



# JEFFERSON COUNTY COMMISSION

124 East Washington Street, P.O. Box 250, Charles Town, WV 25414

**Phone:** (304) 728-3284 **Fax:** (304) 725-7916

**Web:** [www.jeffersoncountywv.org](http://www.jeffersoncountywv.org)

PRESIDENT

*Pasha Majdi*

COMMISSIONER

*Jack Hefestay*

COMMISSIONER

*Cara Keys*

COMMISSIONER

*Mike Mood*

COMMISSIONER

*Steve Stolipher*

## SPECIAL MEETING AGENDA JEFFERSON COUNTY COMMISSION

Tuesday, February 17, 2026

10:00 am

County Commission Meeting Room

393 N. Lawrence Street, Charles Town, WV—please use East Entrance

### **Zoom Broadcast (live):**

<https://us06web.zoom.us/j/84212773425?pwd=asgzbZHZRkqAkCzCMv5eQvpYma9juj.1>

Meeting ID: 842 1277 3425

Passcode: 466046

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### **Special Meeting-** **2017 Consolidation of Water and Sewer Assets in Jefferson County:** **History, Responsibilities, and Related Issues**

#### Attendance:

Jefferson County Commission (confirmed)

City of Ranson (confirmed)

City of Charles Town (invited- 1/13/26)

Charles Town Utility Board (invited- 1/13/26)

#### Agenda:

1. Purchase Agreement: History, Responsibilities, and Related Issues  
City of Ranson
2. Purchase Agreement: History, Responsibilities, and Related Issues  
Jefferson County Commission
3. Purchase Agreement: History, Responsibilities, and Related Issues  
City of Charles Town (*Reserved*)
4. Purchase Agreement: History, Responsibilities, and Related Issues  
Charles Town Utility Board (*Reserved*)
5. Adjourn

**Law Offices of Hoy Shingleton, L.C.**  
**115 Aikens Center, Suite 24**  
**Martinsburg, WV 25404**

**304-262-4773 Telephone**  
**304-262-4775 Fax**

**shinglet@comcast.net**

March 7, 2018

Ms. Ingrid Ferrell  
Executive Secretary  
Public Service Commission of West Virginia  
201 Brooks Street  
PO Box 812  
Charleston, WV 25323

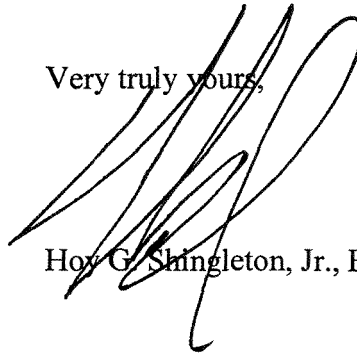
10:28 AM MAR 09 2018 PSC EXEC SEC DIV

**RE: Case No. 17-0915-PSWD-PC**  
**Case No. 18-0006-PSD-C**

Dear Ms. Ferrell:

Enclosed please find thirteen (13) copies of a proposed "Purchase Agreement" between the Jefferson County Public Service District and the City of Charles Town for the sale of the assets of the Jefferson County Public Service District.

Very truly yours,



Hoy G. Shingleton, Jr., Esquire

HGS/kms

**Enclosures**

**cc: Jane Arnett, Utility Manager**  
**Charles Town Utility Board**  
**832 South George Street**  
**Charles Town, WV 25414**

**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**

CASE NO. 17-0915-PSWD-PC

10:29 AM MAR 09 2018 PSC EXEC SEC DIV

JEFFERSON COUNTY COMMISSION  
Petition for consent and approval of dissolution of  
Jefferson County Public Service District.

CASE NO. 18-0006-PSD-C

JEFFERSON COUNTY CITIZENS FOR ECONOMIC  
PRESERVATION, SHENANDOAH JUNCTION  
PUBLIC SEWER, INC. and ARCADIA LAND, INC.  
Jefferson County,

Complainants,

v.

JEFFERSON COUNTY PUBLIC SERVICE DISTRICT,  
A public utility,

Defendant.

**NOTICE OF FILING OF AMENDED PURCHASE AGREEMENT BETWEEN THE  
JEFFERSON COUNTY PUBLIC SERVICE DISTRICT AND THE CITY OF CHARLES  
TOWN**

Comes now, Hoy G. Shingleton, Jr., counsel for the City of Charles, and files a Purchase Agreement between the Jefferson County Public Service District and the City of Charles Town for the sale of the assets of the Jefferson County Public Service District.

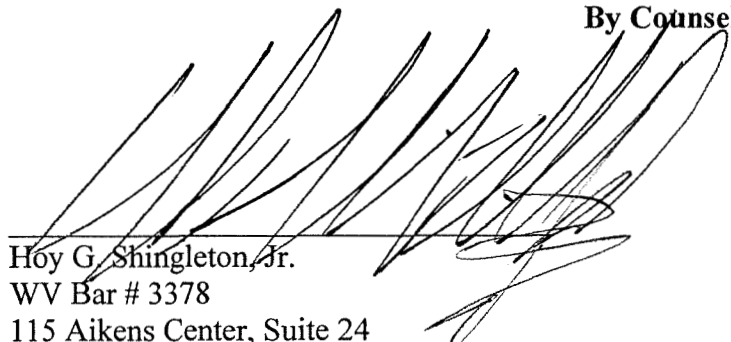
Previously, counsel for the Jefferson County Commission had filed a Purchase Agreement for the assets of the Public Service District between the Jefferson County Commission and the City of Charles Town.

This Agreement was approved by the District Board of the Public Service District on March 1, 2018 after a Public Hearing as required by Chapter 16, Article 13A, Section 8a of the Code of West Virginia. The Agreement was approved by the Charles Town City Council during its regular meeting held on March 5, 2018.

The undersigned has been authorized by counsel for both the Jefferson County Public Service District and the Jefferson County Commission to state that they and their clients concur with the filing of this Agreement.

Dated this 7<sup>th</sup> day of March, 2018.

**CITY OF CHARLES TOWN,**  
**By THE CHARLES TOWN UTILITY BOARD,**  
**By Counsel**



Hoy G. Shingleton, Jr.  
WV Bar # 3378  
115 Aikens Center, Suite 24  
Martinsburg, WV 25404  
Phone (304) 262-4773  
Fax (304) 262-4775  
[Shinglet@comcast.net](mailto:Shinglet@comcast.net)

**CERTIFICATE OF SERVICE**

I, Hoy G. Shingleton, Jr., counsel for The City of Charles Town by Charles Town Utility Board, do hereby certify that a copy of the foregoing **“Notice of Filing of Amended Purchase Agreement between the Jefferson County Public Service District and the City of Charles Town.”** has been served this 7<sup>th</sup> day of March, 2018, upon the following in the manner indicated:

**VIA Federal Epress:**

Ms. Ingrid Ferrell  
Public Service Commission  
201 Brooks Street  
Charleston, WV 25301

**VIA First Class Mail:**

Public Service Commission  
Attn: Ronald Robinson, Staff Attorney  
201 Brooks Street  
Charleston, WV 25301

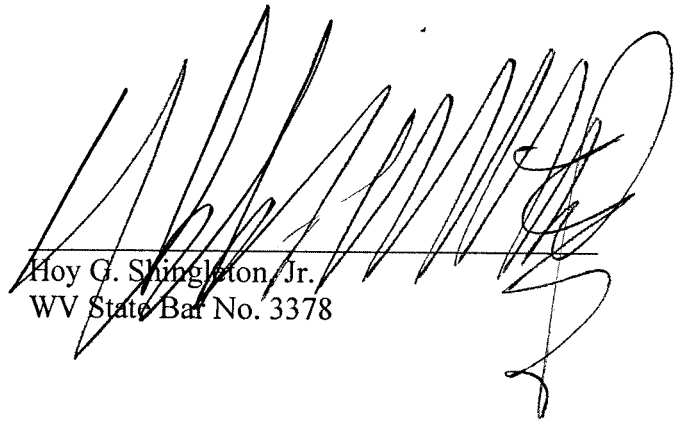
William F. Rohrbaugh  
Attorney at Law  
142 N. Queen Street  
P.O. Box 3090  
Martinsburg, WV 25402-3090

Law Offices of Hammer, Ferretti & Sciavoni  
Attn: David Hammer  
408 W. King Street  
Martinsburg, WV 25401

Hanna & Hanna, PLLC  
Attn: David Hanna  
PO Box 3967  
Charleston, WV 25339

Shuman, McCuskey & Clicer, PLLC  
Attn: Christopher Negley  
1411 Virginia Street, East  
PO Box 3953  
Charleston, WV 25339

Peter Chakmakian  
118 North George Street  
PO Box 547  
Charles Town, WV 25414



Hoy G. Shingleton, Jr.  
WV State Bar No. 3378

## PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT dated this 1<sup>st</sup> day of March, 2018, is made and entered into by and between the **JEFFERSON COUNTY PUBLIC SERVICE DISTRICT**, a public service district, public corporation and political subdivision of the State of West Virginia with its principal office at 340 Edmond Road, Suite A, Kearneysville, West Virginia, 25430 (“Seller”), and the **CITY OF CHARLES TOWN**, a municipal corporation and political subdivision of the State of West Virginia, having its principal office at P.O. Box 14, Charles Town, West Virginia, 25414, (“Purchaser,” and collectively with the Seller, the “Parties”).

### **RECITALS:**

**A. Whereas**, Seller is a public service district, public corporation and political subdivision of the State of West Virginia created by The County Commission of Jefferson County (the “County Commission”) pursuant to the provisions of Chapter 16, Article 13A of the West Virginia Code of 1931, as amended (the “PSD Act”), for the purpose of providing potable water service and sanitary sewerage service within its service territory in Jefferson County, West Virginia (the “County”);

**B. Whereas**, the Seller currently owns and operates a potable water storage and distribution system (collectively, the “District Water System”) which provides potable water service to approximately 113 customers, all residing in Jefferson County (collectively, the “District Water Customers”);

**C. Whereas**, the Seller has financed, and in certain instances, refinanced, the design, acquisition, construction and equipping of the District Water System through the issuance of the following water revenue bonds secured by the net revenues of the District Water System as authorized by the PSD Act;

- (i) Water Revenue Bonds, Series 2014 A (West Virginia DWTRF Program), dated April 17, 2014, issued in the original aggregate principal amount of \$985,350 and outstanding in the principal amount of \$916,463 as of December 31, 2017 (the “Series 2014 A Bonds”). The Series 2014 A Bonds mature September, 2045.

December 31, 2017 (the “Series 2014 A Bonds”). The Series 2014 A Bonds mature September, 2045.

(The Series 2014 A Bonds are hereinafter referred to as the “District Water Revenue Bonds”).

**D. Whereas,** the Seller currently owns and operates a sanitary sewerage collection and transmission system (collectively, the “District Sewer System”) which provides sanitary sewerage service to approximately 2,565 customers, all residing in Jefferson County (collectively, the “District Sewer Customers”);

**E. Whereas,** the Seller has financed, and in certain instances, refinanced, the design, acquisition, construction and equipping of the District Sewer System through the issuance of the following sewer revenue bonds secured by a first lien on the net revenues of the District Sewer System as authorized by the PSD Act;

- (i) Sewer Revenue Bonds, Series 1988 B, dated May 5, 1988, issued in the original aggregate principal amount of \$425,767 and outstanding in the principal amount of \$120,091 as of December 31, 2017 (the “Series 1988 B Bonds”). The Series 1988 B Bonds mature October, 2028.
- (ii) Sewer Revenue Bonds, Series 1998 B (West Virginia SRF Program), dated June 25, 1998, issued in the original aggregate principal amount of \$599,089 and outstanding in the aggregate principal amount of \$44,928 as of December 31, 2017 (the “Series 1998 B Bonds”). The Series 1998 B Bonds mature June, 2019.
- (iii) Sewer Revenue Bonds, Series 1998 C (West Virginia Infrastructure Fund), dated June 25, 1998, issued in the original aggregate principal amount of \$662,039 and outstanding in the aggregate principal amount of \$662,039 as of December 31, 2017 (the “Series 1998 C Bonds”). The Series 1998 C Bonds mature June, 2038.

- (iv) Sewer Revenue Bonds, Series 1999 A (West Virginia SRF Program), dated December 8, 1999, issued in the original aggregate principal amount of \$378,363 and outstanding in the aggregate principal amount of \$154,497 as of December 31, 2017 (the “Series 1999 A Bonds”). The Series 1999 A Bonds mature March, 2030.
- (v) Sewer Revenue Bonds, Series 2000 A (West Virginia SRF Program), dated June 22, 2000, issued in the original aggregate principal amount of \$1,154,889 and outstanding in the aggregate principal amount of \$538,944 as of December 31, 2017 (the “Series 2000 A Bonds”). The Series 2000 A Bonds mature December, 2031.
- (vi) Sewer Revenue Bonds, Series 2008 A (West Virginia SRF Program), dated June 18, 2008, issued in the original aggregate principal amount of \$2,005,000 and outstanding in the aggregate principal amount of \$1,403,476 as of December 31, 2017 (the “Series 2008 A Bonds”). The Series 2008 A Bonds mature December, 2038.
- (vii) Sewer Refunding Revenue Bonds, 2010 Series A, dated June 24, 2010, issued in the original principal amount of \$1,895,000 and outstanding in the aggregate principal amount of \$1,300,000 as of December 31, 2017 (the “Series 2010 A Bonds”). The Series 2010 A Bonds mature October, 2028.
- (viii) Sewer Revenue Bonds, 2013 Series A, dated June 14, 2013, issued in the original aggregate principal amount of \$1,660,000 and outstanding in the aggregate principal amount of \$1,270,000 as of December 31, 2017 (the “Series 2013 A Bonds”). The Series 2013 A Bonds mature June, 2028.

(Collectively the above described sewer revenue bonds, excluding the Series 2010 A Bonds and the Series 2013 A Bonds, are hereinafter referred to as the “District Sewer Revenue Bonds”).

**F.** **Whereas**, the Seller has financed, and in certain instances, refinanced, the design, acquisition, construction and equipping of the District Sewer System through the issuance of the following sewer revenue bonds secured by a second lien on the net revenues of the District Sewer System, authorized by the PSD Act, which are junior and subordinate to the District Sewer Revenue Bonds, the Series 2010 A Bonds and the Series 2013 A Bonds:

- (i) Sewer Revenue Bond (Sewer Project Development), Series 2015, dated November 3, 2015, issued in the original principal amount of \$660,000 and outstanding in the aggregate principal amount of \$584,271.22 as of December 31, 2017 (the “Series 2015 Bonds”). The Series 2015 Bonds mature November, 2030.

**G.** **Whereas**, Purchaser is a municipal corporation and political subdivision of the State of West Virginia, and, pursuant to Chapter 8, Article 20 of the West Virginia Code of 1931, as amended (the “Utility Board Act”), owns both a potable water treatment, storage and distribution system and a sanitary sewerage collection, transmission and treatment system providing service to customers within the municipal boundaries of the Purchaser and the municipal boundaries of the City of Ranson (“Ranson”) as well as certain unincorporated areas within the County, and also providing sanitary sewerage service to customers within the municipal boundaries of the Purchaser and providing bulk sewer service to the Seller and Ranson (collectively, the “CTUB System”). The CTUB System is managed and operated on behalf of the Purchaser by the Charles Town Utility Board (the “Utility Board”).

**G.** **Whereas**, the Seller desires to sell to Purchaser and Purchaser desires to purchase from Seller the District Water System and the District Sewer System and to thereafter be the certificated water utility and sewer utility in the Seller’s service territory for which Purchaser shall provide certain consideration to Seller as provided herein (collectively, the “Transaction”).

**NOW THEREFORE**, in consideration of the premises and mutual covenants and agreement set forth below the Parties agree as follows:

**Section 1: Defined Terms.**

For purposes of this Section 1 and this Agreement, the following definitions shall apply (and capitalized terms used in such definitions shall have the meanings assigned in Section

1 or the introductory paragraphs preceding Section 1):

(a) "Assets" shall mean:

(i) All Inventory (including such Inventory in transit as is covered by a vendor purchase order that Purchaser has assumed in writing);

(ii) The Real Property;

(iii) All Fixed Assets;

(iv) All of the service territories, permits, patents, trademarks, service marks, trade names, copyrights, licenses, franchise or dealer licenses and agreements, servitudes, easements, rights-of-way, orders, operating and processing agreements, options, leases of equipment or facilities, other contracts, agreements, rights and privileges, which are owned by Seller, in whole or in part, on in which Seller has an interest; and

(v) All other personal property whether tangible or intangible assets, specifically including, but not limited to, cash, deposit accounts, investment accounts, Capacity Improvement Funds, Capacity Assurance Funds, lending commitments, and accounts receivable.

(b) "Business" shall mean, collectively, the water utility business and sewer utility business currently conducted by the Seller within the Seller's service territory.

(c) "Closing Date" shall mean a date not later than ninety (90) days after all of the Conditions Precedent to Purchaser's obligation to close the Transaction set forth in this Agreement shall have been satisfied.

(d) "Developer Agreements" shall mean the agreements entered into between the Seller and any one or more developers providing for water or sewer service to real property owned by, or under the control of, such developer, which said agreements have been approved by the PSC and which remain unfulfilled by the Seller. Exhibit 1(a) hereto is a list of all Developer Agreements. Seller shall provide copies of all Agreements within thirty (30) days of the date on which this Agreement is executed.

(e) “Fixed Assets” shall mean all tangible personal property owned by the Seller in whole or in part other than Inventory and Real Property, including all water distribution mains, water treatment facilities, water storage tanks, wells, pumps, sewer collection mains, lift stations, manholes, sewer treatment facilities, vehicles, tools and equipment, and any other tangible personal property used and/or useful in providing service to the Seller water customers and Seller sewer customers.

(f) “GAAP” shall mean generally accepted accounting principles consistently applied, as modified by the Public Service Commission of West Virginia (“PSC”).

(g) “Capital Improvement Funds” shall mean the sum of all funds in the possession of the Seller paid to the Seller by customers or developers pursuant the Seller’s tariff. Attached as Exhibit 1(b) is an itemized list by payors, reflecting payor, real property, date paid and amount, of all Capital Improvement Funds held by Seller.

(h) “Capacity Assurance Agreement” shall mean all agreements entered into by the Seller and a developer to reserve capacity in the District Sewer System. Attached as Exhibit 1(c) is a list of all Capacity Assurance Agreements. Seller shall provide Purchaser copies of all Capacity Assurance Agreements within thirty (30) days of the date on which this Agreement is executed.

(i) “Capacity Assurance Funds” shall mean the sum of all funds in the possession of the Seller paid to Seller by developers pursuant to Capacity Assurance Agreements. Attached as Exhibit 1(b) is an itemized list by payors, reflecting payor, dated provided and amount, of all capital Assurance Funds held by the Seller for which capacity in the District Sewer System has not yet been provided.

(j) “Inventory” shall mean any and all goods, merchandise and other items of tangible personal property owned and held by the Seller at the Locations or held by, or on behalf of, the Seller for sale or other delivery, whether parts or components, finished goods, returned goods or otherwise.

(k) “Land” shall mean all parcels of real property, easements, rights of way, licenses and any other interest in real property owned in whole or in part by the Seller.

(l) “Liabilities” shall mean all existing or future liabilities of the Seller, matured or unmatured, fixed or contingent and known or unknown in respect of any matter or

event arising or occurring prior to the Closing Date which, if unpaid or not otherwise settled or released, would result in a liability to Purchaser or a lien on, or could otherwise be satisfied out of, the Assets.

(m) “Locations” shall mean, collectively, the places of business of the Business in Jefferson County, West Virginia.

(n) “Real Property” shall mean the Land and any and all improvements thereon, specifically including, but not limited to, any buildings, excluding, however, fixtures and other fixtures affixed to the Land or improvements thereon that can be removed without material and irreparable damage to the Land and the improvements thereon (which fixtures are included in the definition of “Fixed Assets,” above).

## **Article 2: Sale and Purchase of Assets.**

Subject to the terms and conditions of this Agreement, at the Closing provided for in Section 4, Seller shall convey all of the Assets to Purchaser in consideration for the undertaking by Purchaser of certain financial obligations as specified in this Section 2.

**2.1 Purchase Price.** As consideration for the acquisition of the Seller Assets the Purchaser shall (collectively, the “Purchase Price”):

2.1.1 Pay to the West Virginia Municipal Bond Commission, on behalf of the Seller, (i) an amount sufficient to pay, on the next prepayment date, the entire outstanding principal of, and accrued interest on, the Seller’s Sewer Revenue Bonds, Series 2010 A, and, (ii) an amount sufficient to defease, to the first call date, the entire outstanding principal of, and accrued interest on, the Seller’s Sewer Revenue Bonds, Series 2013 A.

2.1.2. Pay the holder of the District’s Sewer Revenue Bonds, Series 2015, on behalf of the Seller, an amount sufficient to pay, on the next prepayment date, the entire outstanding principal of, and all accrued interest on, the District’s Sewer Revenue Bonds, Series 2015.

2.1.3 Assume the obligations of the Seller set forth in the Developer Agreements and the Capacity Assurance Agreements.

2.1.4 Assume, subject to the consent of the holders thereof, the District’s Sewer Revenue Bonds as “Combined Waterworks and Sewerage System Revenue Bonds” of the

Purchaser.

2.1.5 Assume, subject to the consent of the holders thereof, the District's Water Revenue Bonds as "Combined Waterworks and Sewerage System Revenue Bonds" of the Purchaser.

**Section 3: Title Matters; Purchaser's Access to, Inspection of and Acceptance of Assets.**

**3.1 Title Examination.** Purchaser shall, at its expense, be responsible for conducting any title examinations and obtaining any title insurance policies it deems advisable. Title to the Real Property shall be good and marketable and insurable at regular rates by a title insurance company licensed in the State of West Virginia selected by Purchaser. The Purchaser shall notify Seller in writing of any title defects to which Purchaser objects disclosed by its examination of the title to the Real Property not later than sixty (60) days after the date of execution of this Agreement. Such notice shall specify any title defects to which Purchaser objects at the conclusion of said sixty (60) day period. Title should be conclusively deemed acceptable to Purchaser except with respect to any matters properly raised by Purchaser within said sixty (60) day period, and any title matters not objected to by Purchaser in the manner and within the time period specified herein shall be deemed to be approved, accepted or waived by Purchaser. In objecting to any defects with respect to Seller's title, Purchaser shall be obligated to act reasonably and agrees not to object to the Permitted Encumbrances or any other matters which would not materially affect the operation of and use of the Real Property for Purchaser's intended use as part of a sewer utility and/or water utility. If Purchaser objects to the condition of the title of any piece of Real Property within said sixty (60) day period, Purchaser may, at its election and in its sole discretion (i) terminate this Agreement without recourse or liability on its part, or (ii) extend the date of Closing an additional period of time, not exceeding one hundred twenty (120) days, during which time Seller shall cure the objections to title at its sole cost and expense.

**3.2 Warranty and Representation as to Title.**

(a) Seller warrants and represents to Purchaser that it has the authority to convey title to the Assets, free and clear of all claims, liens, or other encumbrances of record,

other than the Permitted Encumbrances (as this term is defined in this Section), by a covenant of special warranty.

“Permitted Encumbrances” means (i) real estate taxes and assessments both general and special, which are a lien but not due and payable at the time of Closing; (ii) those encumbrances created by or affirmatively assumed in writing by Purchaser; (iii) those encumbrances specifically set forth in this Agreement; (iv) zoning ordinances, provided the same do not interfere with Purchaser’s intended use, which is as a water utility or sewer utility; (v) state or municipal highways, roads, thoroughfares, and any easements thereof; and (vi) restrictions and utility easements of record, provided the same do not interfere with the Purchaser’s intended use as part of a water utility or sewer utility.

(b) Seller shall execute and deliver to Purchaser at Closing such deeds, assignment of easements, assignment of judgments and bill of sale and any certificates of title to any vehicles, covering all of the Assets, which shall contain a special warranty of title as to the Assets subject only to the Permitted Encumbrances. As reasonably required by Buyer, Seller shall also execute and deliver at (and after) the Closing of such other deeds, assignments, bills of sale, certificates of title and other documents or instruments which are appropriate to transfer the Assets to Buyer (collectively, the “Supplemental Assignments”).

### **3.3 Purchaser’s Access to Assets.**

(a) Purchaser and its authorized employees, agents and contractors shall be provided full access to the Assets for the purpose of conducting inspections for any purpose, specifically including, but not limited to, the existence of any environmental conditions on, under or affecting the Assets which could affect Purchaser's intended use of the Assets. Purchaser agrees to repair any material damage to the Assets resulting from Purchaser's inspections thereof and to indemnify, save and hold Seller harmless, to the extent permitted by law, from and against any and all loss, damage, cost, fine, suit, claim and liability arising as a result of Purchaser's inspections of the Assets. This indemnity shall, to the extent permitted by law, survive termination of this Agreement. Purchaser shall complete such inspections as it deems necessary within one hundred twenty (120) days of the execution of this Agreement by the Parties (the “Inspection Period”) and notify the Seller of any objections.

(b) Purchaser's Acceptance of Assets. If Purchaser, in Purchaser's sole discretion, is not satisfied with the results of Purchaser's inspections as referenced above, Purchaser may

notify Seller on or before the expiration of the Inspection Period that Purchaser is not satisfied with the results of Purchaser's inspections and that Purchaser is terminating this Agreement. Such notice shall be sent to Seller in writing on or before the expiration of the Inspection Period and, upon the transmittal of such notice by Purchaser by a method provided in Section 14 hereof, this Agreement shall be deemed terminated, canceled and of no further force or effect.

#### **Section 4: Closing.**

**4.1 Closing.** The Closing of the sale and purchase of the Assets contemplated hereby (the "Closing") shall take place on the Closing Date at 10:00 a.m. at the Law Offices of Hoy G. Shingleton, Jr., 115 Aikens Center, Suite 24, Martinsburg, West Virginia or at such other location as shall be agreed upon by the Parties.

**4.2 Delivery of Assets.** At the Closing, Seller shall deliver to Purchaser deeds, assignments, bills of sale and certificates of title and all other documentation of ownership, representing all of the Assets in proper form for transfer, thereby transferring to Purchaser good and marketable title to the Assets, free and clear of all liens, encumbrances and security interests of record, except Permitted Encumbrances.

**4.3 Simultaneous Transactions.** All actions taken and transactions consummated at the Closing shall be deemed to have occurred simultaneously and no such transaction shall be considered consummated unless all are consummated.

#### **Section 5: Conditions Precedent to the Obligations of Purchaser.**

All obligations of Purchaser to be discharged under this Agreement at the Closing are subject to the fulfillment, prior to or at the Closing, of each of the following conditions (unless expressly waived in writing by Purchaser at any time at or prior to the Closing):

**5.1** The consideration to be given by Purchaser shall not exceed the consideration outlined in Section 2.1 of this Agreement.

**5.2** There shall not have been a materially adverse change in the Business or operations of the Business.

**5.3** There shall have been no litigation instituted having as an objective the enjoining of the Transaction or seeking a lien on any Asset or any restraint on the operation of the Business which would prevent the acquisition of the District Water System and District Sewer System by

Purchaser.

**5.4** Not less than sixty percent (60%) of the duly appointed members of the Public Service Board of the Seller shall have adopted a resolution finding that it is in the best interests of the Seller and its customers to sell the Assets of the District Water System and District Sewer System to Purchaser pursuant to the terms and provisions of this Agreement, after holding a public hearing regarding the sale of the Assets as required by the PSD Act.

**5.5** The County Commission shall have approved the sale of the Assets of the District Water System and District Sewer System to the Purchaser pursuant to the terms and provisions of this Agreement as required by the PSD Act.

**5.6** The County Commission shall have adopted an Order dissolving the Seller simultaneously with the Closing pursuant to the provisions of the PSD Act.

**5.7** The PSC shall have entered a Final Order, to which all appeal periods have expired, which shall: (i) approve the terms and conditions of this Agreement; (ii) authorize the Seller to convey the Assets of the District Water System and District Sewer System; (iii) grant to the Purchaser the authority to acquire and operate the District Sewer System and the District Water System as part of the CTUB System at the tariffs approved by the PSC as of the date of the execution of this Agreement by the Parties; and (iv) approve the dissolution of the Seller simultaneously with the Closing.

**5.8** Purchaser shall have received a satisfactory opinion of Seller's counsel, dated the Closing Date, in form and substance satisfactory to Buyer, confirming the matters set forth in Sections 9.1, 9.2, 9.3 and 9.9.

**5.9** Purchaser shall have received a satisfactory opinion of Seller's counsel, dated the Closing Date, to the effect that the deeds, assignments and bill of sale, and the supplemental assignments existing at such time are each in proper form for recording in each jurisdiction where the Assets are located, and when duly executed, acknowledged and delivered by Seller to Purchaser will transfer, assign, and convey to Purchaser the Assets, free and clear of all liens and encumbrances of record, except the Permitted Encumbrances.

**5.10** Seller's representations and warranties herein shall be true, and Seller shall not be in breach of its covenants contained herein, in all material respects at the Closing.

**5.11** All consents, permits and approvals from anyone not a party hereto that may be required in connection with the performance of this Agreement or for Purchaser's operation of

the Business after the Closing Date shall have been obtained. These consents, permits and approvals shall include, but not be limited to, all consents, permits or approvals required to own and operate the Business issued by the West Virginia Department of Health, the West Virginia Division of Environmental Protection and the PSC.

**Section 6: Conditions Precedent to the Obligations of Seller.**

All obligations of Seller to be discharged under this Agreement at the Closing are subject to the fulfillment, prior to or at the Closing, of each of the following conditions (unless waived in writing by Seller at any time at or prior to the Closing):

**6.1** Purchaser shall provide to Seller the consideration as described in Section 2.1 hereof.

**6.2** There shall have been no litigation instituted having as an objective the enjoining of the Transaction.

**6.3** The Seller shall have obtained approval from the PSC and such other federal or state governmental authorities having any control over the transfer of the District Water System or the District Sewer System to the Purchaser pursuant to the terms of this Agreement.

**6.4** Seller shall have received a satisfactory opinion of Purchaser's counsel concerning Purchaser's authority to execute and perform this Agreement, the absence of conflicting agreements and such other matters as Seller's counsel shall reasonably require.

**6.5** Seller shall have received a satisfactory opinion of Purchaser's counsel that the Purchaser has adopted changes to Chapter 147 of the Purchaser's Code, effective upon consummation of the Transaction, (i) that the Utility Board will continue, following the acquisition of the Assets, to be comprised of five (5) members, each of which, having the same rights and responsibilities, shall be appointed by the Council of the Purchaser and (ii) within twenty-four (24) months of Closing the Chair of the Utility Board shall be selected by vote of the members of the Utility Board. The Purchaser will further provide that, with respect to one (1) member of the Utility Board, the Council of the Purchaser will consider the recommendation of the County Commission for the individual to serve on the Utility Board as follows:

(a) The County Commission shall have the right to nominate not more than three (3) individuals to serve as a member of the Utility Board, each of whom shall satisfy all of the following criteria:

- (i) Resident of Jefferson County, West Virginia;
- (ii) Customer of the CTUB served by the Assets of the former “District Sewer System,” or extensions thereof; and,
- (iii) Customer of the CTUB paying the same prevailing sewer rate charged to the customers of the former “District Sewer System.”

The Council of the Purchaser shall timely either (i) select one (1) of the individuals so nominated by the County Commission, or (ii) ask the County Commission to nominate not more than three (3) different individuals, each of whom shall satisfy all of the above criteria, who have not previously been so nominated for consideration by the Council of the Purchaser.

(b) If the Council of the Purchaser requests that the County Commission nominate not more than three (3) additional individuals, each of whom shall satisfy all of the above criteria, the County Commission shall nominate not more than three (3) such individuals who have not previously been nominated for consideration to serve as a member of the Utility Board.

**6.6** Seller shall have received a satisfactory opinion of Purchaser’s counsel that the Purchaser has adopted changes to Chapter 147 of the Purchaser’s Code, effective upon consummation of the Transaction, that the County Commission shall have the right to appoint an individual to serve as the “County Liaison” to the Utility Board, the identity of which individual shall be at the sole and exclusive discretion of the County Commission, and such individual as County Liaison:

(a) Shall have the right to engage in all discussion and debate at meetings of the Utility Board, with the exception of any executive session under W.V. Code Section 6-9A-1, *et seq.*, as would a member of the Utility Board, and such right to engage in discussion and debate of the Utility Board shall not be limited as would a member of the public;

(b) Shall not be voting member of the Utility Board, nor have the right to make or second any motion at a meeting of the Utility Board; and

(c) Shall receive all notices of meetings and documents and other materials provided to any member of the Utility Board either in anticipation of, or prior to, any meeting of the Utility Board, except to the extent any such documents or other materials relate to, or are in connection with, any issue which could be considered in executive session by the Utility Board pursuant to W.V. Code Section 6-9A-1 *et seq.*

## **Section 7: Representations and Warranties of Seller.**

Seller makes the following representations and warranties to Purchaser as of the date of execution of this Agreement and shall confirm same as of the Closing as set forth in this Section 7. References herein to Seller's knowledge or belief or awareness shall include the knowledge of Seller and its employees.

**7.1 Organization and Status of Seller.** Seller is a public service district, a public corporation and political subdivision of the State of West Virginia, and has the authority to transfer its assets to the Purchaser pursuant to the terms and conditions of this Agreement.

**7.2 Authority.** Seller has full right and authority to execute this Agreement, to perform its obligations hereunder and to consummate the Transaction provided for herein. All required action with respect to Seller has been taken to approve this Agreement and the Transaction contemplated hereby. This Agreement constitutes the valid and binding obligation of Seller, enforceable in accordance with its terms, subject, however, to the effect of bankruptcy, insolvency, reorganization, moratorium and similar laws from time to time in effect relating to the rights and remedies of creditors, as well as to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law). The execution and delivery of this Agreement, the consummation of the Transaction contemplated hereby and the performance by Seller of this Agreement in accordance with its terms will not require the approval or consent of, or notice to or filing with, any foreign, federal, state, county, local or other governmental or regulatory body except for approvals required by the federal and state governmental authorities as set forth in Sections 5.4, 5.5, 5.6, 5.7 and 5.11 of this Agreement.

**7.3 No Breach.** The execution, delivery and performance by Seller of this Agreement does not and will not (i) result in any violation by Seller of any law, rule or regulation, or any judgment, injunction, order, decree, permit or license of any judicial or administrative authority or any arbitrator applicable to Seller, or (ii) conflict with, breach or, with notice or the passage of time or both, result in a breach by Seller of any agreement or lease to which Seller is a party or by which Seller or any of its property may be bound. Seller is not a party to, or bound by, any judgment, injunction or decree of any court or governmental authority, or any such agreement or lease, which in any material respect may restrict or interfere with the performance of this Agreement.

#### **7.4 Financial Statements; Subsequent Events.**

**7.4.1 Financial Statements.** Seller has delivered to Purchaser the Seller's financial statements for the year ending June 30, 2017 relating to the District Water System and District Sewer System.

To the best of Seller's knowledge, after due inquiry:

#### **7.4.2 Absence of Certain Events.**

(a) Since the most recent balance sheet, the Seller has not (i) suffered any material adverse change in its business, properties, assets or liabilities, operations or financial conditions; (ii) terminated or amended, or suffered termination or amendment of, any material lease, contract or other agreement to which it is or was a party or under which it is or was bound or possessed rights; (iii) made any material change in accounting method or practice; (iv) entered into any agreement or commitment (whether or not in writing) to take or do any of the actions described in subsections (i) through (iii) above.

(b) Except as fully disclosed in this Agreement or as expressly required or permitted by this Agreement, the Seller has (i) continued the Business, conducted its operations and maintained its equipment and facilities in substantially the same manner as during the preceding fiscal year; (ii) used its best efforts to preserve the good will of its suppliers, customers, potential customers, and all others have relationships with the Business; and (iii) maintained its books, records and accounts in accordance with GAAP applied in the usual, regular and ordinary manner.

#### **7.5 Ownership and Condition of Assets.**

**7.5.1 Real Property.** Seller has the authority to convey title to the Real Property to be purchased by Purchaser pursuant to this Agreement, including, without limitation, easements and rights-of-way, free and clear of all claims, liens or other encumbrances of record, other than the Permitted Encumbrances, by a covenant of special warranty.

**7.5.2 Inventory, Accounts Receivable and Other Assets.** Seller has the authority to convey title to and ownership of all Assets, specifically including, but not limited to, fixed assets, Inventory, personal property, whether tangible or intangible, and all other assets and properties identified in this Agreement or reflected in the financial statements or acquired by or for the Business since June 30, 2017, except for those Assets disposed of in the ordinary course

of business subsequent to June 30, 2017, free and clear of all liens, encumbrances and restrictions of record, except the Permitted Encumbrances, inchoate liens prescribed by law, liens securing debt provided that fully executed releases for such liens are delivered to Purchaser (and where necessary to the release of such liens, placed of record in the applicable state and local Uniform Commercial Code and real estate records) as of the Closing Date, and other encumbrances and restrictions not securing debt and not materially and adversely affecting the value or utility of Asset, by a covenant of special warranty.

**7.6 Liabilities.** Except as explicitly permitted hereby, Seller has no knowledge of any liabilities as of June 30, 2017 (accrued, contingent or otherwise) that should have been but were not adequately reflected or adequately reserved against in the financial statements.

Except as so disclosed or agreed to by Purchaser subsequent to June 30, 2017, Seller has not incurred any liability (accrued, contingent or otherwise), including, without limitation, those of the types alluded to in the preceding sentence nor does Seller have any knowledge that any liability will be claimed or incurred in the future.

**7.7 Contracts.**

9.7.1 **Material Contracts.** Except as disclosed within thirty (30) days after the execution of this Agreement by the Parties, Seller is not a party to or bound by any written or oral contract, agreement or commitment which may be material to the Business of Seller to be maintained, owned or held as of and after the Closing Date (collectively, "Contracts"). Except for immaterial short term supply and equipment maintenance contracts, ("MROs" [*i.e.*, maintenance, repair and operation]) all Contracts shall be deemed material, and shall be included with the definition of "Contracts". Seller shall furnish the Purchaser copies of all Contracts specifically including, without limitation, MRO Contracts within thirty (30) days after the execution of this Agreement by the Parties.

**7.8 Insurance.** With respect to the Business (i) Seller has not been refused any insurance, nor has the coverage of Seller been limited by any insurer; (ii) Seller shall indemnify and hold Purchaser harmless from and against any and all claims, costs, expenses, liabilities and premiums relating to any and all such insurance policies and coverage, and any and all illnesses, injuries, claims, claims processing and handling, premiums or other matters related thereto, that occur, relate to or arise out of any time period before the Closing; and (iii) Purchaser shall have no responsibility for or with respect to any such matters and items.

**7.9 Litigation, Investigations and Claims.**

To the knowledge of the seller:

(a) There is no existing, pending or, to the knowledge of Seller, threatened litigation, arbitration, judgment, court order, decree, injunction, administrative order, claim (including, without limitation, any claim for Withdrawal Liability), dispute or process, against the Assets or the operation of the Business, whether or not allegedly in the name of Seller;

(b) There is no investigation, cessation order or notice of violation or other proceeding, administrative or otherwise, concerning the existence of any fact or facts and there are no conditions which would result in the commencement of any of the foregoing, against the Assets or the operation of the Business (if directly or indirectly related to Seller and its Business) that, in the case of either Sections 7.9(a) or 7.9(b) of this Agreement, would materially and adversely affect the Assets or the operation of the Business or that would prevent or hinder the consummation of the Transaction;

(c) The Seller is not in default in respect of any order, writ, injunction, decree or process of any arbitrator or court or of any foreign or domestic, national, state, municipal or other governmental commission, board, department or agency, which default would have a material adverse effect on either the Assets or the operation of the Business; and

(d) Seller has not received notice with respect to a charge of violation of any provision of any foreign, federal, state or local law or administrative ruling or regulation relating to any material aspect of the Business which violation, if proved, is likely to have a material adverse effect on the Assets or the operation of the Business.

**7.10 Completeness of Books and Records.** To the knowledge of Seller, the books, records and accounts of the Business accurately and fairly reflect its transactions and assets and liabilities.

**7.11 Eminent Domain or Condemnation Proceedings.** To the knowledge of the Seller, there are no eminent domain or condemnation proceedings pending or threatened against any parcel or interest in the Real Property.

**7.12 Corporate Minutes.** Seller shall make its best efforts to make available to Purchaser for inspecting true and correct copies of minutes of meetings of the Public Service Board of the Seller relating to the authorization of this Agreement.

**7.13 Taxes.** To the knowledge of Seller, there are no unpaid taxes, additions to tax,

penalties, or interest payable by Seller or by any other person that are or could become a lien on the Assets or otherwise adversely affect the operation of the Business. To the knowledge of Seller, the Seller has collected or withheld all amounts required to be collected or withheld by Seller for income, social security, unemployment, excise, or any other taxes or assessments, and all such amounts have been paid to the appropriate governmental agencies or set aside in appropriate accounts for future payment when due. To the knowledge of Seller, the financial statements fully and properly reflect, as of June 30, 2017, the liabilities of Seller for all accrued taxes, additions to tax, and penalties and any interest thereon, and interest of the Business.

**7.14 Brokers.** All negotiations relative to this Agreement and the Transaction contemplated hereunder have been conducted and carried out by the Seller directly with Purchaser and without the assistance or intervention of any other person so as, through action of the Seller or otherwise, to give rise to any valid claim against Seller for a finder's fee, broker's fee, commission or other like payment. Seller has not engaged, retained or contracted with any finder, broker or similar person with respect to the sale of the Assets, or of any part thereof, so as to incur any liability for a finder's fee, broker fee, commission or like payment in connection with the execution of this Agreement or the consummation of the Transaction contemplated hereunder.

**7.15 No Misleading or Untrue Representations or Warranties.** To the knowledge of Seller, no representation or warranty in this Agreement, the schedules hereto or any other written statement, certificate or exhibit furnished by Seller pursuant to this Agreement contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained therein not materially misleading.

### **Section 8: Representations and Warranties of Purchaser.**

Purchaser makes the following representations and warranties to Seller as of the date of the execution of this Agreement and shall confirm same as of the Closing set forth in this Section 8. References herein to Purchaser's knowledge, belief or awareness shall include the knowledge, belief or awareness of the Utility Board and its employees.

**8.1 Organization, Status and Authority of Purchaser.** Purchaser is a West Virginia Municipal Corporation and political subdivision of the State of West Virginia and has full right and authority to execute this Agreement, to perform its obligations hereunder and to

consummate the Transaction provided for herein. All required corporate action with respect to Purchaser has been taken to approve this Agreement and the Transaction contemplated hereby. This Agreement constitutes the valid and binding obligation of Purchaser, enforceable in accordance with its terms. The execution and delivery of this Agreement, the consummating of the Transaction contemplated hereby, and the performance by Purchaser of this Agreement in accordance with its terms will not require the approval or consent of, or notice to or filing with any foreign, federal, state, county, local or other governmental or regulatory body except as otherwise disclosed by this Agreement.

**8.2 No Breach.** The execution, delivery and performance by Purchaser of this Agreement do not and will not (i) result in any violation of any law, rule or regulation, or any judgment, injunction, order, decree, permit or license of any judicial or administrative authority or arbitrator applicable to Purchaser; or (ii) conflict with, breach, or with notice or the passage of time, or both, result in a breach by Purchaser of any agreement or lease to which Purchaser is a party or by which it or any of its property be bound. Purchaser is not a party to, or bound by, any judgment, injunction or decree of any court or governmental authority, or any such agreement or lease, which in any material respect may restrict or interfere with the performance of this Agreement.

**8.3 Brokers.** All negotiations relative to this Agreement and the Transaction contemplated hereunder have been conducted and carried out by the Purchaser directly with Seller and without the assistance or intervention of any other person so as, through action of the Purchaser or otherwise, to give rise to any valid claim against Purchaser for a finder's fee, broker's fee, commission or other like payment. Purchaser has not engaged, retained or contracted with any finder, broker or similar person with respect to the acquisition of the Assets, or any part thereof, so as to incur any liability for a finder's fee, broker fee, commission or like payment in connection with the execution of this Agreement of the consummation of the Transaction contemplated by this Agreement.

## **Section 9. Seller's Covenants.**

**9.1 Conduct of Business Prior to Closing.** Seller covenants that during the period from the date of execution of this Agreement by the Parties to and including the Closing Date, except as otherwise expressly required or permitted by this Agreement or approved in writing by

Purchaser:

(a) The Business will be conducted in the normal and ordinary course of business, in its current operating condition, all so as to produce during such period continuous compliance with Section 7.4.2.

(b) There will be no execution of contracts or undertakings of obligations with respect to the Business out of the normal course, specifically including, without limitation, maintenance contracts as well as agreements covered by Section 7.7.1 hereof, without prior written consent of Purchaser.

(c) Maintenance of facilities and equipment will be conducted in accordance with prudent practice.

(d) No sale, option to sell or other disposition of all, or any portion of, the Business will be made or permitted by Seller.

(e) Seller will operate and maintain the Business in a sound and prudent manner and will use its reasonable efforts not to allow any contract, lease, permit, license, franchise, certificate or privilege necessary for the operation of the Business to lapse, terminate or be in default and not to violate or to allow liability to arise under any law or regulation or any permit or license. Seller will timely file all required reports and notices with the applicable governmental agencies and authorities and will properly and timely pay all expenses, bonuses, rentals, royalties or other payments due and owing with respect to the Assets and the operation of the Business.

(f) Seller will not take or fail to take, or suffer Seller to take or fail to take, any action that would result in the representations and warranties of Seller set forth herein to be untrue at the Closing as if made at that time.

(g) Seller will collect and withhold all amounts required to be collected or withheld by Seller for income, social security, unemployment, excise, or any other taxes or assessments in respect of the Business and will pay to the appropriate governmental agencies or set aside in appropriate accounts any such amounts.

(h) Seller covenants that it will not enter into or permit the Business to enter into any collective bargaining agreement or other labor agreement with any union or other labor organization without Purchaser's prior written agreement.

## **Section 10: Purchaser's Covenants.**

**10.1 Employment of Existing Personnel.** The Purchaser shall, through the Utility Board, offer full-time employment to employees who are active employees of the Seller as of the Closing Date for a period of two (2) years, provided, however, that each individual possesses a valid driver's license, a high school diploma or GED equivalent, and passes a routine pre-screening physical, including testing for illicit drugs, and other examinations and background tests required of all other individuals for employment with the Utility Board. Excepting credited years of service and accrued vacation leave, the terms of employment for any such employee of the Seller subsequently hired by the Utility Board shall be at the sole discretion of the Utility Board, and employees may be terminated or disciplined for cause. The job descriptions and the duties of the employees of the Seller subsequently hired by the Utility Board shall be determined by the Utility Board and all such employees shall be subject to the terms and conditions of the Personnel Policies of the Utility Board. The Utility Board will credit vacation leave accrued on the financial records of the Seller of each such employee of the Seller subsequently hired by the Utility Board. The Utility Board will credit years of service of Seller employees subsequently hired by the Utility Board as if those years of service had been in the service of the Utility Board for all purposes including sick leave / paid time off and retirement benefits.

The Parties agree that employees employed by the Seller and subsequently hired by the Utility Board will be deemed by the Parties to have transferred employment without a break in service and, therefore not be subject to any notice requirement in order to leave the Seller for the Utility Board's employ.

**10.2 Extension of Service.** The Purchaser shall, at all times in the future, continue to operate the District Water System and District Sewer System in a professional and businesslike manner and will provide potable water and sanitary sewer service to all areas of the County subject only to the limitations in the Utility Board Act, provided, however, that the Purchaser is only willing to extend water or sewer service when such extension of service is technically and economically feasible. The determination as to the technical and financial feasibility of an extension of water or sewer service will be in the sole discretion of the Purchaser, provided, however, the Purchaser specifically agrees and affirms that the rules and regulations of the PSC, as presently existing or as may be modified in the future, specifically

including, but not limited to, 150 W.V. CSR 7.5.5 and 150 W.V. CSR 5.5.5., regulate the provision of public utility service to unserved customers by public utilities and the right of an individual or party seeking service to bring an action at the PSC to enforce such rules and regulations.

**10.3 Existing Seller Water Tariff.** The Purchaser will agree to enact, prior to the Closing Date, an ordinance modifying the Purchaser's existing tariff for water service to provide that the customers served by the District Water System as of the Closing Date, as well as future customers added thereon, shall be charged at the same tariff for water service from the Seller in existence as of the Closing Date. The Purchaser acknowledges and agrees that the rates and charges under the Seller's existing tariff for water service are higher than such rates and charges for water service from the Purchaser and the Purchaser agrees that it shall exercise its best efforts to equalize the rates and charges for water service of all water customers of the Purchaser within ten (10) years after the Closing Date.

**10.4 Existing Seller Sewer Tariff.** The Purchaser will agree to enact, prior to the Closing Date, an ordinance modifying the Purchaser's existing tariff for sewer service to provide that the customers served by the District Sewer System as of the Closing Date, as well as future customers added thereon, shall be charged at the same tariff for sewer service from the Seller in existence as of the Closing Date. The Purchaser acknowledges and agrees that the rates and charges under the Seller's existing tariff for sewer service are higher than such rates and charges for sewer service from the Purchaser and the Purchaser agrees that it shall exercise its best efforts to equalize the rates and charges for sewer service of all sewer customers of the Purchaser within ten (10) years after the Closing Date.

### **Section 11: Miscellaneous Provisions.**

**11.1 Release and Indemnification.** Purchaser, to the extent permitted by law, hereby agrees to indemnify, defend and hold harmless Seller from and against any and all costs, expenses, damages, losses, claims, and liabilities (collectively, the "Losses") incurred by Seller in connection with (i) any failure to perform, breach or default (whether actual or alleged) by Purchaser after Closing under any Contracts and/or Leases of Seller assumed by Purchaser, and (ii) any actions or inactions relating to the Assets that occur or arise after the Closing unless such Losses result from Seller's direct actions. These obligations of Purchaser shall survive Closing.

**11.2 Approvals.** Seller and Purchaser shall cooperate with one another in promptly complying with all applicable government filing, approval or consent requirements as may be necessary or desirable in order to close the Transaction contemplated hereunder.

### **Section 12: Termination of the Agreement.**

**12.1 Purchaser's Rights.** If any of the conditions specified in Section 5 of this Agreement are not satisfied at or prior to the Closing, and if any such condition is not waived by Purchaser, and if any such failure is not cured by Seller within thirty (30) days after written notice from the Purchaser of the failure of any such condition, or if the Closing is not held as provided in Section 4.1 for any reason other than a default by Purchaser hereunder, then Purchaser may, without liability, terminate this Agreement by written notice to Seller.

**12.2 Seller's Rights.** If any of the conditions specified in Section 6 of this Agreement are not satisfied at or prior to the Closing, and if any such condition is not waived by Seller, and if any such failure is not cured by Purchaser within thirty (30) days after written notice from the Seller of the failure of any such condition, or if Closing is not held as provided in Section 4.1 for any reason other than a default hereunder by Seller, then Seller may, without liability, terminate this Agreement by written notice to Purchaser.

**12.3 Effect of Termination.** In the event of the termination of this Agreement pursuant to the provisions of this Section 11, this Agreement shall become void and have no effect, without any liability on the part of any party hereto or its directors, officers or asset holders, in respect of this Agreement, provided that Sections 13.4 and 13.5 shall survive any such termination.

### **Section 13: Survival of Representations, Covenants and Warranties.**

**13.1 Seller's Representations, Agreements, Covenants and Warranties.** The representations, warranties, agreements and covenants made by Seller herein, except as they may be fully performed prior to or contemporaneously with the Closing, shall survive the Closing and shall be fully enforceable at law or in equity against Seller and its successors and assigns by Purchaser and its successors and assigns, until the date one (1) year following the Closing Date, provided that the foregoing one-year limitation shall not apply to any liabilities, representations,

warranties, covenants or agreements as to taxes or environmental matters or to any claims made in writing to Seller during such one-year period, or to any Claim or pending actions

**13.2 Purchaser's Representations, Agreements, Covenants and Warranties.** The representations, warranties, agreements and covenants made by Purchaser herein, except as they may be fully performed prior to or contemporaneously with the Closing, shall survive the Closing and shall be fully enforceable at law or in equity against Purchaser and its successors and assigns by Seller and its successors and assigns, until the date one (1) year following the Closing Date, provided that the foregoing one-year limitation shall not apply to any claims made in writing to Purchaser concerning Purchaser's Covenants set forth in Section 10 .

**Section 14: General Provisions.**

**14.1 Notices.** All notices, requests, demands and other communications hereunder shall be furnished to the other party at the address listed below, shall be in writing, and shall be deemed to have been duly given if delivered personally or by certified mail, return receipt requested:

(a) If to Seller to:

JEFFERSON COUNTY PUBLIC SERVICE DISTRICT  
Attn: General Manager  
340 Edmond Road, Suite A  
Kearneysville, WV 25430

Copy to:

Hammer, Ferretti & Schiavoni Law Offices  
Attn: David Hammer, Esquire  
408 W. King Street  
Martinsburg, WV 25401

(b) If to Purchaser to:

CITY OF CHARLES TOWN  
Attn: City Manager  
P.O. Box 14  
Charles Town, WV 25414

Copy to:

CHARLES TOWN UTILITY BOARD  
Attn: Jane Arnett

832 South George Street  
Charles Town, WV 25414

Law Offices of Hoy Shingleton, L.C.  
Hoy G. Shingleton, Jr., Esq.  
115 Aikens Center, Suite 24  
Martinsburg, West Virginia 25405

**14.2 Entire Agreement; Amendments.** This Agreement supersedes all prior agreements between Purchaser and Seller or any of their respective affiliates (written or oral) relating to the subject matter, is intended as an entire and complete statement of the terms of the Agreement between the Parties, and may be amended or modified only by a written instrument executed by Purchaser and Seller.

**14.3 Expenses.** Except as otherwise specifically provided herein, each party to this Agreement shall pay its own expenses (including, without limitation, the fees and expenses of their respective agents, representatives, counsel and accountants) incidental to the preparation and carrying out of this Agreement and the consummation of the Transaction.

**14.4 Confidentiality.** All books, records and documents and information provided to Purchaser in connection with this Transaction shall, to the extent permitted by law, be kept confidential and shall not be disclosed to the officers or employees of the Parties except those individuals whose assistance in the preparation and consummation of the Transaction is in good faith deemed essential. In the event that the Transaction is not consummated for any reason, all books, records and documents delivered by either party shall promptly be returned and no copies shall be retained.

**14.5 No Third Party Beneficiaries.** Nothing in this Agreement shall entitle any person other than the undersigned Parties, and the persons designated as Purchaser Indemnities or Seller Indemnities, to any claim, cause or action, remedy or right of any kind.

**14.6 Law to Govern.** This Agreement shall be executed, construed, performed and enforced in accordance with the substantive laws of the State of West Virginia.

**14.7 Section and Other Headings.** The section and other headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

**14.8 Counterparts.** This Agreement may be executed simultaneously in any number

of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**14.9 Parties in Interest.** This Agreement shall inure to the benefit of and be binding upon Purchaser, and its successors and assigns, and upon Seller, and its successors and assigns. Notwithstanding the foregoing, this Agreement shall not be assigned by any party, in whole or in part, by operation of law or otherwise, except that Purchaser may assign any or all its interests hereunder to the Utility Board.

**14.10. Currency.** All references to “dollars” or “\$” herein are references to lawful money of the United States of America.

**14.11 Public Disclosures.** Except as required by law, neither party shall make any public disclosure with respect to this Agreement without prior written notice to, and consultation with, the other party.

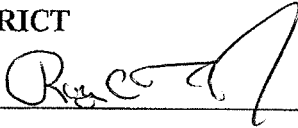
#### **Section 15: Public Service Commission.**

**15.1** Both Seller and Purchaser recognize that Seller and the Utility Board are regulated utilities subject to the jurisdiction of the PSC and they acknowledge that this Agreement or any amendments thereto must be approved by the PSC. The Parties covenant and agree that they shall make a diligent effort to secure the permission of the PSC for the approvals required of the PSC pursuant to this Agreement and any amendments thereto, and the Closing Date as set forth herein shall be extended for such time as necessary to receive such approval. In the event that any such approval of the PSC is not secured or reasonably forthcoming then either party, at its option, may declare this Agreement null and void and be released of all obligations hereunder.

IN WITNESS WHEREOF, the Parties have executed or caused this Agreement to be executed by their respective officers hereunto duly authorized, as of the date first above written.

SELLER:

**JEFFERSON COUNTY PUBLIC SERVICE DISTRICT**

By: 

Its: CHAR

PURCHASER:

**CITY OF CHARLES TOWN**

By: \_\_\_\_\_

Its: \_\_\_\_\_

IN WITNESS WHEREOF, the Parties have executed or caused this Agreement to be executed by their respective officers hereunto duly authorized, as of the date first above written.

SELLER:

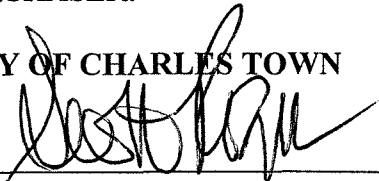
**JEFFERSON COUNTY PUBLIC SERVICE DISTRICT**

By: \_\_\_\_\_

Its: \_\_\_\_\_

PURCHASER:

**CITY OF CHARLES TOWN**

By:  \_\_\_\_\_

Its: Mayor \_\_\_\_\_

# EXHIBIT

## 1(a)

**Jefferson County Public Service District**  
**Alternate Mainline Extension Agreements**

Development	AMEA PSC Case No.	Date Initiated	Date Approved	Status	Development Complete?	Total Development EDU's Requested	Total EDU's Used	Total EDU's Remaining
Breckenridge	97-1468-PSD-ECN	N/A	2/26/1998	Final	Yes	282	282	0
Briar Run	97-1468-PSD-ECN	N/A	2/26/1998	Final	No	436	305	131
Briar Run Addenda	07-0294-PSD-PC	3/07	1/14/2009	Final				
Cambridge	97-1468-PSD-ECN	N/A	2/26/1998	Final	No	151	79	72
Cambridge Addenda	07-0294-PSD-PC	3/07	1/14/2009	Final				
Spruce Hill North	05-1487-PSD-PC	11/05	8/1/2006	Final	Yes	119	119	0
Harvest Hills	05-0908-PSD-PC	6/05	11/18/2005	Final, not signed	No	392	0	392
Beallair (and 2017 Amendment)	02-1791-PSD-PC	11/02	3/2/2004	Final	No	304	89	215
Jefferson Crossing	94-0739-PSWD-PC	8/94	4/11/1995	Final	No	287	287	0
Green Meadows/County Green	02-0650-PSD-PC	5/02	7/17/2002	Final	Yes	77	77	0
Jefferson Avenue	02-0069-PSD-PC	1/02	7/1/2002	Final	Yes	7	7	0
Norborne Glebe	00-1272-PSD-PC	6/05	11/18/2005	Final	No	1000	237	763
Robelei	95-0563-PSD-PC	6/95	10/12/1995	Final	Yes	34	34	0
Greenfield/Hillside	01-1694-PSD-PC	1/02	7/7/2002	Final	Yes	47	47	0
Thorn Hill LLC	10-1085-PSD-PC	7/10	2/16/2011	Final, not signed by Board	No	179	0	179
Jefferson County BOE (Drisswood Elementary School)	09-2056-PSD-PC	12/09	1/25/2010	Final	Yes	17	17	0
Aspen Greens (and 2013 Amendment)	12-1567-PSD-PC	11/12	6/6/2013	Final	No	203	6	197
Crosswinds	94-0753-PSD-PC	8/94	3/14/1995	Final	Yes	147	147	0
Burns Street	N/A	N/A	N/A	Signed 3/11/2005 but not submitted to PSC	No	16	11	5
Burr Business Park-Phase II (Planning Ltr 1/11/2007)	N/A	N/A	N/A	N/A	No	200	40	160
Breckenridge East	N/A	N/A	N/A	Drafted, not submitted to PSC	No	694	0	694
Butler Farms	N/A	N/A	N/A	Drafted, not submitted to PSC	No	71	0	71
Daniels Forest	N/A	N/A	N/A	Drafted, not submitted to PSC	No	192	0	192
Stonecrest	N/A	N/A	N/A	Drafted, not submitted to PSC	No	225	0	225
Jefferson Heights North (Planning letter 10/27/14)	N/A	N/A	N/A	N/A	No	135	0	135
Kings Crossing (Planning Letter 1/10/2005)	N/A	N/A	N/A	N/A	No	276	0	276

# EXHIBIT

1(b)

### Capital Improvement Fee/Capital Assurance Fee

Development	Total CIF Collected	Charles Town CIF	PSD CIF	Total CAF Collected	Charles Town CAF	PSD CAF
Huntfield	\$127,351.00	\$127,351.00				
County Green	\$94,668.00	\$94,668.00				
Aspen Greens	\$22,449.00	\$7,889.00	\$14,560.00			
Norborne Glebe	\$644,991.00	\$227,654.00	\$353,962.00			
Briar Run	\$177,597.00	\$132,986.00	\$44,611.00			
Burns Street	\$19,159.00	\$19,159.00				
Cambridge	\$22,018.00	\$15,778.00	\$6,240.00			
Robelei	\$1,127.00	\$1,127.00				
Jefferson Crossing II	\$844,218.00	\$328,678.28	\$450,539.72			
Miscellaneous	\$168,391.00	\$39,445.00	\$120,821.00			
Burr Industrial Park	\$148,558.50	\$92,977.50	\$37,706.00			
Walnut Grove	\$3,381.00	\$3,381.00				
Beallair Homes	\$172,151.00	\$104,811.00	\$47,840.00	\$57,726.00	\$20,286.00	\$37,440.00
Harris & Owens- Holiday Inn	\$72,128.00	\$72,128.00				
Breckenridge	\$2,254.00	\$2,254.00				
Spruce Hill North	\$440,017.00	\$134,113.00	\$305,904.00			
<b>Total</b>	<b>\$2,960,458.50</b>	<b>\$1,404,399.78</b>	<b>\$1,382,183.72</b>	<b>\$57,726.00</b>	<b>\$20,286.00</b>	<b>\$37,440.00</b>

\* Please see additional worksheets for development details

Total Paid to Joint Utility Account					
Year	Total EDUs	CIF per EDU (Charles Town)	Total EDUs CAF	CAF per EDU (Charles Town)	Total Deposits
FY-06	466.5	\$1,127			\$525,745.50
FY-07	96	\$1,127			\$108,192.00
FY-08	86	\$1,127			\$96,922.00
FY-09	38	\$1,127			\$42,826.00
* FY-09 (Refunded, Briar Run Lots 293-300)	(8)	\$1,127			(\$9,016.00)

FY-10	37	\$1,127			\$41,699.00
FY-11	74.64	\$1,127			\$84,119.28
* FY-11 (Refunded, Cambridge Lots 75,87,89,90 and 112 & Ricky French, 19 Flow. Acres)	(6)	\$1,127			(\$6,762.00)
FY-12	26	\$1,127			\$29,302.00
FY-13	76	\$1,127			\$85,652.00
FY-14	91	\$1,127			\$102,557.00
FY-14 (Refunded-Beallair Lot 98)	(1)	\$1,127			(\$1,127.00)
*FY-14 (Refunded, 30 EDUs-Lot 18 Burr)	(30)	\$1,127			(\$33,810.00)
FY-15	138	\$1,127			\$155,526.00
*FY-15 (Refunded, 1 EDU-85 Belvedere)	(1)	\$1,127			(\$1,127.00)
FY-16	67	\$1,127			\$75,509.00
FY-17	69	\$1,127			\$77,763.00
FY-18	26	\$1,127	18	\$1,127	\$49,588.00
<b>Total</b>	<b>1245.14</b>				<b>\$1,423,558.78</b>
* Please see additional worksheets for deposit details					

New Service added since 12/12/05 \$6.10	
Development	Total EDUs
County Green	38
Norborne Glebe	183
Briar Run	105
Burns Street	16
Cambridge	5
Jefferson Crossing II	268.24
Miscellaneous	35
Burr Industrial Park	49.5
Walnut Grove	2
Beallair Homes	88
Harris & Owens- Holiday Inn	64

Breckenridge	2
Spruce Hill North	119
Aspen Green	3
<b>Total</b>	<b>977.74</b>

# EXHIBIT

## 1(c)



**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 26<sup>th</sup> day of June 2018.

CASE NO. 17-0915-PSWD-PC

JEFFERSON COUNTY COMMISSION

Petition for consent and approval of dissolution of  
Jefferson County Public Service District.

and

CASE NO. 18-0006-PSD-C

JEFFERSON COUNTY CITIZENS FOR ECONOMIC  
PRESERVATION, SHENANDOAH JUNCTION  
PUBLIC SEWER, INC., and ARCADIA LAND, INC.,  
Jefferson County,

Complainants,

v.

JEFFERSON COUNTY PUBLIC SERVICE DISTRICT,  
a public utility,

Defendant.

**COMMISSION ORDER**

The Commission (i) grants its consent for Jefferson County Public Service District to enter into a Purchase Agreement with City of Charles Town, (ii) approves the petition filed by Jefferson County Commission to dissolve Jefferson County Public Service District and (iii) dismisses a formal complaint.

**BACKGROUND**

County Commission petition to dissolve PSD, Case No. 17-0915-PSWD-PC

On April 7, 2017, Jefferson County Commission (County Commission) filed with the Public Service Commission (Commission) an Order and Notice of a Public Hearing relating to the County Commission's proposal to dissolve Jefferson County Public Service District (PSD) contingent upon City of Charles Town (Charles Town) presenting a plan to acquire the PSD customers and assets.

On July 6, 2017, County Commission voted to dissolve PSD, subject to the consent and approval of the Commission. County Commission filed a copy of Charles Town Resolution 2017-13 that provided the terms for a Purchase Agreement to acquire the assets of PSD.

On October 31, 2017, the Commission granted petitions to intervene filed by Charles Town, PSD, Jefferson County Citizens for Economic Preservation (Citizens), Shenandoah Junction Public Sewer, Inc. (Shenandoah Junction) and Arcadia Land, Inc. (Arcadia).

On November 13, 2017, County Commission filed a copy of a Purchase Agreement between County Commission and Charles Town.

On December 11, 2017, PSD filed a Notice of Substitution of Counsel. In a separate letter, new PSD attorney David Hammer advised that on December 7, 2017, the PSD Board voted to initiate direct negotiations for the sale or transfer of the PSD utility plant and customers to Charles Town.

On December 13, 2017, the Commission granted a County Commission motion to stay further proceedings and required the parties to file an update by March 14, 2018.

#### Developers' complaint against PSD, Case No. 18-0006-PSD-C

On March 23, 2017, the Commission granted a certificate of public convenience and necessity to PSD to construct improvements to PSD's wastewater collection and transmission system (Flowing Springs Project). Jefferson Co. PSD, Case No. 16-0616-PSD-PC-CN, Comm'n Order at 24 (Mar. 23, 2017).

On January 4, 2018, Citizens, Shenandoah Junction and Arcadia (collectively, Developers) filed a formal complaint against PSD. Developers asserted that PSD failed to seek Commission approval prior to putting the Flowing Springs Project on indefinite delay. Citizens, Shenandoah Junction and Arcadia asked the Commission to (i) order PSD to complete the Flowing Springs Project and (ii) petition the Circuit Court of Jefferson County to attach the utility assets and place PSD under the sole control and responsibility of a receiver until the project was completed.

On January 16, 2018, PSD filed its Answer and Motion to Dismiss, asserting that PSD still intended to upgrade and expand sewer service in the Flowing Springs area. PSD denied the receivership allegations.

On February 6, 2018, County Commission filed a Motion to Intervene and Dismiss, arguing that (i) the issuance of a certificate by the Commission authorized a utility to construct a project, but did not create a requirement for a utility to build the

project, (ii) it was reasonable to delay the start of the Flowing Springs Project because negotiations to consolidate sewer operations in Jefferson County were at an advanced stage and consolidation would create efficiencies that were not addressed in the certificate case, and (iii) a delay recognized the status quo because the funding authorities had not authorized PSD to advertise bids for the Flowing Springs Project. County Comm'n Motion to Intervene and Dismiss at 1-5 & Memorandum of Law in Support of Motion to Intervene and Dismiss at 1-8.

### Subsequent pleadings

On February 7, 2018, the Commission consolidated Case Numbers 17-0915-PSWD-PC and 18-0006-PSD-C, granted County Commission's petition to intervene in the complaint case and required the parties to address several matters in forthcoming pleadings.

On March 9, 2018, Charles Town filed a copy of a proposed Purchase Agreement between Charles Town and PSD. The PSD Board approved the contract on March 1, 2018, after conducting a public hearing, and Charles Town approved it during a regular council meeting on March 5, 2018. Charles Town Notice of Filing of Purchase Agreement at 2.

Under the proposed Purchase Agreement, Charles Town would pay off some PSD water and sewer bonds and assume others, Charles Town's Utility Board would continue to have five members and County Commission would recommend someone for one of the board positions, and County Commission could appoint a non-voting County Liaison who could engage in discussion and debate at Utility Board meetings. Charles Town was willing to extend water or sewer service when, in Charles Town's sole discretion, it was technically and economically feasible to do so. Charles Town would charge PSD's water and sewer rates, which are higher than Charles Town's water and sewer rates, and use its best efforts to unify rates within ten years. Charles Town would offer full-time employment for two years to active PSD employees as of the date of the closing of the transaction.

On March 14, 2018, Charles Town filed its update and advised that a new industrial manufacturing plant, Roxul, would require a substantial extension of the sewer collection system in Ranson (Ranson Extension).<sup>1</sup> Charles Town hired Thrasher Engineering (Thrasher) to design the Ranson Extension, which should be finished late this year or early 2019, and coordinate construction of PSD's certificate project with the Ranson Extension. Some of the PSD improvements would connect to the Ranson

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<sup>1</sup> On February 7, 2018, the Commission granted its consent for Charles Town and Ranson to enter into a contract in which Charles Town would acquire Ranson's sewer system assets. City of Charles Town and City of Ranson, Case No. 17-1534-S-PC, Comm'n Order at 4 (Feb. 7, 2018).

Extension, and the PSD improvements should be completed before year-end 2019. Charles Town Response at 2-4 (Mar. 14, 2018).

Charles Town proposed to revise the plans and specifications for the PSD certificate project after the Commission ruled on the proposed Purchase Agreement between PSD and Charles Town and argued that a revised project would satisfy concerns of the Developers. Charles Town asserted that financing for the Ranson Extension would not affect Charles Town's acquisition of PSD assets or completion of a revised certificate project. Id. at 4-5.

On March 14, 2018, Developers filed their update, arguing that (i) the Commission determined that the Flowing Springs Project must be built and (ii) Charles Town and County Commission made clear that they planned to eliminate the Flowing Springs Project. Developers also asserted that the PSD failure to seek Commission approval prior to placing the Flowing Springs Project on indefinite delay was an unreasonable utility practice, pursuant to W.Va. Code §24-2-7. Developers' Update at 1-9 (Mar. 14, 2018).

On March 14, 2018, County Commission filed its update, asserting that the change in the majority of the PSD Board altered the focus of the dissolution case. After approval of the purchase contract between Charles Town and PSD by both County Commission and the Commission, PSD would be devoid of assets, liabilities, customers and employees. County Commission argued that PSD and Charles Town had committed to upgrade and expand sewer service in the Flowing Springs area, and proceeding with the certificate project as approved by the Commission but without taking into account the unification of the Charles Town, Ranson and PSD sewer systems, could result in the construction of redundant sewer facilities and the waste of public funds. County Commission reiterated that W.Va. Code §24-2-11 authorized, but did not obligate, a utility to construct a project after receiving a certificate. County Comm'n Update at 1-16 (Mar. 14, 2018).

On March 15, 2018, PSD filed its update, writing that PSD employees would have job stability under the Purchase Agreement to assure continuity of operations. PSD asserted that Thrasher recently recommended facilities to provide the sewer service that the Developers requested, plus additional facilities, at a lower cost to ratepayers. PSD Update at 1-5 (Mar. 15, 2018).

On March 16, 2018, County Commission filed a letter advising that the terms of the Purchase Agreement between Charles Town and PSD were in the best interests of the PSD customers and County Commission voted to provide its consent and approval of that contract. County Comm'n Letter at 1-2 (Mar. 16, 2018).

On March 29, 2018, Patricia Noland filed a letter expressing her opposition to Charles Town's acquisition of the PSD assets. Ms. Noland, a Jefferson County Commissioner, argued that Charles Town was not making a purchase, but was taking PSD assets and divesting PSD ratepayers of their investment. She asserted that the Purchase Agreement did not provide assurance that funds paid to PSD for the Capacity Assurance Fee, Capacity Improvement Fee and the Senate Bill 234 account would be used as intended and the Purchase Agreement did not obligate Charles Town to follow through with the PSD upgrades. Ms. Noland asked the Commission to deny approval of the Purchase Agreement and require construction of the certificate project. P. Noland Letter at 1-8 (Mar. 29, 2018).

On April 5, 2018, County Commission filed a copy of its Order that provided consent to the Purchase Agreement between Charles Town and PSD, subject to approval by the Commission. County Comm'n Order Approving Purchase Agreement at 1 (Apr. 5, 2018).

On April 12, 2018, Developers filed a Reply to Charles Town's Update and asked the Commission to require that the Flowing Springs Project be built as was approved in the certificate case. They asserted that Charles Town had not provided a revised certificate project for the Commission to consider and Developers did not support or endorse any alternative project. Developers Reply to Charles Town Update at 1.

On April 17, 2018, PSD filed (i) the Notice of the March 1, 2018 public hearing during which the PSD Board would consider transferring its assets to Charles Town and adopting a resolution to authorize execution of the Purchase Agreement between Charles Town and PSD, (ii) Affidavits of Publication to evidence that notice of the public hearing was published two times in February in both the Spirit of Jefferson Advocate and the Shepherdstown Chronicle, (iii) the Resolution adopted by the PSD Board following the public hearing and (iv) the minutes of the public hearing and PSD Board meeting on March 1, 2018.

On June 14, 2018, Developers filed a Request for a Status Conference, asserting that Developers remained willing to discuss alternatives to the Flowing Springs Project, but did not agree to hold their Formal Complaint in abeyance during the development of any alternatives. Developers Request at 1-6 (June 14, 2018).

On June 22, 2018, County Commission filed a Response, advising that County Commission did not oppose the entry of a scheduling Order but requested that any evidentiary hearing be scheduled as soon as possible. County Commission Response at 1-2 (June 22, 2018).

## DISCUSSION

### Sale of PSD system

Pursuant to W.Va. Code §16-13A-18a, when at least 60 percent of the board of a public service district deems it in the best interests of the utility to sell the water or sewer system, the board may do so upon such terms and conditions as the board, in its discretion, considers in the best interests of the utility provided that (i) the board publishes notice of a hearing one time in a newspaper published and of general circulation in the county in which the utility is located not earlier than 20 days and not later than seven days prior to the hearing, (ii) County Commission approves of the sale and (iii) the Commission approves of the sale.

The Resolution was unanimously approved by the PSD Board and stated that Charles Town's acquisition of the PSD water and sewer systems was in the public interest, served the public purpose of PSD and would promote the health, welfare and safety of customers. The PSD Board conducted its public hearing on March 1, 2018, and notice of that hearing was published on February 14, 16, 21 and 23, 2018, in newspapers published and of general circulation in Jefferson County, which exceeded the notice requirements of W.Va. Code §16-13A-18a. County Commission filed an Order in which County Commission found that the terms of the proposed Purchase Agreement were in the best interests of the customers of PSD and citizens of Jefferson County and granted its consent to the acquisition. The first two requirements of W.Va. Code §16-13A-18a having been satisfied, the Commission will consider whether to approve the PSD Board's proposed sale of the water and sewer utility systems to Charles Town.

W.Va. Code §24-2-12 requires a public utility to receive the prior consent and approval of the Commission before selling its assets. Under that code section, the Commission is authorized to grant its consent and approval to a proposed transaction, without approving of its terms and conditions, if the transaction is reasonable and neither party is given an undue advantage, and the transaction does not adversely affect the public in the state. The Commission further is authorized to determine if a hearing is necessary.

The Resolution states that PSD faces considerable cost and expense to continue to own, operate, maintain and upgrade its water and sewer systems. Under the proposed Purchase Agreement, Charles Town will satisfy or assume the obligations of PSD's bonds, Developer Agreements and Capacity Assurance Agreements as consideration for Charles Town's acquisition of the water and sewer systems. Charles Town will set aside one of the five seats on the Charles Town Utility Board for customers who were formerly served by the PSD and permit a non-voting County Liaison to participate in board meetings. Charles Town will charge PSD's water and sewer rates and work to unify rates

throughout the service territory within ten years. Charles Town also will offer full-time employment for two years to active PSD employees.

The Commission received more than 140 letters and online comments in favor of the sale to Charles Town. The letters of support were filed by a broad cross section of local residents and elected officials, including State Senator Patricia Rucker and Delegates Jill Upson and Riley Moore.

The Commission received three letters or online comments against the transfer. Commissioner Noland alleged that customers who live outside of the municipal boundaries may not have adequate representation, funds paid to PSD for the Capacity Assurance Fees, Capacity Improvement Fees and the Senate Bill 234 funds may not be used as intended, and Charles Town was not obligated to follow through with the PSD upgrades. Developers asserted that their interests would be best served by construction of the Flowing Springs Project as the Commission authorized in the PSD certificate case.

Senate Bill 234 (SB 234) made sweeping changes to Commission jurisdiction over public service districts and municipal utilities in 2015. Among other things, W.Va. Code §24-2-4b(a) was amended to remove from the Commission any jurisdiction over the retail rates charged by Charles Town for water and sewer public utility services, as long as Charles Town has gross revenues exceeding \$3 million and more than 4,500 customers. SB 234 also revised W.Va. Code §24-2-11(a) to delete the statutory requirement that Charles Town obtain a certificate of public convenience and necessity from the Commission before constructing any plant or facility to provide public utility service projects, other than ordinary extensions of existing systems. Further, subsection (k) was added to W.Va. Code §24-1-1 requiring water and sewer utilities that are political subdivisions of the state to maintain a working capital reserve of at least one-eighth of actual annual operation and maintenance expense, separate from and in addition to any repair and replacement funds that may be required by bond covenants.

The Legislature's decision to change oversight of retail rates for municipalities of a certain size and delete the requirement for those municipalities to obtain a certificate from the Commission prior to constructing a major utility project does not affect Charles Town's responsibilities as a public utility provider. Charles Town has always been, and remains, obligated to provide safe and adequate utility service to all of its customers, including the Developers, who will become Charles Town customers if the Commission approves the acquisition.

Developers want the sewer system improvements that were authorized in the PSD certificate case to be built and assert that Charles Town has decided not to make those improvements. Commissioner Nolan complains that the Purchase Agreement does not obligate Charles Town to follow through with the Flowing Springs upgrades. Because PSD changed its position and now supports consolidation, Developers and PSD

customers understandably may be wondering if, or how, their public utility sewer service will change.

The record before us is clear that Charles Town intends to improve sewer service in the Flowing Springs area. Charles Town hired Thrasher to coordinate construction of Flowing Springs improvements with the Ranson Extension and estimated that the Flowing Springs improvements would be completed before year-end 2019. Charles Town Update at 2-5 (Mar. 14, 2018). Charles Town asserted that a revised project could be developed in connection with the consolidation of the Charles Town, Ranson and PSD sewer systems that would satisfy the needs of the proposed Flowing Springs developments at a reduced capital cost. Charles Town filed a letter from Thrasher dated March 13, 2018, that provided potential revisions to the certificate project, a preliminary cost estimate and a project map. Id. Exs. 1-3.

County Commission likewise expects service to be improved in the Flowing Springs area, writing, “In addition, the District and the City of Charles Town have committed to work cooperatively to upgrade and expand sewer service in the Flowing Springs area, taking into account the unification of the Charles Town, Ranson and District sewer systems and the planned installation of sewer facilities related to the Roxul economic development project.” County Comm’n Update at 6 (Mar. 14, 2018).

PSD has described the certificate project funding sources of the proposed sale of its assets and anticipates that the project funding can be transferred. PSD Update at 2-3 (Mar. 14, 2018). PSD asserts that Thrasher’s assessment that more sewer service improvements can be made at a lower cost already reflects the benefits of consolidation. Id. Furthermore, in a letter filed with the Commission on December 11, 2017, PSD counsel wrote, that the PSD intends to work cooperatively with the City of Charles Town to upgrade and expand sewer service in the Flowing Springs area and to ensure that the provision of public utility services is efficiently provided to meet the needs of customers.

These specific statements by Charles Town, County Commission and PSD outweigh the speculation presented by Developers and Commissioner Noland with regard to upgrades in the Flowing Springs area. Developers may discuss with Charles Town whether the alternatives that are proposed to the certificate project are sufficient.

Commissioner Noland also asserted that customers who live outside of Charles Town’s municipal boundaries might not have adequate representation on the five-member Charles Town Utility Board. In the Purchase Agreement, Charles Town agrees to (i) consider recommendations from County Commission to fill one board seat with a customer who is served by assets of, and who pays the rate charged to customers of, the former PSD sewer system and (ii) allow a non-voting County Liaison to participate in discussion and debate in Utility Board proceedings. Charles Town already sets aside one

of the five seats for an engineer and another for the City Manager. Residents within the municipal limits will have two seats, and customers outside the municipal limits will have one seat and a non-voting advocate.

Customers of the former PSD have been guaranteed one voting board member and one non-voting advocate. The Commission expects that all members of the Charles Town Utility Board, regardless of where they reside, will be faithful to their responsibilities to consider the interests of all customers of the utility. There is no evidence to suggest and we will not presume that customers in the areas served by PSD will be inadequately served by the Charles Town Utility Board.

Commissioner Noland also suggested that Charles Town might not use funds paid to PSD for the Capacity Assurance and Capacity Improvement Fees or set aside by PSD for the Senate Bill 234 reserve account as intended. These concerns are not well founded. As the purchaser of the PSD systems, Charles Town steps into the obligations of the Capacity Assurance and Capacity Improvement Fee agreements. As a political subdivision, Charles Town is already familiar with the requirements of SB 234 relating to the working capital reserve account. Charles Town must use these designated dollars to provide the services that were contemplated in the agreements and as required by law.

Based on the record, we find that the terms and conditions of the Purchase Agreement are reasonable and do not give either party an undue advantage. We further find that that the transaction does not adversely affect the public interest.

Sufficient notice was provided by PSD and Charles Town. The substantial number of comments that the Commission received reflect that the public was well informed and engaged in the deliberative process for utility consolidation in Jefferson County. The Commission will not, therefore, require a hearing to be conducted.

Pursuant to W.Va. Code §§16-13A-18a and 24-2-12, and without approving the underlying terms and conditions, the Commission will grant its prior consent and approval for Charles Town and PSD to enter into the Purchase Agreement, subject to any required bondholder approval. The Commission also will authorize the Charles Town Utility Board to add PSD's current rates and charges to the Charles Town Utility Board tariff as a separate schedule. We encourage Charles Town to adopt a unified tariff as soon as reasonably possible and much sooner than ten years.

#### Petition to dissolve PSD

Having granted our consent for Charles Town and PSD to enter into the Purchase Agreement, we next consider County Commission's proposal to dissolve PSD.

County Commission may dissolve PSD on its own motion provided County Commission (i) conducts a hearing on the proposal not more than 40 nor less than 20 days before the date of any final county Commission action, (ii) notifies Commission of the hearing date within ten days of fixing the hearing date, (iii) publishes notice of the hearing one time in Jefferson County at least ten days prior to the hearing and (iv) files the Order to dissolve PSD with Commission for review and approval. W.Va. Code §§16-13A-2(c), (f).

County Commission conducted public hearings on May 4 and July 7, 2017; published notice of the hearings in Jefferson County on April 19 and 26, 2017, and June 21 and 28, 2017, in the Spirit of Jefferson Advocate; entered an Order to dissolve PSD on July 7, 2017; and filed the Order to dissolve PSD with the Commission on July 10, 2017, and requested Commission approval of the dissolution.

After Charles Town acquires PSD's water and sewer systems, only a shell public service district will remain, devoid of assets, liabilities, customers and employees. On April 5, 2018, County Commission filed a copy of its Order Approving the Purchase Agreement. The Commission will approve the dissolution of the shell PSD upon consummation of the Purchase Agreement.

#### Formal Complaint by Developers

Developers want the Flowing Springs Project improvements that were authorized in the PSD certificate case to be built, but remain willing to discuss alternatives. The record is clear that Charles Town intends to improve sewer service in the Flowing Springs area and Developers may discuss with Charles Town whether the alternatives that are proposed to the certificate project are sufficient. It is reasonable, therefore, to dismiss the Formal Complaint.

#### **FINDINGS OF FACT**

1. On July 6, 2017, County Commission voted to dissolve PSD, subject to the consent and approval of the Commission. County Comm'n Order of Dissolution at 1-2 (July 7, 2017).

2. On December 7, 2017, the PSD Board voted to enter into negotiations with Charles Town to transfer PSD's water and sewer system assets to Charles Town. PSD Letter at 1 (Dec. 11, 2017).

3. On March 1, 2018, the PSD Board approved the terms of the proposed Purchase Agreement with Charles Town after conducting a public hearing. Charles Town Notice of Filing of Purchase Agreement at 2 (Mar. 9, 2018).

4. On March 5, 2018, Charles Town's Council approved the terms of the proposed Purchase Agreement with PSD during a regular council meeting. Id.

5. On March 9, 2018, Charles Town asked the Commission to approve the proposed Purchase Agreement between PSD and Charles Town. Charles Town Notice of Filing Purchase Agreement at 1-2, Purchase Agreement at 1-27 & attachments (Mar. 9, 2018).

5. On March 29, 2018, County Commission entered an Order that consented to the terms of the proposed Purchase Agreement, subject to approval by the Commission. County Comm'n Order Approving Purchase Agreement at 1 (Apr. 5, 2018).

6. Developers and Commissioner Noland opposed the transfer of PSD's water and sewer systems to Charles Town and the dissolution of PSD. E.g., Developers Formal Complaint at 1-8 (Jan. 4, 2018); Commissioner Noland Ltr. at 1-8 & attachments (Mar. 29, 2018).

7. Charles Town intends to improve sewer service in the Flowing Springs area before year-end 2019. Charles Town Update at 2-5 & Exs. 1-3 (Mar. 14, 2018).

8. Developers are willing to discuss alternatives to the Flowing Springs Project that was approved in PSD's certificate case. Developers Request at 1-6 (June 14, 2018).

9. After Charles Town acquires PSD's water and sewer systems, only a shell public service district will remain, devoid of assets, liabilities, customers and employees. County Comm'n Update at 1-16 (Mar. 14, 2018).

### **CONCLUSIONS OF LAW**

1. When at least 60 percent of the board of a public service district deems it in the best interests of the utility to sell the water or sewer system, the board may do so upon such terms and conditions as the board, in its discretion, considers in the best interests of the utility provided that (i) the board publishes notice of a hearing one time in a newspaper published and of general circulation in the county in which the utility is located not earlier than 20 days and not later than seven days prior to the hearing, (ii) County Commission approves of the sale and (iii) the Commission approves of the sale. W.Va. Code §16-13A-18a.

2. W. Va. Code §24-2-12 requires a public utility to receive the prior consent and approval of the Commission before selling its assets.

3. Charles Town has always been, and remains, obligated to provide safe and adequate public utility service to all of its customers.

4. The specific statements by Charles Town, County Commission and PSD that Charles Town will improve sewer service in the area of the Flowing Springs developments outweigh the speculation presented by Developers and Commissioner Noland that Charles Town will not proceed with system upgrades.

5. All members of the Charles Town Utility Board, regardless of where they reside, are obligated to consider the interests of all customers of the utility.

6. As the purchaser of the PSD systems, Charles Town assumes the obligations of the Capacity Assurance and Capacity Improvement Fees.

7. Charles Town is subject to the requirements of SB 234 relating to the working capital reserve account.

8. Charles Town must use the dollars designated for the PSD Capacity Assurance and Capacity Improvement Fees and the SB 234 working capital reserve account to provide the services that were contemplated in the agreements and as required by law.

9. The terms and conditions of the Purchase Agreement are reasonable and neither party is given an undue advantage and the transaction does not adversely affect the public interest.

10. The Commission should approve the dissolution of PSD upon consummation of the Purchase Agreement.

11. Because the record is clear that Charles Town intends to improve sewer service in the Flowing Springs area and Developers remain willing to discuss alternatives, the Commission should dismiss the Formal Complaint.

### **ORDER**

IT IS THEREFORE ORDERED that, pursuant to W.Va. Code §§16-13A-18a and 24-2-12, and without approving the underlying terms and conditions, the Commission grants its prior consent and approval for Charles Town and Jefferson County Public Service District enter into the Purchase Agreement that was filed on March 9, 2018, subject to any required bondholder approval.

IT IS FURTHER ORDERED that Charles Town Utility Board is authorized to add Jefferson County Public Service District's current rates and charges to the Charles Town Utility Board tariff as a separate schedule.

IT IS FURTHER ORDERED that the Commission grants the request of the Jefferson County Commission to dissolve Jefferson County Public Service District upon consummation of the Purchase Agreement between Charles Town and Jefferson County Public Service District.

IT IS FURTHER ORDERED that the Request for a Status Conference is denied.

IT IS FURTHER ORDERED that the Formal Complaint is dismissed.

IT IS FURTHER ORDERED that upon entry of this Order, Case Numbers 17-0915-PSWD-PC and 18-0006-PSD-C shall be removed from the Commission's docket of open cases.

IT IS FURTHER ORDERED that the Executive Secretary of the Commission serve a copy of this Order by electronic service on all parties of record who have filed an e-service agreement, and by United States First Class Mail on all parties of record who have not filed an e-service agreement, and on Commission Staff by hand delivery.

A True Copy, Teste,



Ingrid Ferrell  
Executive Secretary

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