AGENDA
SPECIAL JOINT MEETING OF THE CITY COUNCIL, SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY, PUBLIC FINANCE AUTHORITY, PUBLIC UTILITY AUTHORITY, HOUSING AUTHORITY, PERRIS JOINT POWERS AUTHORITY AND PERRIS COMMUNITY ECONOMIC DEVELOPMENT CORPORATION OF THE CITY OF PERRIS
Thursday, July 27, 2017
5:30 P.M.
City Council Chambers
(corner of San Jacinto and Perris Boulevard)
101 North “D” Street
Perris, California

ROLL CALL:
Burke, Corona, Rabb, Rogers, Vargas

CLOSED SESSION: 5:30 P.M.

A. Conference with Legal Counsel - Potential Litigation - Government Code Section 54956.9 (d)(2) - 2 cases

1. CALL TO ORDER: 6:00 P.M.

2. ROLL CALL:
Burke, Corona, Rabb, Rogers, Vargas

3. INVOCATION:

4. PLEDGE OF ALLEGIANCE:
Councilwoman Burke will lead the Pledge of Allegiance.

5. REPORT ON CLOSED SESSION ITEMS:
6. **CONSENT CALENDAR:**

Consent Calendar items are normally enacted in one motion. The Mayor or City Council may remove a Consent Calendar item for separate action. Public comment is limited to three (3) minutes.

A. Adopt Resolution Number (next in order) and approve the Settlement Agreements for the Acquisition of Fee Simple Interests for the Widening of Perris Boulevard. The Proposed Resolution Number (next in order) is entitled:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PERRIS ACCEPTING DAN’S FEED AND SEED, INC’S IRREVOCABLE OFFER OF DEDICATION FOR PUBLIC PURPOSES

B. Approve the Final Parcel Map 37344 (FPM 17-05125) to subdivide 1.45 acre lot (Pad K) into two lots within the Perris Crossing retail center. Parcel 1 is a vacant .71 acre lot with an approved multi-tenant retail use; Parcel 2 is .73 acre and developed with a restaurant use. (Applicant: Jamey Tabata, Dasher & Tabata, Inc.).

C. Approve Perris Valley Youth Association Fee Waiver request for the use of the City's Mobile Stage for a Cops and Clergy event to be held on August 14, 2017 at Foss Field Park.

D. Adopt Resolution Number (next in order) allowing an alternate background check process in lieu of a live scan for employees of medical marijuana dispensary establishments for the purpose of processing/issuing a medical marijuana dispensary permit. The Proposed Resolution Number (next in order) is entitled:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PERRIS, CALIFORNIA, APPROVING AN APPLICATION FOR AUTHORIZATION TO ACCESS STATE AND FEDERAL LEVEL SUMMARY CRIMINAL HISTORY INFORMATION FOR LICENSING OR CERTIFICATION PURPOSES FOR ISSUANCE OF A MEDICAL MARIJUANA DISPENSARY PERMIT
E. Approve the terms of the revised Asset Purchase Agreement with Liberty Utilities regarding the Proposed Sale of the City's Water Systems.

4. ADJOURNMENT:

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Building Office (951) 443-1029. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.
Consider Approval of Settlement Agreements for the Acquisition of Fee Simple Interests for the Widening of Perris Boulevard

REQUESTED ACTION: That the City Council approve the terms and conditions of the Settlement Agreements by and between: (1) City of Perris & CEMEX Construction Materials Pacific, LLC, (“CEMEX”) authorizing the City to acquire a fee simple interest in the property located at the southeast corner of Perris Boulevard and 1st Street (APN 310-022-001); and (2) City of Perris & Dan’s Feed and Seed, Inc., (“Dan’s”) authorizing the City to acquire a fee simple interest in the property located at 211 E. 3rd Street (APN 310-024-001) by acceptance of an irrevocable offer of dedication; and

Adopt Resolution No. XX, “Resolution of the City Council of the City of Perris Accepting Dan’s Feed and Seed, Inc.’s Irrevocable Offer of Dedication for Public Purposes;” and

That the City Council authorize the City Manager to execute the same in a form approved by the City Attorney.

CONTACT(S): Eric Dunn, City Attorney
Habib Motlagh, City Engineer

BACKGROUND/DISCUSSION:

The Project
The City of Perris (“City”) is improving and expanding the Perris Boulevard Arterial between I-215 and 4th Street based on its assessment of the City’s current and future highway needs (the “Project”). Currently, Perris Boulevard consists of four lanes from Placentia Avenue to 300 feet north of Ramona Expressway and two lanes from 300 feet north of Ramona Expressway to the City limits. The Project will expand Perris Boulevard to three lanes in each direction between I-215 and 4th Street per the General Plan. The Project will also include the creation of bicycle lanes on Perris Boulevard. The Project will improve traffic safety and emergency vehicle response times. As set forth below, the attached Settlement Agreements presented for City Council consideration helps to implement the Project.

Proposed Acquisitions & Agreements
The City has commenced the process of acquiring, through the lawful exercise of its power of eminent domain, portions of certain properties located along Perris Boulevard which will be necessary for Project construction. To that end, the City commissioned and obtained appraisals of property required for the expansion of Perris Boulevard in the Project Area.

Thereafter, the City sent an offer pursuant to Government Code § 7267.2 to each of the affected property owners. Following negotiations with the property owners who have responded to the
City's offer, the City has reached settlement with the following owners of APN 310-022-001 ("CEMEX") and APN 310-024-001 ("Dan's") for the indicated amounts:

<table>
<thead>
<tr>
<th>APN 310-022-001 (&quot;CEMEX&quot;)</th>
<th>$113,588</th>
</tr>
</thead>
<tbody>
<tr>
<td>APN 310-024-001 (&quot;Dan's&quot;)</td>
<td>$105,068</td>
</tr>
</tbody>
</table>

**CEMEX Settlement Agreement**
CEMEX agreed to the City's acquisition of a fee simple interest in a portion of the CEMEX property, APN 310-022-001, by grant deed. This partial take consists of an approximately 5,025 square foot strip of land along Perris Boulevard, between 1st and 2nd Street. As part of the agreement, the City will remove and replace various landscape and hardscape items at its expense. The City will also record a document to the effect that the remainder of the CEMEX property is a result of an acquisition for public use and does not render the remainder of the property an illegal use.

**Dan's Settlement Agreement**
Dan's agreed to the City's acquisition of a fee simple interest in a portion of the Dan's property, APN 310-024-001, by irrevocable offer of dedication. This partial take consists of approximately 2,100 square foot strip of land along Perris Boulevard, south of 3rd Street. As part of the agreement, the City will remove and dispose of the current truck scale on the Dan's property, fill in the hole left by removal of the scale, and install a new above-ground truck scale on the Dan's property at the City's expense, at a location on the property mutually agreed upon by the City and Dan's.

Staff requests that City Council approve the Settlement Agreements for the amounts stated above, authorize the City Manager to sign the Settlement Agreements and all other reasonably necessary documents that do not require the Mayor's signature, and approve the resolution accepting the Irrevocable Offer of Dedication from Dan's.

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**FISCAL IMPACT:**

The cost of acquisition of right of way and construction of the Project will be funded by TUMF and local transportation funds.

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Reviewed by:

City Attorney   
City Manager
Assistant City Manager

Attachments:
1. Settlement Agreement with CEMEX Construction Materials Pacific, LLC
2. Settlement Agreement with Dan's Feed & Seed
3. Resolution No. XX, “Resolution of the City Council of the City of Perris Accepting Dan’s Feed and Seed, Inc.'s Irrevocable Offer of Dedication for Public Purposes”

Consent: X
Public Hearing:
01006.0065/383295.3
ATTACHMENT 1
SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made and executed as of ________________, 2017 by and between the CITY OF PERRIS, a municipal corporation (hereinafter “CITY”), and CEMEX Construction Materials Pacific, LLC, a Delaware limited liability company (hereinafter referred to as “CEMEX”). Hereinafter the CITY and CEMEX shall be collectively referred to as the "PARTIES" and each individually as a "PARTY" and with reference to the following definitions and recitals:

RECITALS:

A. The City seeks to acquire a portion of the property located at the southeast corner of Perris Boulevard and 1st Street, in the City of Perris, County of Riverside, California with Assessor Parcel Number 310-022-001 ("SUBJECT PROPERTY") for the North Perris Road and Bridge Benefit District Project ("PROJECT").

B. Specifically, it is necessary for the CITY to acquire the fee simple interest in the portion of the SUBJECT PROPERTY described in the legal description attached hereto and incorporated herein by this reference as Exhibit A and depicted on the map attached hereto and incorporated herein by this reference as Exhibit B ("FEE INTEREST").

C. On May 19, 2016, the CITY mailed a Government Code § 7267.2 offer letter to Sunbelt Acquisitions, Inc., owner of record of the SUBJECT PROPERTY, for the acquisition of the FEE INTEREST for the construction of the PROJECT.

D. Following the CITY’s offer, CEMEX notified the CITY that Sunbelt Acquisitions, Inc. had merged into CEMEX on January 1, 2011 leaving CEMEX as the surviving entity and owner of the SUBJECT PROPERTY.

E. Thereafter, the PARTIES entered into negotiations for the acquisition of the FEE INTEREST.
F. By entering into this Agreement, the PARTIES desire to resolve all issues related to the granting of the FEE INTEREST by CEMEX to the CITY informally and enter into this Agreement to FINALLY, FULLY and COMPREHENSIVELY settle and avoid legal action.

NOW THEREFORE, in consideration of the covenants herein contained, and based upon the representations in the above Recitals, which are incorporated by this reference into the terms of the Agreement, and for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the PARTIES hereby agree as follows, in full and complete settlement of this matter:

AGREEMENT:

1. **Consideration.** CEMEX grants the FEE INTEREST to the CITY for consideration of One Hundred Thirteen Thousand Five Hundred Eighty-Eight Dollars and Zero Cents ($113,588.00) ("Settlement Amount"). A copy of the Grant Deed is attached hereto as Exhibit C, and CEMEX is to return a notarized executed copy of same to the CITY.

2. **Breakdown of Consideration and Improvements to be Completed by City.**

A breakdown of the consideration for the FEE INTEREST is as follows:

<table>
<thead>
<tr>
<th>Amount</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>$67,632</td>
<td>Real Property – Fee Interest</td>
</tr>
<tr>
<td>45,956</td>
<td>Site Improvements</td>
</tr>
<tr>
<td>$113,588</td>
<td>TOTAL</td>
</tr>
</tbody>
</table>

The CITY shall issue a check in the amount of $113,588 payable to CEMEX Construction Materials Pacific, LLC within 15 days of the successful recordation of the Grant Deed. Various landscape items and hardscape items ("Site Improvements") will be removed as part of the Project and replaced by the CITY at the CITY's expense. These items are valued at replacement cost for purposes of calculating the total amount of compensation paid by the CITY:

<table>
<thead>
<tr>
<th>Item</th>
<th>Total Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Landscape Items</td>
<td></td>
</tr>
<tr>
<td>Gazenia Ground Cover</td>
<td>$546</td>
</tr>
<tr>
<td>Sod</td>
<td>$2,688</td>
</tr>
<tr>
<td>Irrigation</td>
<td>$13,022</td>
</tr>
</tbody>
</table>
Chinese Evergreen Elm  $50
Deciduous Trees  $24,050
Evergreen Tree  $50
Palms  $200
Privet Bushes  $150
Shrubs  $1,700
Drought Tolerant Plants Provided by the CITY  -$10,000

**Hardscape Items**
Concrete Driveway  $3,500
Temp. relocation of sand pile and misc.  $4,000
Landscape Architect  $6,000
Total Landscape and Hardscape Costs  $45,956

3. **Further Compensation.** CEMEX hereby acknowledges that the Settlement Amount and terms of this Agreement constitute full and just compensation for the FEE INTEREST and any and all other claims, including, but not limited to, loss of goodwill, business value, and revenue, if any, that CEMEX may have arising out of the CITY’s acquisition of the FEE INTEREST. CEMEX hereby waives any rights to additional compensation for the FEE INTEREST other than the compensation set forth herein.

4. **Setback Requirements.** CITY hereby agrees to issue and record a document to the effect that the remainder of the SUBJECT PROPERTY is a result of an acquisition for public use and is, therefore, a legal nonconforming use. The form of the document is attached hereto as Exhibit D.

5. **Ownership of Fee Interest.** CEMEX represents and warrants as a material term of this Agreement that CEMEX has not heretofore assigned, transferred, released, or granted, or purported to assign, transfer, release, or grant, any claim disposed of by this Agreement, and that CEMEX is the owner of the FEE INTEREST. In executing this Agreement, CEMEX further warrants and represents that none of the claims released by CEMEX hereunder will in the future be assigned, conveyed, or transferred in any fashion to any other person and/or entity.

6. **Representations.** Each of the PARTIES agrees and represents that they have made such investigation of the facts pertaining to this Agreement and all matters pertaining
hereto as they have determined reasonable and necessary. This Agreement is intended to be final and binding among the PARTIES hereto.

7. **CEMEX's Release.** Except as provided herein, CEMEX, for themselves and all of their successors, assigns, and agents, do hereby fully and forever release and discharge the CITY and all of its successors, assigns, and agents from any and all claims for fair market value beyond the Settlement Amount and other consideration set forth in this Agreement, claims to improvements to realty, rights, costs, statutory interest relocation benefits, any other damages, costs or expenses arising from any and all actions of the CITY, and compensation of any nature whatsoever, which CEMEX has or may hereafter accrue, including without limitation, any and all known and unknown, foreseen and unforeseen claims, damage and injury, relating to, or in any way, directly or indirectly, involving or arising out of any facts or circumstances related to the acquisition of the FEE INTEREST.

8. **CITY's Release.** Except as provided herein, the CITY for itself and all of its successors, assigns, and agents, does hereby fully and forever release and discharge CEMEX and all of its successors, assigns, and agents from any and all claims, rights, costs, relocation benefits, any other damages, costs or expenses arising from any and all actions of CEMEX, and compensation of any nature whatsoever, which the CITY has or may hereafter accrue, including without limitation, any and all known and unknown, foreseen and unforeseen claims, damage and injury, relating to, or in any way, directly or indirectly, involving or arising out of any facts or circumstances related to the acquisition of the FEE INTEREST.

9. **Waivers.** It is the intention and understanding of the PARTIES hereto that the Agreement shall be effective as a full and final accord and satisfaction and compromise and release of each and every settled or released matter pertaining or related to the FEE INTEREST. In connection with such compromise, waiver and relinquishment, the PARTIES acknowledge that they are aware that they may hereafter discover facts in addition to or different from those which they now know or believe to be true with respect to the conveyance of the FEE INTEREST between the PARTIES on the subject matter of this instrument, but
that, except as is otherwise provided herein, it is their intention hereby to fully, finally and
forever settle and release all matters, disputes and differences, known or unknown, suspected
or unsuspected, which do now exist, may exist, or heretofore have existed, and that in
furtherance of such intention, the release actually given herein shall be and remain in effect as
a full and complete general release, notwithstanding the discovery or existence of any such
additional or different facts. In furtherance of this intention, the PARTIES acknowledge that
they are familiar with Section 1542 of the Civil Code of the State of California which provides
as follows:

“A general release does not extend to claims which the creditor
does not know or suspects to exist in his favor at the time of
executing the release, which, if known by him, must have
materially affected his settlement with the debtor.”

The PARTIES hereby expressly waive or relinquish any right or benefit which they have, or
might have, under Section 1542 of the Civil Code of the State of California and all other
similar provisions of law of other jurisdictions to the fullest extent allowed by law.
Notwithstanding the foregoing, nothing in this Section 9 is intended to waive or relinquish
(i) the obligations imposed by this Agreement, or (ii) any future or unknown acts of intentional
fraud, deceit or misrepresentation.

CEMEX Representative’s Initials: ___

CITY Representative’s Initials: ______

OTHER TERMS AND PROVISIONS:

10. Governing Law. This Agreement shall be governed and interpreted in
accordance with the laws of the State of California. The PARTIES expressly agree that any
disputes, disagreements or actions shall be venued with the Superior Court of Riverside
County, State of California.

11. Integrated Agreement. This Agreement contains the entire understanding and
agreement between the PARTIES, and the terms and conditions contained herein shall inure to
the benefit of, and be binding upon the PARTIES hereto. No other representations, or other prior or contemporaneous agreements, whether oral or written, respecting such matters not specifically incorporated herein shall be deemed in any way to exist or bind any of the PARTIES hereto.

12. Modification. No supplement, modification, amendment, or waiver of any provision of this Agreement shall be binding unless executed in writing by all of the PARTIES. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provision whether or not similar, nor shall waiver constitute a continuing waiver.

13. Binding on Successors. This Agreement and the covenants and conditions contained herein shall obligate, bind, extend to and inure to the benefit of the PARTIES and each of their respective successors in interest.

14. Future Cooperation. The PARTIES expressly agree to execute documents, provide information, and to cooperate in good faith to effectuate the purpose of this Agreement.

15. Counterparts. This Agreement may be executed in duplicate counterparts, each of which shall be deemed an original and shall constitute an agreement to be effective as of the date of signing. Further, signatures transmitted and memorialized by facsimile shall be deemed to have the same weight and effect as an original signature. The PARTIES may agree that an original signature will be substituted at some later time for any facsimile signature.

16. Authority. The persons executing this Agreement on behalf of the PARTIES hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) entering into this Agreement does not violate any provision of any other agreement to which said party is bound.
17. **Invalid Clause May Be Severed.** If any provision, clause, or part of the Agreement is adjudged illegal, invalid or unenforceable, the balance of this Agreement shall remain in full force and effect.

[SIGNATURES ON THE FOLLOWING PAGE]
I have carefully read and fully understand, and hereby execute, this Agreement.

CEMEX Construction Materials Pacific, LLC

[Name] OSCAR FRIGAS
[Position] VICE PRESIDENT

[Name]
[Position]

I have carefully read and fully understand, and hereby execute, this Agreement.

CITY OF PERRIS, a municipal corporation

__________________________
Richard Belmudez, City Manager

ATTEST:

__________________________
Nancy Salazar
City Clerk

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

By: __________________________
June S. Ailin
Attorney for the CITY OF PERRIS

[END SIGNATURES]
EXHIBIT A
LEGAL DESCRIPTION

[on following page]
EXHIBIT "A"
LEGAL DESCRIPTION
A.P.N. 310-022-001

PARCEL "A"

THE WEST 14.00 FEET OF THE EAST 20.00 FEET OF "E" STREET (PERRIS BOULEVARD) WHICH LIES BETWEEN THE WESTERLY PROLONGATION OF THE NORTHERLY LINE OF LOT 1 AND THE WESTERLY PROLONGATION OF THE SOUTHERLY LINE OF LOT 12, OF THAT BLOCK OF REMEY'S SUBDIVISION, WHICH IS A PORTION OF BLOCK 2 OF CARPENTER'S ADDITION TO PERRIS, AS SHOWN BY MAP ON FILE IN BOOK 15 OF MAPS, AT PAGE 712, RECORDS OF SAN DIEGO COUNTY, CALIFORNIA.

SAID LAND IS LOCATED IN THE CITY OF PERRIS, COUNTY OF RIVERSIDE, CALIFORNIA AND CONTAINS 4480 SQUARE FEET, MORE OR LESS.

PARCEL "B"

THAT PORTION OF THE EAST 20.00 FEET OF "E" STREET (PERRIS BOULEVARD) ADJACENT TO THE WESTERLY LINES OF LOT 1 AND LOT 2, TOGETHER WITH THAT PORTION OF SAID LOT 1 OF THAT BLOCK OF REMEY'S SUBDIVISION, WHICH IS A PORTION OF BLOCK 2 OF CARPENTER'S ADDITION TO PERRIS, AS SHOWN BY MAP ON FILE IN BOOK 15 OF MAPS, AT PAGE 712, RECORDS OF SAN DIEGO COUNTY, CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF ABOVE DESCRIBED PARCEL "A";

THENCE SOUTH 00° 04' 59" EAST, ALONG THE EAST LINE OF SAID PARCEL "A", A DISTANCE OF 25.03 FEET;

THENCE NORTH 42° 34' 34" EAST, A DISTANCE OF 34.00 FEET TO A POINT ON THE NORTH LINE OF SAID LOT 1;

THENCE NORTH 89° 59' 59" WEST, A DISTANCE OF 23.04 FEET TO THE POINT OF BEGINNING.

SAID LAND IS LOCATED IN THE CITY OF PERRIS, COUNTY OF RIVERSIDE, CALIFORNIA AND CONTAINS 288 SQUARE FEET, MORE OR LESS.

PARCEL "C"

THAT PORTION OF THE EAST 20.00 FEET OF "E" STREET (PERRIS BOULEVARD) ADJACENT TO THE WESTERLY LINE OF LOT 12, TOGETHER WITH THAT PORTION OF SAID LOT 12 OF THAT BLOCK OF REMEY'S SUBDIVISION, WHICH IS A PORTION OF BLOCK 2 OF CARPENTER'S ADDITION TO PERRIS, AS SHOWN BY MAP ON FILE IN BOOK 15 OF MAPS, AT PAGE 712, RECORDS OF SAN DIEGO COUNTY, CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF ABOVE DESCRIBED PARCEL "A";
EXHIBIT "A"
LEGAL DESCRIPTION
A.P.N. 310-022-001

THENCE NORTH 00° 04' 59" WEST, ALONG THE EAST LINE OF SAID PARCEL "A", A DISTANCE OF 24.97 FEET;

THENCE SOUTH 42° 39' 07" EAST, A DISTANCE OF 33.95 FEET TO A POINT ON THE SOUTH LINE OF SAID LOT 12;

THENCE NORTH 89° 59' 59" WEST, A DISTANCE OF 22.96 FEET TO THE POINT OF BEGINNING.

SAID LAND IS LOCATED IN THE CITY OF PERRIS, COUNTY OF RIVERSIDE, CALIFORNIA AND CONTAINS 287 SQUARE FEET, MORE OR LESS.

THE ABOVE DESCRIBED PARCELS OF LAND ARE SHOWN ON EXHIBIT "B" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

PREPARED UNDER THE SUPERVISION OF

GABRIEL D. YBARRA
LAND SURVEYOR NO. 4343
REGISTRATION EXPIRES 06-30-2016

2014-SJSessDiligent
EXHIBIT B
LEGAL MAP
[on following page]
EXHIBIT "B"

PLAT

SHOWING THE PROPOSED ACQUISITION OF RIGHT-OF-WAY OVER A PORTION OF VACATED "E" STREET (PERRIS BOULEVARD) AND A PORTION OF LOTS 1 AND 12 OF REMEYS SUBDIVISION OF LOTS 1, 2, 3, 22, 53, AND 24 IN BLOCK 2 OF THE MAP OF CARPENTER'S ADDITION TO PERRIS AS SHOWN BY MAP ON FILE IN BOOK 15 OF MAPS, AT PAGE 712, RECORDS OF SAN DIEGO COUNTY, CALIFORNIA.

SUNBELT ACQUISITIONS, INC.
A.P.N. 310-022-001

LINE DATA

<table>
<thead>
<tr>
<th>No.</th>
<th>Bearing</th>
<th>Distance</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>S 00°45'43&quot; E</td>
<td>25.05'</td>
</tr>
<tr>
<td>2</td>
<td>N 42°44'34&quot; E</td>
<td>34.00'</td>
</tr>
<tr>
<td>3</td>
<td>N 8°39'58&quot; W</td>
<td>23.04'</td>
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<tr>
<td>4</td>
<td>N 00°09'29&quot; W</td>
<td>24.87'</td>
</tr>
<tr>
<td>5</td>
<td>S 42°39'03&quot; E</td>
<td>32.65'</td>
</tr>
<tr>
<td>6</td>
<td>N 00°10'46&quot; W</td>
<td>22.90'</td>
</tr>
</tbody>
</table>

PREPARED UNDER THE SUPERVISION OF:

GABRIEL D. YBARRA, L.S. 4343 DATE 5/09/15

Record Owner:
Sunbelt Acquisitions, Inc.,
A Delaware Corporation
255 N. Perris Boulevard
Perris, CA 92570

Exhibit prepared by:
Action Surveys
1045 Main Street, Suite 102
Riverside, CA 92501
(951) 686-6166

Exhibit prepared for:
Tri Lake Consultants, Inc.
120 N. Perris Boulevard
Perris, CA 92570
(951) 943-6504

Scale: 1" = 60'  
Scale: 1" = 80'

Assessor's Parcel Numbers:
310-022-001

Date Exhibit Prepared:
May 6, 2015
EXHIBIT C
GRANT DEED
[on following page]
FREE RECORDING REQUESTED BY

AND WHEN RECORDED MAIL TO:

City of Perris
101 North D Street
Attn: Habib Motlagh, City Engineer

GRANT DEED

FOR A VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, CEMEX Construction Materials Pacific, LLC, a Delaware limited liability company, successor in interest by way of merger with Sunbelt Acquisitions, Inc. ("Grantor"), hereby grant(s) to the CITY OF PERRIS, a municipal corporation and general law city ("Grantee"), the fee simple interest in that certain portion of the real property located at the southeast corner of Perris Boulevard and 1st Street, in the City of Perris, County of Riverside, California, which is referred to as Assessor’s Parcel Number ("APN") 310-022-001, that is identified and described in the Legal Description attached hereto and incorporated herein as Exhibit "A" and depicted on the map attached hereto and incorporated herein as Exhibit "B."

IN WITNESS WHEREOF, Grantor and Grantee have caused this instrument to be executed on their behalf by their respective officers or agents hereunto as of the date first above written.

"GRANTOR":

Date: May 26, 2017

By: 

[Name]
[Position] OSCAR FRIAS
VICEPRESIDENT

Date: __________________________

By: __________________________

[Name]
[Position]
CERTIFICATE OF ACCEPTANCE

Pursuant to Government Code Section 27281 this is to certify that the interest in real property conveyed by CEMEX Construction Materials Pacific, LLC, by Grant Deed to the CITY OF PERRIS is hereby accepted by the undersigned officer and agent of the CITY OF PERRIS pursuant to the authority conferred by a Settlement Agreement approved by the CITY OF PERRIS dated _________________, 2017, and that the CITY OF PERRIS consents to the recording of the Grant Deed.

Signed and dated in Perris, California on _________________, 2017.

“GRANTEE”

CITY OF PERRIS

Date: ____________________________

By: ________________________________

Michael M. Vargas, Mayor

ATTEST:

By: ________________________________

Nancy Salazar, City Clerk
EXHIBIT D

[on following page]
NOTICE REGARDING IMPACT OF PARTIAL ACQUISITION OF PROPERTY BY CITY OF PERRIS

1. The City of Perris, California ("City"), is authorized to acquire property for public purposes through the exercise of eminent domain pursuant to Section 19 of Article 1 of the California Constitution, Section 1240.010 through 1240.050 of the California Code of Civil Procedure, and Sections 37350, 37350.5, 37353, and 40404 of the California Government Code.

2. The City acquired, under threat of the exercise of the power of eminent domain, a portion of the real property owned by CEMEX Construction Materials Pacific, LLC, described in Exhibit A attached hereto and incorporated herein by reference (the "Property") for the purpose of the Perris Boulevard Improvement Project, which generally consists of the widening of the Perris Boulevard Arterial between Interstate 215 and 4th Street (referred to herein as the "Project").

3. The City has determined that its taking of a portion of the Property for the Project does not render the use of the remainder of the Property existing as of the date of recording of this document an illegal use under any section of the City’s General Plan and Municipal and Zoning Codes.

Date: ___________________  CITY OF PERRIS

By: ______________________  Michael M. Vargas, Mayor
ATTACHMENT 2
SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made and executed as of ______________, 2017, by and between the CITY OF PERRIS, a municipal corporation (hereinafter "CITY"), and DAN'S FEED AND SEED, INC., a California corporation (hereinafter "DAN'S"). Hereinafter the CITY and DAN'S shall be collectively referred to as the "PARTIES" and each individually as a "PARTY" and with reference to the following definitions and recitals:

RECITALS:

A. The City seeks to acquire portions of the property located at 211 E. 3rd Street in the City of Perris, County of Riverside, California, with Assessor Parcel Number 310-024-001 ("SUBJECT PROPERTY") for the Perris Boulevard Road Project (the "PROJECT"). The public purpose and use of the PROJECT is the widening of Perris Boulevard between Interstate 215 and 4th Street pursuant to the Circulation element of the CITY's General Plan.

B. Specifically, it is necessary for the CITY to acquire the following interest in portions of the SUBJECT PROPERTY: (i) a fee simple interest in the portion of the SUBJECT PROPERTY described in the legal description attached hereto and incorporated herein by this reference as Exhibit A and depicted on the map attached hereto and incorporated herein by this reference as Exhibit B ("SUBJECT INTEREST").

C. On July 7, 2015, the CITY mailed a Government Code § 7267.2 offer letter to DAN'S, owner of the SUBJECT PROPERTY, for the acquisition of the SUBJECT INTEREST for the construction of the PROJECT.

D. On or about March 28, 2017, after noticed hearing in compliance with Code of Civil Procedure § 1245.235, the CITY's City Council duly and regularly will consider, and, by the time of execution of this Agreement, may have adopted, by vote of at least two-thirds of its members a resolution entitled: "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PERRIS, CALIFORNIA, DECLARING THAT PUBLIC INTEREST AND NECESSITY
REQUIRE ACQUISITION OF FEE SIMPLE INTEREST IN A PORTION OF THE PROPERTY KNOWN AS ASSESSOR'S PARCEL NO. 310-024-001" (the "Resolution").

E. By entering into this Agreement, the PARTIES desire to resolve all issues related to DAN'S' dedication of the FEE INTEREST to the CITY and to FINALLY, FULLY and COMPREHENSIVELY settle and avoid legal action related to those issues.

NOW THEREFORE, in consideration of the covenants herein contained, and based upon the representations in the above Recitals, which are incorporated by this reference into the terms of the Agreement, and for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the PARTIES hereby agree as follows, in full and complete settlement of this matter:

AGREEMENT:

1. Consideration.
   a. DAN'S dedicates the FEE INTEREST to the CITY for consideration of One Hundred Five Thousand Sixty-Eight Dollars and No Cents ($105,068.00) (the "Settlement Amount"). A copy of the Irrevocable Offer of Dedication is attached hereto as Exhibit C and DAN'S is to return a notarized executed copy of same to the CITY within 10 days after the CITY delivers to DAN'S a signed copy of this Agreement.
   b. In addition to payment of the Settlement Amount, the CITY agrees to remove and dispose of the current truck scale, fill in the hole of the current scale, and install a new above-ground truck scale located on the DAN'S property at the CITY's expense to a location on the DAN'S property mutually agreed upon by the CITY and DAN'S.

2. Further Compensation. DAN'S hereby acknowledges that the Settlement Amount constitutes full and just compensation for the SUBJECT INTEREST and any and all other claims, including, but not limited to, loss of goodwill, business value, and revenue, if any, that DAN'S may have arising out of the City's acquisition of the SUBJECT INTEREST. DAN'S hereby waives any further rights to further compensation for the SUBJECT INTEREST other than the compensation set forth herein.
3. **Ownership of Fee Interest.** DAN'S represents and warrants as a material term of this Agreement, that DAN'S has not heretofore assigned, transferred, released, or granted, or purported to assign, transfer, release, or grant, any claim disposed of by this Agreement, and that DAN'S is the owner of the FEE INTEREST. In executing this Agreement, DAN'S further warrants and represents that none of the claims released by DAN'S hereunder will in the future be assigned, conveyed, or transferred in any fashion to any other person and/or entity.

4. **Representations.** Each of the PARTIES agrees and represents that they have made such investigation of the facts pertaining to this Agreement as they have determined reasonable and necessary. This Agreement is intended to be final and binding among the PARTIES hereto, regardless of any claims or misrepresentations, promises made without the intention of performing them, mistakes of fact or law, or any other circumstances whatsoever, and under no circumstances shall any party be entitled to set aside this Agreement, either in whole or in part.

5. **DAN'S' Release.** Except as provided herein, DAN'S, for itself and all of its successors, assigns, and agents, does hereby fully and forever release and discharge the CITY and all of its successors, assigns, and agents from any and all claims for fair market value beyond the settlement amount, claims to improvements to realty, rights, costs, statutory interest relocation benefits, any other damages, costs or expenses arising from any and all actions of the CITY, and compensation of any nature whatsoever, which DAN'S has or may hereafter accrue, including without limitation, any and all known and unknown, foreseen and unforeseen claims, damage and injury, relating to, or in any way, directly or indirectly, involving or arising out of any facts or circumstances related to the acquisition of the SUBJECT INTEREST.

6. **CITY's Release.** Except as provided herein, the CITY for itself and all of its successors, assigns, and agents, does hereby fully and forever release and discharge DAN'S and all of its successors, assigns, and agents from any and all claims, rights, costs, relocation benefits, any other damages, costs or expenses arising from any and all actions of DAN'S, and compensation of any nature whatsoever, which the CITY has or may hereafter accrue,
including without limitation, any and all known and unknown, foreseen and unforeseen claims, damage and injury, relating to, or in any way, directly or indirectly, involving or arising out of any facts or circumstances related to the acquisition of the SUBJECT INTEREST.

7.  **Waivers.** It is the intention and understanding of the PARTIES hereto that the Agreement shall be effective as a full and final accord and satisfaction and compromise and release of each and every settled or released matter pertaining or related to the SUBJECT INTEREST. In connection with such compromise, waiver and relinquishment, the PARTIES acknowledge that they are aware that they may hereafter discover facts in addition to or different from those which they now know or believe to be true with respect to the conveyance of the SUBJECT INTEREST between the PARTIES on the subject matter of this instrument, but that, except as is otherwise provided herein, it is their intention hereby to fully, finally and forever settle and release all matters, disputes and differences, known or unknown, suspected or unsuspected, which do now exist, may exist, or heretofore have existed, and that in furtherance of such intention, the release actually given herein shall be and remain in effect as a full and complete general release, notwithstanding the discovery or existence of any such additional or different facts. In furtherance of this intention, the PARTIES acknowledge that they are familiar with Section 1542 of the Civil Code of the State of California which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspects to exist in his favor at the time of executing the release, which, if known by him, must have materially affected his settlement with the debtor."

The PARTIES hereby expressly waive or relinquish any right or benefit which they have, or might have, under Section 1542 of the Civil Code of the State of California and all other similar provisions of law of other jurisdictions to the fullest extent allowed by law. Notwithstanding the foregoing, nothing in this Section 7 is intended to waive or relinquish (i) the obligations imposed by this Agreement, or (ii) any future or unknown acts of intentional fraud, deceit or misrepresentation.
OTHER TERMS AND PROVISIONS:

8. **Governing Law.** This Agreement shall be governed and interpreted in accordance with the laws of the State of California. The PARTIES expressly agree that any disputes, disagreements or actions shall be venued with the Superior Court of Riverside County, State of California.

9. **Integrated Agreement.** This Agreement contains the entire understanding and agreement between the PARTIES, and the terms and conditions contained herein shall inure to the benefit of, and be binding upon the PARTIES hereto. No other representations, or other prior or contemporaneous agreements, whether oral or written, respecting such matters not specifically incorporated herein shall be deemed in any way to exist or bind any of the PARTIES hereto.

10. **Modification.** No supplement, modification, amendment, or waiver of any provision of this Agreement shall be binding unless executed in writing by all of the PARTIES. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provision whether or not similar, nor shall waiver constitute a continuing waiver.

11. **Binding on Successors.** This Agreement and the covenants and conditions contained herein shall obligate, bind, extend to and inure to the benefit of the PARTIES and each of their respective successors in interest.

12. **Future Cooperation.** The PARTIES expressly agree to execute documents, provide information, and cooperate in good faith to effectuate the purpose of this Agreement.

13. **Counterparts.** This Agreement may be executed in duplicate counterparts, each of which shall be deemed an original and shall constitute an agreement to be effective as of the date of signing. Further, signatures transmitted and memorialized by facsimile shall be
deemed to have the same weight and effect as an original signature. The PARTIES may agree that an original signature will be substituted at some later time for any facsimile signature.

14. **Authority.** The persons executing this Agreement on behalf of the PARTIES hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) entering into this Agreement does not violate any provision of any other agreement to which said party is bound.

15. **Invalid Clause May Be Severed.** If any provision, clause, or part of the Agreement is adjudged illegal, invalid or unenforceable, the balance of this Agreement shall remain in full force and effect.

[Signatures on Following Pages]
I have carefully read and fully understand, and hereby execute, this Agreement.

Date: 5-16-17

DAN'S, INC.
A California corporation

By: [Signature]
TAMARA JERIE SMITH
President

See Attached Notary Form

I have carefully read and fully understand, and hereby execute, this Agreement.

CITY OF PERRIS, a municipal corporation

____________________________
RICHARD BELMUDEZ, City Manager

ATTEST:

____________________________
Nancy Salazar
City Clerk

APPROVED AS TO FORM:
ALESHER & WYNDER, LLP

By: _________________________
JUNE S. AILIN, ESQ.
Attorney for the CITY OF PERRIS

[END SIGNATURES]
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF ORANGE

On May 16, 2017 before me, C. Portillo, Notary Public
Here, insert Name and Title of Officer
personally appeared Tamara Smith
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

C. PORTILLO
Notary Public - California
Riverside County
Commission # 2183315
My Comm. Expires Mar 2 2021
EXHIBIT A

LEGAL DESCRIPTION OF PARTIAL FEE INTEREST

[on following page]
EXHIBIT "A"
LEGAL DESCRIPTION
A.P.N. 310-024-001

PARCEL "A"

THE WEST 14.00 FEET OF LOT 1 IN BLOCK 4 OF THE MAP OF CARPENTER'S ADDITION TO PERRIS, AS SHOWN BY MAP ON FILE IN BOOK 4 OF MAPS, AT PAGE 244, RECORDS OF SAN DIEGO COUNTY, CALIFORNIA.

SAID LAND IS LOCATED IN THE CITY OF PERRIS, COUNTY OF RIVERSIDE, CALIFORNIA AND CONTAINS 2100 SQUARE FEET, MORE OR LESS.

THE ABOVE DESCRIBED PARCEL OF LAND IS SHOWN ON EXHIBIT "B" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

PREPARED UNDER THE SUPERVISION OF

GABRIEL D. YBARRA
LAND SURVEYOR NO. 4343
REGISTRATION EXPIRES 06-30-2016
EXHIBIT B
LEGAL MAP OF PARTIAL FEE INTEREST
[on following page]
EXHIBIT "B"

PLAT

SHOWING THE PROPOSED ACQUISITION OF RIGHT-OF-WAY OVER LOT 1 IN BLOCK 4 OF THE MAP OF CARPENTER'S ADDITION TO PERRIS AS SHOWN BY MAP ON FILE IN BOOK 4 OF MAPS, AT PAGE 244, RECORDS OF SAN DIEGO COUNTY, CALIFORNIA.

DAN'S FEED AND SEED, INC.
A.P.N. 310–024–001

LINE DATA

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<td>S 42°34'34&quot; W</td>
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<td>25.03'</td>
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PREPARED UNDER THE SUPERVISION OF:

GABRIEL D. YBARA
No. 4343
Exp. 6-30-18
STATE OF CALIFORNIA

Record Owner:
Dan’s Feed and Seed, Inc.,
A California Corporation
211 East Third Street
Perris, CA 92570

Exhibit prepared by:
Action Surveys
1045 Main Street, Suite 102
Riverside, CA 92501
(951) 686-6166

Exhibit prepared for:
Tri Lake Consultants, Inc.
120 N. Perris Boulevard
Perris, CA 92570
(951) 943-6504

Scale: 1" = 60'

Assessor's Parcel Numbers:
310–024–001

Date Exhibit Prepared:
September 9, 2014
EXHIBIT C
IRREVOCABLE OFFER OF DEDICATION
[on following page]
IRREVOCABLE OFFER OF DEDICATION

On this _____ day of __________, 2017, DAN'S FEED AND SEED, INC., hereby irrevocably offers for dedication to the CITY OF PERRIS, a municipal corporation, pursuant to the provisions of California Government Code Section 7050, for public street and highway purposes, together with all right to construct and maintain utilities, sewers, drains and other improvements consistent with the use as a public street and highway, fee interests in portions of real property together with all improvements thereon, located in the City of Perris, County of Riverside, State of California as more particularly described on Exhibit "A" and depicted on Exhibit "B" attached hereto and by this reference incorporated herein.

DAN'S FEED AND SEED, INC.

By: ____________________________
ATTACHMENT 3
RESOLUTION NO. ____________

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PERRIS
ACCEPTING DAN’S FEED AND SEED, INC.’S IRREVOCABLE OFFER OF
DEDICATION FOR PUBLIC PURPOSES

WHEREAS, pursuant to Government Code § 7050, Dan’s Feed and Seed, Inc., a
California corporation (’Dan’s’), made an irrevocable offer of dedication to the City of
Perris (’City’), attached hereto as Exhibit “A,” consisting of a fee simple interest in a
portion of APN 310-024-001 located at 211 E. 3rd Street, in the City of Perris, for street
and highway improvement purposes (the “Offer”); and

WHEREAS, Dan’s is the owner of APN 310-024-001 and subject to the terms
and conditions of the Offer; and

WHEREAS, pursuant to Government Code section 7050, the City’s City Council
may accept all or any portion of an irrevocable offer of dedication at any time; and

WHEREAS, the City Council desires to accept the Offer at this time for the
public purposes stated therein, namely for public street and highway improvements.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF
THE CITY OF PERRIS AS FOLLOWS:

Section 1. All of the above-stated recitals are true and correct and
incorporated herein by reference.

Section 2. The City Council hereby accepts the Offer for public street and
highway improvements.

Section 3. The City Clerk is hereby authorized and directed to cause this
acceptance to be recorded on behalf of the City in the Office of the Riverside County
Recorder, and to certify the adoption of this resolution. The Mayor, City Manager, and
City Clerk are hereby authorized and directed to execute any and all other documents as
may be necessary to effect the recordation and enforcement of this acceptance.

PASSED, APPROVED and ADOPTED, this ___ day of ________, 2017.

________________________
Mayor

ATTEST:

________________________
City Clerk
STATE OF CALIFORNIA  
COUNTY OF RIVERSIDE  
CITY OF PERRIS  

I, ______________________, City Clerk of the City of Perris, California, do hereby certify that the foregoing Resolution No. _________ was duly and regularly adopted by the City Council of the City of Perris at a regular meeting thereof held on the ___ day of ______, 2017 by the following vote:

Ayes:
Noes:
Absent:
Abstain:

________________________
Nancy Salazar
Exhibit “A”

Dan’s Feed and Seed Irrevocable Offer of Dedication

[on following pages]
IRREVOCABLE OFFER OF DEDICATION

On this 16 day of May 2017, DAN'S FEED AND SEED, INC., hereby irrevocably offers for dedication to the CITY OF PERRIS, a municipal corporation, pursuant to the provisions of California Government Code Section 7050, for public street and highway purposes, together with all right to construct and maintain utilities, sewers, drains and other improvements consistent with the use as a public street and highway, fee interests in portions of real property together with all improvements thereto, located in the City of Perris, County of Riverside, State of California as more particularly described on Exhibit "A" and depicted on Exhibit "B" attached hereto and by this reference incorporated herein.

DAN'S FEED AND SEED, INC.

See Attached Notary Form

By: [Signature]

By: [Signature]
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF ORANGE

On May 16, 2017 before me, C. Portillo, Notary Public

personally appeared Tamara Smith

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public
COUNTY OF RIVERSIDE

CITY OF PERRIS

The undersigned officer, on behalf of the City of Perris, a municipal corporation, consents to the hereinafore Irrevocable Offer of Dedication; provided, however, that this consent does not constitute acceptance of said Irrevocable Offer of Dedication at this time, but the City of Perris reserves all rights to accept said dedication at any time hereafter.

Dated: ________________

CITY OF PERRIS

By: _______________________

Name: Nancy Salazar
Title: City Clerk
EXHIBIT A

LEGAL DESCRIPTION
EXHIBIT "A"
LEGAL DESCRIPTION
A.P.N. 310-024-001

PARCEL "A"

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SAID LAND IS LOCATED IN THE CITY OF PERRIS, COUNTY OF RIVERSIDE,
CALIFORNIA AND CONTAINS 2100 SQUARE FEET, MORE OR LESS.

THE ABOVE DESCRIBED PARCEL OF LAND IS SHOWN ON EXHIBIT "B" ATTACHED
HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

PREPARED UNDER THE SUPERVISION OF

GABRIEL D. YBARRA
LAND SURVEYOR NO. 4343
REGISTRATION EXPIRES 06-30-2016

[Signature] 9-7-26
DATE

[Seal]
LICENSED LAND SURVEYOR
No. 4343
STATE OF CALIFORNIA

2014-55 Dan's Feed & Seed
EXHIBIT B

LEGAL MAP
EXHIBIT "B"
PLAT
SHOWING THE PROPOSED ACQUISITION OF RIGHT-OF-WAY OVER LOT 1 IN BLOCK 4 OF THE MAP OF CARPENTER'S ADDITION TO PERRIS AS SHOWN BY MAP ON FILE IN BOOK 4 OF MAPS, AT PAGE 244, RECORDS OF SAN DIEGO COUNTY, CALIFORNIA.

DAN'S FEED AND SEED, INC.
A.P.N. 310-024-001

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Record Owner:
Dan's Feed and Seed, Inc.,
A California Corporation
211 East Third Street
Perris, CA 92570

Exhibit prepared by:
Action Surveys
1045 Main Street, Suite 102
Riverside, CA 92501
(951) 686-6166

Exhibit prepared for:
Tri Lake Consultants, Inc.
120 N. Perris Boulevard
Perris, CA 92570
(951) 943-8504

Scale: 1" = 50'

Assessor's Parcel Numbers:
310-024-001

Date Exhibit Prepared:
September 9, 2014
Exhibit “B”

Certificate of Acceptance

[on following page]
CERTIFICATE OF ACCEPTANCE

This is to certify that the City of Perris, a California municipal corporation ("City"), by and through its City Council, hereby accepts the "Property" as defined in that certain Irrevocable Offer of Dedication, executed by Dan's Feed and Seed Inc., a California corporation, and consisting of a fee simple interest in the portion of Assessor's Parcel Number ("APN") 310-024-001 located at 211 E. 3rd Street, and hereby consents to the recordation thereof by its duly authorized officer. This acceptance is made pursuant to the authority conferred by City Resolution No. ____________ adopted on ____________, 2017.

Dated: _________________, 2017

CITY OF PERRIS, a California municipal corporation

By: ________________

City Manager

ATTEST:

_____________________________

City Clerk

APPROVED AS TO FORM:

_____________________________

City Attorney
CITY COUNCIL
AGENDA SUBMITTAL

Meeting Date: July 27, 2017

SUBJECT: Final Parcel Map 37344 (FPM 17-05125) to subdivide a 1.45 acre lot (Pad K) into two lots within the Perris Crossing retail center. Parcel 1 is a vacant .71 acre lot with an approved multi-tenant retail use; Parcel 2 is .73 acre and developed with a restaurant use. **Applicant:** Jarney Tabata, Dasher & Tabata Inc.

REQUESTED ACTION: Approve Final Map 37344 subdividing 1.45 acres into two (2) lots, subject to the Conditions of Approval.

CONTACT: Clara Miramontes, Assistant City Manager

BACKGROUND/DISCUSSION:

On June 21, 2017 the Planning Commission approved Tentative Parcel Map 37344 (FPM 17-05125) to subdivide 1.45 acres (Pad K) into two lots within the Perris Crossing retail center. Parcel 1 is a vacant .71 acre lot with an approved multi-tenant retail use; Parcel 2 is .73 acre and developed with an existing restaurant use (Corky's). The map will be used for financing purposes to attract a developer and tenants for the multi-tenant retail building. The site is located within the Commercial zone of the Green Valley Specific Plan.

The Final Parcel Map submitted complies with the minimum lot size, dimensional criteria and frontage requirements for commercially-zoned parcels in the Green Valley Specific Plan and the Zoning Code. The City Engineer is currently reviewing Final Parcel Map. Review and final approval by the City Engineer will occur prior to recordation of the Final Map.

BUDGET (or FISCAL) IMPACT: Cost for staff preparation of this item, cost of construction and payment of impact fees are covered by the applicant.

PREPARED BY: Kenneth Phung, Project Planner

City Attorney: Eric Dunn
Assistant City Manager: Darren Madkin

Attachments:
1. Conditions of Approval (Planning and Engineering)
2. Final Parcel Map Exhibit

Consent: July 27, 2017
CITY OF PERRIS
DEVELOPMENT SERVICES DEPARTMENT
PLANNING DIVISION

CONDITIONS OF APPROVAL

GENERAL REQUIREMENTS:

1. **City Ordinances and Business License.** The businesses to occupy the existing and approved buildings on the site shall maintain compliance with all local and City Ordinances, including but not limited to an annual fire inspection and maintenance of a City business license.

2. **Development Standards.** The project shall conform to all requirements of the Green Valley Specific Plan and Perris Municipal Code Title 19 for commercial development.

3. **Conformance to Administrative Development Review (ADPR) 15-05101 and DPR 04-0621.** The project shall conform to the approved Conditions of Approval for ADPR 15-05101 and DPR 04-0621, as applicable. Any deviation shall require the appropriate Planning Division review and approval.

4. **Fire Safety Requirements.** The project shall adhere to all fire safety/emergency services requirements as mandated by the City Fire Marshal and any applicable city codes, ordinances, and the Uniform Fire Code.

5. **Building Division Requirements.** The project shall adhere to all applicable building and development codes, including the Uniform Building Code and any applicable city codes and ordinances, and State-mandated requirements.

6. **City Engineer.** The project shall adhere to all requirements of the City Engineer, as presented in the project Conditions of Approval dated June 6, 2017.

7. **Amended Water Quality Management Plan (WQMP) 15-05101.** An amended WQMP shall be approved for the subject new parcels, and be inspected and signed off prior to issuance of a Certificate of Occupancy for the approved, unconstructed building on Parcel 1.

8. **Expansion of Use.** Any future expansion or change of use shall require Planning review and approval.
9. **Future Obligation of Buyers and Lessees.** All future buyers and lessees shall be informed of their obligation to comply with these Conditions of Approval. The applicant shall provide a copy of these conditions and inform the buyer or lessee of their obligation to maintain compliance with all local and City ordinances, including but not limited to an annual fire inspection and maintenance of a City business license.

10. **Indemnification.** The developer/applicant shall indemnify, protect, defend, and hold harmless, the City and any agency or instrumentality thereof, and/or any of its officers, employees and agents from any and all claims, actions, or proceedings against the City, or any agency or instrumentality thereof, or any of its officers, employees and agents, to attack, set aside, void, annul, or seek monetary damages resulting from an approval of the City, or any agency or instrumentality thereof, advisory agency, appeal board or legislative body including actions approved by the voters of the City, concerning Tentative Parcel Map 37344. The City shall promptly notify the developer/applicant of any claim, action, or proceeding for which indemnification is sought and shall further cooperate fully in the defense of the action.

11. **Approval Period.** In accordance with the Subdivision Map Act, the recordation of the final map shall occur within two (2) years from Planning Commission approval, unless an automatic extension is granted by the State of California. The applicant may apply for a maximum of five (5) one-year extensions to permit additional time to record the final map. A written request for an extension shall be submitted to the Planning Division at least thirty (30) days prior to the initial (and subsequent extensions) expiration of Tentative Parcel Map approval.

12. **Graffiti** located on site shall be removed within 48 hours. The site shall be maintained in a graffiti-free state at all times.

13. **Waste-Hauling.** The developer shall use only the City-approved waste hauler for all construction and other waste disposal.

**Project-Specific Requirements:**

14. **Conformance to CC&Rs.** The project shall conform to the various documents collectively known as the Perris Crossing CC&Rs which control easements, access, utilities, maintenance, stormwater control, and all other activities regulated by the CC&Rs.

15. **Grease Interceptors.** The existing grease interceptor located on Parcel 1 will be on a different parcel than the existing restaurant, which is allowable only through an easement. This grease interceptor cannot be shared with other restaurant uses. Every restaurant use is required to have its own grease interceptor per Eastern Municipal Water District (EMWD).

16. **Notice of Exemption.** Within three (3) days of Planning Commission approval, the applicant shall submit a check to the City Planning Division, payable to “Riverside County Clerk-Recorder” for a $50.00 check for filing of the CEQA Notice of Exemption.
Prior to Final Map Recordation:

17. **Final Map Application.** The Final Map application shall be submitted to the Planning Division with payment of appropriate fees for review and approval, concurrently with an application to the City Engineer. The Final Map application shall include all appropriate easements and shall include, but not be limited to, the following:

   a. The Final Map shall preserve all existing ingress and egress access easements.
   b. The Final Map shall conform substantially to the Planning Commission-approved Tentative Parcel Map.

18. **Recordation of Final Map.** Prior to recordation of the Final Map, the owner shall obtain the following clearances, approvals or actions:

   a. Approval of Final Map by the City Engineer.
   b. Verification from the Planning Division that all pertinent Conditions of Approval have been met.
   c. Required approvals from any outside agency.
CITY OF PERRIS
HABIB MOTLAGH, CITY ENGINEER

CONDITIONS OF APPROVAL

P8-625
June 6, 2017
Tentative Financing Map 37344

With respect to the Conditions of Approval for the above referenced project, the City of Perris requires that the developer provide the following street improvements and/or road dedication in accordance with the City of Perris Municipal Code Title 18. It is understood that the site plan and the map correctly shows all existing and proposed easements, traveled ways, right-of-way, and drainage courses with appropriate Q's and that their omission may require the map to be resubmitted for further consideration. These Ordinances and the following conditions are essential parts and requirement occurring in ONE is as binding as though occurring in all. They are intended to be complimentary and to describe the conditions for a complete design of the improvements. Unless otherwise noted, all offsite improvements as conditioned shall be installed prior to issuance of any occupancy permits. All questions regarding the true meaning of the conditions shall be referred to the City Engineer's office.

1. The Final Map shall be reviewed and approved by City Engineer and shall include installation of all monuments.

2. This map is for financing purpose only and as such, no permit(s) shall be issued for development and/or redevelopment of individual lots.

Habib Motlagh
Habib Motlagh
City Engineer
CITY COUNCIL
AGENDA SUBMITTAL

Meeting Date: July 27, 2017

SUBJECT: Perris Valley Youth Association fee waiver request for the use of the City’s Mobile Stage

REQUESTED ACTION: That the City Council consider a waiver of rental fees totaling $2,600.00, for the Perris Valley Youth Association and the Cops and Clergy event to be held on August 14, 2017 at Foss Field Park

CONTACT: Sabrina Chavez, Director of Community Services and Housing

BACKGROUND/DISCUSSION:

The Perris Valley Youth Association, has planned a prayer vigil in conjunction with the Cops and Clergy at Foss Field Park on August 14, 2017, from 4:00pm - 9:00pm. The event provides the community with the opportunity to connect with local pastors and churches. This is a community outreach event that is open to all the Perris residents. Perris Valley Youth Association is requesting that the City Council authorize the waiver of rental fees associated with the reservation of the City’s Mobile Stage. A copy of the reservation request is attached with this submittal. The total value of the requested fee waiver is $2,600 ($1,250 for mobile stage rental; $350 for staff cost; and deposit of $1000.00).

FISCAL IMPACT: The requested waiver of rental fees for the Perris Valley Youth Association event totals $2,600.00. This amount includes the reservation of the City’s Mobile Stage, staff cost and deposit.

Prepared by: Rachel Pinedo, Recreation Coordinator
Reviewed by: Sabrina Chavez, Director of Community Services and Housing
Attachments: Letter of fee waiver request from Perris Valley Youth Association

Consent: X
Public Hearing: Business Item:
Other:
July 25, 2017

Dear City of Perris,

Perris Valley Youth Association Sports is requesting a fee waiver to use Foss Field and the stage for the 2nd Annual Cops And Clergy Night Of Prayer August 14, 2017, for more than 20 pastors.

Sincerely,

[Signature]
Andre Mitchell
CITY COUNCIL
AGENDA SUBMITTAL

Special Meeting Date: July 27, 2017

SUBJECT: Allow an alternate background check process in lieu of a live scan for employees of medical marijuana dispensary establishments for the purpose of processing/issuing a medical marijuana dispensary permit

ACTION REQUESTED: Authorize an application for authorization to access state and federal level summary criminal history information for employment for licensing, certification and permitting purposes for a medical marijuana dispensary permit application

CONTACT: Clara Miramontes, Director of Development Services

BACKGROUND/DISCUSSION:

The City has begun the process of taking in applications for a medical marijuana dispensary permit. The application requires that a live scan be submitted for each employee or prospective employee at each establishment. Under the City’s current ordinance, a live scan means a “system for inkless electronic fingerprinting and the automated background check developed by the California Department of Justice (DOJ) which involves digitizing fingerprints and electronically transmitting the fingerprint image data along with personal descriptor information to computers at the DOJ for completion of a criminal record check; or such other comparable inkless electronic fingerprinting and automated background check process as determined by the City Council.”

Upon review of recent applications, the live scan DOJ alone may not be used for licensing or certification purposes for a medical marijuana regulatory permit. However, the current ordinance further states that such other comparable inkless electronic fingerprinting and automated background check process may be allowed, as determined and authorized by the City Council through a resolution. Staff is recommending that the City Council authorize that an alternate background check process be allowed to be processed through HDL Companies, on behalf of the City, for purposes of licensing and issuing a medical marijuana dispensary permit.

BUDGET (or FISCAL) IMPACT:

Cost for services will not impact the General Fund. Services will be charged to the applicant at the time of application submittal.

Prepared by: Clara Miramontes, Assistant City Manager

City Attorney: Eric Dunn
Assistant City Manager: Darren Madkin
Director of Finance: Jennifer Erwin

Consent Agenda: July 25, 2017
Attachments: Resolution
RESOLUTION NUMBER (NEXT IN ORDER)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PERRIS, CALIFORNIA, APPROVING AN APPLICATION FOR AUTHORIZATION TO ACCESS STATE AND FEDERAL LEVEL SUMMARY CRIMINAL HISTORY INFORMATION FOR LICENSING OR CERTIFICATION PURPOSES FOR ISSUANCE OF A MEDICAL MARIJUANA DISPENSARY PERMIT

WHEREAS, Penal Code Sections 11105(b)(11) and 13300(b)(11) authorize cities, counties, districts and joint powers authorities to access state and local summary criminal history information for employment, licensing or certification purposes; and

WHEREAS, Penal Code Sections 11105(b)(11) authorizes cities, counties, districts and joint powers authorities to access federal level criminal history information by transmitting fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation; and

WHEREAS, Penal Code Sections 11105(b)(11) and 13300(b)(11) require that there be a requirement or exclusion from employment, licensing, or certification based on specific criminal conduct on the part of the subject of the record; and

WHEREAS, Penal Code Sections 11105(b)(11) and 13300(b)(11) require the city council, board of supervisors, governing body of a city, county or district or joint powers authority to specifically authorize access to summary criminal history information for employment, licensing, or certification purposes.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PERRIS, CALIFORNIA, is hereby authorized to access state and federal level summary criminal history information for licensing, and certification purposes and/or for issuance of a medical marijuana dispensary permit, and may not disseminate the information to a private entity.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Perris, California, at a regular meeting held on the 25th day of July, 2017.

ATTEST: Mayor

City Clerk

APPROVED AS TO FORM:

City Attorney
CITY COUNCIL
AGENDA SUBMITTAL

Meeting Date: July 27, 2017

SUBJECT:  Proposed Sale of City’s Water Systems

REQUESTED ACTION: It is recommended that the City Council approve the terms of the revised asset purchase agreement with Liberty Utilities.

CONTACT: Eric Dunn, City Attorney

BACKGROUND/DISCUSSION:

At its July 11, 2017, meeting, the City Council approved resolutions that submit the question of whether to sell the water system in the Downtown area that provides service to approximately 2366 connections (“Downtown Water System”) and the water system in the North Perris area that provides service to approximately 1357 connections (“North Perris Water System” or “NPWS”) to the City’s qualified voters at a special election on November 7, 2017. The Downtown Water System and the NPWS are collectively the “Water Systems.”

The City Council also approved the terms of an Asset Purchase Agreement with Liberty Utilities for their purchase of the Water Systems at the same meeting; however, this was made subject to the City Manager and City Attorney’s finalizing the agreement. Further, City staff informed the City Council that, if any of the terms of the asset purchase agreement were substantially changed, City staff would bring the agreement back to the City Council for its approval of such revised terms. Since then, City staff has been working with Liberty Utilities to define the scope of how the parties will work together in acquiring the Second Water Permit from the California State Water Resources Control Board. At this time, the following substantial changes have been made:

1. **Section 6.12:** Liberty Utilities is required to work in good faith to assist the City in its efforts to access, utilize and deliver accessing, utilizing and delivering water pursuant to any permit that may be granted to the City by the California State Water Resources Control Board under Application No. 31799.

2. **Article 8:** Under certain circumstances, Liberty Utilities may terminate the Asset Purchase Agreement, sue for specific performance thereunder, and potentially seek damages.
Recommended Action

The APA is attached in draft form. Staff recommends that the City Council approve the general terms of the Asset Purchase Agreement with Liberty Utilities, authorize and direct the City Manager and City Attorney to finalize the APA, and authorize and direct the Mayor to execute the APA when it is in final form. If there are any substantive changes to the APA, the APA will be brought back for further consideration.

BUDGET (or FISCAL) IMPACT:

The cost of the special election is estimated to be $20,000 to $30,000, depending on how many measures are on the ballot. If the sale of the Water Systems is approved and ultimately closes, the City would receive $11,500,000.

Reviewed by:
City Attorney  X
Assistant City Manager
Assistant Director of Finance

Attachments:
1. Draft Asset Purchase Agreement

Consent:  X
Public Hearing:
Business Item:
Other:
ASSET PURCHASE AGREEMENT

BETWEEN

LIBERTY UTILITIES (PARK WATER) CORP.

AND

THE CITY OF PERRIS, CALIFORNIA

DATED AS OF [**Month Day**], 2017
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SCHEDULES

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

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Exhibit A  Form of Assignment and Assumption Agreement
Exhibit B  Form of Bill of Sale
Exhibit C  Form of Escrow Agreement
ASSET PURCHASE AGREEMENT

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

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

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

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

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

ARTICLE I
DEFINITIONS

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

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

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

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

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

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

KCP-8274375-v2
“Applicable Law” means all Laws that apply to or relate to the Parties, the Water systems, the Purchased Assets, this Agreement or the rights, responsibilities and obligations arising from the transaction made the subject of this Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Deposit Amount” means One Million Dollars ($1,000,000).
“Direct Claim” has the meaning set forth in Section 8.4(c).

“Disclosure Schedule” means the Disclosure Schedule delivered by Seller to Buyer concurrently with the execution and delivery of this Agreement.

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

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

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

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

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

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

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

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

“Environmental Law” means any and every Law pertaining to, regulating, relating to or imposing liability, standards or obligations of conduct concerning pollution, contaminants, or pathogens, or protection of health, safety (including the health and safety of workers under the
U.S. Occupational Safety and Health Act of 1970 (29 U.S.C. §§ 651 et seq.), flora and fauna, the Environment or protection, allocation, use, preservation, or control of the quantity or quality of natural resources, including without limitation (a) any Law relating to any actual or threatened Release, manufacture, processing, distribution, use, treatment, storage, transport, or handling of any Hazardous Substance, (b) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §§ 9601 et seq.) ("CERCLA"), the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 et seq.); the Clean Air Act (42 U.S.C. §§ 7401 et seq.); the Clean Water Act (33 U.S.C. §§ 1251 et seq.) the Toxic Substances Control Act (15 U.S.C. §§ 2601 et seq.); the Emergency Planning and Community Right to Know Act (42 U.S.C. §§ 11001 et seq.); the Oil Pollution Act of 1990 (33 U.S.C. §§ 2701 et seq.); and the Hazardous Materials Transportation Uniform Safety Act (49 U.S.C. §§ 5101 et seq.), the National Environmental Policy Act (42 U.S.C. §§ 4321 et seq.), the Migratory Bird Treaty Act (16 U.S.C. §§ 701 et seq.), the Bald and Golden Eagle Protection Act (16 U.S.C. §§ 668 et seq.) and the Endangered Species Act of 1973 (16 U.S.C. §§ 1531 et seq.) with any amendments or reauthorization thereto or thereof, and any and all regulations promulgated thereunder, and all analogous state and local counterparts or equivalents; (c) any Law relating to maximum contaminant levels for drinking water distributed by public water systems and criteria, procedures, and treatment techniques for ensuring compliance with such levels, including but not limited to the Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq. and any and all regulations promulgated thereunder, and all analogous state and local counterparts or equivalents, including but not limited to the California Safe Drinking Water Act (California Health and Safety Code §116270 et seq.; (d) and any other state, county, municipal, local or other statute, law, ordinance or regulation which may relate to or deal with human health or the environment or dangerous toxic or hazardous substances, all as may be from time to time amended; and (e) all Environmental Permits issued under such Law.

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

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

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

"Escrow Agent" means [** to be agreed**].

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

"Excluded Assets" has the meaning set forth in Section 2.2.

"Excluded Liabilities" has the meaning set forth in Section 2.5.

"Franchise Agreement" means that certain Franchise Agreement, as shown in Exhibit C, and to be executed at Closing by and between Seller and Buyer.
“GAAP” means generally accepted accounting principles for financial reporting in the United States.

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

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

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

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

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

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

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

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

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

“Inventory” has the meaning set forth in Section 2.1(c).
"Knowledge" An individual will be deemed to have Knowledge of a particular fact or other matter if:

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

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

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

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

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

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

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

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

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

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

"North System" has the meaning set forth in the Recitals hereto.
“Objections” has the meaning set forth in Section 6.9.

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

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

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

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

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

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

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

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

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

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

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

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

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

“PPUA” has the meaning set forth in the recitals.
"PPUA Transfer" means the transfer of ownership of the North System from the PPUA to Seller which occurred effective [**Date**], 2017.¹

"Purchase Price" has the meaning set forth in Section 2.6.

"Purchased Assets" has the meaning set forth in Section 2.1.

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

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

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

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

"Returns" has the meaning set forth in Section 4.17.

"Seller" has the meaning set forth in the preamble hereeto.

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

"Seller Indemnitees" has the meaning set forth in Section 8.3.

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

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

"System Map" means that certain map titled ____________ dated __, ___ provided by Seller to Buyer describing and depicting the layout of the Water Systems including the water distribution lines, customer service lines, valves, wells, pumps, and treatment facilities.²

"Target Working Capital Amount" means ____________________ Dollars ($__________________).

"Taxes" means all taxes, charges, fees, levies or other assessments, including, without limitation, all net income, gross income, gross receipts, sales, use, ad valorem, transfer, franchise, profits, license, withholding, payroll, employment, social security, unemployment, excise, estimated, severance, stamp, occupation, property or other taxes, customs duties, fees

¹ PPUA Transfer to occur prior to execution of the APA.
² To be modified depending on systems maps in existence or developed.
assessments or charges of any kind whatsoever, including, without limitation, all interests and penalties thereon and additions to tax or additional amounts imposed by any taxing authority.

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

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

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

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

"Transfer Taxes" has the meaning set forth in Section 6.7.

"Transfer Time" has the meaning set forth in Section 3.3.

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

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

"Water Systems" has the meaning set forth in the Recitals hereto.

ARTICLE II
PURCHASE AND SALE

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

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

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

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

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

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

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

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

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

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

(a) Cash;

(b) Customer deposits;

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

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

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

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3 Seller to provide fully executed copies of 2012 and 2015 Settlement Agreements.
2.4 Assumed Liabilities. Subject to the terms and conditions set forth herein, Buyer shall assume and agree to pay, perform and discharge only the following Liabilities of Seller (collectively, the “Assumed Liabilities”), and no other Liabilities:

(a) all trade accounts payable of Seller to third parties in connection with the Water Systems that remain unpaid and are not delinquent as of the Closing Date and that either are (i) reflected on the Interim Balance Sheet, or (ii) arose in the ordinary course of business consistent with past practice since the Interim Balance Sheet Date (“Accounts Payable”);

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

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

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

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

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

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

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

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

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

(g) any Environmental Claims or other Liabilities under any Environmental Law, to the extent arising out of or relating to facts, circumstances or conditions existing on or prior to the Closing or otherwise to the extent arising out of any actions or omissions of Seller;

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

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

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

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

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

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

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

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

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

2.7 Purchase Price Adjustment.

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

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

(b) Examination and Review.

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

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

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

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

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

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

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

ARTICLE III
CLOSING

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

3.2 Closing Deliverables.

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

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

iii. any consents necessary for valid assignment of the Assigned Contracts;

iv. any Real Property Assignment Agreements;

v. the Franchise Agreement;

vi. the Opinion of Counsel;

vii. the Seller Closing Certificate; and

viii. such other certificates, documents and instruments of sale, transfer, conveyance and assignment as Buyer may reasonably request.

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

i. the Closing Amount less the Deposit Amount (as adjusted);

ii. the Bill of Sale;

iii. the Assignment and Assumption Agreement;

iv. any Real Property Assignment Agreements;

v. the Franchise Agreement;

vi. the Buyer Closing Certificate; and

vii. such other certificates, documents and instruments of sale, transfer, conveyance and assignment as Seller may reasonably request.

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

3.4 Separation and Transfer. The Parties agree upon the following procedures for transferring possession and operation of the Purchased Assets:
(a) Unless the Parties otherwise agree in writing, Seller shall read its meters before the Closing Date and issue a final billing to its customers for any services used prior to the final meter read. Seller shall provide the final meter reads to Buyer at the Closing. To the extent that there are any missing meter reads or any adjustments required to any meter reads, Buyer and Seller agree to cooperate to promptly estimate or otherwise resolve such meter reads.

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

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF SELLER

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

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

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

4.3 No Conflicts; Consents; Governmental Approvals.

(a) The execution, delivery and performance by Seller of this Agreement and the other Transaction Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) conflict with or result
in a violation or breach of, or default under, any provision of the certificate of incorporation, by-laws or other charter or organizational documents of Seller; (b) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to Seller, the Water Systems or the Purchased Assets; (c) except as set forth in Section 4.3(a) of the Disclosure Schedule, require the consent, notice or other action by any Person under, conflict with, result in a violation or breach of, constitute a default or an event that, with or without notice or lapse of time or both, would constitute a default under, result in the acceleration of or create in any party the right to accelerate, terminate, modify or cancel any Contract or Permit to which Seller is a party or by which Seller or the Water Systems is bound or to which any of the Purchased Assets are subject (including any Assigned Contract); or (d) result in the creation or imposition of any Encumbrance on the Purchased Assets.

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

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

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

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

4.6 Absence of Certain Changes, Events and Conditions. Since the Interim Balance Sheet Date:
(a) there has not been any event, occurrence or development that has had, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect;

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

4.7 Contracts and Commitments.

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

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

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

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

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

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

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

(a) To the Knowledge of Seller, except as set forth in Section 4.9 of the Disclosure Schedule, the Distribution Facilities and other items of tangible personal property included in the Purchased Assets are structurally sound, are in good operating condition and repair, and are adequate for the uses to which they are being put, and none of such

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4 Pending review of Disclosure Schedule.
Distribution Facilities or other items of tangible personal property is in need of maintenance or repairs except for ordinary, routine maintenance and repairs that are not material in nature or cost. The Purchased Assets are sufficient for the continued conduct of the operations of the Water Systems after the Closing in substantially the same manner as conducted prior to the Closing and constitute all of the rights, property and assets necessary to conduct the operations of the Water Systems as currently conducted. None of the Excluded Assets are material to the Water Systems.

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

4.10 **Real Property.**

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

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

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

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

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

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

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

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

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

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

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

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

4.13 Legal Proceedings; Governmental Orders.

(a) Except as set forth on Section 4.13(a) of the Disclosure Schedule, there are no notices of proposed violation, reports, audits or investigations (in each case, issued, undertaken, pending or to Seller’s knowledge, threatened) by any Governmental Authority, or Actions pending or, to Seller’s Knowledge, threatened against or by Seller (i) relating to or affecting the Water Systems, the Purchased Assets or the Assumed Liabilities; or (b) that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. No event has occurred or circumstances exist that may give rise to, or serve as a basis for, any such Action.
(b) Except as set forth on Section 4.13(b) of the Disclosure Schedule, there are no outstanding Governmental Orders and no unsatisfied judgments, penalties or awards against, relating to or affecting the Water Systems. Seller is in compliance with the terms of each Governmental Order set forth on Section 4.13(b) of the Disclosure Schedule, and no event has occurred or circumstances exist that may constitute or result in (with or without notice or lapse of time) a violation of any such Governmental Order.

4.14 Compliance with Laws; Permits.

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

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

4.15 Environmental Matters.

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

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

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

(d) To the Knowledge of Seller, no expenditure will be required at the time of Closing in order for Buyer to comply with any Environmental Law in effect at the Transfer Time in connection with the operation or continued operation of the Water Systems or the ownership or use of the Purchased Assets in a manner consistent with current operation thereof by Seller, except for any permit, transfer, registration, or similar fees associated with the required approvals described in Section 5.3(b).

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

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

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

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

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

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

4.20 Disclosure. No representation or warranty by Seller in this Agreement and no statement contained in the Schedules or Disclosure Schedule to this Agreement or any certificate or other document furnished or to be furnished to Buyer pursuant to this Agreement contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements contained therein, in light of the circumstances in which they are made, not misleading.

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

ARTICLE V
REPRESENTATIONS AND WARRANTIES OF BUYER

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

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

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

5.3 No Conflicts; Consents.

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

(b) Except for approval of the transactions contemplated by this Agreement by the California Public Utilities Commission and the California State Water Resources Control Board, no consent, authorization, order, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Buyer in connection with the execution and delivery of this Agreement and the other Transaction Documents and the performance of its obligations and the consummation of the transactions contemplated hereby and thereby, including but not limited to operating the Water Systems and owning, leasing, operating, or using the Purchased Assets.

5.4 Legal Proceedings. There are no Actions pending or, to Buyer’s knowledge, threatened against or by Buyer or any Affiliate of Buyer that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement or any other Transaction Document based upon arrangements made by or on behalf of Buyer.

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

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

ARTICLE VI
COVENANTS

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

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

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

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5 NTD: Under review,
(c) confer with Buyer prior to implementing operational decisions of a material nature;

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

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

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

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

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

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

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

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

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

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

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

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

(b) Without limiting the foregoing, Buyer shall have the right to enter upon Seller’s property to conduct physical inspections and testing of the Distribution Facilities, surveys, environmental assessments and sampling, site analysis, engineering studies, and other investigations it deems reasonably necessary with respect to the Water Systems and the Purchased Assets.

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

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

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

6.4 Notice of Certain Events.

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

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

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

iii. any notice or other communication from any Governmental Authority in connection with the transactions contemplated by this Agreement; and
iv. any Action commenced or, to Seller’s Knowledge, threatened against, relating to or involving or otherwise affecting the Water Systems, the Purchased Assets or the Assumed Liabilities that, if pending on the date of this Agreement, would have been required to have been disclosed pursuant to Section 4.13 or that relates to the consummation of the transactions contemplated by this Agreement.

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

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

6.6 Governmental Approvals and Consents.

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

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

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

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

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

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

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

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

6.9 Title and Survey.

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

(b) **Title Commitment.** For any Real Property listed on Section 4.10(a) or Section 4.10(c) of the Disclosure Schedule, within ten (10) days after the Effective Date, Seller, at Seller's sole cost and expense, shall furnish to Buyer current commitments (the "Title Commitments") for the issuance of one or more Owner's Policies of Title Insurance with respect to the Owned Real Property and Easements, insuring that Seller holds good and marketable fee simple title to the Owned Real Property, valid and insurable easement interests in the Easements, together with legible copies of all documents (the "Title Documents") constituting exceptions to Seller's title as reflected in the Title Commitments, including legible copies of the current plats, if any, filed in the map and plat records. The Surveys and the Title Commitments shall form the basis for the legal descriptions of the Real Property.

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

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

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

iii. Upon Buyer's receipt of the Cure Notice, or if Seller does not deliver a Cure Notice within the 15-day period, Buyer shall have until Closing to either (i) terminate this Agreement by written notice to Seller, with neither Party being thereafter obligated to the other, except as to those provisions that expressly survive hereunder, or (ii) waive the Objections by written notice to Seller and proceed to Closing with all uncured Objections constituting Permitted Exceptions. Notwithstanding any other provision of this Agreement, in the event of termination by Buyer as permitted under this Section 6.9(c), unless Buyer is in default, the Deposit Amount will be refunded to Buyer.
iv. Notwithstanding anything contained herein to the contrary, Seller may not, at any time after the Effective Date, place any encumbrances and/or restrictions on the Real Property without the prior written consent of Buyer.

(d) **Title Policy.** For any Real Property listed on Section 4.10(a) or Section 4.10(c) of the Disclosure Schedule, on or before the Closing Date, Seller shall furnish Buyer, at Seller’s cost and expense (excluding any additional premium for the survey exception deletion), with an Owner’s Policy of Title Insurance (the “Title Policy”) issued through the Title Company on the standard form in use in the State of California from a title insurance underwriter reasonably acceptable to Buyer, insuring good, marketable and indefeasible fee title to the Owned Real Property, and valid and insurable easement interests in the Easements, to be granted to Buyer, subject only to the Permitted Exceptions. The parties hereby specifically agree that the Title Policies shall be issued with all “standard exceptions” being deleted therefrom. The “standard exceptions” to be deleted shall include the mechanic’s lien exception and the unsettled taxes exception.

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

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

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

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

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

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

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

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

(h) Copies of all warranties relating to the Water Systems; and
(i) Sufficient documentation to support the book value of the Purchased Assets.

6.11 Transition and Non-Disparagement.

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

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

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

6.12 Further Assurances. Following the Closing:

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

(b) Buyer shall work in good faith, consistent with law and its utility obligations, to assist Seller in Seller’s efforts to access, utilize and deliver water pursuant to any permit that may be granted to Seller by the California State Water Resources Control Board under Application No. 31799.

ARTICLE VII
CONDITIONS TO CLOSING

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

(a) No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Governmental Order which is in effect and has the effect of making the transactions contemplated by this Agreement illegal, otherwise restraining or prohibiting consummation of such transactions or causing any of the transactions contemplated hereunder to be rescinded following completion thereof.
(b) The transactions contemplated by this Agreement shall have been approved by a majority of votes cast on the measure at the Municipal Election, as certified by the Registrar of Voters.

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

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

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

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

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

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

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

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

(h) Buyer shall have received all Permits that are necessary for it to conduct the operations of the Water Systems as conducted by Seller as of the Closing Date.
(i) For any Real Property listed on Section 4.10(a), Section 4.10(b), or Section 4.10(c) of the Disclosure Schedule, Buyer shall have received (at Seller's expense) one or more Title Policies with respect to each parcel of Owned Real Property, Easement, and Leasehold Real Property issued by a nationally recognized title insurance company acceptable to Buyer, written as of the Closing Date, insuring Buyer in such amounts and together with such endorsements, and otherwise in such form, as Buyer shall require. Such Title Policies shall insure fee simple title to each Owned Real Property, free and clear of all Encumbrances other than Permitted Encumbrances and those listed on Section 4.10(a)(i) of the Disclosure Schedule, valid and insurable easement interests in each Easement, free and clear of all Encumbrances other than Permitted Encumbrances and those listed on Section 4.10(c) of the Disclosure Schedule, free and clear of all Encumbrances other than Permitted Encumbrances and those listed on Section 4.10(b) of the Disclosure Schedule. Buyer shall have received (at Seller’s expense) appropriately certified ALTA/NSPS Land Title Surveys showing no Encumbrances other than the Permitted Encumbrances and those listed on Section 4.10(a)(i) of the Disclosure Schedule, and otherwise in form and substance satisfactory to Buyer, for each of the Owned Real Properties.

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

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

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

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

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

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

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

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

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

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

ARTICLE VIII
INDEMNIFICATION

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

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

(a) any inaccuracy in or breach of any of the representations or warranties of Seller contained in this Agreement, the other Transaction Documents or in any certificate or instrument delivered by or on behalf of Seller pursuant to this Agreement, as of the date such representation or warranty was made or as if such representation or warranty was made on and as of the Closing Date;

(b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Seller pursuant to this Agreement, the other Transaction Documents or any certificate or instrument delivered by or on behalf of Seller pursuant to this Agreement;

(c) any Excluded Asset, any Excluded Contract or any Excluded Liability; or

(d) any Third Party Claim based upon, resulting from or arising out of the business, operations, properties, assets or obligations of Seller, PPUA or the Water Systems (other than Assumed Liabilities) conducted, existing or arising on or prior to the Closing Date.
8.3 **Indemnification by Buyer.** Subject to the other terms and conditions of this Article VIII, Buyer shall indemnify and defend each of Seller and its Affiliates and their respective Representatives (collectively, the "Seller Indemnitees") against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Seller Indemnitees based upon, arising out of, with respect to or by reason of:

(a) any inaccuracy in or breach of any of the representations or warranties of Buyer contained in this Agreement or in any certificate or instrument delivered by or on behalf of Buyer pursuant to this Agreement, as of the date such representation or warranty was made or as if such representation or warranty was made on and as of the Closing Date;

(b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Buyer pursuant to this Agreement;

(c) any Assumed Liability; or

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

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

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

(b) Settlement of Third Party Claims. Notwithstanding any other provision of this Agreement, the Indemnifying Party shall not enter into settlement of any Third Party Claim without the prior written consent of the Indemnified Party, except as provided in this Section 8.4(b). If a firm offer is made to settle a Third Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnified Party and provides, in customary form, for the unconditional release of each Indemnified Party from all liabilities and obligations in connection with such Third Party Claim and the Indemnifying Party desires to accept and agree to such offer, the Indemnifying Party shall give written notice to that effect to the Indemnified Party. If the Indemnified Party fails to consent to such firm offer within ten (10) days after its receipt of such notice, the Indemnified Party may continue to contest or defend such Third Party Claim and in such event, the maximum liability of the Indemnifying Party as to such Third Party Claim shall not exceed the amount of such settlement offer. If the Indemnified Party fails to consent to such firm offer and also fails to assume defense of such Third Party Claim, the Indemnifying Party may settle the Third Party Claim upon the terms set forth in such firm offer to settle such Third Party Claim. If the Indemnified Party has assumed the defense pursuant to Section 8.4(b), it shall not agree to any settlement without the written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

(c) Direct Claims. Any Action by an Indemnified Party on account of a Loss which does not result from a Third Party Claim (a “Direct Claim”) shall be asserted by the Indemnified Party giving the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than thirty (30) days after the Indemnified Party becomes aware of such Direct Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Such notice by the
Indemnified Party shall describe the Direct Claim in reasonable detail and indicate an estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have thirty (30) days after its receipt of such notice to respond in writing to such Direct Claim. The Indemnified Party shall allow the Indemnifying Party and its Representatives to investigate the matter or circumstance alleged to give rise to the Direct Claim, and whether and to what extent any amount is payable in respect of the Direct Claim and the Indemnified Party shall assist the Indemnifying Party’s investigation by giving such information and assistance (including access to the Indemnified Party’s premises and personnel and the right to examine and copy any accounts, documents or records) as the Indemnifying Party or any of its Representatives may reasonably request. If the Indemnifying Party does not so respond within such thirty (30) day period, the Indemnifying Party shall be deemed to have rejected such claim, in which case the Indemnified Party shall be free to pursue such remedies as may be available to the Indemnified Party on the terms and subject to the provisions of this Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

9.2 Deposit Amount.
(a) If Seller terminates this Agreement pursuant to (i) Section 9.1(c)(i); or (ii) Section 9.1(c)(ii) (other than for failure of the condition set forth in Section 7.3(c)), and in the case of this clause (ii), all of the conditions to Buyer’s obligations to consummate the Closing under Section 7.1 and Section 7.2 have been satisfied (other than any such conditions which by their nature are to be satisfied by the Closing Date), the Parties agree that Seller shall have suffered a loss and value to the Water Systems of an indeterminable amount, unrecoverable in law, and Seller shall be entitled to retain the Deposit Amount and shall be distributed the Deposit Amount pursuant to the Escrow Agreement.

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

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

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

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

ARTICLE X
MISCELLANEOUS

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

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

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

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

10.5 **Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.
10.6 Entire Agreement. This Agreement and the other Transaction Documents constitute the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement and those in the other Transaction Documents, the Exhibits and Schedules (other than an exception expressly set forth as such in the Schedules), the statements in the body of this Agreement will control.

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

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

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


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

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY MAY BE INSTITUTED IN THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA OR THE COURTS OF THE STATE OF CALIFORNIA IN EACH CASE IN OR FOR RIVERSIDE COUNTY, CALIFORNIA, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF
SUCH COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR ANY PROCEEDING IN SUCH COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

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

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

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

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

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

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

SELLER:

City of Perris, California

By: ________________________________
Name: ______________________________
Title: ______________________________

BUYER:

Liberty Utilities (Park Water) Corp.

By: ________________________________
Name: ______________________________
Title: ______________________________
Schedule 2.1(b)

Distribution Facilities

[To be separately circulated - material from Stetson RCNLD to be inserted]
Schedule 2.1(f)

Assigned Contracts

[EMWD water supply agreement for Downtown System]
Schedule 2.2(d)

Certain Excluded Assets

City of Perris / PPUA Application No. 31799 seeking to divert 1,087 acre feet of water (pending before the California State Water Resources Control Board)
Schedule 2.4(c)

Certain Assumed Liabilities

None.
# Schedule 2.7(a)

## Form of Closing Working Capital Statement

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$^{6}$ Under review; should tie to City's chart of accounts.