

EXHIBIT

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AGREEMENT

THIS AGREEMENT is made and entered into this 19 day of July, 2021, by and between WEST MCRACKEN WATER DISTRICT, hereinafter referred to as "District," and PADUCAH WATER WORKS, hereinafter referred to as "PWW";

WITNESETH:

WHEREAS, District desires to merge its entire water distribution system with water distribution system of PWW, and PWW desires to acquire the water distribution system of District; and

WHEREAS, District and PWW now desire to formalize their agreement in writing;

NOW, THEREFORE, for valuable consideration, the legal adequacy and sufficiency of which is hereby acknowledged by all parties, the parties do covenant and agree as follows:

1. TRANSFER AND ACCEPTANCE.

- 1.1 Description of Agreement. Subject to the terms and conditions of this Agreement, District hereby agrees to transfer unto PWW and PWW hereby agrees to accept from District, District's entire water distribution system. Included in this transfer and acceptance are all rights in real property, all equipment and personal property, all water storage tanks, all easement rights, all water distribution facilities, all contract rights and accounts of District, and all cash on hand. It is the intent of District and PWW that this transfer and acceptance shall include all of District's assets, including both real and personal property, and all rights, and privileges of every kind and nature, and wheresoever situated.
- 1.2 Title to be Delivered. District agrees to transfer marketable fee simple title to all of the real and personal property of District, which property shall not be subject to any lien or adverse interest of another, except as may be acceptable to PWW. PWW shall, at its cost, have a title examination performed on the property transferred herein.
- 1.3 Documents of Transfer. District shall execute all documents of transfer, including appropriate and recordable deeds of conveyance and bills of sale.
- 1.4 Assumption of Debt and Contract Agreements. In consideration of the transfer of the property of District to PWW, PWW agrees that it shall assume all of the debt of District on the date of closing. Additionally, PWW shall accept and honor all legally binding contractual agreements of District with its customers, vendors,

contractors, or developers. However, these assumption provisions shall only be enforceable subject to the following conditions:

1.4.1 District shall use best efforts to identify to PWW all District debts and contracts; and

1.4.2 All conditions precedent to closing shall have been fully satisfied and complied with.

1.5 General Provisions. This Agreement constitutes the entire agreement of the parties to this Agreement and supersedes all prior written or oral and all contemporaneous oral agreements, understandings and negotiations with respect to the subject matter hereof.

This Agreement may not be amended or modified unless in writing by all parties hereto, and no condition herein (express or implied) may be waived unless waived in writing by each party whom the condition is meant to benefit.

The section headings herein are for the convenience of the parties only and shall not affect the construction or interpretation of this Agreement.

Each of the parties hereto acknowledges that it is a sophisticated business entity who was adequately represented by counsel during negotiations regarding the provisions hereof, including, without limitation, the indemnification provisions of Section 9.9 and is fully informed regarding said provisions.

2. REPRESENTATIONS AND WARRANTIES OF DISTRICT.

2.1 Merchantable Title. District hereby represents and warrants to PWW that it has full and complete merchantable title to its real and personal properties. PWW may waive any defect at its option.

2.2 Condition of Facilities. District hereby represents that to the best of its knowledge its facilities are in compliance with all federal, state, and local law.

2.3 Financial Condition of District. District hereby represents that to the best of its knowledge the last audit and annual Kentucky Public Service Commission report substantially represent the District's financial condition.

2.4 Adverse Proceeding. District hereby represents to PWW that to the best of its knowledge it is not presently a party to any judicial or administrative proceeding, nor has it knowledge of any threatened or imminent judicial or administrative proceeding.

2.5 Operations. District hereby represents to PWW that to the best of its knowledge the operation of its water distribution system has been and continues to be in compliance with all federal, state, and local regulatory law.

- 2.6 Cooperation. District shall cooperate with all Kentucky Public Service Commission proceedings facilitating the transfer to PWW.

3. OBLIGATIONS OF DISTRICT PRIOR TO CLOSING.

- 3.1 Obligations to Continue Management of Facilities. From and after the date of the execution of this Agreement to date of closing, District shall continue the management, operation, and maintenance of District's water distribution system in a sound and responsible manner and in accordance with standard water distribution practices. Additionally, District shall continue to collect its water charges from its customers in the usual and customary manner, and shall maintain good operating and accounting records.
- 3.2 Prohibition Against Further Liability and Expenditures. From and after the date of the execution of this Agreement to date of closing, District shall not incur any additional liability or debt nor make any expenditure of funds unless such liability, debt, or expenditure is reasonably necessary to the continued operations of District, or District's compliance with its obligations as herein assumed. Additionally, District shall not enter into any additional contractual relationship with any of its customers, vendors, contractors, or developers which is not in the ordinary course of business unless the prior written consent of PWW is obtained.
- 3.3 Information to be Disclosed to PWW. District shall make reasonable efforts to identify to PWW each and every liability, debt, and contract to be assumed by PWW as provided for herein, and provide to PWW any agreements, documents or writings evidencing same. Additionally, District shall provide to PWW full and complete access to all of its files, records, documents, maps, and writings, and PWW may request that District personnel be available to PWW to be interviewed about operational matters, or otherwise provide information regarding the operation of the District.
- 3.4 Access to Real and Personal Property. District shall provide to PWW full and complete access to its real and personal properties, and each and every part of its water distribution system. PWW shall have the right to fully inspect same, and perform any test or study as relates to same. District shall identify to PWW any known defects or needs of imminent repair or replacement regarding any of the aforesaid property. Additionally, District shall identify and provide to PWW any manufacturer's warranties, documents of purchase, service agreements, or other written representations as relate to any of District's property.

4. OBLIGATIONS OF PWW PRIOR TO CLOSING.

- 4.1 Investigation. From and after the date of execution of this Agreement, PWW shall immediately commence its due diligence and inspection of the District, including the physical assets and all documents and records relating to liabilities, debts and contracts to be assumed by PWW as provided herein, and of the document and records relating to the financial worth and condition of District. PWW may employ, at its expense, any engineer, accountant, attorney, or any other expert to perform any part of the investigation to be performed by PWW.

- 4.2 Audit. From and after the date of the execution of this Agreement, PWW may, should such be deemed necessary, at its election and cost, have a certified public accountant perform an audit of District for the year 2021.
- 4.3 Documents of Transfer. PWW shall have prepared, at its cost, all documents of transfer, including any deeds or conveyance and bills of sale which shall be available for inspection by District prior to the time of closing.

5. CONDITIONS PRECEDENT TO TRANSFER AND ACCEPTANCE.

- 5.1 Conditions Precedent. Notwithstanding the foregoing transfer and acceptance, this transfer and acceptance shall be subject to the following conditions precedent:
- 5.1.1 Title to the real and personal property transferred herein shall be marketable fee simple title free and clear of all liens or adverse interests except those acceptable to PWW;
 - 5.1.2 The transfer and acceptance shall be approved, if legally necessary, by the City Commission and/or the Fiscal Court;
 - 5.1.3 The transfer and acceptance shall be approved, if legally necessary and required, by the Kentucky Division of Water;
 - 5.1.4 The transfer and assignment shall be fully and finally approved by applicable state and federal agencies, specifically including the Kentucky Public Service Commission;
 - 5.1.5 The debts to be assumed by PWW as provided for herein are acceptable to PWW at its discretion;
 - 5.1.6 The liabilities to be assumed by PWW as provided for herein are acceptable to PWW at its discretion;
 - 5.1.7 The contractual agreements to be assumed by PWW as provided for herein are acceptable to PWW at its discretion;
 - 5.1.8 District shall be solvent and in a good financial condition;
 - 5.1.9 The real and personal property to be transferred herein shall be in an acceptable condition and state of repair;
 - 5.1.10 All other representations and warranties of District to PWW have been fully satisfied and complied with; and
 - 5.1.11 PWW shall use its best efforts to obtain from the City Commission of the City of Paducah the adoption of the proposed ordinance which is attached hereto and marked Exhibit "A". Failure of the City Commission to adopt the proposed ordinance, by the date of closing, will, at District's option, be grounds to terminate this Agreement.
- 5.2 Satisfaction of Conditions Precedent. On the date of closing, all the above-referenced conditions precedent shall be fully satisfied and complied with. In the event any one of the aforesaid conditions precedent is not fully satisfied or

complied with, PWW, at its option, may terminate this Agreement, and upon such termination, the Agreement shall be of no further legal force and effect. Upon such termination, the District shall not be liable to PWW in any manner whatsoever.

6. CLOSING.

- 6.1 Date and Place of Closing. Upon PWW's determination that all conditions precedent have been fully satisfied and complied with, PWW shall immediately supply written notice of PWW's intent to close to the District. Closing shall take place as soon as practicable following the date of said notice, but in no event shall it be more than 90 days from notice, unless mutually agreed to by the parties.
- 6.2 Documents of Transfer. At the time of closing, District shall tender to PWW properly executed documents of transfer including appropriate deeds of conveyance and bills of sale. Additionally, at the time of transfer, District shall tender to PWW all of its records and documents including, but not limited to, bank accounts, customer accounts and files, engineering plans, financial statements, audits, easements, contracts with customers, etc. It is the intent of the parties herein that on the date of closing, any and all of the property, property rights and privileges shall be finally assigned and transferred to PWW.
- 6.3 Notice of Closing to District Customers. In the event there is any requirement that notification of final transfer of District's assets and property be given to the customers of District, District agrees to provide such notification.

7. OBLIGATIONS OF DISTRICT SUBSEQUENT TO CLOSING.

- 7.1 Assistance in Transition. Immediately subsequent to closing, District shall utilize its best efforts to assist PWW in transferring the customer accounts and files to PWW's system and to otherwise cooperate and assist PWW to finalize the transfer of property and the assumption of District's operations by PWW. District shall not do any act or omit to perform any act which is adverse or inimical to this Agreement.
- 7.2 Dissolution of District. At such point in time that the transfer of property from District to PWW has been fully finalized, and the assumption by PWW of District's operations had been fully effectuated, PWW, on behalf of District, shall file with the Public Service Commission and/or the McCracken County Fiscal Court a petition, application, or other pleading or document requesting dissolution of District. District shall perform all other acts necessary to finalize dissolution of District. All necessary costs, including necessary legal services relating to dissolution proceedings, shall be assumed by PWW. Upon dissolution, the existing water supply contract between District and PWW shall be deemed void.

8. POST-CLOSING OBLIGATIONS OF PWW.

- 8.1 Operations of District's Water Distribution System. From and after the date of closing, PWW shall assume full control of the operations of District's water distribution system and shall assume full responsibility for providing a quality and adequate water supply to the customers of District. It is the intention of this

Agreement that PWW shall treat all District customers in all respects the same as all present PWW customers. Additionally, PWW shall have full responsibility to repair, replace, and otherwise maintain District's former water distribution facilities. PWW shall operate and maintain the water distribution facilities in accordance with its general practices and standards which PWW utilizes in relation to its present PWW customers. Additionally, PWW will operate and maintain the water distribution facilities in accordance with all federal and state laws.

- 8.2 Rates. Water rates charged by the PWW shall be the same as charged to all PWW customers of the same class effective upon the signing of this agreement, *except* for former District Customers with a 5/8" or 3/4" meter using less than 1,000 gallons on any given month. These former District Customers will be subject to a Capital Replacement and Expansion Fee which shall be phased in over the course of four (4) years. The Capital Replacement and Expansion Fee charge to these customers will be \$0.00 at the date of this Agreement. This charge will be phased in as follows: \$1.25 beginning on July 1, 2022, \$2.50 beginning on July 1, 2023, \$3.75 on July 1, 2024, and \$5.00 on July 1, 2025. On July 1, 2026, the charge will then be equalized with all other customers of PWW.
- 8.3 Future Rate Increases. Water rate increases to the District's customers shall be based on the same percentage given to all customers of the same class uniformly across PWW, subject to the exception described in 8.2.
- 8.4 Expansion of District Water Distributions. PWW shall use its good faith and good business, engineering, and operational practices to establish water system expansions and improvements which are necessitated by reason of the growth and potential development of the present area in District. Any necessary water system expansion and improvements shall be addressed and implemented by PWW which utilizes its relation to its other customers. Additionally, any future fees, of any nature, for any customers located within District, shall be calculated and established in the same manner as the fees charged by PWW to its customers of similar class in accordance with the same general practices and standards.
- PWW shall make good faith effort to perform water system extensions and improvements so as to aid the growth and prosperity of the District area. The foregoing notwithstanding, all water extensions and improvements shall remain in the discretion of PWW and shall at all times be subject to prudent business practices and quality standards for water utilities.
- 8.5 District's Debts. PWW agrees to pay and satisfy all assumed debts of District in accordance with the arrangements made by District to its various creditors.
- 8.6 District's Contracts. PWW agrees to assume and perform all contractual obligations of District as required by law.
- 8.7 District's Attorney Fees. PWW agrees to pay and satisfy reasonable and necessary attorney fees, if any, incurred by District in reviewing this Agreement, unless such fees are the result of District's actions, inactions, or violations of this Agreement.

8.8 District Employees.

8.8.1 Offer of Employment. PWW shall offer employment to two (2) District employees.

Eric Young shall not be offered employment by PWW, but shall be offered a Severance Agreement providing a lump sum cash payment of an amount equal to six (6) months at his current District rate of pay subject to applicable taxes. Acceptance of a severance offer will be solely at the option of the employee and pursuant to a written Severance Agreement.

April Reed-Warriner and Kim Skinner shall be offered full-time employment by PWW with an hourly rate of pay equal to, or greater than, their current District hourly rates to be determined by PWW. District employees' years of service shall be carried over in regard to vacation and sick leave upon the date of closing and there shall be no waiting period for insurance benefits. Retirement benefits shall be carried over in compliance with ERISA.

In the event April Reed-Warriner or Kim Skinner declines employment by PWW or voluntarily leaves employment under PWW within thirty (30) days after hire, PWW shall provide six (6) months of severance pay at their current District rate of pay subject to applicable taxes.

8.8.2 Policies and Duties. District employees shall be subject to the same employment policies and job regulations as PWW's current employees and shall perform job duties as directed by PWW in its discretion.

8.9 Future Board Member Representation. Should a customer of District, with suitable experience and expertise, express interest in serving on the PWW Board, PWW may make a recommendation to the Mayor. District understands that appointment to the Board is within the sole discretion of the Mayor of Paducah.

9. **MISCELLANEOUS.**

9.1 Reference to PWW's General Practices and Standards. The reference in this Agreement to PWW's "general practices and standards" shall be defined to include not only the general practices and standards presently utilized by PWW, but additionally, any other practices and standards which may be utilized by PWW in the future, so long as said general practices and standards treat District customers in all respects the same as all other PWW customers. Nothing contained in this Agreement shall impair or limit PWW from amending or modifying its general practices and standards, or implementing new practices and standards. The intent of the parties hereto is that the District customers shall be treated as all other PWW customers, as they are presently treated by PWW and as they may be treated by the PWW in the future.

9.2 Applicable Law. It is mutually understood and agreed that this Agreement shall be governed by the laws of the Commonwealth of Kentucky as to both interpretation and performance.

- 9.3 Binding Effect. This Agreement shall bind and inure to the benefit of the parties hereto, and each of their respective successors and assigns.
- 9.4 Assignment. This Agreement, any interest herein, or any claim arising hereunder, shall not be transferred by either party without the prior written consent of the other party.
- 9.5 Notices. Notice to PWW and District shall be given at the following addresses:
PWW: 1800 North 8th Street, Paducah, Kentucky 42001
District: 8020 Ogden Landing Road, West Paducah, Kentucky 42086
- 9.6 Severability. The parties agree that if a court of competent jurisdiction holds anyone or more of the paragraphs or subparagraphs of this Agreement to be invalid or ineffective for any reason, any such paragraph or subparagraph will be deemed separate from the remainder of this Agreement and will not affect the validity and enforceability of the remaining provisions.
- 9.7 Indemnification. From and after the date of execution of this Agreement and after the closing, PWW agrees to fully indemnify and hold harmless the District, or any of its commissioners individually, from any claim by any persons by reason of the District entering into this Agreement or obligations which flow therefrom. PWW agrees to fully indemnify and hold harmless the District and its commissioners individually from any and all liability, costs, and damage due to injury of any person or damage to or destruction of property incident to or arising out of any act or request of PWW performed by the District or PWW after the entering of this Agreement and prior to the closing.
- 9.8 District Office. At the discretion of PWW, the District's present office may remain open for an indeterminate period of time. PWW shall retain a drop box at the location of the District's present office, for not less than five years or until PWW sells the property.

IN WITNESS WHEREOF, and pursuant to approving motions made, seconded, and unanimously passed by the Commissioners of West McCracken Water District and Paducah Water Works, the parties hereto have set their hands on the date first above written.

By: Benny J. Head
 WEST MCCRACKEN WATER DISTRICT, CHAIR

By: W. E. Barber
 PADUCAH WATER WORKS, CHAIR

STATE OF KENTUCKY)

COUNTY OF McCracken)

Subscribed and Sworn before me this 20th day of July, 2021 by

Benny Heady, chair of West McCracken Water District.

My commission expires: _____

Kinsey D. Roberts
NOTARY PUBLIC, STATE AT LARGE



STATE OF KENTUCKY)

COUNTY OF McCracken)

Subscribed and Sworn before me this 30 day of June, 2021 by
W. Edward Barker, chair of Paducah Water Works.

My commission expires: 10/30/22

[Signature]
NOTARY PUBLIC, STATE AT LARGE

