

**Agreement of Sale
By and Between
the City of Falls Church, Virginia,
and the Fairfax County Water Authority
for
the Acquisition of the Assets of
the Water System of Falls Church, Virginia
by
the Fairfax County Water Authority**

Dated as of January 3, 2014

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AGREEMENT OF SALE

This Agreement of Sale (“Agreement”) is made and entered into this 3rd day of January, 2014, by and between the CITY OF FALLS CHURCH, VIRGINIA, a political subdivision and an independent city of the Commonwealth of Virginia (“Falls Church” or “City”), and the FAIRFAX COUNTY WATER AUTHORITY, a political subdivision and independent water authority in the Commonwealth of Virginia (“Fairfax Water”).

RECITALS

RECITAL 1. Falls Church is a political subdivision and an independent city of the Commonwealth of Virginia, and is engaged, inter alia, in the business of acquiring, treating, storing, supplying, distributing and selling water to the public (“Water System” or “System”).

RECITAL 2. Falls Church owns, operates and maintains the System to serve its customers in the City and in portions of surrounding areas.

RECITAL 3. Fairfax Water is a political subdivision created by the Board of Supervisors of Fairfax County, Virginia, pursuant to the Virginia Water and Waste Authorities Act, and which is engaged, inter alia, in the business of collecting, treating, storing, supplying, distributing and selling water to the public through an integrated system sometimes located adjacent to Falls Church’s Water System.

RECITAL 4. Subject to the terms and conditions set forth herein, Falls Church desires to sell, and Fairfax Water desires to purchase, substantially all of the assets and rights of Falls Church used in connection with the System.

AGREEMENT

In consideration of the mutual covenants, warranties, representations and agreements set forth herein, and intending to be legally bound, Falls Church and Fairfax Water (each a "Party" and collectively referred to as the "Parties") agree as follows:

ARTICLE 1. THE TRANSACTION

1.1 Incorporation of Recitals

The recitals set forth above are incorporated herein by reference and are a part of this Agreement.

1.2 Sale and Purchase of Assets

At Closing (as defined in Section 1.10 of this Agreement), subject to the terms and conditions of this Agreement, Falls Church shall sell, assign, transfer, deliver and convey to Fairfax Water, and Fairfax Water shall purchase from Falls Church, all of the Assets (as defined in Section 1.3) for the Purchase Price (as defined in Section 1.7 and subject to adjustment as provided in Section 1.8).

1.3 Description of Assets

The term "Assets" means, subject to Sections 1.4 and 1.5 of this Agreement, all of Falls Church's right, title and interest in, under and to all of the assets, properties and rights related to the System or used in connection with the System of every kind, nature and description existing on the Closing Date (as defined in Section 1.10), wherever such assets, properties and rights are located and whether such assets, properties and rights are real, personal or mixed, tangible or intangible. The Assets are being sold subject to the "Permitted Encumbrances."

The term "Permitted Encumbrances" means: (i) any pledges, liens, charges, claims, mortgages, encumbrances, and security interests ("Liens") for property taxes, assessments or

governmental charges not yet due and payable; (ii) rights-of-way and easements that do not materially interfere with the existing use of the Real Property (as defined herein) or any of the Assets; (iii) zoning and other governmental restrictions so long as such zoning and other restrictions do not prevent or unduly burden the use of such parcel for the continued use and operation of the System; (iv) Liens incurred in the ordinary course of business for indebtedness not yet due to carriers, warehousemen, laborers, or material men and the like; (v) Liens in respect of pledges or deposits under workmen's compensation laws or similar legislation; (vi) those affecting real property, which is owned by third parties, containing easements or rights-of-way relating to the Assets which are, in each case, recorded in the appropriate land records; and (vii) matters common to any plat or subdivision in which the Real Property is located which are, in each case, recorded in the appropriate land records; provided, however, in no event shall Permitted Encumbrances include any Liens securing debt of Falls Church; and provided further that in the case of the Quitclaim Parcels, Permitted Encumbrances shall also include any Lien affecting such parcels prior to their ownership by Falls Church.

Subject to the provisions, terms and conditions of this Agreement, the Assets are being sold in their "AS-IS" and "WHERE-IS" condition, including environmental condition, operating condition and condition of repair. Fairfax Water may not rely on any representation made by Falls Church except for the representations and warranties contained in this Agreement or in any other agreement, certificate or document delivered in connection with the execution of this Agreement or the consummation of the transactions contemplated by this Agreement.

Without limiting the generality of the foregoing, and subject to Sections 1.4 and 1.5

hereof, the Assets shall include the following:

- a) all cash held by Falls Church with respect to, or on behalf of, the System, including all cash in the System's cash accounts and all cash held in the Washington Aqueduct escrow account;
- b) all Real Property; the term "Real Property" means, collectively: (i) the land and real property listed on Schedule 1.3(b)(i) which is owned by Falls Church in fee simple, including those properties acquired by Falls Church by condemnation or eminent domain (collectively, the "Fee Parcels"), (ii) all water facility easements and rights-of-way listed on Schedule 1.3(b)(ii) (collectively, the "Water Rights"), (iii) all land and real property (collectively, the "Leased Parcels") subject to a lease, license or other occupancy agreement (each a "Lease") and which is listed on Schedule 1.3(b)(iii), and (iv) the land and property, if any, listed on Schedule 1.3(b)(iv) which is subject to quitclaim deeds to Falls Church, and which is being sold to Fairfax Water without any warranty or covenant of title (collectively, the "Quitclaim Parcels");
- c) all water tanks, water distribution towers, water lines, pumping stations, pumps, water lines, water mains, service lines, distribution facilities, meters, curb boxes, curb stops, services lines, public fire hydrants, valves, fittings, and all appurtenances, along with all other tangible personal property related to the Water System;
- d) all equipment, machinery, vehicles, tools, motors, spare parts, materials, supplies, fixtures and improvements, construction in progress, jigs, molds, patterns, gauges, production fixtures, office equipment, computer systems, telephone systems and other tangible personal property related to the Water System (the "Equipment"); each item of Equipment with a book value in excess of One Thousand Dollars (\$1,000), or that is otherwise material to the operation of the System (the "Material Equipment"), is listed on Schedule 1.3(d);
- e) to the extent transferable, all of Falls Church's rights under any written or oral contract, agreement, lease, plan, instrument, registration, license, sub-license (including any railroad crossing license or sub-license), certificate, document, commitment, arrangement, undertaking, practice, authorization or approval of any nature relating to the use and operation of the System (the "Assumed Contracts"). The Assumed Contracts include, without limitation, (i) to the extent transferable, all of Falls Church's water rights, water withdrawal rights, water reservation rights, water appropriation rights and rights to water flow relating to the System ("Water Rights Agreements"), (ii) those contracts, agreements and other documents which have a value (in terms of goods provided or services rendered during the remaining term thereof) in excess of Ten Thousand Dollars (\$10,000) or are otherwise material to the operation of the System, including, without limitation, all telecommunications leases with any cellular and/or wireless service

provider (to the extent such leases are for property included in the Assets, but, in each case, excluding the Excluded Contracts, as defined in Section 1.5) (collectively, the “Material Contracts”), and (iii) subject to Section 3.4(m), the obligations listed in Schedule 1.3(e)2, Part II. All Water Rights Agreements (whether or not transferable) are listed on Schedule 1.3(e)1, and the Material Contracts, as of the date of this Agreement, are listed on Schedule 1.3(e)2;

- f) to the extent transferable, all of Falls Church's rights under any permit, franchise, license, sub-license, approval, authorization, order, registration, certificate, variance, document and any other similar rights obtained from any authority relating to the System, and all pending applications therefor (“Permits”);
- g) all job classification, service length and wage information relating to the Employees (as defined in Section 3.2 of this Agreement);
- h) all Intellectual Property related solely to the System (collectively, the “System Intellectual Property”). The term “Intellectual Property” means all (i) patents, patent applications and patent disclosures; (ii) trademarks, service marks, and applications for registration thereof together with all of the goodwill associated therewith, (iii) copyrights (registered or unregistered) and copyrightable works and registrations and applications for registration thereof; (iv) computer software (including, without limitation, source code and object code); (v) trade secrets and other confidential information (including, without limitation, ideas, formulas, compositions, inventions (whether patentable or unpatentable and whether or not reduced to practice)), know-how, products, processes, techniques, methods, research and development information and results; and (vi) copies and tangible embodiments of any of the foregoing (in whatever form or medium);
- i) all information, books, records, ledgers, files (including files on microfiche), documents, correspondence, data, plans, models, system maps, engineering records, mylars, planning, studies (including all rate studies), architectural plans, drawings and specifications, customer records and data, supplier lists, records of operations, quality control records and procedures, equipment maintenance records, manual and warranty information, laboratory books and inspection processes of the System (collectively, the “Books and Records”);
- j) all accumulated and unexpended availability fees, connection fees, and local facility charges held by Falls Church for planned improvements and expansions to the System (collectively, “Tap Fees”); and
- k) all funds for uncompleted capital projects and other uncompleted construction projects of the System, whether or not held in escrow prior to Closing.

1.4 Excluded Assets

The Assets shall not include any Excluded Assets. The term “Excluded Assets” means, collectively: all of the assets, properties or rights listed on Schedule 1.4, and each of the

following: (a) the Purchase Price; (b) any billed and unbilled accounts receivable or accounts payable to the System that relate to the period prior to Closing; (c) any of the real property of Falls Church located at City Hall and the property yard located at 217 Gordon Road, Falls Church, Virginia (“Property Yard”); (d) up to Three Million Dollars (\$3,000,000) of unrestricted or undesignated cash balances of any kind held in the System’s cash accounts (including the Washington Aqueduct escrow account) after payment of all obligations incurred by Falls Church and relating solely to the System; (e) all information, documents, opinions, reports, correspondence, emails, or other communications prepared by or sent to Falls Church or any of its counsel, consultants or other professionals that related to any aspect of matters covered by the Agreement, any previous efforts of Falls Church to sell the Water System or to establish rates related to the Water System, and any litigation regarding the Water System; (f) any other information, books, ledgers, files, documents, opinions, reports, correspondence, emails, or other communications which would, under the laws of the Commonwealth of Virginia, be considered attorney work product or attorney-client privileged communications; and (g) that certain System Intellectual Property listed on Schedule 1.4(g). The Excluded Assets shall remain the property of Falls Church.

1.5 Assumption of Contracts

At the Closing and subject to the terms and conditions of this Agreement, Falls Church shall assign to Fairfax Water, and Fairfax Water shall assume from Falls Church, the contractual rights, duties, liabilities and obligations of Falls Church arising on and after the Closing with respect to the Assumed Contracts, except that (a) subject to proration of expenses pursuant to Section 1.9, Fairfax Water shall not assume (i) any liabilities or obligations of Falls Church under such Assumed Contracts that relate to periods prior to the Closing Date, or (ii) any liabilities or obligations to the extent relating to any breach or default under any Assumed

Contract by Falls Church occurring before the Closing Date (or any liabilities or obligations arising after the Closing Date if the related breach or default occurred at any time before the Closing Date); and (b) Fairfax Water shall not assume any liabilities or obligations for any contracts, agreements or commitments listed on Schedule 1.5(b) (“Excluded Contracts”).

1.6 Assumption of Liabilities; Retained Liabilities

- a) At the Closing and subject to the terms and conditions of this Agreement, Fairfax Water shall assume and agree to pay or discharge only the following liabilities and obligations of Falls Church: (i) all duties, liabilities and obligations of Falls Church under the Assumed Contracts accruing or arising on and after the Closing Date (except for any duties, liabilities and obligations relating to periods prior to Closing); (ii) any change orders on projects in progress that were entered into between the date hereof and the Closing Date and that were requested by Fairfax Water and approved by Falls Church before the Closing Date; (iii) any duties, liabilities, and obligations related to open and outstanding permits issued by the Virginia Department of Transportation issued to Falls Church as those permits are listed on Schedule 2.1(j); and (iv) any change orders that are approved or requested by Fairfax Water after the Closing Date (collectively “Assumed Liabilities”).
- b) On and after the Closing, Falls Church shall retain and discharge: (i) all rights, duties, liabilities and obligations required to be performed under the Excluded Contracts; (ii) all duties, liabilities and obligations of Falls Church under the Assumed Contracts required to be performed prior to the Closing Date or after the Closing Date to the extent that any such duties, liabilities or obligations under the Assumed Contracts relate to any breach or default by Falls Church occurring before the Closing Date (or any liabilities or obligations arising after the Closing Date if the related breach or default occurred at any time before the Closing Date); (iii) any change orders on projects in progress that were approved by Falls Church but were not requested or approved by Fairfax Water before the Closing Date; (iv) any debt, loans or other monetary obligations of Falls Church (whether or not incurred in relation to the System); and (v) all other liabilities and obligations of Falls Church arising prior to the Closing Date, including, without limitation, those related to Taxes (as defined below) and those arising out of the ownership, operation or use of the Assets or System or the employment of the Employees, excepting only the Assumed Liabilities (collectively “Retained Liabilities”). The Retained Liabilities shall not include any amounts paid or payable by Falls Church on account of (i) certain loans previously made by the Secretary of the Treasury to the District of Columbia to provide funds for the Washington Aqueduct, (ii) certain bonds previously issued by the District of Columbia to obtain funds for the Washington Aqueduct water system, and (iii) certain debt, loans or other monetary obligations issued in connection with any agreement related to the use of water storage and/or other services at Jennings

Randolph Lake, including the Novation Agreement dated July 22, 1982 (and any amendments thereto) by and between the United States of America, the Maryland Potomac Water Authority, the Washington Suburban Sanitary Commission, the Fairfax County Water Authority, and the District of Columbia, and any of such parties' successors or assigns (collectively, the "Non-Falls Church Water Supply Obligations," each of which, and their respective amounts outstanding, is listed on Schedule 1.6(b)). Certain of the Retained Liabilities are listed on Schedule 1.5(b).

1.7 Purchase Price

The total purchase price for the Assets (not including the lease of a portion of the Property Yard) to be paid by Fairfax Water to Falls Church as consideration hereunder is the amount of Forty Million Dollars (\$40,000,000) (the "Unadjusted Purchase Price"), which shall be subject to adjustment as set forth in Section 1.8 of this Agreement (as adjusted, the "Purchase Price").

1.8 Adjustments to Unadjusted Purchase Price; Reconciliation

- a) The Purchase Price will be determined by reducing and/or increasing the Unadjusted Purchase Price, on a dollar-for-dollar basis, as follows:
 - (i) [reserved];
 - (ii) such amount shall be reduced by the amount, if any, by which Tap Fees are less than Twenty-Six Million Six Hundred Thousand Dollars (\$26,600,000);
 - (iii) such amount shall be reduced by the amount of any contract retainage held by Falls Church for the Assumed Contracts which is not remitted to Fairfax Water at Closing;
 - (iv) such amount shall be increased by the amount of the verifiable cost to Falls Church of any capital improvements, other than Ordinary Course Improvements, which Falls Church makes to the System after the date of this Agreement and prior to Closing, provided, that any such capital improvement is approved by Fairfax Water. The term "Ordinary Course Improvements" means any repairs, replacements and items occurring in the ordinary course of business to provide adequate service to Falls Church's customers; and
 - (v) such amount shall be reduced by the amount of all accrued Employee benefits, as stated on Schedule 1.8(a)(v), for which (i) the Employee is entitled during the calendar year that includes the Closing Date, and (ii) the Employee has not taken, used or been compensated prior to Closing, or

will be compensated by Falls Church on January 17, 2014, the first regularly scheduled pay day after the Closing.

- b) At least ten (10) days prior to the Closing, Falls Church delivered to Fairfax Water a statement (in the form of Exhibit 1.8(b)) setting forth Falls Church's good faith estimated calculation of the Purchase Price in accordance with Section 1.8(a) (the "Estimated Purchase Price Calculation Statement"), together with supporting documentation for such amounts and any additional information reasonably requested by Fairfax Water. Such statement was prepared in consultation with Fairfax Water. After consultation with Fairfax Water, such statement may be updated by Falls Church prior to the Closing (the "Updated Purchase Price Calculation Statement"). The Unadjusted Purchase Price, as reduced or increased to reflect the estimate set forth on the Estimated Purchase Price Calculation Statement, or the Updated Purchase Price Calculation Statement as applicable, is referred to as the "Estimated Purchase Price." At Closing, Fairfax Water shall pay the Estimated Purchase Price to Falls Church.
- c) Within forty-five (45) days after Closing, Fairfax Water shall prepare and deliver to Falls Church a draft statement showing Fairfax Water's good faith calculation of the final Purchase Price in accordance with Section 1.8(a) and any difference between the Estimated Purchase Price (as derived from the Estimated Purchase Price Calculation Statement, or the Updated Purchase Price Calculation Statement as applicable) and the actual amount of the adjustments to the Purchase Price set forth in this Section 1.8(a) as reasonably calculated by Fairfax Water in accordance with GAAP (the "Draft Purchase Price Reconciliation Statement").

If Falls Church has no objections to the Draft Purchase Price Reconciliation Statement, such draft shall be considered final and shall constitute the final Purchase Price Reconciliation Statement (as defined below). If Falls Church has any reasonable objections to the Draft Purchase Price Reconciliation Statement, Falls Church shall deliver a detailed statement describing its objections to Fairfax Water within forty-five (45) days after receiving the Draft Purchase Price Reconciliation Statement. Fairfax Water and Falls Church will use their commercially reasonable efforts to resolve any such objections. Fairfax Water shall make available to Falls Church all documents, figures and other materials used by Fairfax Water in preparing the Draft Purchase Price Reconciliation Statement, and Falls Church shall make available to Fairfax Water all documents, figures and other materials used by Falls Church in preparing any objection to the Draft Purchase Price Reconciliation Statement. All such documents, figures and materials must be made available by each party at reasonable times and upon reasonable notice. If a final resolution is not obtained within thirty (30) days after Fairfax Water has received the statement of objections, Fairfax Water and Falls Church will engage a nationally recognized firm of certified public accountants with a nationwide audit and accounting practice reasonably acceptable to Fairfax Water and Falls Church (the "Independent Accountant") to resolve any remaining objections and whose resolution shall be binding on the parties. If Fairfax Water and Falls Church are unable to agree on the identity of

the Independent Accountant, Fairfax Water and Falls Church shall each have the right to request the American Arbitration Association to appoint the Independent Accountant. Fairfax Water and Falls Church will execute, if required by the Independent Accountant, a customary and reasonable engagement letter.

Fairfax Water and Falls Church will each submit to the Independent Accountant a written statement setting forth such party's proposed resolution of each unresolved objection and any supporting data and analysis. Fairfax Water and Falls Church shall instruct the Independent Accountant to make its determination as an expert and not as an arbitrator. In making its determination, the Independent Accountant shall decide only the unresolved objections. Upon final resolution of all objections, Fairfax Water will revise the Draft Purchase Price Reconciliation Statement as appropriate to reflect the resolution of Falls Church's objections (as agreed upon by Fairfax Water and Falls Church or as determined by the Independent Accountant) and deliver it to Falls Church within ten (10) days after the resolution of such objections. Such revised statement shall constitute the "Final Purchase Price Reconciliation Statement."

To the extent that the Final Purchase Price Reconciliation Statement shows that the Purchase Price is more than the Estimated Purchase Price, Fairfax Water shall pay the difference in those amounts to Falls Church in immediately available funds within five (5) business days of Fairfax Water's delivery of the Final Purchase Price Reconciliation Statement. To the extent that the Final Purchase Price Reconciliation Statement shows that the Purchase Price is less than the Estimated Purchase Price, Falls Church shall pay the difference in those amounts to Fairfax Water in immediately available funds within five (5) business days of the delivery of Fairfax Water's delivery of the Final Purchase Price Reconciliation Statement.

- d) If any unresolved objections are submitted to the Independent Accountant for resolution as provided above, the fees and expenses of the Independent Accountant in resolving all such objections shall be borne by (i) Fairfax Water in an amount equal to the proportion of the total disputed amount that the Independent Accountant finds in favor of Falls Church, and (ii) Falls Church in an amount equal to the proportion of the total disputed amount that the Independent Accountant finds in favor of Fairfax Water. Notwithstanding anything herein to the contrary, the dispute resolution mechanism contained in this Section 1.8 shall be the sole and exclusive mechanism for resolving disputes regarding any adjustments to the Purchase Price.

1.9 Proration of Expenses

The following expenses will be calculated and prorated as of the Closing Date in accordance with this Section 1.9. Falls Church shall pay those expenses incurred during the

period up to the Closing Date, and Fairfax Water shall pay those expenses incurred from the period on and after the Closing Date:

- a) electric, fuel, gas, telephone, water and other charges, in each case, to the extent relating to the System (other than the Excluded Assets and the Excluded Contracts); and
- b) rentals and other charges under the Assumed Contracts, subject to the limitations set forth in Section 1.5 of this Agreement.

1.10 Closing

The date of closing of this transaction (“Closing Date”) shall occur on the later of January 3, 2014, or five (5) business days after satisfaction (or waiver) of the conditions to Closing set forth in Article 4 of this Agreement, or on such other date mutually agreed to by the Parties in writing.

On the Closing Date (at a time of day to be mutually agreed upon by the Parties), subject to the terms and conditions of this Agreement, the acts of closing this transaction (“Closing”) shall occur and title and possession of the Assets shall be sold, assigned, transferred, delivered and conveyed to Fairfax Water.

Closing shall take place at Falls Church City Hall or such other location as the Parties may mutually agree in writing.

1.11 Deliveries at Closing by Falls Church to Fairfax Water

At Closing, Falls Church shall deliver (or cause to be delivered) to Fairfax Water the following documents and items which must each be in form and substance reasonably acceptable to Fairfax Water and its counsel and duly executed and acknowledged by Falls Church (as appropriate):

- a) bill of sale with respect to the Assets (in the form attached hereto in Exhibit 1.11(a));

- b) title certificates to any motor vehicles included in the Assets (together with any other transfer forms necessary to transfer title to such vehicle);
- c) an assignment of all Water Rights (in the forms attached hereto in Exhibit 1.11(c) and Exhibit 1.11(c)(1)), in recordable form;
- d) a deed (in the form attached hereto in Exhibit 1.11(d)), in recordable form, which is sufficient to convey to Fairfax Water good and valid title to all Fee Parcels;
- e) a quitclaim deed for the Quitclaim Parcels (in the form attached hereto in Exhibit 1.11(e)), in recordable form;
- f) a Foreign Investment in Realty Property Tax Act Certification and Affidavit for the Real Property, duly executed by Falls Church;
- g) Falls Church's Closing Certificate pursuant to Section 4.1(d) of this Agreement;
- h) all agreements and other documents expressly required by this Agreement;
- i) Falls Church's updated meter reading information pursuant to Section 3.2(i) of this Agreement;
- j) a receipt for the payment of the Estimated Purchase Price;
- k) the Assignment and Assumption Agreement with respect to the Assumed Contracts and Permits (in the form attached hereto in Exhibit 1.11(k));
- l) the General Assignment Agreement (in the form attached hereto in Exhibit 1.11(l));
- m) a Deed of Easement (in the form attached hereto in Exhibit 1.11(m), in recordable form, for the Assets located on Falls Church's public property (the "Easement");
- n) all of the System's accumulated and unexpended Tap Fees;
- o) an agreement substantially in the form attached hereto as Exhibit 1.11(o), regarding sewer billing services;
- p) an agreement regarding the collection of fees, bills and other amounts due to Fairfax Water at locations within Falls Church, in the form attached hereto as Exhibit 1.11(p);
- q) a lease for a portion of the Property Yard, substantially in the form of Exhibit 1.11(q);
- r) a settlement statement, agreed to by Fairfax Water and Falls Church, showing the payment of the Estimated Purchase Price and all other adjustments, prorations and allocations required under this Agreement (the "Settlement Statement");

- s) the Pension Amount, as may be adjusted as set forth in Section 3.1(g);
- t) the OPEB Amount, as may be adjusted as set forth in Section 3.1(h); and
- u) all other instruments, documents or agreements (which, where necessary or desirable, will be in recordable form) that, in the reasonable opinion of Fairfax Water and its counsel, are necessary to transfer the Assets to Fairfax Water in accordance with this Agreement including, without limitation, true and correct copies of (i) bank and investment statements relating to the System to confirm account balances as of the Closing Date, (ii) transactional records relating to the System from June 30, 2013 through the Closing Date, and (iii) trial balances relating to the System from June 30, 2013 through the Closing Date (the items referred to in clauses (i)-(iii) above will be referred to as the “Financial Deliverables”).

1.12 Deliveries at Closing by Fairfax Water to Falls Church

At the Closing, Fairfax Water shall deliver (or cause to be delivered) to Falls Church the following documents which must each be in form and substance reasonably acceptable to Falls Church and its counsel and duly executed and acknowledged by Fairfax Water (as appropriate):

- a) a wire transfer of immediately available funds in an amount equal to the Estimated Purchase Price, subject to the prorations and adjustments set forth in this Agreement, to such account (or accounts) as shall be designated by Falls Church which payment shall net out, and be reduced by, all amounts required to be paid to Fairfax Water by Falls Church under this Agreement (including, without limitation, all fees, advances, retainage amounts and other sums specified in this Agreement), all as shown on the Settlement Statement;
- b) Fairfax Water's Closing Certificate pursuant to Section 4.2(c) of this Agreement;
- c) a duly executed counterpart to any document requiring the signature of Fairfax Water and referenced in Section 1.11 including the Settlement Statement;
- d) all agreements and other documents required by this Agreement;
- e) a receipt for the payment by Falls Church of the Pension Amount, as may be adjusted as set forth in Section 3.1(g);
- f) a receipt for the payment by Falls Church of the OPEB Amount, as may be adjusted as set forth in Section 3.1(h); and
- g) all such other documents that are, in the reasonable opinion of Falls Church and its counsel, necessary to consummate the transactions contemplated by this Agreement.

**ARTICLE 2.
REPRESENTATIONS AND WARRANTIES**

2.1 Representations and Warranties of Falls Church

Falls Church represents and warrants to Fairfax Water, as of the date hereof and as of the Closing Date, as follows in this Section 2.1. As used in this Agreement, the term “Knowledge of Falls Church” and terms of like import mean the actual knowledge of Falls Church’s Director of Public Utilities, City Manager, Chief Financial Officer, Director of Human Resources and Chief Engineer, after due inquiry of their subordinates who have responsibility for the relevant subject matter(s) of any representations and warranties made by Falls Church under this Agreement that are qualified as to the Knowledge of Falls Church. Notwithstanding the foregoing, none of the individuals listed above will have any personal liability with respect to the representations and warranties made by Falls Church under this Agreement, and Fairfax Water waives any right it may have to pursue those individuals if any representation or warranty made by Falls Church under this Agreement is discovered or proven to be false, inaccurate or misleading.

- a) **Organization and Good Standing.** Falls Church is a political subdivision and an independent city duly organized, validly existing and in good standing under the laws of the Commonwealth of Virginia.
- b) **Authorization; Execution and Delivery; Enforceability.** Falls Church has the full power and lawful authority to (i) execute this Agreement and to perform its obligations contemplated hereby, and (ii) operate the System as it is now being operated and to own and operate and hold under lease the Assets as, and in the places where, such Assets are now owned, operated and held and to perform its obligations under the Assumed Contracts. Falls Church has duly and validly authorized the execution of this Agreement and the other agreements, instruments and documents to be delivered by Falls Church in connection herewith. Falls Church has duly executed and delivered this Agreement. This Agreement constitutes (and the other agreements, instruments and documents to be delivered by Falls Church in connection herewith will constitute, when executed and delivered) the legal, valid and binding obligations of Falls Church, enforceable against Falls Church in accordance with their terms, except as such enforceability may be limited by applicable Laws (as defined in Section 2.1(j)(i)) relating to bankruptcy, insolvency, fraudulent conveyance, or reorganization or affecting

creditor's rights generally and by general principles of equity, regardless of whether considered in a proceeding at law or equity.

- c) **Noncontravention**. Except as set forth on Schedule 2.1(c), the execution and delivery by Falls Church of this Agreement and of the other agreements, instruments and documents to be delivered by it in connection herewith, and its performance of its obligations hereunder and thereunder, do not and will not, directly or indirectly, with or without the giving of notice or lapse of time (or both) (i) require any further notice to, filing or registration with, or approvals or consents from any Governmental Authority or third party; (ii) conflict with or violate Falls Church's organizational documents or any Law or order binding on Falls Church or any of its assets or properties; (iii) conflict with or result in a breach of, or constitute a default under, any contract, lease, permit or other agreement or commitment to which Falls Church is a party or by which any of its properties or assets are bound; (iv) result in any party to any of the Assumed Contracts having a right of cancellation or termination thereof or right to exercise any option thereunder or result in any other loss or impairment of any right or license granted to Falls Church; or (v) except as provided for under Sections 3.4(n) and (o), result in the creation or imposition of any Liens upon any of the Assets or any Real Property. The term "Governmental Authority" means any foreign, international, federal, state, local, municipal or administrative, regulatory, self-regulatory, governmental or quasi-governmental authority of any nature (including, without limitation, any governmental agency, branch, bureau, commission, department, instrumentality, official or entity and any court or other tribunal), or any administrative, executive, judicial, legislative, police, regulatory or taxing authority, or arbitral body.
- d) **No Pending Litigation or Proceeding**. Except as listed on Schedule 2.1(d): (i) there is no action, claim, litigation, arbitration, proceeding, judgment, injunction, audit or legal, administrative or governmental investigation by or before any Governmental Authority pending or, to the Knowledge of Falls Church, threatened against Falls Church relating to the System (including the Assets and the Assumed Contracts) or the transactions contemplated by this Agreement; (ii) to the Knowledge of Falls Church, no event has occurred or circumstances exist that are reasonably likely to give rise to, or serve as a basis for, the commencement of any such proceeding; and (iii) there is no outstanding judgment or order to which Falls Church or any of the Assets or Assumed Contracts is subject.
- e) **Title to and Sufficiency of Assets**. Falls Church owns good and valid title to the Fee Parcels, free and clear of any and all Liens, except the Permitted Encumbrances. As of the Closing Date, good and valid title to such Fee Parcels will pass to Fairfax Water, free and clear of all Liens, except the Permitted Encumbrances. As of the Closing Date, any interest Falls Church may possess in the Quitclaim Parcels will pass to Fairfax Water, free and clear of all Liens except the Permitted Encumbrances. The Assets and Assumed Contracts (including all personal property leased pursuant to the Assumed Contracts) constitute all

tangible and intangible assets, contracts and rights related to and necessary for the operation of the System by Fairfax Water on and after the Closing Date in accordance with Falls Church's past practice, other than with respect to the Excluded Assets and the Excluded Contracts. The Assets and Assumed Contracts do not include any equity or debt securities of or interest in, or any right or obligation to acquire any equity or debt securities of or interest in, any entity.

- f) **Books and Records.** The Books and Records are complete and correct in all material respects. Falls Church has made available to Fairfax Water for examination the originals or true and complete copies of all documents material to the System and all other documents that Fairfax Water has requested in connection with the transactions contemplated by this Agreement, except for documents that are Excluded Assets.
- g) **Accuracy of Information.** To the Knowledge of Falls Church, neither this Agreement nor any other document, agreement or certificate provided by Falls Church to Fairfax Water in connection with the transactions contemplated hereby contains an untrue statement of a material fact or omits to state a material fact necessary to make the statements contained herein or therein not misleading.
- h) **Assumed Contracts.** Falls Church has made available to Fairfax Water true and complete copies of all of the Assumed Contracts (including all amendments or modifications thereto) or, in the case of any oral Assumed Contracts, true and complete written summaries of the terms thereof as set forth in Schedule 2.1(h). Each Assumed Contract is legal, valid, binding, enforceable and in full force and effect as to Falls Church and, to the Knowledge of Falls Church, the other parties thereto, in accordance with its terms. Falls Church has performed (and, to the Knowledge of Falls Church, all other parties thereto have performed) in all material respects each term, covenant and obligation required to be performed by Falls Church (or such other party, as applicable) under each Assumed Contract, and no condition exists (including the execution, delivery and performance by Falls Church of this Agreement and the other documents and instruments contemplated herein) which constitutes or, with notice or lapse of time, or both, would constitute a material default thereunder on the part of Falls Church, or, to the Knowledge of Falls Church, on the part of any of the other parties thereto, or give to any other person any material right of termination, amendment, modification, acceleration, suspension, revocation, cancellation, first offer or first refusal under any of the Assumed Contracts, or result in the creation of any Lien on any of the Assets. Schedule 1.3(e)2 sets forth a true and correct list of all Material Contracts as of the date hereof.
- i) **Brokerage.** Falls Church has not made any agreement or taken any other action which might cause any person to become entitled to a broker's or finder's fee or commission as a result of the transactions contemplated hereunder.

j) **Permits; Compliance with Law.**

- (i) Except as disclosed in Schedule 2.1(j), the operation of the System by Falls Church and Falls Church's use and ownership of the Assets and performance under the Assumed Contracts do not violate or conflict with, and, to the Knowledge of Falls Church, has not violated or conflicted with, in any material respect, any Law. Falls Church has not received any written or, to the Knowledge of Falls Church, any oral notice or other communication from any Governmental Authority or any other person or entity regarding (A) any actual, alleged, possible or potential violation of, or failure to comply in any material respect with, any Law, or (B) any actual, alleged, possible or potential obligation on the part of Falls Church to undertake, or to bear all or any portion of the cost of any remedial action of any nature. The term "Law" means any foreign, international, federal, state, local or municipal law, common law, statute, ordinance, rule, treaty, regulation, code, decision, verdict, directive, guideline or other requirement enacted, issued, enforced, made, rendered or promulgated by or on behalf of a Governmental Authority, together with any decree, injunction, judgment, order, ruling, writ, charge, assessment or arbitration award of any Governmental Authority.
- (ii) Except as disclosed in Schedule 2.1(j), the Permits constitute all material permits, franchises, licenses, sub-licenses, approvals, authorizations, orders, registrations, certificates, variances, documents and other similar rights obtained from any Governmental Authority for the System, and all pending applications therefor. All material Permits are in full force and effect and Falls Church is in material compliance with all Permits required to use and operate the System as presently operated and to own, lease, or otherwise hold the Assets under all applicable Laws. There are no proceedings pending or, to the Knowledge of Falls Church, threatened that seek the revocation, cancellation, suspension or any adverse modification of any of the Permits.

k) **Conveyance of Real Property; Leased Parcels; Personal Property; Related Matters.** At the Closing, Falls Church shall convey to Fairfax Water: (i) good, marketable and insurable fee simple title to the Fee Parcels; (ii) any interest Falls Church may possess in the Quitclaim Parcels; (iii) good and valid leasehold title to the Leased Parcels; (iv) good title to, or valid interest in, any personal property included in the Assets; and (v) valid System easements and rights-of-way. In addition, and except as set forth on Schedule 2.1(k):

- A. all rents and other amounts due under each Lease relating to the Leased Parcels have been paid;
- B. Falls Church, as lessee under each Lease, has a valid leasehold interest and the right to occupy, use, possess and control the entire

premises thereunder as presently occupied, used, possessed and controlled by it, and Falls Church is in peaceful possession thereof;

- C. no claim has been asserted against Falls Church adverse to its rights in the Real Property;
- D. Falls Church has received no notice that it is in breach or default under any Lease, and, to the Knowledge of Falls Church, Falls Church is not in breach or default under any Lease (nor, with the giving of notice or the passage of time, or both, would be in default or breach), and no waiver, indulgence or postponement of the obligations of Falls Church, or the obligations of the lessor, thereunder has been granted by the lessor or Falls Church, as the case may be;
- E. Falls Church has not entered into any lease, sublease or assignment with respect to its interests in the Real Property;
- F. there are no Liens encumbering the Real Property that do, or could reasonably be expected to, interfere with the operation of the System;
- G. all facilities, buildings, improvements and fixtures on the Real Property are in working condition, subject to normal wear and tear, given their use and age, and are suitable for the continued operation of the System as currently conducted;
- H. there are no pending or, to the Knowledge of Falls Church, threatened condemnation proceedings, lawsuits or administrative actions relating to the Assets or other matters affecting adversely the current use or occupancy of the Real Property or the Leased Parcels;
- I. to the Knowledge of Falls Church: except as provided on Schedule 2.1(k)(I), the legal description for the Real Property contained in any Lease (with respect to the Leased Parcels) and in any deed (with respect to other Real Property) describes such parcel fully and adequately; all buildings and improvements are located within the boundary lines of the described parcels, are not in violation of applicable setback requirements, zoning laws and ordinances (and none of the properties or buildings or improvements thereon are subject to “permitted non-conforming use” or “permitted non-conforming structure” classifications) and do not encroach on any easement which may burden the parcel; none of the described parcels serves any adjoining property for any purpose inconsistent with the use of such parcel; and none of the described parcels is located within any flood plain or subject to any similar type

restriction for which any permits or licenses necessary to the use thereof have not been obtained. Falls Church has received no written notice that any of the representations and warranties stated in this Section 2.1(k)(I) are false, inaccurate, or misleading;

- J. the Real Property (i) is in material compliance with all applicable Laws, (ii) has received all approvals of all Governmental Authorities (including, without limitation, all material permits, licenses, registrations and related matters) required in connection with Falls Church's ownership, occupation and operation thereof for the System and (iii) has been operated and maintained in accordance with all applicable Laws in all material respects;
- K. all facilities located on the Real Property are, to the extent applicable, supplied with utilities and other services necessary for the operation of such facilities in connection with the System, including gas, electricity, water, telephone, sanitary sewer and storm sewer, all of which services are adequate in quality and quantity for the operation of the System as currently conducted and in accordance with all applicable Laws and are provided via public roads or via permanent, irrevocable, appurtenant easements benefiting the parcel;
- L. any Liens associated with the Assets (other than Permitted Encumbrances) will be removed as of the Closing, to the effect that the Assets will be conveyed hereunder to Fairfax Water at Closing free and clear of all Liens except for any Permitted Encumbrances; and
- M. Schedule 1.3(b)(i) sets forth a true and complete list of all Fee Parcels, and Schedule 1.3(b)(iii) sets forth a true and complete list of all Leased Parcels.

1) **Intellectual Property.**

- (i) Except to the extent licensed to Falls Church by a third party and disclosed in Schedule 2.1(J)(i) Falls Church owns, without the necessity of obtaining approval of any party and free and clear of all Liens except Permitted Encumbrances, all System Intellectual Property, including System Intellectual Property that (A) is used in its current or planned services or operations with respect to the System, (B) is necessary to freely make, have made, use or sell, or that are otherwise applicable to, any present products and services or currently planned products and services with respect to the System, or (C) is necessary to perform its respective contractual obligations to others with respect to the System.

- (ii) Schedule 2.1(l)(ii) sets forth a description of all of Falls Church's registered and pending applications for registration of all patents, trademarks and copyrights related to the System Intellectual Property.
- (iii) The System Intellectual Property and Falls Church's use of the Assets and operation of the System do not and have not infringed on, misappropriated or otherwise violated the Intellectual Property rights of any person, entity, Governmental Authority or party. To the Knowledge of Falls Church, no person, entity or Governmental Authority is infringing upon or misappropriating the rights of Falls Church with respect to any System Intellectual Property.
- (iv) Schedule 2.1(l)(iv) sets forth a true and complete list of all Assumed Contracts pursuant to which Falls Church is a party and relating to (A) System Intellectual Property granted or licensed to Falls Church by third parties for the use, operation and management of the System, other than commercially available off-the-shelf software ("Third Party Software"), and (B) Intellectual Property rights granted or licensed by Falls Church to any third party relating to the System.
- (v) All registrations for System Intellectual Property are in force and valid. There are no ongoing interferences, oppositions, reissues, reexaminations, cancellations, challenges or other proceedings involving any of the System Intellectual Property or, to the Knowledge of Falls Church, any Third Party Software in the United States Patent and Trademark Office or in any foreign patent office or similar Governmental Authority, except for office actions and similar ex parte proceedings in the ordinary course.
- (vi) Except as set forth in Schedule 2.1(l)(vi), Falls Church has the right to use and assign all Third Party Software to Fairfax Water.

m) **Insurance.**

- (i) Schedule 2.1(m)(i) sets forth a true and complete list of each insurance policy (including policies providing property, casualty, liability and workers' compensation coverage and bond and surety arrangements) related to the System that is in force as of the date hereof and as to which Falls Church is a party, a named insured or otherwise the beneficiary of coverage. With respect to each such insurance policy: (A) the policy is legal, valid, binding, enforceable and in full force and effect, (B) neither Falls Church nor, to the Knowledge of Falls Church, any other party to the policy is in breach or default thereunder (including with respect to the payment of premiums or the giving of notices), and no event has occurred that, with notice or the lapse of time, would constitute such a breach or default, or permit termination, modification or acceleration under the policy and (C) neither Falls Church nor, to the Knowledge of Falls Church, any other party to the policy has repudiated any provision thereof.

Falls Church has been covered during the past five years by insurance substantially similar in scope to that listed in Schedule 2.1(m)(i). Schedule 2.1(m)(i) accurately and completely describes any self-insurance arrangements and any retrospective rating plans affecting Falls Church and which relate to the System.

- (ii) Schedule 2.1(m)(ii) sets forth, by year, for the current policy year and each of the five preceding policy years, and as related to the System, (A) a summary of the loss experience under each insurance policy, (B) a statement describing each claim under an insurance policy for an amount in excess of Ten Thousand Dollars (\$10,000), which sets forth (x) the name of the claimant; (y) a description of the policy; and (z) the amount and a brief description of the claim, and (C) a statement describing the loss experience for all claims that were self-insured, including the number and aggregate cost of such claims and the actuarial projection of losses, including paid-to-date figures, for any retrospective rating plans.

- n) **No Material Adverse Effect; Ordinary Course Operation.** Except as set forth in Schedule 2.1(n), since June 1, 2012, the System has been operated in the ordinary course consistent with past practice, and there has not been: (i) any Material Adverse Effect and no fact or condition exists which could reasonably be expected to result in any Material Adverse Effect, (ii) any loss, damage, condemnation or destruction to any of the Assets or to any personal property that is leased pursuant to the Assumed Contracts (whether covered by insurance or not) that, individually or in the aggregate with all other such losses, damages, condemnation and destruction, is material to the System, (iii) any transfer of cash of the System (including Tap Fees) to satisfy any obligation of Falls Church (other than obligations of the System satisfied in the ordinary course of business or as otherwise provided for under Sections 3.3(f) and (g)) or any other transfer of cash of the System to Falls Church, (iv) any borrowings by Falls Church relating to the System other than trade payables arising in the ordinary course of business, (v) the encumbrance by any Lien on any of the Assets or Assumed Contracts, except for Permitted Encumbrances, or (vi) any sale, transfer, assignment or other disposition of the Assets or Assumed Contracts or of any items of real or personal property that are leased pursuant to the Assumed Contracts, other than in the ordinary course of business or as contemplated by this Agreement.

- o) **Taxes and Grants.**

- (i) The Assets currently are and have been treated as exempt from real estate taxes in Falls Church and any other jurisdiction in which the Assets are or have been located.
- (ii) Falls Church is, and at all times in which it has owned the Assets has been, a political subdivision of the Commonwealth and an organization described in Sections 115 and 170(c)(1) of the Code.

- (iii) All Tax Returns (as defined below) required to be filed by Falls Church with all applicable Governmental Authorities have been duly and timely filed, and all Taxes required to be paid by Falls Church to such Governmental Authorities have been duly and timely paid for all outstanding Tax years and periods.
- (iv) All Tax Returns with respect to the Assets have been duly and timely filed, and each such Tax Return correctly and completely reflects all Taxes (as defined below) and all other information required to be reported thereon.
- (v) There is no action or audit currently pending or, to the Knowledge of Falls Church, threatened against Falls Church by any taxing authority with respect to any Taxes.
- (vi) There are no outstanding assessments or Liens for Taxes on any of the Assets, except for Permitted Encumbrances, and Falls Church has not entered into (nor is Falls Church subject to) any contract, agreement, or arrangement with any Governmental Authority with respect to Taxes related to the Assets.
- (vii) Falls Church has withheld and timely paid all Taxes required to have been withheld or paid and has complied with all information reporting and backup withholding requirements, including maintenance of required records with respect thereto with respect to the Assets.
- (viii) Except as set forth on Schedule 2.1(o)(viii), there is no dispute or outstanding claim concerning any Taxes with respect to the Assets for which notice has been provided or, to the Knowledge of Falls Church, which is asserted or threatened.
- (ix) Other than set forth on Schedule 2.1(o)(ix), Falls Church has received no grants relating to the System. With respect to the grants set forth on Schedule 2.1(o)(ix), (i) all work or other requirements that were required to be taken and completed have been taken and completed by Falls Church, (ii) Falls Church's performance with respect to such grants has not been challenged or questioned by nor is, to the Knowledge of Falls Church, the subject of any audit or investigation by any Governmental Authority, and (iii) all such grants have been closed out and all final payments related thereto have been made.
- (x) Falls Church has complied with all applicable arbitrage rules regarding the proceeds of any general obligation bonds that were pledged for use by the System.

The term "Tax" or "Taxes" means all national, federal, state, local or municipal (whether domestic or foreign) taxes, assessments, duties, levies or similar charges of any kind, including

all sales, payroll, employment, margin, gross margin, income, profits, license, severance, occupation, windfall profits, capital gains, capital stock, transfer, registration, social security (or similar), franchise, gross receipts, use, property, ad valorem, real property, personal property, premium, environmental (including taxes under Section 59A of the Code), customs duties, estimated, unemployment, disability, excise, value added, stamp, alternative or add-on minimum, withholding and other taxes of any kind whatsoever imposed by any Governmental Authority, whether disputed or undisputed, and including all interest, penalties and additions imposed with respect to such taxes and including any obligation to indemnify or otherwise assume or succeed to the Tax liability of any other person, entity, Governmental Authority or party.

The term “Tax Returns” means any return, report, information return, declaration, claim for refund or other document (including any schedule or related or supporting information) required to be supplied to any agency or department of any Governmental Authority responsible for the administration and collection of such Taxes, including amendments thereto.

p) **Employee Benefit Plans; ERISA.**

- (i) Schedule 2.1(p)(i) sets forth a true and complete list of each deferred compensation, retention, bonus or other incentive compensation plan, program, agreement or arrangement, each severance or termination pay, medical, surgical, hospitalization, life insurance and other “welfare” plan, fund or program (within the meaning of Section 3(1) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), regardless whether ERISA is otherwise applicable to Falls Church), each profit-sharing, stock bonus or other “pension” plan, fund or program (within the meaning of Section 3(2) of ERISA, regardless whether ERISA is otherwise applicable to Falls Church), each employment, termination, change in control, retention or severance agreement, and each other employee benefit plan, fund, program, agreement or arrangement, that in each case described above, provides benefits to Employees or the dependents or beneficiaries of such employees (collectively, the “Benefit Plans”), and in each case, that is sponsored, maintained or contributed to or required to be contributed to by Falls Church or by any other entity, whether or not incorporated, that together with Falls Church would be treated as a “single employer” under Section 414 of the Internal Revenue Code of 1986, as amended (the “Code”) (any such entity, an “ERISA

Affiliate”). Falls Church has made available to Fairfax Water a true and complete copy of each Benefit Plan and all amendments thereto (or, in the case of any unwritten Benefit Plans, written descriptions thereof) and a true and complete copy of the following items (in each case, only if applicable): (A) each trust or other funding arrangement, (B) each summary plan description and summary of material modifications, (C) the most recently filed annual or other governmental report, (D) the most recent actuarial valuation report and (E) the most recently received determination letter from the United States Internal Revenue Service (“IRS”).

- (ii) Each of the Benefit Plans (and each related trust or funding vehicle) has been operated and administered in all material respects in accordance with its terms and applicable Laws, including but not limited to the Public Health Service Act (“PHSA”) and the Code, and employee salary reduction contributions) under or in connection with the Benefit Plans that are required to have been made as of the date hereof in accordance with the terms of the Benefit Plans have been timely made.
- (iii) Each Benefit Plan intended to qualify under Section 401(a) of the Code is so qualified and has received a favorable determination letter from the IRS with respect to each such Benefit Plan as to its qualified status under the Code. To the Knowledge of Falls Church, no event has occurred relating to any such Benefit Plan (or a Benefit Plan intended to qualify under Section 403(b) or 457(b) of the Code) that would reasonably be expected to adversely affect the qualification of such Benefit Plan.
- (iv) Neither the execution or delivery of this Agreement nor the consummation of the transactions contemplated hereby will, either alone or in conjunction with any other event, (A) increase the amount or value of any benefit or compensation otherwise payable or required to be provided to any such director, employee, consultant or independent contractor, or (B) accelerate the time of payment or vesting of compensation due any such director, employee, consultant or independent contractor except as expressly provided in this Agreement.
- (v) Falls Church has paid all retention and similar bonuses due to each Employee and will provide evidence of those payments to Fairfax Water. At Closing no retention bonuses or similar bonuses will be due to any Employee.

q) **Labor Matters.**

- (i) Falls Church is and has been in compliance in all material respects with all applicable Laws respecting employment and employment practices, labor relations, unemployment compensation, workers’ compensation, terms and conditions of employment and wages and hours, including, without

limitation, any such Laws respecting the payment of social security and similar Taxes, classification of persons as employees or independent contractors, payment of wages, employment discrimination and occupational safety and health requirements, and Falls Church is not liable for the payment of any Taxes, fines, penalties or other amounts, however designated, for failure to comply with any of the foregoing.

- (ii) There is no litigation, arbitration proceeding, citation or action of any kind pending or, to the Knowledge of Falls Church, proposed or threatened, or, to the Knowledge of Falls Church, any governmental investigation pending, proposed or threatened, against Falls Church relating to employment, employment practices, terms and conditions of employment, wages and hours, unemployment compensation or workers' compensation.
 - (iii) Falls Church does not have any collective bargaining relationship or duty to bargain with any labor union or other employee association and Falls Church has not recognized any labor union or other employee association as the bargaining agent of any of its employees and none of the employees of the System are represented by any labor union or other employee association for purposes of bargaining over terms and conditions of employment.
 - (iv) To the Knowledge of Falls Church, no labor union or other employee association is attempting to organize any employees of the System.
 - (v) Falls Church has not, during the 90-day period prior to the date of this Agreement, taken any actions that, individually or in the aggregate, would constitute or result in the layoff of employees that would require following the layoff procedure set forth in the Falls Church City Code.
 - (vi) Falls Church has complied in all material respects with all Laws related to immigration, verification of citizenship or legal permission to work in the United States, including any regulations of any Governmental Authority related thereto.
 - (vii) Falls Church is not a party to any written or oral employment agreement with any employee of the System, and all of the employees of the System are employed by Falls Church on an "at will" basis.
- r) **Customer Advances.** Falls Church has either (i) completed construction of all construction projects related to the System for which Falls Church received customer advances or (ii) has available all unexpended, refundable customer advances for such projects in progress as of the date of this Agreement. Except as listed on Schedule 2.1(r), Falls Church is not a party to any contract or agreement that obligates Falls Church to make any future payment of any refund (including any main extension agreements, customer deposit agreements or similar commitments).

- s) **Condition of Assets.** All of the buildings, machinery, equipment, tools, furniture, improvements and other tangible assets of the System, including, without limitation, all Material Equipment, which are included in the Assets, are in working condition, subject to ordinary wear and tear, given the use and age of such assets.
- t) **Financial Statements; Absence of Undisclosed Liabilities.** Falls Church has delivered to Fairfax Water true and correct copies of the audited (i) balance sheets of the System as of June 30, 2012 and June 30, 2013, and (ii) statements of earnings and cash flows of the System for the three year period ended June 30, 2013 (collectively, the “Financial Statements”). The balance sheets included in the Financial Statements are true and correct in all material respects, present fairly the financial position of the System as of the dates presented, are consistent with the books and records of Falls Church and were prepared in accordance with generally accepted accounting principles as in effect in the United States (“GAAP”), consistently applied. The statements of earnings and cash flows included in the Financial Statements are true and correct in all material respects, present fairly the results of operations and cash flows of the System for such periods, are consistent with the books and records of Falls Church and were prepared in accordance with GAAP, consistently applied. Since June 30, 2013, Falls Church has not effected any change in any method of accounting or accounting practice with respect to the System. Falls Church is not subject to any material liability or obligation of any kind relating to the System, whether absolute or contingent, accrued or unaccrued, asserted or unasserted, known or unknown, or otherwise, not specifically reflected in the Financial Statements.
- u) **Projects in Progress.** The capital improvements projects and/or studies undertaken by Falls Church with respect to the System that may still be in progress at the time of Closing are listed on Schedule 2.1(u) and the projects and/or studies listed on that schedule are the only such projects and/or studies currently under contract, or being performed by, Falls Church. The amount of money being delivered to Fairfax Water pursuant to Section 1.3(k) including retainage, if any, is sufficient to fully pay for the costs, expenses, fees, charges, and other sums relating to, or arising from, the projects and/or studies listed on Schedule 2.1(u).
- v) **Water Rights Agreements.** As of the Closing Date, all costs, fees, amounts, sums, and expenses then due and payable under the Water Rights Agreements will have been paid in full by Falls Church, and there will be no assessments, capital contributions or other requirements then due and payable under any of the Water Rights Agreements that are unpaid, unsatisfied, or remain outstanding.
- w) **Environmental Matters.** Except as listed on Schedule 2.1(w):
- (i) Falls Church has not disposed of or arranged for the disposal of or released any Hazardous Materials (as defined below), other than in conformity with all Environmental Laws, at the Real Property and/or

Leased Parcels, or at any other facility, location or site to be transferred to Fairfax Water pursuant to the terms of this Agreement or arranged for disposal of Hazardous Materials at any property that requires Remedial Action (as defined below).

- (ii) To the Knowledge of Falls Church, neither Falls Church nor any other person, entity or Governmental Authority has released or arranged for disposal of any Hazardous Materials on, under, at, from or in any way affecting any of the Real Property and/or the Leased Parcels or the Assets (or, to the Knowledge of Falls Church, any other real property or assets that was previously owned, leased or operated by Falls Church or any of its predecessors that were used in connection with the System) in any manner that constituted or constitutes a violation of any applicable Environmental Law or requires Remedial Action or abatement thereunder.
- (iii) Falls Church has not received and, to the Knowledge of Falls Church, no other person, entity or Governmental Authority has received, any written notice or request for information with respect to, and Falls Church has not been designated a potentially liable party for Remedial Action or response costs, in connection with any of the Real Property or, as of the date hereof, with respect to the Assets or the operation of the System, at any other facility, location or other site under any Environmental Laws.
- (iv) Except for such use or storage of Hazardous Materials as is incidental to the operation of the System, which use and storage is and has been in compliance with all Environmental Laws, to the Knowledge of Falls Church, none of the Real Property and/or the Leased Parcels has been used for the storage, treatment, generation, processing, production, or disposal of any Hazardous Materials or as a landfill or other waste disposal site in violation of any Environmental Law.
- (v) Except as provided on Schedule 2.1(w), to the Knowledge of Falls Church, there are no, and there has not been any, underground storage tanks (other than tanks for the storage of water) located on or under any Real Property or the Leased Parcels.
- (vi) There are no pending or unresolved claims, and, to the Knowledge of Falls Church, there have not been any claims in the past, against Falls Church or the System for investigatory costs, clean-up, removal, remedial or response costs, or natural resource damages arising out of any releases or threat of release of any Hazardous Materials at the Real Property with respect to the System or Assets or any other System facility, location or site.
- (vii) Neither Falls Church nor, to the Knowledge of Falls Church, any of its predecessors is subject, with respect to the System, to any decision, consent decree or order of any Governmental Authority with respect to

any matters subject to regulation under any Environmental Law, nor are there any claims or actions pending or, to the Knowledge of Falls Church, threatened against Falls Church or basis for any such claims or actions or, to the Knowledge of Falls Church, any of Falls Church's predecessors by any person, entity or Governmental Authority alleging any actual or threatened injury or damage to any person, entity or Governmental Authority real or personal property, natural resource or the environment by any Hazardous Materials.

- (viii) Falls Church has provided or otherwise made available to Fairfax Water all non-privileged reports, disclosures, studies, sampling results, analyses, assessments, tests, plans, audits, insurance policies and other information and documentation (whether or not privileged) in the possession or control of Falls Church regarding material environmental matters relating to the System or the Real Property.
- (ix) Neither Falls Church nor, to the Knowledge of Falls Church, any of Falls Church's predecessors has agreed to indemnify or hold harmless any other person, entity, Governmental Authority or party for any violation of Environmental Laws or remediation or abatement required thereunder.
- (x) All facilities, structures and equipment used for the collection, management and treatment or disposal of Hazardous Materials or wastes, coproducts or byproducts of any kind in the operation of the System, if any, are in working condition, subject to ordinary wear and tear, given the use and age of such assets, and are capable of maintaining compliance with Environmental Laws.

The term "Environmental Laws" means Laws regulating, relating to or imposing liability, standards or obligations of conduct concerning pollution, protection of human health, natural resources or the environment, including, without limitation, Laws relating to releases or threatened releases of Hazardous Materials or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, transport, disposal or handling of Hazardous Materials, including, without limitation, the Comprehensive Environmental Response Compensation and Liability Act.

The term "Hazardous Materials" or "Hazardous Substances" means (i) petroleum (including waste or used oil and any petroleum product and substances derived from or commingled therewith), infectious medical waste, perchlorate, radioactive materials or waste, urea formaldehyde foam insulation and polychlorinated biphenyls, radon gas, and asbestos in any form that is or could become friable; (ii) any waste or substance that is listed, defined, designated, or classified as, or otherwise determined by any Environmental Laws to be, hazardous, ignitable, corrosive, radioactive, dangerous or toxic; and (iii) any waste, material or substance (whether solid, liquid or gas) that is defined as a "solid waste" (which is also a hazardous waste), "pollutant" or "contaminant" (for purposes of the Clean Water Act), "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste,"

“restricted hazardous waste,” “hazardous constituent,” “special waste,” “toxic substance,” or a word, term, or phrase of similar meaning or regulatory effect under any Environmental Law.

The term “Remedial Action” means any and all actions, including any capital expenditures undertaken, to (A) clean up, remove, treat or in any other way address any Hazardous Material; (B) prevent the release or threat of release, or minimize the further release of any Hazardous Material so it does not migrate, endanger or threaten to endanger public health or welfare or the indoor or outdoor environment; (C) perform pre-remedial studies and investigations or post-remedial monitoring and care; or (D) with respect to any Hazardous Material, correct any condition of noncompliance with any Environmental Law.

(x) **Voter Approval.** The sale of the Assets contemplated in this Agreement has been approved by the voters of Falls Church by a referendum that was passed on November 5, 2013.

2.2 Representations and Warranties of Fairfax Water

Fairfax Water represents and warrants to Falls Church as of the date hereof and as of the Closing Date as follows in this Section 2.2:

- a) **Organization and Good Standing.** Fairfax Water is an independent public body politic and corporate duly organized and validly existing and in good standing under the laws of the Commonwealth of Virginia.
- b) **Authorization; Execution and Delivery; Enforceability.** Fairfax Water has the full power and lawful authority to execute this Agreement and to perform its obligations contemplated hereby. Fairfax Water has duly and validly authorized the execution of this Agreement and the other agreements, instruments and documents to be delivered by Fairfax Water in connection herewith. Fairfax Water has duly executed and delivered this Agreement. This Agreement constitutes (and the other agreements, instruments and documents to be delivered by Fairfax Water in connection herewith will constitute, when executed and delivered) the legal, valid and binding obligations of Fairfax Water, enforceable against Fairfax Water in accordance with their terms, except as such enforceability may be limited by applicable Laws relating to bankruptcy, insolvency, fraudulent conveyance, or reorganization or affecting creditor's rights generally and by general principles of equity, regardless of whether considered in a proceeding at law or equity.
- c) **Noncontravention.** The execution and delivery by Fairfax Water of this Agreement and of the other agreements, instruments and documents to be delivered by it in connection herewith, and its performance of its obligations hereunder and thereunder, do not and will not, directly or indirectly, with or without the giving of notice or lapse of time (or both) (i) except as otherwise set forth in Schedule 2.2(c), require any further approvals or consents from any Governmental Authority or third party; (ii) conflict with or violate Fairfax

Water's organizational documents or any Law binding on Fairfax Water or any of its assets or properties; or (iii) conflict with or result in a breach of, or constitute a default under, any contract, lease, permit or other agreement or commitment to which Fairfax Water is a party or by which any of its properties or assets are bound.

- d) **No Pending Litigation or Proceedings.** There is no action, claim, litigation, arbitration, proceeding, judgment, injunction, audit or legal, administrative or governmental investigation pending or, to the Knowledge of Fairfax Water, threatened against Fairfax Water which could reasonably be expected to materially impair Fairfax Water's ability to consummate the transactions contemplated hereby.
- e) **Brokerage.** Neither Fairfax Water nor any of its affiliates has made any agreement or taken any other action which might cause any person to become entitled to a broker's or finder's fee or commission as a result of the transactions contemplated hereunder.
- f) **Financing.** Fairfax Water has, and at the Closing Date will have, sufficient resources to pay the Purchase Price to Falls Church.

ARTICLE 3. COVENANTS

3.1 Mutual Covenants and Agreements of the Parties

The Parties mutually covenant and agree that, except as otherwise approved by the other Party in advance and in writing:

- a) **Transaction Cooperation.** The Parties shall cooperate and shall cause their respective officers, employees, agents and representatives to cooperate to (i) ensure the orderly transfer of the Assets from Falls Church to Fairfax Water; and (ii) minimize any disruption to the customers of the System from the transactions contemplated by this Agreement. Each Party shall furnish to the other Party any necessary information or reasonable assistance as the other Party may reasonably request in connection with obtaining any required consent, approval or authorization of, or registration with or filing or submission to any third party (including any Governmental Authority).
- b) **Further Assurances.** Each Party shall cooperate and deliver such instruments and take such action as may be reasonably requested by the other Party in order to carry out the provisions and purposes of this Agreement and the transactions contemplated hereby. After the Closing, each Party shall take such other actions and execute such other documents as may be reasonably requested by the other Party (i) in order to transfer more effectively to Fairfax Water or to put Fairfax

Water more fully in possession of any of the Assets; (ii) to assist in billing or transferring any customers of the System to Fairfax Water; and (iii) in connection with the preparation of any Tax Return, audit or examination by any Governmental Authority or taxing authority. Without limiting the foregoing, (i) Falls Church shall promptly execute any additional agreements, easements, or other documents that Fairfax Water may reasonably request in order to access, service, maintain and/or inspect the System, provided that the terms of any such agreement, easement or other document must not unreasonably interfere with the operations of Falls Church; and (ii) Fairfax Water shall promptly execute any additional agreements, easements, or other documents that Falls Church may reasonably request in order to access, service, construct, maintain and/or inspect any sanitary sewer and storm water facilities, or any communications equipment or related appurtenances owned by Falls Church and located on the Real Property or any of the Assets (as applicable), provided that the terms of any such agreement, easement or other document must not unreasonably interfere with the operations of Fairfax Water or any third parties or entities.

- c) **Expenses.** The Parties shall each bear their own respective accounting, legal and other expenses incurred in connection with the transactions contemplated by this Agreement.
- d) **Pending Litigation Challenging Ordinance.** The Parties agree to a stay of the proceedings in *City of Falls Church, et al. v. Board of Supervisors of Fairfax County, Virginia, et al.*, No. 1:12cv487 (challenge to legality of ordinance), and agree to take action to effect such stay until the first to occur of (i) the Closing, at or by which time the Parties shall cause the case to be dismissed with prejudice; or (ii) this Agreement is terminated pursuant to Article 5.
- e) **Litigation Cooperation.** Notwithstanding anything to the contrary contained in this Agreement, if any action or proceeding by any third party is instituted (or threatened to be instituted) challenging any transaction or action contemplated by this Agreement, the Parties shall use their commercially reasonable efforts to (i) contest, resist or resolve any such proceeding or action and (ii) have vacated, lifted, reversed or overturned any injunction adverse to the Parties resulting from such proceeding or action.
- f) **Utility Taxes.** From time to time after Closing, Falls Church may, in accordance with applicable Law, assess utility taxes relating to water supplied by Fairfax Water to its customers within the jurisdiction of the City of Falls Church. Fairfax Water agrees to use its commercially reasonable efforts to collect any such taxes on behalf of Falls Church, in accordance with Fairfax Water's then-effective billing terms and cycle. As and when any such taxes are actually received by Fairfax Water, they will be promptly paid to Falls Church; provided, however, that Fairfax Water may deduct from those payments its reasonable costs and expenses associated with complying with its obligations under this Subsection, and shall provide to Falls Church reasonable written evidence supporting the

deducted costs and expenses. Nothing herein shall be construed as a guarantee of the collectability of any such taxes by Fairfax Water.

- g) **Transfer of Pension Plan Liabilities.** At Closing, Falls Church shall direct the transfer from the City of Falls Church Basic Pension Plan to the Fairfax County Water Authority Retirement Plan of (i) all of the accrued benefits and the associated liabilities of the Employees hired by Fairfax Water pursuant to Section 3.4(g) of this Agreement (for the purposes of subsections (g) and (h), the “Hired Employees”) under the City of Falls Church Basic Pension Plan (“Pension Benefits and Liabilities”) and (ii) assets in the amount of One Million Nine Hundred Eighty-Four Thousand and Eighty Four Dollars (\$1,984,084) (the “Pension Amount”). The Pension Amount shall be subject to adjustment only in the event that any of the Employees covered by the City of Falls Church Basic Pension Plan will not be employed by Fairfax Water as of the Closing Date. The portion of the Pension Amount to be transferred for each Employee is listed on Schedule 3.1(g), which schedule shall be revised downward, as necessary, prior to the Closing Date to reflect the removal of any Employees that will not be employed by Fairfax Water as of the Closing Date and the corresponding portion of the Pension Amount for such Employees. The Parties agree that Fairfax Water and the Fairfax County Water Authority Retirement Plan shall, as of the Closing (or, if later, the date the asset transfer provided under subsection (g)(ii) occurs), assume and be liable for all of the Pension Benefits and Liabilities and any accrued benefits and liabilities the Hired Employees may accrue under the Fairfax County Water Authority Retirement Plan on and after the Closing Date. The Parties shall take all actions and do all things necessary or appropriate to implement the transfer of the Pension Benefits and Liabilities. The Parties agree that as of the Closing Date (or, if later, the date the asset transfer provided under subsection (g)(ii) occurs) , neither Falls Church nor the Falls Church Basic Pension Plan shall have any further liability or obligation for the Pension Benefits and Liabilities.
- h) **Transfer of Retiree Health Liabilities.** At Closing, Falls Church shall transfer to Fairfax Water, and Fairfax Water will assume sole responsibility for, all benefits and liabilities under Fall Church’s Retiree Health Insurance Policy and The City of Falls Church Post-Retirement Medical Benefits Defined Benefit Plan for Current and Former Employees, as in effect as of Closing, for all Hired Employees (“OPEB Benefits and Liabilities”). At Closing, assets in the amount of Six Hundred Eighty Three Thousand Five Hundred and Two Dollars (\$683,502) for The City of Falls Church Post-Retirement Medical Benefits Defined Benefit Plan for Current and Former Employees (the “OPEB Amount”) shall be transferred to the Fairfax County Water Authority Retirement Plan and allocated to the section 401(h) account maintained under that Plan to pay for the OPEB Benefits and Liabilities. Such OPEB Amount shall be subject to adjustment only in the event that any of the Employees subject to Fall Church’s Retiree Health Insurance Policy and the City of Falls Church Post-Retirement Medical Benefits Defined Benefit Plan for Current and Former Employees will not be employed by Fairfax Water as of the Closing Date. The portion of the

OPEB Amount to be transferred for each Employee is listed on Schedule 3.1(g), which schedule shall be revised downward, as necessary, prior to the Closing Date to reflect the removal of any Employees that will not be employed by Fairfax Water as of the Closing Date and the corresponding portion of the OPEB Amount attributable to such Employees. The Parties shall take all actions necessary or appropriate to implement the transfer of the OPEB Benefits and Liabilities. As of the Closing (or, if later, the date the asset transfer provided under this subsection occurs) (i) Falls Church shall have no further liability or obligation for OPEB Benefits and Liabilities, and (ii) Fairfax Water shall assume and be liable for the OPEB Benefits and Liabilities.

- i) **Final Billing Process.** Falls Church and Fairfax Water covenant and agree that the final billing of customers to be transferred from Falls Church to Fairfax Water for water service shall proceed as follows:
- (i) The final bills for water service provided by Falls Church (“Final Bills”) will be processed in Falls Church using Falls Church’s billing system, Munis, and mailed, post-Closing, to the customers to be transferred from Falls Church to Fairfax Water.
 - (ii) Without cost to Falls Church, Fairfax Water will read the meters between January 2 and January 5, 2014, and provide a meter reading download file for each cycle and route, a total of ten (10) files, to Falls Church, in the import layout that Falls Church currently uses.
 - (iii) Without cost to Falls Church, Fairfax Water will lend Falls Church, for up to three weeks, the utility billing staff that were employed prior to Closing by Falls Church in order to complete the Final Bills.
 - (iv) Without cost to Falls Church, Fairfax Water will also provide meter recheck service during that period on an as needed basis.
 - (v) The utility billing staff who are being lent to Falls Church will still have a start date with Fairfax Water of January 3, 2014, and will still end their employment with Falls Church on January 2, 2014.
 - (vi) Any and all refundable credits, advances and deposits to which a customer of Falls Church may be entitled will be applied to the customer’s final bill from Falls Church. Any such credits, advances or deposits will not be transferred to Fairfax Water.
 - (vii) All customer service calls during the time in which the Final Bills are being processed will be routed to Fairfax Water customer services line so that the utility billing staff being lent to Falls Church can work on creating and sending the Final Bills.

Fairfax Water does not guarantee the collectability of Falls Church's Final Bills.

Fairfax Water will not terminate water service for Falls Church's uncollectible accounts related to pre-Closing periods, except as may be required by Law; provided, however, that Fairfax Water may, in accordance with its policies, terminate water service to any customer which does not pay its bills to Fairfax Water after the Closing Date.

- j) **Commercially Reasonable Efforts.** Subject to the terms and conditions herein provided, each of the Parties agrees to use its commercially reasonable efforts to take, or cause to be taken, all action, and to do, or cause to be done, all things necessary, proper and advisable under applicable Law, the Assumed Contracts or otherwise to consummate and make effective the transactions contemplated by this Agreement. Solely with respect to obtaining any consents or approvals required by any Governmental Authority and notwithstanding anything in this Agreement to the contrary, Fairfax Water shall not be required to, and Falls Church may not, without the prior written consent of Fairfax Water (which may be withheld in Fairfax Water's sole discretion), sell, divest, lease, license, transfer, dispose of or otherwise encumber or hold separate, before or after the Closing Date, any assets, licenses, operations, rights, businesses or interest therein of Fairfax Water or the System or to agree to any changes or restriction on, or other impairment of, the ability of Fairfax Water to own or operate any of its assets, licenses, operations, rights, businesses or interests therein or Fairfax Water's ability to exercise full ownership rights with respect to the System, the Assets and the Assumed Contracts after the Closing.
- k) **Public Announcements.** So long as this Agreement is in effect, neither of the Parties shall issue or cause the publication of any press release or other public announcement with respect to this Agreement or the transactions contemplated hereby without the prior written consent of the other Party (which consent shall not be unreasonably withheld, delayed or conditioned), except as may be required by Law (in which case such Party shall not issue or cause the publication of such press release or other public announcement without prior consultation with the other Party, to the extent practicable).
- l) **Notice of Certain Events.** Each Party shall give the other Party prompt written notice when such Party becomes aware that a representation or warranty made by a Party in this Agreement was not true or accurate in any material respect when made, or becomes aware of any of the following:
- (i) the occurrence of any event or the existence of any circumstance that would be reasonably likely to cause any representation or warranty of a Party contained in this Agreement to be inaccurate in any material respect or to be breached if such representation or warranty were made at the time of such event or circumstance;
 - (ii) the breach of or failure to perform in any material respect any covenant or obligation of a Party in this Agreement;

- (iii) the receipt by a Party of a notice or other communication from any person, entity or Governmental Authority alleging that such person, entity or Governmental Authority's consent or approval (other than any consent specifically required by this Agreement) is or may be required in connection with this Agreement and the transactions contemplated herein;
 - (iv) the receipt by a Party of a notice or other communication from any Governmental Authority in connection with this Agreement or any of the transactions contemplated herein, or concerning an actual or potential violation of Law with respect to the System, this Agreement or the transactions contemplated herein;
 - (v) the initiation or threatened initiation of an action, claim, suit or other proceeding by any person (including any Governmental Authority) that seeks restraint, prohibition, damages or other relief in connection with this Agreement or the consummation of the transactions contemplated hereby, or that otherwise questions the validity or legality of this Agreement or the consummation of the transactions contemplated herein; or
 - (vi) the occurrence of any Material Adverse Effect.
- m) **Agreement Regarding Certain Water Facilities.** The Parties agree that for purposes of complying with Section 15.2-2232 of the 1950 Code of Virginia (the "Code"), as amended, the following projects, which are considered routine in nature and/or normal service extensions, shall not require review and approval by the Falls Church Planning Commission and/or the City Council of Falls Church:
- (i) the extension of water mains twenty-four (24) inches and smaller in diameter when constructed within a public right-of-way;
 - (ii) the maintenance, repair or replacement of any water facility, with a facility of substantially the same type or capacity;
 - (iii) the maintenance, repair, relocation or replacement of any existing water main including the replacement of an existing water main with one that is 24 inches in diameter or no more than 50% larger in diameter, whichever is greater, and in substantially the same location as may be necessitated by highway improvements or other reasons;
 - (iv) the extension of water mains forty-eight (48) inches and smaller in diameter when constructed within the right-of-way of highway improvements in connection with a road improvement project;
 - (v) the installation of fire hydrants within a public right-of-way; and
 - (vi) the installation of pressure control, meter or other vaults within a public right-of-way.

3.2 Covenants of Falls Church

Falls Church hereby covenants and agrees that, except as otherwise approved in advance in writing by Fairfax Water:

- a) **Continuation of Business.** From the date hereof through the Closing Date, Falls Church shall operate the System only in the ordinary course and in accordance

with past practice and shall not take any action inconsistent therewith, except as otherwise permitted by this Agreement or consented to by Fairfax Water in writing. Without limiting the generality of the foregoing, Falls Church shall: (i) keep full and complete Books and Records; (ii) take such commercially reasonable action as may be necessary to preserve the Assets in working condition; (iii) preserve all cash of the System (including Tap Fees) in the System's accounts, and not apply any of such cash to satisfy any obligations of Falls Church (other than obligations of the System) or otherwise transfer any such cash to Falls Church; (iv) promptly notify Fairfax Water in writing of any Material Adverse Effect that has occurred or which Falls Church reasonably believes may occur; (v) preserve its rights under the Assumed Contracts; (vi) use its commercially reasonable efforts to preserve its business intact and preserve for Fairfax Water the existing goodwill of the employees, suppliers, vendors, customers and others having relations with the System; and (vii) comply in all material respects with all Laws applicable to Falls Church in the operation of the System and its use and ownership of the Assets, including the Real Property.

- b) **Continuation of Insurance.** Falls Church shall keep in existence all policies of insurance insuring the Assets and the System, including those listed on Schedule 2.1(m)(i), against liability and property damage, fire and other casualty through the Closing Date, consistent with the policies in effect on the date of this Agreement.
- c) **Standstill Agreement.** Until the Closing Date, unless this Agreement is earlier terminated pursuant to Article 5 of this Agreement, Falls Church shall not, directly or indirectly, solicit offers for any portion of the Assets or the System, sell or transfer any of the Assets outside of the ordinary course of business, or respond to inquiries from, share confidential information with, negotiate with or in any way facilitate inquiries or offers from, third parties who express or who have heretofore expressed an interest in acquiring any or all of the Assets or the System.
- d) **Access.** Prior to Closing, Falls Church shall (i) give to Fairfax Water and its representatives, until the Closing Date, full access during normal business hours, upon reasonable notice, to all the properties, books, data, contracts, agreements, documents and records connected to the Assets and/or the System, except for documents that are Excluded Assets; and (ii) make available to Fairfax Water and its representatives all other information with respect to the Assets and/or the business and affairs of the System as Fairfax Water may reasonably request; provided, such access does not unreasonably interfere with Falls Church's operation of the System and the Assets in the ordinary course of business.
- e) **Contractual Consents.** Falls Church shall, at all times, use its commercially reasonable efforts and diligently pursue all approvals, authorizations and consents required in connection with the transfer of the Assumed Contracts and Permits, including, without limitation, those approvals, authorizations, and consents listed on Schedule 2.1(c).

- f) **Customer Advances and Deposits.** Falls Church shall either (i) complete prior to the Closing the construction of all water facilities construction projects for which Falls Church received customer advances and/or deposits and which are listed on Schedule 2.1(r); or (ii) otherwise remit to Fairfax Water at the Closing, the amount of all unexpended, refundable customer advances for projects in progress together with the amount of any other refunds which are outstanding as of the Closing Date.
- g) **Projects in Progress.** The capital improvements projects and/or studies which may still be in progress at the time of Closing are listed on Schedule 2.1(u). Should there be any capital improvements projects and/or studies still in progress at the time of Closing, Falls Church shall deliver to Fairfax Water at Closing the balance of the contracted project costs, including retainage, held by Falls Church and including any change orders approved by Falls Church up to the Closing Date. Fairfax Water shall apply such amounts to the completion of such capital improvements and/or studies in accordance with Section 3.4(e). Prior to Closing, the Parties will calculate and agree to the amounts of the outstanding balances of capital projects and/or studies in progress, and the amounts to be delivered to Fairfax Water related thereto. Prior to Closing, Falls Church and Fairfax Water will each be required to approve any and all change orders that are known to be necessary at that time in order to complete the scope of each capital improvement project in progress at or prior to Closing. Notwithstanding the foregoing, Fairfax Water may request change orders to any capital improvement project in progress up to Closing, provided the cost of those change orders will be at Fairfax Water's expense. After the Closing, it will be the responsibility of Fairfax Water to complete any project contract included in the Assumed Contracts and to approve or reject any change orders related thereto.
- h) **Regulatory Consents.** Falls Church shall, at all times, use its commercially reasonable efforts and diligently pursue all approvals, authorizations, consents and permits required to be obtained by Falls Church for Falls Church to sell the Assets and assign the Assumed Contracts, including, without limitation, those approvals, authorizations, consents and permits listed on Schedule 2.1(c).
- Falls Church shall (i) as promptly as practicable, make or cause to be made such filings and submissions under all applicable Laws as may be required by Governmental Authorities for Falls Church to sell the Assets, all related property rights and the Assumed Contracts pursuant to the terms of this Agreement and (ii) keep Fairfax Water apprised of the status of any such filing or submission to any Governmental Authority.
- i) **Meter Reading Information.** Falls Church has provided Fairfax Water with a complete list of customers of the System, including names, service addresses, billing addresses, meter sizes and meter serial numbers in meter reading route sequence. This complete list shall be updated at Closing and be provided to Fairfax Water at Closing so as to be true and correct on the Closing Date.

- j) **Pending Litigation Challenging Ordinance.** Promptly after the Closing, Falls Church shall cause its representatives to seek and effect a dismissal with prejudice of the proceedings in *City of Falls Church, et al. v. Board of Supervisors of Fairfax County, Virginia, et al.*, No. 1:12cv487 (challenge to legality of ordinance), and any related proceedings. Except in the event this Agreement is terminated pursuant to Article 5 hereof, Falls Church shall take no action (whether prior to the Closing or thereafter) to aid or encourage litigation by third parties against Fairfax County, Virginia, a political subdivision of the Commonwealth of Virginia (“Fairfax County”) and/or Fairfax Water with respect to the ordinance that is the subject of such proceedings.
- k) **Boundary Lines.** Falls Church shall use its commercially reasonable efforts to cause to be issued a valid and binding order of a Virginia court of competent jurisdiction giving full legal effect to a voluntary boundary adjustment agreement between Falls Church and Fairfax County that changes the boundary line between Falls Church and Fairfax County in accordance with that certain Boundary Line Adjustment Agreement, dated December 11, 2013 between Falls Church and Fairfax County (the “Boundary Line Adjustment Agreement”).
- l) **Tax Matters.**
- (i) From and after the date of this Agreement, including after Closing, to the extent permitted by Law, Falls Church will not impose any Taxes on the System (to the extent the System is owned by Fairfax Water) without the prior written consent of Fairfax Water (which may be withheld in Fairfax Water’s sole discretion). Any Taxes imposed by Falls Church will be referred to as “Additional System Taxes.”
 - (ii) Falls Church shall, to the extent permitted by Law, treat the sale of the Assets to Fairfax Water as exempt from Additional System Taxes and shall provide to Fairfax Water any information, returns, statements, certificates, or returns to cause such sale of the Assets to be exempt from Taxes by Falls Church.
 - (iii) After Closing, and at the reasonable direction of Fairfax Water, Falls Church will, (A) to the extent permitted by Law, take all actions necessary for the Assets to retain their exemption from real estate taxes within the jurisdiction of the City of Falls Church, and (B) cooperate with Fairfax Water to retain any other tax exemptions from any other political subdivision of the Commonwealth of Virginia, in each case to the extent that the Assets remain owned by Fairfax Water.
- m) **Employment Matters.**
- (i) Falls Church has provided to Fairfax Water a true and correct list of each person expected to be employed by Falls Church in the operation of the System immediately prior to Closing (the “Employees”).

- (ii) Falls Church shall be solely responsible for all liabilities and obligations of any kind with respect to its Employees for matters occurring prior to the Closing Date, including but not limited to any claims by any Employees related to their employment by Falls Church or to any termination of their employment by Falls Church prior to the Closing Date, and Falls Church also is responsible for any claims by any of the Employees' dependents and beneficiaries related to Falls Church Benefit Plans prior to the closing date. Without limiting the generality of the foregoing sentence, Falls Church shall be solely responsible for the following matters related to Falls Church's employment of the Employees and any termination of such employment: (A) any required compliance with continuation coverage requirements of Title XXII of the PHSA, 42 U.S.C. Sections 300bb-1 *et. seq.* and the applicable requirements of any similar state law ("COBRA") for qualifying events (as defined in Section 300bb-3 of the PHSA or applicable state law) occurring prior to the Closing Date; and (B) all alleged and actual obligations and claims arising from or relating to the Benefit Plans and any other employment agreement to which Falls Church is a party or under which any of the Employees are covered, or any proceedings relating to compliance with any applicable labor or employment Law (including but not limited to all Laws pertaining to discrimination, workers' compensation, unemployment compensation, occupational safety and health, family and medical leave, and wages, hours or employee benefits) for events occurring prior to the Closing Date. Except as provided in Sections 3.1(g), 3.1(h) and Schedule 1.8(a)(v), Fairfax Water shall not be obligated under and hereby specifically disclaims any assumption of liability with respect to any employment contract to which Falls Church is a party or Benefit Plan under which any of the Employees or their dependents or beneficiaries are covered prior to the Closing.
- (iii) Falls Church agrees to terminate, as of the Closing Date, the employment of each Employee who is not a Retiree (as defined in subparagraph (vii) below) and who has accepted the offer of employment extended by Fairfax Water pursuant to Section 3.4(g). Falls Church agrees to satisfy all compensation, severance pay and other obligations under applicable Law with respect to all Employees occurring prior to the Closing Date. Except as provided in Section 1.8(a)(v), prior to Closing, Falls Church shall pay all amounts payable to its current and former employees under the Benefit Plans, including Falls Church's (x) vacation plan, (y) bonus and/or incentive compensation plans, and (z) bonus arrangements related to the consummation of the transactions contemplated by this Agreement. Fairfax Water shall have no liability or obligation with respect to the Employees, except for obligations expressly undertaken by Fairfax Water with respect to periods on and after the Closing Date.
- (iv) Falls Church shall continue its group health plan (as defined in Section 300bb-8 of the PHSA) until the date that no Employee or qualified

beneficiary (as defined in Section 300bb-8 of the PHSA) is entitled to continued coverage under COBRA.

- (v) At Fairfax Water's request, Falls Church will cooperate with Fairfax Water to make any such Employees available at reasonable times to participate in Fairfax Water's employment or transition orientation.
- (vi) Falls Church, as the predecessor employer, shall provide Forms W-2 to each Employee disclosing all wages and other compensation paid, and taxes withheld therefrom, for the portion of the calendar year beginning on the January 1st immediately prior to the Closing Date, and ending on the Closing Date.
- (vii) To the extent any person employed by Falls Church in the operation of the System immediately prior to Closing is a current retiree of Fairfax Water (each a "Retiree"), Falls Church shall continue to be the employer for all purposes of each Retiree after Closing. Falls Church will lease the services of any such Retiree to Fairfax Water after Closing at the direction of Fairfax Water. Falls Church will invoice Fairfax Water for all of the cost of services provided by any Retiree to Fairfax Water, providing reasonable written evidence supporting the invoiced costs. Fairfax Water will promptly pay such invoices. Fairfax Water may not terminate the use of any such Retiree at any time prior to thirty-six (36) months from Closing except for cause (as provided in Section 3.4(g)) and upon notice to Falls Church. Any and all legal obligations associated with employing such Retiree will be borne by Falls Church, including but not limited to employment taxes, benefits, workers' compensation, and unemployment compensation, but for which Fairfax Water will reimburse Falls Church in full.
- n) **Intentionally deleted.**
- o) **Additional Easements.** After Closing, and within sixty (60) days after receiving a reasonable written request from Fairfax Water, Falls Church shall deliver to Fairfax Water, with respect to any real property owned by Falls Church, any new or supplemental easement or other acceptable agreement in recordable form, duly executed and acknowledged by Falls Church, which is reasonably acceptable to Fairfax Water and its counsel and Falls Church and its counsel, which grants Fairfax Water continued and reasonable access to any public right of way owned by Falls Church in a manner not to unreasonably interfere with Falls Church operations.
- p) **Confidentiality.** On and after the Closing Date, Falls Church will maintain in confidence, and will cause the officers, employees, agents and advisors of Falls Church to maintain in confidence, and not use for any purpose, any written, oral or other information or documentation related to the System or communicated by Falls Church to Fairfax Water in connection with the negotiation, execution or

performance of this Agreement, except to the extent such information (i) is required to be disclosed by Falls Church or Fairfax Water under applicable Law or process or (ii) otherwise becomes generally available to the public other than through a breach of this Agreement by Falls Church or any of Falls Church's officers, employees, agents and advisors. Falls Church shall (A) use the same care and discretion as it employs with its own confidential and proprietary information to maintain in confidence, and prevent disclosures of, the Fairfax Water Confidential Information, and (B) be responsible for any unauthorized disclosure by its officers, employees, agents and advisors. In the event of a breach or threatened breach by Falls Church of this Section, Fairfax Water shall be entitled to an injunction restraining Falls Church from utilizing or disclosing, in whole or in part, such information. Nothing in Section shall be construed as prohibiting Fairfax Water from pursuing any other available remedy for such breach or threatened breach, including, without limitation, the recovery of damages.

- q) **Transfer of Customers.** Falls Church has provided to Fairfax Water all information, files, and materials necessary for Fairfax Water to transfer the customers of the System to Fairfax Water at Closing.
- r) **Cooperation Regarding Operations of the System.** In addition to the requirements of Section 3.1(b), Falls Church shall, at all times after Closing, fully cooperate with Fairfax Water, and shall take such reasonable actions as may be reasonably requested by Fairfax Water, in order to assist Fairfax Water with the operation, maintenance, and servicing of the System within the City of Falls Church, including, without limitation, taking such actions as may be reasonably requested by Fairfax Water in order to (i) put Fairfax Water more fully in possession of any of the Assets, or (ii) provide Fairfax Water with means of access (or more reasonable means of access) in order to provide service to its customers within the City of Falls Church. Fairfax Water shall reimburse Falls Church for the reasonable costs of complying with this Section.
- s) **Post Closing Financial Deliverables.** Falls Church shall provide Fairfax Water with (i) a true and correct list of accounts receivable and accounts payable relating to the System within 90 days after the Closing Date (which list shall account for the period of time from the Closing Date until the end of such 90 day period), and (ii) true and correct copies of all updated Financial Deliverables within 30 days after the Closing Date.

3.3 Negative Covenants of Falls Church.

From the date hereof through the Closing Date, Falls Church will not, except as otherwise permitted by this Agreement or consented to by Fairfax Water in writing:

- a) mortgage, pledge or hypothecate or otherwise subject to a Lien (other than a Permitted Encumbrance) any of the Assets, Assumed Contracts or the Real Property to secure any indebtedness or for any other purpose;
- b) lease, license, sell and leaseback or otherwise surrender, relinquish, sell or dispose of any Assets (other than in the ordinary course of business consistent with past practices of the System), Assumed Contracts or the Real Property;
- c) purchase substantially all of the assets of, or otherwise acquire any business or any proprietorship, firm, association, corporation or other business organization or division thereof, which is engaged in the business of collecting, treating, storing, supplying, distributing or selling water to the public;
- d) with respect to any Employee, (i) enter into any collective bargaining agreement, recognize any labor union or other employee association as the representative of its employees for purposes of bargaining over terms and conditions of employment, (ii) establish any new employee benefit plan or policy, amend any employee benefit plan or policy to increase the benefits thereunder, or create or modify any pension or profit sharing plan, bonus, deferred compensation, death benefit, health, or retirement plan, or increase the level of benefits under any such plan, (iii) increase or decrease any severance or termination pay benefit or any other fringe benefit or (iv) increase such Employee's compensation and/or fringe benefits related to compensation in an amount in excess of three (3) percent or, in the instance of an Employee that has obtained a commercial driver's license within six (6) months of the date such Employee was hired by Falls Church, in an amount in excess of eight (8) percent;
- e) change any of the accounting methods used by Falls Church in connection with the System unless required by applicable Law;
- f) with respect to the System, enter into any new lease or license arrangement, acquire real property or make any new capital expenditure in excess of Fifty Thousand Dollars (\$50,000) for a single item or Two Hundred Fifty Thousand Dollars (\$250,000) in the aggregate, except in the event of an unforeseen incident or emergency that threatens to interrupt or actually interrupts the transmission of water to or within the System, in which case reasonable capital expenditures incurred by Falls Church to address such unforeseen incident or emergency may exceed the aforementioned amounts provided that Falls Church provides prompt notice of the incident or emergency to Fairfax Water;
- g) notwithstanding Section 3.3(f), (i) pay, discharge, settle or satisfy any claims, liabilities, or obligations or litigation (absolute, accrued, asserted or unasserted, contingent or otherwise) of the System, other than (A) the payment, discharge, settlement or satisfaction in the ordinary course of business consistent with past practice of the System, (B) the payment, discharge, settlement or satisfaction of any amounts required to be paid under Section 7.3.5(b)(i) of the Water Sales

Agreement dated July 17, 1997, between Falls Church and the United States of America acting through the Secretary of the Army (the “Falls Church Water Sales Agreement”) for which Falls Church is obligated to reimburse the Secretary of the Army, in an amount not to exceed Two Million Four Hundred Thousand Dollars (\$2,400,000), or (C) any expenditures related to and necessary for the consummation of the transactions contemplated by this Agreement, or (ii) waive or assign any claims or rights of substantial value of the System;

- h) except to the extent that Fairfax Water would not become bound, enter into any Material Contract, assign any Material Contract, modify or amend any Material Contract, waive, release, assign or fail to exercise or pursue any rights or claims under any Material Contract or accelerate, terminate or cancel any Material Contract;
- i) sell, transfer or license to any person, entity or Governmental Authority, or modify, any rights to any System Intellectual Property Rights;
- j) enter into any contract or agreement with respect to the System containing any restriction on the ability of Falls Church to assign all or any portion of its rights, interests or obligations thereunder, unless such restriction expressly excludes any assignment to Fairfax Water in connection with the consummation of the transactions contemplated by this Agreement;
- k) take any action that would or is reasonably likely to result in any of the conditions set forth in Section 4.2 not being satisfied as of the Closing Date; or
- l) enter into any agreement or arrangement obligating Falls Church to take any of the actions prohibited by this Agreement.

3.4 Covenants of Fairfax Water

Fairfax Water hereby covenants and agrees that, except as otherwise approved in advance in writing by Falls Church:

- a) **Regulatory Consents.** Fairfax Water shall, at all times, use its commercially reasonable efforts and diligently pursue all approvals, authorizations, consents and permits required to be obtained by Fairfax Water to consummate the transactions contemplated by this Agreement, including, without limitation, any required approvals from Governmental Authorities. Fairfax Water shall (i) as promptly as practicable, make or cause to be made such filings and submissions under all applicable Laws as may be required by Governmental Authorities for it to consummate its obligations under this Agreement and (ii) keep Falls Church apprised of the status of any such filing or submission to any Governmental Authority.
- b) **Maintenance of Books and Records.** No files, books, documents or records existing on the Closing Date and included among the Assets conveyed to Fairfax

Water pursuant to this Agreement shall be destroyed by Fairfax Water for a period of five (5) years after the Closing Date without giving Falls Church at least thirty (30) days prior written notice, during which time Falls Church shall have the right to examine (during normal business hours) and copy (at its own expense) such files, books, documents or records.

- c) **Confidentiality.** Until the Closing Date, Fairfax Water will maintain in confidence, and will cause the supervisors, directors, officers, employees, agents and advisors of Fairfax Water to maintain in confidence, and not use to the detriment of Falls Church, any written, oral or other information or documentation that is designated by Falls Church to be private, proprietary, privileged or obtained in confidence from Falls Church in connection with this Agreement or the transactions contemplated by this Agreement except to the extent (i) such information is already known by Fairfax Water prior to its disclosure by Falls Church or by others not bound by a duty of confidentiality to Falls Church; (ii) such information becomes publicly available through no fault of Fairfax Water; (iii) the use of such information is necessary or appropriate in making any filing or obtaining any approval, authorization or consent required for the consummation of the transactions contemplated by this Agreement; (iv) the furnishing or use of such information is required by applicable Law or in connection with any legal proceeding; or (v) Falls Church otherwise consents in writing to use of such information. Fairfax Water shall use the same care and discretion as it employs with its own confidential and proprietary information to maintain in confidence, and prevent disclosures of, such information and shall be responsible for any unauthorized disclosure by its supervisors, directors, officers, employees, agents and advisors.

For purposes of this Section, the following information, to the extent delivered by Falls Church to Fairfax Water, is designated by Falls Church as private, proprietary, privileged or obtained in confidence from Falls Church:

(i) information not required to be disclosed by Falls Church under applicable Law; (ii) information entitled or otherwise required to be kept confidential under applicable Law (including, but not limited to, the social security numbers, home addresses and home or mobile telephone numbers of Falls Church's Employees and customers) and (iii) any other information designated or identified, in writing, by Falls Church as private, proprietary, privileged or confidential.

If this Agreement is terminated pursuant to Article 5 of this Agreement, Fairfax Water will return to Falls Church or destroy such private, proprietary, privileged or confidential information. In the event of a breach or threatened breach by Fairfax Water of this Section, Falls Church shall be entitled to an injunction restraining Fairfax Water from utilizing or disclosing, in whole or in part, such information. Nothing in this Section shall be construed as prohibiting Falls Church from pursuing any other available remedy for such breach or threatened breach, including, without limitation, the recovery of damages.

- d) **Proceeds of Sale and Rates.** Fairfax Water will take no action, and will not support or encourage others to take action, either retroactively or prospectively, to seek recovery, refunds, or disgorgement from Falls Church of any proceeds of the transactions contemplated in this Agreement or any rates charged or collected by Falls Church with respect to the System prior to Closing; provided, however, that nothing in this Agreement will prevent Fairfax Water from taking any action to enforce its rights and remedies under this Agreement (including, without limitation, any indemnification obligations of Falls Church).
- e) **Projects in Process.** The amounts of money being delivered to Fairfax Water pursuant to Section 3.2(g), if any, will (i) be separately segregated on the books of Fairfax Water, and (ii) be applied by Fairfax Water to the completion of the projects and/or studies listed on Schedule 2.1(u).
- f) **Taxes.** To the extent any aspect of the transaction may result in recordation tax liabilities, then Fairfax Water and Falls Church shall evenly split the amount of those liabilities.
- g) **Employees.** Prior to Closing, Fairfax Water shall, contingent on Closing, offer employment to each of the Employees and, as of the Closing Date, employ each and every such Employee that accepts the offer of employment. Fairfax Water shall offer such employment to the Employees at pay and benefits comparable to the pay and benefits provided by Falls Church immediately prior to Closing. Fairfax Water shall use commercially reasonable efforts to ensure that each Employee who accepts his or her offer of employment will receive service credit for his or her period of service with Falls Church for all purposes under any benefit plans of Fairfax Water in which such Employees will be eligible to participate; provided, that such service shall not be recognized (i) for the purposes of benefit accrual under any defined benefit pension plan maintained by Fairfax Water, to the extent that such service has been counted under a defined benefit pension plan maintained by Falls Church (or the crediting of such service would otherwise result in a duplication of benefits), or (ii) for the purposes of any benefit plan to the extent that such service would not otherwise be recognized under Fairfax Water's corresponding benefit plan. Fairfax Water agrees that it shall, for a period of 36 months after the Closing, not terminate the employment of any Employee that accepts his or her offer of employment excluding voluntary terminations and discharges and/or terminations for cause which shall be determined by Fairfax Water in its reasonable discretion (but which shall not, in any case, include reductions in force). The terms of employment for each Employee who accepts Fairfax Water's offer of employment will be reflected in a letter agreement between such Employee and Fairfax Water, which will incorporate Fairfax Water's standard terms of employment and employment policies.

Except as provided in Sections 3.1(g), 3.1(h) and Schedule 1.8(a)(v), Falls Church shall be responsible to the Employees for all employee benefits that accrue under the Benefit Plans or otherwise prior to Closing and Fairfax Water shall be

responsible to the Employees who accept Fairfax Water's offer of employment for all employee benefits under Fairfax Water's employee benefit plans that accrue on or after the Closing.

With respect to each Employee employed by Fairfax Water following the Closing Date, Fairfax Water shall adopt the "standard procedure" for preparing and filing Forms W-2, as described in Rev. Proc. 2004-53. Under this procedure, Fairfax Water, as the successor employer, shall provide Forms W-2 to each Employee reflecting all wages paid, taxes withheld by Fairfax Water and any other items required to be reported on the Form W-2, as the successor employer for the portion of the calendar year beginning as of the Closing Date.

- h) **Local Payment Location.** Fairfax Water shall maintain arrangements within Falls Church for at least one (1) location where customers can make walk-in bill payments. Fairfax Water may satisfy the requirements of this Section 3.4(h) by using a lock or drop box reasonably located in Falls Church's city hall or another administrative or governmental center operated by Falls Church which is reasonably acceptable to Fairfax Water and Falls Church, and Falls Church shall cooperate with Fairfax Water to establish and maintain any such lock or drop box. Fairfax Water will cause the contents of any such lock or drop box to be regularly collected. With the consent of Falls Church (which consent shall not be unreasonably withheld, conditioned, or delayed), Fairfax Water may terminate its obligations under this Section 3.4(h) upon the occurrence of any one of the following events: (i) Fairfax Water no longer operates any walk-in payment location for customers living outside of the jurisdiction of Falls Church, or (ii) Fairfax Water reasonably determines that it is no longer economically justifiable to maintain a local payment office in the jurisdiction of Falls Church City.
- i) **Local Advisory Board.** Until the date that is five (5) years after the Closing Date, representatives of Fairfax Water shall meet at least twice per calendar year with a local advisory board appointed by Falls Church.
- j) **Uniform Rate.** On and after the Closing, Fairfax Water shall charge, in perpetuity, uniform rates for all customers of the same class in the service area that was served by the System prior to the Closing, regardless of whether such customers receive service in the City of Falls Church or in Fairfax County; provided, however, that from time to time the rates of customers within the City of Falls Church may in the reasonable discretion of Fairfax Water be increased to reflect any then-applicable Extraordinary Falls Church Requirement. The term "Extraordinary Falls Church Requirement" means any Additional System Taxes (which, for purposes of this Section 3.4(j), include all fees, payments or other consideration charged or assessed in lieu of any Taxes) imposed by Falls Church and the cost of any requirement imposed by Falls Church with regard to the System or Fairfax Water's operation of the System within the City of Falls Church. Extraordinary Falls Church Requirements will not include any permit fees or street bonding fees.

- k) **Rate Phase-In.** Fairfax Water shall phase-in rate reductions for the Commodity, Peak Use and Service Charges for all customers in the service area that was served by the System prior to the Closing such that, within at most two (2) years after the Closing Date, all such customers will, in perpetuity, be charged rates that are uniform with the rates of Fairfax Water's other customers of the same class in Fairfax County; provided, however, that Fairfax Water will charge uniform rates for all customers of the same class for all charges, other than the Commodity, Peak Use and Service Charges, from the date of Closing; and provided further that, from time to time the rates of all customers in the service area that was served by the System prior to Closing may be uniformly increased to reflect any then-applicable Extraordinary Utility Requirements. The term "Extraordinary Utility Requirements" means the cost to respond to an incident that interrupts or threatens to interrupt the transmission of water to the System from any source provided (a) the anticipated capital expense for Fairfax Water to properly respond to the incident exceeds Two Million Dollars (\$2,000,000), and (b) the incident occurs within five (5) years after Closing.

Nothing in this Section shall prevent Fairfax Water from applying on a uniform basis its rules and regulations regarding conditions of service after Closing.

- l) **Sewer Billing.** After the Closing, Fairfax Water shall provide sewer billing services on behalf of Falls Church, at a cost that does not exceed the costs charged by Fairfax Water to Fairfax County for similar billing services and in accordance with an agreement substantially in the form attached hereto as Exhibit 1.11(o), which the Parties will enter into at Closing.
- m) **Availability Fees/ Local Facility Charges.** Fairfax Water shall use the availability and local facility charge components of all Tap Fees it receives at Closing from Falls Church (which are being received by Fairfax Water by way of an adjustment to the Purchase Price pursuant to this Agreement) to provide capacity for the System, including the supply, treatment, distribution, and transmission of water, and the payment of any principal, interest and other fees and expenses relating to any debt incurred to finance such work.
- n) **Certain Easements.** At Closing, Fairfax Water will grant Falls Church (i) sanitary and storm sewer facility easements for the continued use of existing sanitary and storm sewer facilities owned by Falls Church and, in a manner reasonably approved by Fairfax Water and which does not unreasonably interfere with the use and operation of the System by Fairfax Water, for the expansion and extension of existing sanitary and storm sewer facilities and the installation of new sanitary and storm sewer facilities by Falls Church, and (ii) an easement for the location, relocation, maintenance, operation, repair, and replacement of all communications equipment and related appurtenances owned and/or leased now or in the future by Falls Church and which are used for governmental, safety or other governmental purposes, and which are situated on any of the water tanks or water distribution towers included in the Assets, or on any Real Property, as applicable, in a manner reasonably approved by Fairfax Water and which does not

unreasonably interfere with the use and operation of those tanks, towers or Real Property by Fairfax Water or any other third party or entity. Any easement granted by Fairfax Water pursuant to this Section 3.4(n) will provide that Falls Church shall, to the extent permitted by Virginia law, indemnify, defend and hold harmless the Fairfax Water Indemnified Parties (as defined in Section 6.2) from any Damages (as defined in Section 6.1) relating to or arising out of any death, injury or property damage caused by the construction, installation, maintenance, repair, operation, replacement, expansion, removal or condition of any facilities or equipment located in any such easement and which is not caused by the gross negligence of any of the Fairfax Water Indemnified Parties.

- o) **Relocation of Certain Assets.** Upon written notice from Falls Church to Fairfax Water, Fairfax Water will, by the end of the Relocation Period (as defined below), relocate (1) any water main and related appurtenances located on property that is owned by Falls Church (except for property located in a public right-of-way), and (2) facilities of the System described in Section 1.3(c) of this Agreement located within the School Easement (as defined in Section 4.1(n)), to a location, and under conditions (including suspension of service relating to the System), reasonably agreeable to Falls Church and Fairfax Water if, in Falls Church's reasonable opinion, those mains, appurtenances, or facilities (as applicable) unreasonably interfere with the operation, maintenance or construction of real or personal property by Falls Church in the ordinary course of Fall Church's operations, or unreasonably interfere with the development of the School Easement properties. The notice delivered by Falls Church to Fairfax Water must contain the reason for the request to relocate the designated mains, appurtenances, or facilities (as applicable) and their proposed new location.

The term "Relocation Period" means a period of time, reasonably designated by Fairfax Water, within which Fairfax Water will complete the relocation of the mains, appurtenances or facilities described in this Section 3.4(o). The Relocation Period will include the amount of time reasonably designated by Fairfax Water to, among other things: select and acquire relocation sites; complete all necessary design and construction documents; obtain all necessary permits; complete construction for the relocated mains, appurtenances or facilities (as applicable); and up to 180 days thereafter to complete such relocation. Upon request, Fairfax Water will keep Falls Church reasonably informed as to the expected duration of the Relocation Period.

The cost for any relocation of the designated mains, appurtenances, or facilities (as applicable) located on property described in (1) and (2) of this Section 3.4(o) will be borne solely by Falls Church, and Falls Church promptly (and no later than 30 days after receipt of each invoice from Fairfax Water) must reimburse, or advance to, Fairfax Water (in the discretion of Fairfax Water) all reasonable funds, amounts, expenses, costs, fees (including without limitation engineers' and attorneys' fees, staffing costs, costs of necessary easements, and costs of construction) relating to the relocation of the mains, appurtenances, or facilities (as applicable). All relocations, adjustments, and associated betterments of

facilities of the System located on properties within Falls Church (other than relocations relating to those properties described in (1) and (2) of this Section 3.4(o)), will be governed by and performed in accordance with the Master Utility Relocation Agreement attached hereto as Exhibit 3.4(o).

ARTICLE 4. CONDITIONS PRECEDENT

4.1 Conditions Precedent to Fairfax Water's Obligations

The obligation of Fairfax Water to consummate the transactions contemplated by this Agreement is subject to the satisfaction, on or prior to the Closing Date, of each of the following conditions (any one or more of which may be waived in writing, in whole or in part, by Fairfax Water, in its sole discretion):

- a) **Representations and Warranties.** (i) The representations and warranties set forth in Sections 2.1(a), 2.1(b) and the first two sentences of 2.1(e) shall be true and correct in all respects as of the date hereof and as of the Closing Date as if then made and (ii) all other representations and warranties of Falls Church contained in this Agreement or in any other document, certificate or agreement delivered in connection herewith (A) that are qualified as to “materiality,” “Material Adverse Effect” and similar phrases shall be true and correct in all respects as of the date hereof and as of the Closing Date as if then made, and (B) that are not so qualified shall be true and correct in all material respects as of the date hereof and as of the Closing Date as if then made, unless such representations and warranties speak as to a certain date, in which case such representations and warranties shall be so true and correct as of such date.
- b) **Performance of Agreements.** Falls Church shall have performed and complied, in all material respects, with all covenants, agreements and conditions required by this Agreement or any other agreement, document or certificate to be delivered in connection with the consummation of the transactions contemplated thereby to be performed or complied with by it prior to or at the Closing.
- c) **Adverse Change.** There shall not have occurred a Material Adverse Effect whether covered by insurance or not.
- d) **Closing Certificates.** Falls Church shall have delivered to Fairfax Water a certificate of an officer of Falls Church (i) certifying and attaching true and complete copies of the resolutions of the City Council of Falls Church authorizing the execution and delivery of this Agreement and the transactions contemplated hereby and the performance of the obligations of Falls Church hereunder, (ii) certifying the incumbency of the officers of Falls Church executing this

Agreement or any other document, agreement or certificate delivered hereunder and (iii) certifying as to the satisfaction, as of the Closing Date, of each of the conditions set forth in Sections 4.1(a), (b), (c), (g), (h), (j), and (l) hereof.

- e) **Closing Deliveries.** Falls Church shall have delivered to Fairfax Water the documents and other items described in Section 1.11 of this Agreement.
- f) **No Litigation; No Prohibition.** There shall not be any pending or overtly threatened action, proceeding or investigation by or before any court, arbitrator or other Governmental Authority which seeks to restrain, prohibit or invalidate the transactions contemplated hereby or which, if adversely determined, would result in a Material Adverse Effect. No Law or order shall have been enacted or promulgated by any Governmental Authority which prohibits, restricts or makes illegal this Agreement or the transactions contemplated hereby.
- g) **Regulatory Consents.** Falls Church shall have obtained the written, final and unappealable approvals, authorizations and consents (including consents for Permit transfers) from Governmental Authorities that are required to consummate the transactions contemplated by this Agreement, including, without limitation, the consents listed on Schedule 2.1(c) and the approval of every other Governmental Authority that may be required in the reasonable opinion of Fairfax Water.
- h) **Contractual Consents.** Falls Church shall have obtained or made each notice to, filing or registration with, or authorization, consent or approval of any person, entity or Governmental Authority that is necessary or is required to be made or obtained by Falls Church under any Assumed Contract or Permit in connection with the execution and delivery by Falls Church of this Agreement or the other documents and instruments contemplated hereby or the consummation by Falls Church of the transactions contemplated hereby and thereby including, without limitation, the assignment of the Assumed Contracts and Permits listed on Schedule 1.3(e)2 to Fairfax Water at Closing.
- i) **Water Supply Matters.** Fairfax Water shall have (i) entered into a water supply agreement with the Secretary of the Army, or any other necessary body or entity, effective as of Closing, providing for the continued supply of water from the Washington Aqueduct to the System from and after Closing on terms reasonably satisfactory to Fairfax Water, (ii) an assignment, effective as of Closing, of Falls Church's rights and obligations on and after Closing under that certain Memorandum of Understanding with respect to the Washington Aqueduct between the District of Columbia Water and Sewer Authority, Arlington County Virginia, Falls Church and the Corps, or the execution of a new Memorandum of Understanding (or similar agreement) by and between the District of Columbia Water and Sewer Authority, Arlington County Virginia, Fairfax Water, the Secretary of the Army and any other necessary party or entity, (iii) an agreement, easement, license, lease or other document reasonably acceptable to Fairfax Water from the United States Department of the Interior, the Secretary of the Army, or

any other necessary party or entity, allowing Fairfax Water the right to access, maintain, repair, replace and expand all lines, mains, facilities and equipment running to, and/or from, the Dalecarlia Reservoir located in Washington, D.C. which serve the System, and (iv) any other agreement, easement, license, lease or other document which Fairfax Water, in its reasonable discretion, determines is necessary for the continued use and operation of the System.

- j) **Voter Approval.** Falls Church shall have received referendum approval for the sale of the Assets by a majority of all votes cast by the qualified voters of Falls Church in a general election.
- k) **Defeasance.** All Liens associated with the Assets or the System shall have been removed prior to the Closing (subject only to the Permitted Encumbrances) and evidence thereof shall have been delivered to Fairfax Water.
- l) **Boundary Lines.** Fairfax County and Falls Church shall have obtained a binding and non-appealable order from a court of competent jurisdiction in the Commonwealth of Virginia giving legal effect to a voluntary boundary adjustment agreement between Falls Church and Fairfax County in accordance with the Boundary Line Adjustment Agreement (the “Boundary Line Order”).
- m) **Zoning.** Fairfax Water shall have received written evidence that any Real Property, together with all improvements, equipment and facilities located thereon, which, as a result of the Boundary Line Order, will be located in the City of Falls Church will be zoned in such a manner that (i) Fairfax Water will not need to obtain any zoning approvals, amendments, permits (including special exception permits or occupancy permits) or consents to allow their continued use and operation in the same manner as before the Boundary Line Order became effective, (ii) such Real Property will comply with all applicable land use ordinances and regulations, and (iii) in the event of damage or destruction of the existing improvements on such Real Property, or in the event all or any portion of the existing improvements on such Real Property need to be repaired and/or replaced in their entirety, such improvements may be restored, repaired and/or replaced on the Real Property without any discretionary approvals.
- n) **School Easement.** Fairfax Water shall have received an agreement, easement, license, lease or other document reasonably acceptable to Fairfax Water from the School Board of Falls Church allowing Fairfax Water the right to access, maintain, repair, replace and expand all lines, mains, facilities, structures, improvements and equipment related to the System and located on property owned by the School Board of Falls Church at, or located near, George Mason High School (the “School Easement”).
- o) **Termination of Water Sales Agreement.** The Falls Church Water Sales Agreement shall have been terminated on terms reasonably satisfactory to Fairfax Water.

4.2 Conditions Precedent to Falls Church's Obligations

The obligation of Falls Church to consummate the transactions contemplated by this Agreement is subject to the satisfaction, on or prior to the Closing Date, of each of the following conditions (any one or more of which may be waived in writing, in whole or in part, by Falls Church, in its sole discretion):

- a) **Representations and Warranties.** (i) The representations and warranties set forth in Sections 2.2(a) and (b) shall be true and correct in all respects as of the date hereof and as of the Closing Date as if then made, and (ii) all other representations and warranties of Fairfax Water contained in this Agreement or in any other document, certificate or agreement delivered in connection herewith (A) that are qualified as to "materiality" and similar phrases shall be true and correct in all respects as of the date hereof and as of the Closing Date as if then made, and (B) that are not so qualified shall be true and correct in all material respects as of the date hereof and as of the Closing Date as if then made, unless such representations and warranties speak as to a certain date, in which case such representations and warranties shall be so true and correct as of such date.
- b) **Performance of Agreements.** Fairfax Water shall have performed and complied, in all material respects, with all covenants, agreements and conditions required by this Agreement or any other agreement, document or certificate to be delivered in connection with the consummation of the transactions contemplated thereby to be performed or complied with by it prior to or at the Closing.
- c) **Closing Certificates.** Fairfax Water shall have delivered to Falls Church a certificate of an officer of Fairfax Water (i) certifying and attaching true and complete copies of the resolutions of the board members of Fairfax Water authorizing the execution and delivery of this Agreement and the transactions contemplated hereby and the performance of the obligations of Fairfax Water hereunder, (ii) certifying the incumbency of the officers of Fairfax Water executing this Agreement or any other document, agreement or certificate delivered hereunder and (iii) certifying as to the satisfaction, as of the Closing Date, of each of the conditions set forth in Sections 4.2(a) and (b) above.
- d) **Closing Deliveries.** Fairfax Water shall have delivered to Falls Church the documents and other items described in or required by Section 1.12 of this Agreement.
- e) **No Litigation.** There shall not be any pending or overtly threatened action, proceeding or investigation by or before any court, arbitrator or other Governmental Authority which seeks to restrain, prohibit or invalidate the transactions contemplated hereby, or which, if adversely determined would result in a Material Adverse Effect, and no Law or order shall have been enacted or

promulgated by any Governmental Authority which prohibits, restricts or makes illegal this Agreement or the transactions contemplated hereby.

- f) **Regulatory Consents.** Fairfax Water shall have obtained the written, final and unappealable approvals, authorizations and consents (including consents for Permit transfers) that are required to be obtained by Fairfax Water from any Governmental Authority to consummate the transactions contemplated by this Agreement.
- g) **Voter Approval.** Falls Church shall have received referendum approval for the sale of the Assets to Fairfax Water by a majority of all votes cast by the qualified voters of Falls Church.
- h) **Boundary Lines.** Fairfax County and Falls Church shall have obtained the Boundary Line Order.
- i) **Termination of Water Sales Agreement.** The Falls Church Water Sales Agreement shall have been terminated on terms reasonably satisfactory to Falls Church.

ARTICLE 5. TERMINATION

5.1 Termination

This Agreement may be terminated prior to the Closing Date only as follows and in each case only by written notice to the other Party:

- a) by the mutual written consent of the Parties;
- b) by either Party, if the Closing has not occurred (other than as a result of the failure of that Party to comply fully with its obligations under this Agreement) on or before the first anniversary of the date of this Agreement or, if the only condition to Closing remaining after the first anniversary of the date of this Agreement is the receipt by Fairfax Water and Falls Church of the Boundary Line Order, then before the second anniversary of the date of this Agreement (the "Termination Date");
- c) by either Party, if the other Party has breached any covenant, warranty, representation, agreement or provision of this Agreement in any material respect and such breach (if capable of being cured) has not been (i) cured within thirty (30) days after a non-breaching Party gives written notice of said breach to the breaching Party; or (ii) waived by the non-breaching Party;
- d) by Fairfax Water, if any of the conditions in Section 4.1 of this Agreement (i) have not been satisfied as of the Termination Date or (ii) have become

incapable of being satisfied by such date (other than through the failure of Fairfax Water to comply with its obligations under this Agreement);

- e) by Falls Church, if any of the conditions in Section 4.2 of this Agreement (i) have not been satisfied as of the Termination Date or (ii) have become incapable of being satisfied by such date (other than through the failure of Falls Church to comply with its obligations under this Agreement); or
- f) by Falls Church or Fairfax Water, if any court of competent jurisdiction or other Governmental Authority shall have issued an order or taken any other action restraining, enjoining or otherwise prohibiting the transactions contemplated herein and such order or other action shall have become final and nonappealable.

5.2 Effect of Termination

Each Party's right of termination under Section 5.1 of this Agreement is in addition to any other rights it may have under this Agreement or otherwise, and the exercise of a right of termination will not be an election of remedies.

If this Agreement is terminated pursuant to Section 5.1 of this Agreement, all further obligations of the Parties under this Agreement will terminate, except that the obligations in Sections 3.1(c) (Expenses), 3.2(p) and 3.4(c) (Confidentiality), this Section 5.2, and Article 8 of this Agreement shall survive such termination; provided, however, that if this Agreement is terminated by a Party pursuant to Section 5.1(c) of this Agreement, such Party's rights to pursue all legal remedies available for any breach of this Agreement will survive such termination unimpaired.

ARTICLE 6. INDEMNIFICATION

6.1 Definition of Damages

For purposes of this Agreement, "Damages" means the aggregate amount of all damages, claims, causes of action, losses, obligations, liabilities (including any governmental penalty, fines or punitive damages), deficiencies, diminution in value, interest, costs and expenses (including

reasonable attorneys' fees and all other expenses incurred in investigating, preparing, or defending any claim, suit or other proceeding, whether commenced or threatened).

6.2 Indemnification by Falls Church

To the extent permitted by Virginia law, on and after the Closing, Falls Church agrees to indemnify, defend and hold harmless Fairfax Water, its affiliates and their respective officers, directors, employees and agents (the "Fairfax Water Indemnified Parties") from and against, and reimburse the Fairfax Water Indemnified Parties for, any and all Damages that such Fairfax Water Indemnified Parties may suffer or incur (regardless of whether or not such Damages relate to a Third Party Claim) arising out of or resulting from:

- a) any breach or inaccuracy of any representation or warranty made by Falls Church in this Agreement or any other document, certificate or agreement delivered in connection herewith, provided that for purposes of determining the amount of any Damages related to a breach or inaccuracy of any representation or warranty for purposes of indemnification (but not for determining whether a breach or inaccuracy thereof has occurred or exists), the representations and warranties set forth in this Agreement shall be considered without regard to any "Knowledge of Falls Church," "knowledge," "materiality," "Material Adverse Effect" or phrases of like import;
- b) the non-fulfillment of any covenant or agreement made by Falls Church in this Agreement or any other document, certificate or agreement delivered in connection herewith (including any deliveries furnished pursuant to Section 1.11 of this Agreement);
- c) any and all liabilities of Falls Church of any nature, other than Assumed Liabilities;
- d) the Retained Liabilities; and
- e) the costs incurred in connection with the successful enforcement by a Fairfax Water Indemnified Party of its rights under this Section of this Agreement, including, without limitation, reasonable attorneys' fees and costs.

Falls Church's obligations under this Section of this Agreement shall be discharged, and all amounts payable hereunder (including costs and fees in the defense of any litigation), shall be paid to Fairfax Water as they are incurred by Fairfax Water. To the extent permitted by law,

Falls Church waives, and shall not assert, any claim or defense that the indemnities set forth in this Section 6.2 are invalid, unenforceable, void or otherwise ineffective.

6.3 Indemnification by Fairfax Water

To the extent permitted by Virginia law, on and after the Closing, Fairfax Water agrees to indemnify, defend and hold harmless Falls Church, its affiliates and their respective officers, council members, employees and agents (the “Falls Church Indemnified Parties”) from and against, and reimburse the Falls Church Indemnified Parties for, any and all Damages that such Falls Church Indemnified Parties may suffer or incur (regardless of whether or not such Damages relate to a Third Party Claim) arising out of or resulting from:

- a) any breach or inaccuracy of any representation or warranty made by Fairfax Water in this Agreement or any other document, certificate or agreement delivered in connection herewith, provided that for purposes of determining the amount of any Damages related to a breach or inaccuracy of any representation or warranty for purposes of indemnification (but not for determining whether a breach or inaccuracy thereof has occurred or exists), the representations and warranties set forth in this Agreement shall be considered without regard to any “Knowledge of Fairfax Water,” “knowledge,” “materiality,” “Material Adverse Effect” or phrases of like import;
- b) the non-fulfillment of any covenant or agreement made by Fairfax Water in this Agreement or any other document, certificate or agreement delivered in connection herewith (including any deliveries furnished pursuant to Section 1.12 of this Agreement);
- c) any and all liabilities of Fairfax Water of any nature;
- d) the Assumed Liabilities; and
- e) the costs incurred in connection with the successful enforcement by a Falls Church Indemnified Party of its rights under this Section of this Agreement, including, without limitation, reasonable attorneys’ fees and costs.

Fairfax Water's obligations under this Section of this Agreement shall be discharged, and all amounts payable hereunder (including costs and fees in the defense of any litigation) shall be paid to Falls Church as they are incurred by Falls Church. To the extent permitted by law,

Fairfax Water waives, and shall not assert, any claim or defense that the indemnities set forth in this Section 6.3 are invalid, unenforceable, void or otherwise ineffective.

6.4 General Indemnification Procedures

- a) During the applicable survival period specified in Article 7 of this Agreement, a Party seeking indemnification pursuant to Article 6 of this Agreement (an “Indemnified Party”) shall give prompt written notice (a “Claim Notice”) to the Party from whom such indemnification is sought (the “Indemnifying Party”) of the assertion of any claim, the incurrence or potential incurrence of any Damages, or the commencement of any action, suit or proceeding, of which the Indemnified Party has knowledge in respect of which indemnity may be sought hereunder, and will give the Indemnifying Party such information with respect thereto as the Indemnifying Party may reasonably request; provided, that the failure by the Indemnified Party to give promptly such required notice shall relieve the Indemnifying Party of any liability hereunder only to the extent that the Indemnifying Party has suffered actual prejudice due to such failure to promptly give such written notice.
- b) If the Claim Notice does not involve a Third Party Claim (as defined below), the Indemnifying Party shall promptly pay to the Indemnified Party any amounts owed to such Indemnified Party pursuant to the terms of this Article 6.
- c) The Indemnifying Party shall have the right, exercisable by written notice to the Indemnified Party after receipt of a Claim Notice from the Indemnified Party of the commencement, threatened commencement or assertion of any claim, action, suit or proceeding by a third party in respect of which indemnity may be sought hereunder (a “Third Party Claim”), to assume the defense of such Third Party Claim so long as such claim involves (and continues to involve) solely monetary damages; provided, that (i) the Indemnifying Party expressly agrees in such notice (A) that, as between the Indemnifying Party and the Indemnified Party, solely the Indemnifying Party shall be obligated to satisfy and discharge the Third Party Claim, and (B) to reimburse the Indemnified Party for any and all Damages incurred by the Indemnified Party in connection with such Third Party Claim; (ii) such Third Party Claim does not include a request or demand for injunctive or other equitable relief; (iii) the Indemnifying Party makes reasonably adequate provision to assure the Indemnified Party of the ability of the Indemnifying Party to satisfy the full amount of any adverse monetary judgment that is reasonably likely to result; and (iv) such Third Party Claim, if adversely decided, in the reasonable opinion of the Indemnified Party, is not likely to establish a precedential custom or practice adverse to the continuing business interests or reputation of the Indemnified Party. In connection with any Third Party Claim, the Parties shall cooperate with each other and provide each other with access to relevant books and records in their possession.

- d) The Indemnifying Party shall have the right to settle or compromise any Third Party Claim against the Indemnified Party without the consent of the Indemnified Party, provided that the terms of the settlement or compromise provide for the unconditional release of the Indemnified Party and require the payment only of monetary damages.
- e) The Indemnifying Party or the Indemnified Party, as the case may be, shall have the right to participate in (but not control), at its own expense and with counsel of its choosing, the defense of any Third Party Claim which the other Party is defending as provided in this Section 6.4.
- f) Notwithstanding any other provision of Article 6 of this Agreement, (i) no claim for indemnification may be asserted under Section 6.2(a) or Section 6.3(a), as applicable, of this Agreement, and no indemnification shall be due and owing from any Party thereunder unless and until, and only to the extent, the aggregate of all such claims under such Section, net of any insurance payments, first exceeds Two Hundred Fifty Thousand Dollars (\$250,000.00) (the "Basket"); (ii) in no event shall the aggregate amount of Damages paid either by Falls Church under Section 6.2(a) or by Fairfax Water under Section 6.3(a) exceed Six Million Dollars (\$6,000,000); and (iii) in no event shall the aggregate amount of Damages paid by Falls Church under Section 6.2(b), or by Fairfax Water under Section 6.3(b), exceed the Purchase Price.
- g) Other than with respect to Third Party Claims, no Party will be liable to any other Party for any reason under this Agreement for any form of special, incidental, indirect, or punitive damages of any kind.

6.5 Effect of Knowledge or Investigation.

The respective rights of the Fairfax Water Indemnified Parties and the Falls Church Indemnified Parties to indemnification under this Agreement and the other remedies permitted under this Agreement based upon any representations, warranties, covenants or agreements contained in this Agreement or in any other document, certificate or agreement delivered in connection herewith shall not be affected by any investigation conducted by such person with respect to, or any knowledge acquired (or capable of being acquired) at any time by such person, whether before or after the execution and delivery of this Agreement or the Closing Date, regarding the accuracy or inaccuracy of or compliance with any such representation, warranty, covenant or agreement.

ARTICLE 7. SURVIVAL

7.1 Survival

All covenants, warranties, representations and agreements made by the Parties in this Agreement or in any other document, agreement, statement or certificate furnished in connection with the transactions contemplated by this Agreement shall survive the Closing, subject to the limitations set forth in this Article 7.

7.2 Limitations on Survival

- a) The representations and warranties of the Parties in this Agreement and in any other document, agreement, statement or certificate furnished in connection with the transactions contemplated by this Agreement shall survive as follows:
 - (i) the warranties and representations made in Section 2.1(a), 2.1(b), and 2.1(c) and in Section 2.2(a), 2.2(b) and 2.2(c) shall survive indefinitely;
 - (ii) the warranties and representations made in Section 2.1(o) (Taxes and Grants), 2.1(q) (Labor Matters), and 2.1(r) (Customer Advances) shall survive until the date that is ninety (90) days after the expiration of the statute of limitations applicable to the respective subject matters thereof; and
 - (iii) each other representation and warranty, whether express or implied, shall survive the Closing for a period of two (2) years.
- b) This Article 7 shall not limit any covenant or agreement made by the Parties in this Agreement or in any document, agreement or certificate furnished in connection with the transactions contemplated by this Agreement that by its terms contemplates performance after Closing. Each such covenant or agreement shall survive Closing, and continue in full force and effect after Closing, until each such covenant or agreement is fully performed.

ARTICLE 8. MISCELLANEOUS

8.1 Schedules

All Exhibits and Schedules (“Schedules”) annexed or referred to in this Agreement are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Nothing

in the Schedules shall be deemed adequate to disclose an exception to a representation or warranty made herein unless such Schedule identifies the exception with reasonable particularity and discloses the relevant facts in reasonable detail. Without limiting the generality of the foregoing, the mere listing (or inclusion of a copy) of a document or other item shall not be deemed adequate to disclose an exception to a representation or warranty made herein (unless the representation or warranty has to do with the existence of the document or other item itself).

Prior to Closing, the Parties shall promptly deliver an amended or supplemented Schedule when any change in fact, condition or information requires an amendment or supplement to such Schedule. No amendment or supplement to Fairfax Water's or Falls Church's Schedules will affect any of the conditions to Fairfax Water's or Falls Church's, as applicable, obligations under this Agreement (including, without limitation conditions precedent to Closing), affect Fairfax Water's or Falls Church's, as applicable, indemnification rights under Article 6 or affect any other remedy available to Fairfax Water or Falls Church, as applicable, arising from a representation that would be inaccurate, or a warranty that would be breached, without qualification by the amended or supplemented Schedule. Notwithstanding the foregoing, any litigation scheduled by a party pursuant to this Section 8.1, that individually or in the aggregate would result in or constitute a Material Adverse Effect, may be considered for purposes of the conditions precedent to Closing set forth in Sections 4.1(f) and 4.2(e).

8.2 Entire Agreement

This Agreement, along with all other documents, agreements and certificates delivered by either Party in connection with the transactions contemplated thereby, constitutes the entire agreement between the Parties concerning the sale and purchase of the Assets and the assignment of the Assumed Contracts, and supersedes all prior oral or written agreements, understandings,

representations and warranties, and courses of conduct and dealing between the Parties on the subject matter hereof.

8.3 Amendment

This Agreement may be amended or modified only by a writing executed by all of the Parties.

8.4 Extension or Waiver of Performance

Falls Church or Fairfax Water may extend the time for or waive the performance of any of the obligations of each other, waive any inaccuracies in the warranties or representations by each other, or waive compliance by each other with any of the covenants, conditions or agreements contained in this Agreement, provided that any such extension or waiver shall be in writing and signed by the waiving Party in the case of a waiver, or each of the Parties in the case of an extension. If any of the conditions set forth in Section 4.1 of this Agreement have not been satisfied, Fairfax Water may nevertheless elect to waive (to the extent permitted by applicable Law) such conditions and proceed with the consummation of the transactions contemplated hereby, and if any of the conditions set forth in Section 4.2 of this Agreement have not been satisfied, Falls Church may nevertheless elect to waive (to the extent permitted by applicable Law) such conditions and proceed with the consummation of the transactions contemplated hereby; provided, that no waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision of this Agreement (including any right to indemnification under Article 6), whether or not similar, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

8.5 Assignment or Delegation

Neither Party may assign, delegate or otherwise transfer any of its duties, rights or obligations under this Agreement without the prior written consent of the other Party. Any such assignment, delegation or transfer without consent shall be void and of no force and effect.

8.6 Successors and Assigns; Binding Effect

Except as otherwise provided herein, this Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns.

8.7 Governing Law; Certain Matters Relating to the Code of Virginia

This Agreement shall be governed by and construed under the laws of the Commonwealth of Virginia, without reference to the conflict of laws principles thereof. This Agreement is being entered into pursuant to Section 15.2-2112 of the Code.

8.8 Notices

All notices, requests and demands provided for, required by or specified in this Agreement shall be in writing, addressed to Falls Church or Fairfax Water, as the case may be, at the addresses set forth in this Paragraph and may be (a) delivered in person; (b) sent by United States registered or certified mail, return receipt requested; or (c) sent by Federal Express or any other nationally recognized overnight courier or delivery service from which a receipt may be obtained:

To Falls Church: Wyatt Shields, City Manager
City of Falls Church, Virginia
300 Park Avenue, Suite 303 East
Falls Church, VA 22046
Tel: 703-248-5004
Fax: 703-248-5146
WShields@fallschurchva.gov

With a copy to: City Attorney

City of Falls Church, Virginia
300 Park Avenue, Suite 302 East
Falls Church, VA 22046
Tel: 703-248-5010
Fax: 703-248-5146

To Fairfax Water:

Charles Murray, General Manager
Fairfax County Water Authority
8570 Executive Park Avenue
Fairfax, VA 22031
cmurray@fairfaxwater.org

With a copy to:

John C. McGranahan, Jr., Esquire
Hunton & Williams LLP
1751 Pinnacle Drive, Suite 1700
McLean, VA 22102
jmcgranahan@hunton.com

Any Party shall have the right to designate a new recipient or address for the receipt of notices by written notice to the other Parties as provided in Section 8.8 of this Agreement. Each Party shall also endeavor to provide copies of any notice, request or demand to the other Party by email.

8.9 Captions

The headings and captions used with the subsections, sections and articles of this Agreement are for convenience of reference only and shall not be deemed to modify or limit the provisions of this Agreement.

8.10 Construction

In the event any ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

Any reference to any federal, state, local or foreign statute shall be deemed to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise.

Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context may require. The word “including” means included, without limitation.

“Material Adverse Effect” means any change, result, occurrence, fact, event or effect which, individually or in the aggregate, has had or could reasonably be expected to have a material adverse effect on (i) the business, assets, condition (financial or otherwise), prospects or results of operations of the System or Assets, taken as a whole, involving an amount equal to or over Five Hundred Thousand Dollars (\$500,000), or (ii) the ability of the Parties to consummate the transactions contemplated hereby; provided, however, that for the purposes of clause (i) above, none of the following, either alone or in combination, shall be deemed to constitute, or shall be considered in determining whether there has been, a “Material Adverse Effect”: (A) changes in general economic conditions affecting municipal water systems, or changes or circumstances affecting the financial, securities, lending or commodities markets generally or (B) effects resulting from changes caused by a material worsening of current conditions caused by acts of terrorism or war (whether or not declared) occurring after the date of this Agreement, unless, in each case, any such change, result, occurrence, fact, event or effect disproportionately adversely affects the System or the Assets compared to similarly-situated municipal water systems.

8.11 Cumulative Remedies

The remedies afforded in this Agreement are cumulative to each other and to all other remedies provided by Law.

8.12 No Waiver

Except as otherwise provided herein, no delay of or omission in the exercise of any right, power or remedy accruing to any Party as a result of any breach or default by any other Party under this Agreement shall impair any such right, power or remedy; nor shall it be construed as a waiver of or acquiescence in any such breach or default, or any similar breach or default occurring later; nor shall any waiver of a single breach or default be deemed a waiver of any other breach or default occurring before or after that waiver.

8.13 Jurisdiction and Venue

The Parties each irrevocably submit to the exclusive jurisdiction of (a) the state courts of the Commonwealth of Virginia having proper jurisdiction and which are situated in either Arlington County or Fairfax County and the appropriate appellate courts therefrom, and (b) the United States District Court for the Eastern District of Virginia and the appropriate appellate courts therefrom, for the purposes of any suit, action or other proceeding arising out of or relating to this Agreement or any transaction contemplated by this Agreement.

8.14 Waiver of Jury Trial

Falls Church and Fairfax Water each irrevocably and unconditionally waive all rights they may have to a trial by jury in respect of any litigation (whether based on contract, tort or otherwise) directly or indirectly arising out of or relating to this agreement.

8.15 Third Party Beneficiaries

Other than the Falls Church Indemnified Parties and Fairfax Water Indemnified Parties with respect to Article 6, there are no intended third party beneficiaries to this Agreement, and nothing herein expressed or implied is intended or should be construed to confer upon or give to any person (other than the Parties) any rights or remedies under or by reason of this Agreement.

8.16 Specific Performance.

The Parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that, except as expressly provided in this Agreement, Falls Church and Fairfax Water shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement, this being in addition to any other remedy to which they are entitled at Law or in equity and without the necessity of posting bonds or any other undertaking in connection therewith. The Parties acknowledge that in the absence of a waiver, a bond or undertaking may be required by a court and the Parties hereby waive any such requirement of such a bond or undertaking.

8.17 Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original copy of this Agreement and all of which, when taken together, shall be deemed to constitute one and the same agreement. Copies of executed counterparts transmitted by telecopy or other electronic transmission service shall be considered original executed counterparts.

8.18 Severability

If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic and legal substance of the transactions contemplated hereby are not affected in any manner resulting in a Material Adverse Effect. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this

Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner, to the end that the transactions contemplated hereby are fulfilled to the extent possible.

[Signatures Appear on Next Page]

WHEREFORE, in consideration of the foregoing and intending to be legally bound by the terms herein, the Parties have caused this Agreement to be executed as set forth below.

Attest:

Kathleen C. Beeschow
City Clerk

CITY OF FALLS CHURCH, VIRGINIA

By: Wyatt Shields
Wyatt Shields
City Manager

Approved as to form:

J. Patrick T.
City Attorney



COMMONWEALTH OF VIRGINIA,

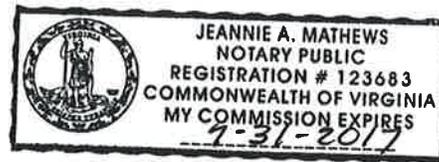
COUNTY OF FAIRFAX, TO-WIT:

The foregoing instrument was acknowledged before me this 2ND day of January, 2014, by Wyatt Shields, City Manager of the City of Falls Church, a political subdivision and an independent city of the Commonwealth of Virginia, on behalf of the City.

Jeannie A. Mathews
Notary Public

Registration No.: 123683

My Commission Expires: 7-31-2017



Attest:

FAIRFAX COUNTY WATER
AUTHORITY

Eva J. Catlin

By: Philip W. Allin
Philip W. Allin
Chairman of the Board

COMMONWEALTH OF VIRGINIA,

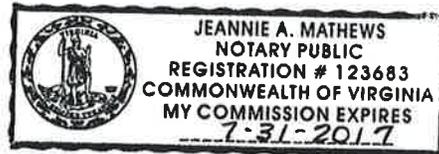
COUNTY OF FAIRFAX, TO-WIT:

The foregoing instrument was acknowledged before me this 2ND day of January, 2014, by Philip W. Allin, Chairman of the Board of the Fairfax County Water Authority, a public body politic and corporate and a political subdivision of the Commonwealth of Virginia, on behalf of the Authority.

Jeannie A. Mathews
Notary Public

Registration No.: 123683

My Commission Expires: 7-31-2017



List of Schedules for Agreement of Sale

- Schedule 1.3(b)(i) - Land and Real Property
- Schedule 1.3(b)(ii) - Systems Easements and Rights-of-Way
- Schedule 1.3(b)(iii) - Leased Parcels
- Schedule 1.3(b)(iv) - Quitclaim Parcel
- Schedule 1.3(d) - Material Equipment
- Schedule 1.3(e)1 - Falls Church Water Rights Agreements
- Schedule 1.3(e)2 - Falls Church Material Contracts
- Schedule 1.4 - Excluded Assets
- Schedule 1.4(g) - Excluded System Intellectual Property
- Schedule 1.5(b) - Excluded Contracts and Retained Liabilities
- Schedule 1.6(b) - Non-Falls Church Water Supply Obligations
- Schedule 1.8(a)(v) - Accrued Employee Benefits
- Schedule 2.1(c) - Required Notices, Registrations, Approvals and Consents
- Schedule 2.1(d) - Falls Church's Pending Litigation or Proceedings
- Schedule 2.1(h) - Summary of Oral Assumed Contracts
- Schedule 2.1(j) - Non-transferrable Permits
- Schedule 2.1(k) - Exceptions to Real Property Conveyances
- Schedule 2.1(k)(I) - Certain Real Property Issues
- Schedule 2.1(l)(i) - Exceptions to Ownership of System Intellectual Property
- Schedule 2.1(l)(ii) - Water System Patents, Trademarks and Copyrights
- Schedule 2.1(l)(iv) - Assumed Third Party Software Licenses and System Intellectual Property
- Schedule 2.1(l)(vi) - Non-Assignable Third Party Software
- Schedule 2.1(m)(i) - Falls Church's Insurance Policies Related to the System
- Schedule 2.1(m)(ii) - Loss Experiences Under Falls Church's Insurance Policies Related to the System
- Schedule 2.1(n) - Material Adverse Effects
- Schedule 2.1(o)(viii) - Tax Claims and Disputes
- Schedule 2.1(o)(ix) - Grants
- Schedule 2.1(p)(i) - Falls Church Benefit Plans
- Schedule 2.1(r) - Customer Advances and Potential Refunds

Schedule 2.1(u) - Projects and Studies in Progress at Closing

Schedule 2.1(w) - Environmental Matters

Schedule 2.2(c) - Fairfax Water's Consents and Approvals

Schedule 2.2(d) - Fairfax Water's Pending Litigation or Proceedings

Schedule 3.1(g) - Pension and OPEB Liability Transfer

**List of Exhibits for
Agreement of Sale**

- Exhibit 1.8(b) - Form of Estimated Purchase Price Calculation
- Exhibit 1.11(a) - Form of Bill of Sale
- Exhibit 1.11(c) - Form of Assignment and Assumption Agreement (Fairfax County)
- Exhibit 1.11(c)(1) - Form of Assignment and Assumption Agreement (Arlington County)
- Exhibit 1.11 (d) - Form of Deed for Fee Parcels
- Exhibit 1.11(e) - Form of Deed for Quitclaim Parcel
- Exhibit 1.11(k) - Form of Assignment and Assumption Agreement
- Exhibit 1.11(l) - Form of General Assignment Agreement
- Exhibit 1.11(m) - Form Deed of Easement
- Exhibit 1.11(o) - Form of Sewer Billing Agreement
- Exhibit 1.11(p) - Form of Payment Location Agreement
- Exhibit 1.11(q) - Form of Property Yard Lease
- Exhibit 3.4(o) - Form of Master Relocation Agreement