Agreement, to indemnify, keep and hold the Town free and harmless from any and all judgments, damages, losses, decrees, costs and expenses, which the Town may legally suffer, or which may be legally obtained against the Town for or by reasons related to the use and occupation of any street, alley, or other public place in the Town by the Grantee pursuant to the conditions and limitations set forth in this Agreement or legally resulting from the exercise by the Grantee of any of the privileges granted herein, except as may be caused or contributed to by the negligence of the Town, its agents, employees, or of any other person or corporation.

Section 13. The Town and the Grantee shall take all reasonable action to ensure that any person who shall maliciously or wrongfully tamper or interfere with, cut, injure or destroy any of the pipes, mains, services, meters or other property of said Grantee, constructed and maintained in accordance with the provisions of this Agreement, within the limits of the Town, shall be diligently prosecuted pursuant to any and all applicable provisions of the Virginia Code.

Section 14. The Town shall adopt no ordinance that shall conflict with any provision of this Agreement, except as required by the laws of the Commonwealth of Virginia or federal law.

Section 15. The Town shall permit the Grantee to abandon any underground franchise property in place so long as such property does not interfere with the use of the streets, alleys, public rights-of-way, or any other public spaces in or at which such property is located or with the use thereof by any public utility, other entity or person, and the Grantee shall, upon request, provide the Town with suitable maps and other documents, which shall identify the location of the abandoned property. If the Town determines that any such abandoned property does interfere with the use of the streets, alleys, public rights-of-way, or any other public spaces in or at which such property is located or with the use thereof by any public utility, other entity or person, then the Grantee shall remove the abandoned property from the streets, alleys, and public places of the Town, subject to the conditions regarding cost responsibility for the removal or relocation of Facilities set forth in Section 3, as applicable.

Section 16. The Grantee shall collect and process all gross receipts tax or any other surcharge of any kind levied or imposed by any appropriate taxing jurisdiction. In the event that the Town

should change or add any additional tax or surcharge, the Town shall give the Grantee at least sixty (60) days' notice of such change or addition. Payment of any tax or surcharge due to the Town shall be remitted to the Town within ninety (90) days of receipt by the Grantee except as otherwise provided by law.

Section 17. The Grantee shall pay property taxes to the Town on the property values assessed by the State Corporation Commission with the prevailing tax rate applied.

Section 18. The Grantee shall, upon request, meet on an annual basis with the Town Council at a regular meeting in order to provide information, including reasonably detailed financial statements concerning the Grantee's operation of the Facilities, and answer questions regarding the operation of the water and wastewater systems.

Section 19. The Grantee and the Town respectively agree that certain confidential and proprietary information relating to the operations, business, properties and assets of the water and wastewater systems (collectively, "Confidential Information") may be exchanged between the parties in order to comply with this Agreement. The Town hereby acknowledges that maintaining the confidence of this information is imperative to the security of the water and wastewater system. To that end, the parties hereby agree to maintain the Confidential Information to the extent allowed by law, in confidence, giving it the same degree of care, but no less than a reasonable degree of care, as the parties exercise with their own confidential or proprietary information. Neither party, without the prior written consent of the other party (which may be withheld in such other party's sole discretion), will disclose any portion of the Confidential Information to others, except to their employees, attorneys, agents, consultants or contractors having a need to know in order to accomplish the purpose of this Agreement and who are bound by a like obligation of confidentiality under this Agreement; provided, however, that the restrictions of this sentence shall not apply (a) as may otherwise be required by law, (b) to the extent necessary for regulatory purposes, including without limitation, the requirements of the Virginia State Corporation Commission, and (c) to the extent such information shall have otherwise become publicly available.

Section 20. All the rights and privileges hereby granted may be exercised by any successor or successors, assignee or assignees of the said Grantee, but said successor or successors, assignee or assignees shall be subject to all the provisions, obligations and stipulations and penalties herein prescribed.

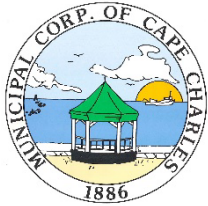
Section 21. The rights and privileges hereby granted shall continue for the period of forty (40) years from and after the passage of the ordinance granting this Agreement, unless the same be sooner voluntarily surrendered by the Grantee, with the consent of the Town Council, or unless the same be sooner forfeited as provided by law. Upon the expiration of the term of this grant and upon the termination of the rights hereby granted, by surrender, forfeiture or otherwise, all of the facilities of the Grantee in the streets, alleys, public places and other public property of the Town shall remain the property of the Grantee and may be abandoned consistent with the provisions of Section 15, or it may be removed from the streets, alleys, public places and other public property of the Town at the option and at the expense of the Grantee within a reasonable timer after the expiration or termination of such rights and privileges; provided however, that, following such termination of the rights hereby granted, the Town may elect to pursue acquisition of the Facilities

consistent with applicable law, in exchange for payment of a fair market valuation for the Facilities to the Grantee consistent with applicable law and precedent. Any such fair market valuation of the Facilities shall be established as the simple average of the valuations provided by three qualified and impartial utility valuation experts qualified and licensed to perform such valuations in Virginia. The Town and the Grantee shall each retain one utility valuation expert and the third utility valuation expert shall be retained jointly by Town and Grantee.

Section 22. (a) This Agreement and the rights and privileges hereby granted and conferred shall not become effective unless and until the Grantee shall file with the Clerk of Council of the Town of Cape Charles its written acceptance hereof, in form satisfactory to the Town, and shall enter into a bond in the sum of Fifty Thousand Dollars (\$50,000.00) with surety satisfactory to the Town, conditioned to the effect that the Grantee will construct and maintain, or if constructed, will maintain, the facilities provided for herein and reasonably necessary for the exercise of the rights and privileges granted in and by this Agreement, and will maintain the same in good order throughout the term of this grant, and will comply with the terms, provisions and conditions of this Agreement in all respects. This bond shall satisfy all other obligations to provide individual performance bonds that may be required by the Town of Cape Charles for any acts or activities undertaken by the Grantee.

Section 23. (a) This Agreement represents the entire franchise agreement between the parties. All acts, ordinances, and parts of acts heretofore passed inconsistent with this Agreement are hereby repealed.

(b) Should any provision of this Agreement require interpretation or construction, it is agreed by the parties that the court interpreting or construing this Agreement shall not apply a presumption that the provision be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agents prepared the same, it being agreed that the parties hereto and their respective attorneys and agents have fully participated in the preparation of all provisions hereof.



**TOWN OF
CAPE CHARLES**

AGENDA TITLE: Transition Consulting Agreement with Virginia American Water to advise on water and wastewater utility

AGENDA DATE
November 10, 2022

SUBJECT/PROPOSAL/REQUEST: Approval of a Transition Consulting Agreement with Virginia American Water to provide advice on the Town's water and wastewater utilities

ITEM NUMBER:
4E

ATTACHMENTS: Transition Consulting Agreement

FOR COUNCIL:
Action (X)
Information ()

STAFF CONTACT (s):
John Hozey, Town Manager

REVIEWED BY:
John Hozey, Town Manager

BACKGROUND:

The Town has been engaged in a complex due diligence effort to evaluate the potential sale of the Town's water and wastewater utility for over two years. That process culminated with the Town Council's consideration of this sale in the previous agenda items at this special meeting.

ITEM SPECIFICS:

If earlier in this meeting, the Town Council rejected the utility sale to Virginia American Water (VAW), no action should be taken on this agenda item.

If however, earlier in this meeting, the Town Council approved the utility sale to Virginia American Water (VAW), the attached consultation agreement will provide a smooth transition of these critical services between the Town and VAW, while assisting the Town to meet all its obligations and permit requirements for the period of time between approval of the utility sale and closing of the sale, which will not conclude until after a lengthy Virginia State Corporation Commission approval process.

RECOMMENDATION:

If prior actions to approve the sale of Town water and wastewater utilities to VAW have been approved, staff recommends approval of this Transition Consulting Agreement with Virginia American Water.

TRANSITION CONSULTING AGREEMENT

This Transition Consulting Agreement (this “Agreement”) is made as of November __, 2022, by and between the Town of Cape Charles, a Virginia municipal corporation (the “Town”), and Virginia-American Water Company, a Virginia corporation (the “Company”).

WHEREAS the Company and the Town entered into a comprehensive asset purchase agreement dated November xx, 2022 (“CAPA”) for the Company’s purchase of the Town’s water and wastewater system (the “Systems”); and

WHEREAS the Company has some preliminary familiarity with the Systems, as well as the capability and capacity to provide certain water and wastewater operations consulting services; and

WHEREAS the Town has experienced challenges operating its water and wastewater systems, including receiving multiple notices of violation (“NOV”) from the Virginia Department of Environmental Quality; and

WHEREAS the Town has an interest in mitigating the impact of the NOVs and providing safe and reliable service to its customers until such time as the Company acquires the Systems; and

WHEREAS the Company, in light of the pending acquisition of the Systems, has an interest in learning more about the Systems and in the Town providing safe and reliable services to its customers to ensure an effective transition of services from the Town to the Company upon closing of the acquisition; and

WHEREAS the Company and the Town entered into a Consulting Agreement effective September 13, 2022, through which the Company provided, on an emergency basis, substantially similar consulting services as contemplated in this Agreement, which Consulting Agreement terminated upon execution of the CAPA;

WHEREAS, the Town has determined that the Company is the only source practically available to provide the transition consulting services in conjunction with the CAPA, which thereby qualifies as a sole source procurement pursuant to the Virginia Procurement Act, to be awarded without competitive sealed bidding or competitive negotiation; and

WHEREAS the Town, having full power and authority to execute this Agreement, desires to retain the Company to provide transition consulting services and the Company is willing to perform such services under the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the Town agree as follows:

1. **Consulting Relationship.** During the term of this Agreement, the Company will provide consulting services to the Town as described on Exhibit A hereto (the “Services”). The

Company shall provide the Services in accordance with the terms and subject to the conditions set forth in this Agreement. Notwithstanding the Company's agreement to provide the Services, the Town will at all times be ultimately responsible for the operation and maintenance of the Systems, including each of the following: (a) ultimate responsibility for compliance with all applicable permits, authorizations, consent decrees, regulations, and all other applicable laws at the facilities, including without limitation environmental, employment, health and safety, and other legal requirements; (b) operations, maintenance, and capital improvements related to the Systems; (c) purchase of equipment, supplies, chemicals, utilities, and any other costs associated with the operation, maintenance, or capital improvements of its facilities; (d) ultimate responsibility for all Town employees; and (e) employment of all operations and maintenance staff and other employees at the Town's facilities including providing necessary licensed operators for the Systems.

2. **Fees.** For the Services to be performed hereunder, the Town shall pay to the Company a fixed fee of Ten Thousand Dollars (\$10,000) per month. The Town shall reimburse the Company for all reasonable travel and out-of-pocket expenses incurred by the Company in connection with the performance of the Services, within 15 days of receipt by the Town of an invoice from the Company accompanied by receipts and reasonable supporting documentation. Notwithstanding the foregoing, Town shall not be required to reimburse the Company for travel or out-of-pocket expenses associated with the Company gathering information or data for purposes of integrating the Systems into the Company's operations upon closing of the acquisition of the Systems by the Company.

3. **Term and Termination.** The Company shall serve as a consultant to the Town for a period commencing on the date first noted above and terminating on the earlier of (a) termination of the CAPA pursuant to the provisions set forth therein or (b) the closing of the acquisition of the Systems as contemplated in the CAPA. Notwithstanding the above, either party may terminate this Agreement at any time upon 10 business days' written notice. In the event of such termination, the Company shall be paid for any portion of the Services that have been performed prior to the termination.

4. **Independent Contractor.** The Company's relationship with the Town will be that of an independent contractor and in no event will the Company be considered an agent or employee of the Town for any purpose.

5. **Method of Provision of Services.** The Company shall be solely responsible for determining the method, details and means of performing the Services. The Company may, at the Company's own expense, employ or engage the services of such employees, subcontractors, partners or agents, as the Company deems necessary to perform the Services (collectively, the "Assistants"). The Assistants are not and shall not be employees of the Town.

6. **Confidential Information.** From time to time during the term of this Agreement, either party (as the "Disclosing Party") may disclose or make available to the other party (as the "Receiving Party"), non-public, proprietary, and confidential information of Disclosing Party that, if disclosed in writing or other tangible form is clearly labeled as "confidential," or if disclosed orally, is identified as confidential when disclosed and within three (3) days thereafter, is summarized in writing and confirmed as confidential ("Confidential Information"); provided,

however, that Confidential Information does not include any information that: (a) is or becomes generally available to the public other than as a result of Receiving Party's breach of this Section 6; (b) is or becomes available to the Receiving Party on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information; (c) was in Receiving Party's possession prior to Disclosing Party's disclosure hereunder; or (d) was or is independently developed by Receiving Party without using any Confidential Information. The Receiving Party shall: (x) protect and safeguard the confidentiality of the Disclosing Party's Confidential Information with at least the same degree of care as the Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care; (y) not use the Disclosing Party's Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under this Agreement or for the purposes of performing due diligence in anticipation of entering an asset purchase agreement; and (z) not disclose any such Confidential Information to any person or entity, except to the Receiving Party's Group who need to know the Confidential Information to assist the Receiving Party, or act on its behalf, to exercise its rights or perform its obligations under this Agreement. If the Receiving Party is required by applicable law or legal process to disclose any Confidential Information, it shall, prior to making such disclosure, use commercially reasonable efforts to notify Disclosing Party of such requirements to afford Disclosing Party the opportunity to seek, at Disclosing Party's sole cost and expense, a protective order or other remedy. For purposes of this Section 6 only, Receiving Party's Group shall mean the Receiving Party's affiliates and their employees, officers, directors, shareholders, agents, independent contractors, service providers, sublicensees, subcontractors, attorneys, accountants, and financial advisors.

7. Limitation of Liability.

(a) The Company shall not be liable, and the Town shall remain solely liable, for (i) any violation of Law existing prior to the execution of this Agreement or discovered by the Company during the course of providing the Services and (ii) compliance with any and all terms of any order by consent issued by the Virginia Department of Environmental Protection, or any other Government Authority, or any corrective action plan resulting therefrom.

(b) The Town shall be responsible for any regulatory fines and penalties assessed against the Town or the Company for (i) non-compliance of applicable laws associated with failures or conditions existing prior to the execution of this Agreement; (ii) non-compliance with applicable laws resulting from the failure of the Town to accept the Company's recommendations or guidance; or (iii) failure of the Company to provide recommendations or guidance in accordance with industry custom and practice, but only in proportion to the Company's fault.

(c) In addition, if, during the course of the performance of any work hereunder, Hazardous Materials are uncovered by the Company, it shall not be the obligation of the Company to remove or dispose of such Hazardous Materials unless the Company is responsible for such Hazardous Materials being at such location. The Company shall, however, take all appropriate and necessary steps to contain the Hazardous Materials and to notify the appropriate agencies and determine the necessary steps to properly dispose or provide for the disposal of such Hazardous Materials.

(d) The Company's aggregate liability to the Town for any and all claims and losses whatsoever resulting from or in any way attributable to errors, omissions, or other acts of the Company shall not exceed the amount received by the Company under this Agreement.

(e) For purposes of this Section 7, the capitalized terms used herein shall have the following meanings:

(i) "Governmental Authority(ies)" means any (A) nation, state, county, city, village, district or other jurisdiction of any nature, (B) federal, state, local, municipal, foreign or other government, (C) governmental or quasi-governmental authority of any nature (including any governmental agency, branch, department, official or entity and any court or other tribunal), (D) multi-national organization or body or (E) body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power of any nature.

(ii) "Hazardous Materials" means any waste or other substance that is listed, defined, designated or classified as, or otherwise determined to be, hazardous, radioactive or toxic or a pollutant or a contaminant under or pursuant to any Environmental Law, including any admixture or solution thereof, and specifically including petroleum and all derivatives thereof or synthetic substitutes therefor and asbestos or asbestos-containing materials.

(iii) "Law(s)" means any law, rule, regulation or ordinance of any federal, foreign, state or local Governmental Authority or other provisions having the force or effect of law, including all judicial or administrative Orders and determinations, and all common law.

(iv) "Order" means any award, decision, injunction, judgment, order, ruling, subpoena or verdict entered, issued, made or rendered by any court, administrative agency or other Governmental Authority or by any arbitrator.

8. **Indemnification.** The Town hereby agrees to fully pay, protect, defend, indemnify and hold harmless the Company and its affiliates, and their respective officers, directors, managers, employees and agents from and against any and all losses, damages, liabilities, suits, claims, demands, cause of action, penalties, fines, and out of pocket costs or expenses of whatever kind (including reasonable attorneys' fees and the cost of pursuing any insurance providers) (collectively "Losses") to the extent arising out of, as a result of, or relating to:

(a) the Company's provision of Services pursuant to this Agreement, provided, however, that the Town's indemnity obligations under this section shall not apply to any Losses solely caused by the Company's breach of its obligations under this Agreement;

(b) the ownership and/or operation of the Systems;

(c) the Town's provision of water and wastewater services to its customers;

9. Miscellaneous.

- (a) **Governing Law.** The validity, interpretation, construction and performance of this Agreement, and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the Commonwealth of Virginia, without giving effect to principles of conflicts of law.
- (b) **Entire Agreement.** This Agreement sets forth the entire agreement and understanding of the parties relating to the subject matter herein and supersedes all prior or contemporaneous discussions, understandings and agreements, whether oral or written, between them relating to the subject matter hereof. For the avoidance of doubt, this Agreement is separate from the CAPA and does not supersede any provision of the CAPA or associated agreements.
- (c) **Amendments and Waivers.** No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, shall be effective unless in writing signed by the parties to this Agreement. No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance.
- (d) **Successors and Assigns.** Except as otherwise provided in this Agreement, this Agreement, and the rights and obligations of the parties hereunder, will be binding upon and inure to the benefit of their respective successors, assigns, heirs, executors, administrators and legal representatives.
- (e) **Notices.** Any notice, demand or request required or permitted to be given under this Agreement shall be in writing and shall be deemed sufficient when delivered personally or by overnight courier or sent by email, or 48 hours after being deposited in the U.S. mail as certified or registered mail with postage prepaid, addressed to the party to be notified at such party's address as set forth on the signature page.
- (f) **Severability.** If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (i) such provision shall be excluded from this Agreement, (ii) the balance of the Agreement shall be interpreted as if such provision were so excluded and (iii) the balance of the Agreement shall be enforceable in accordance with its terms.
- (g) **Construction.** This Agreement is the result of negotiations between and has been reviewed by each of the parties hereto and their respective counsel, if any; accordingly, this Agreement shall be deemed to be the product of all of the parties hereto, and no ambiguity shall be construed in favor of or against any one of the parties hereto.
- (h) **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and all of which together shall constitute one and the same agreement. Execution of a facsimile copy

will have the same force and effect as execution of an original, and a facsimile signature will be deemed an original and valid signature.

[Signature Page Follows]

The parties have executed this Agreement as of the date first written above.

THE TOWN OF CAPE CHARLES:

By: _____
(Signature)

Name: _____

Title: _____

Address:

**VIRGINIA-AMERICAN WATER
COMPANY:**

By: _____
(Signature)

Name: _____

Title: _____

ADDRESS:

2223 Duke Street

Alexandria, VA 22314

EXHIBIT A

DESCRIPTION OF CONSULTING SERVICES

1. The Company will work with the Town to evaluate the Town's wastewater treatment plant and collection system to make recommendations regarding potential short-term maintenance and capital needs for the Town to consider pursuing.
2. The Company will work with the Town to evaluate existing permit requirements of the Town and make recommendations as to how the Town can develop a process to achieve compliance with applicable permit requirements.
3. To the extent the Town must develop corrective action plans to address violations issued against the Town, the Company will work with the Town to develop such corrective action plans and provide recommendations for how the Town can execute on such action plans.
4. To the extent the Town accepts any of the Company's recommendations, the Company will monitor the utility staff's progress on completing the recommended action on a routine basis, and report any issues or concerns related to the completion of the recommended action to the town manager.
5. The Company will be available to the Town to answer operational questions that may arise from time to time, and will do so within a reasonable time.