

DISTRICT TRANSFER AGREEMENT

**Lewis County Water-Sewer District No. 5,
Seller**

and

**Lewis County Public Works,
Purchaser**

DISTRICT TRANSFER AGREEMENT

THIS DISTRICT TRANSFER AGREEMENT ("**Agreement**") is entered into as of the date of mutual execution as indicated below, **BETWEEN**:

Lewis County Water-Sewer District No. 5, a water-sewer district and municipal corporation organized and duly incorporated under Title 57 RCW and having its principle office and mailing address at 921 C Middle Fork Rd., Onalaska, Washington 98570 (herein after referred to as the "**Seller**"); and

Lewis County Public Works, a subdivision and department of Lewis County, a political subdivision of the state of Washington and county duly incorporated under the Washington State Constitution, and having its principle office and mailing address at 2025 NE Kresky Avenue, Chehalis, Washington 98532 (herein after referred to as the "**Purchaser**").

(The Purchaser and the Seller occasionally individually referred to as a "**Party**" and collectively referred to as the "**Parties**," as the context may require).

WHEREAS:

- A.** The Seller is organized for and authorized to and does provide water and sewer services to the District consistent with Title 57 RCW;
- B.** The Purchaser is Lewis County, acting by and through Lewis County Public Works; and
- C.** The Seller has agreed to sell and the Purchaser has agreed to purchase all of the assets and property of the District constituting its system of sewerage, system of water or combined water and sewerage system, together with any of its other real or personal property rights and interests used or useful in connection with the operation, maintenance, repair, replacement, extension, or financing of that system the District (as defined hereinafter) pursuant to RCW 36.94.310, as described in and subject to the terms of this Agreement.

NOW THEREFORE, in consideration of the above recitals, the representations, warranties, covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and adequacy of which are now acknowledged, the Parties agree as follows:

1. DEFINITIONS AND INTERPRETATION

- 1.1 Some terms used in this Agreement shall have the meanings ascribed to them at Part A to Schedule "A" to this Agreement.
- 1.2 Agreement shall be interrelated in a manner and on the basis of principles as provided in Part B to Schedule "A" to this Agreement.

2. SALE AND TRANSFER OF DISTRICT

- 2.1 Transfer of District. The Seller hereby agrees to sell, assign, convey and transfer all the (a) all of the assets and property of the District constituting its system of sewerage, system of water or combined water and sewerage system; (b) moveable assets, furniture and fixtures, equipment and inventory; (c) intellectual property rights and other intangibles; (d) customer accounts of the District; (e) all contracts relating to the operation of the District; and (f) all legal rights and licenses owned by, or necessary for the operation of the District, and as more particularly described as the "Assets" in Schedule "A" (sometimes collectively described as the "Assets"). The Purchaser agrees to purchase and accept the Assets of the District on the terms of this Agreement, at Closing.
- 2.2 Liabilities. Except as expressly provided for herein, Purchaser is not purchasing or accepting, and expressly disclaims, any and all pre-existing liabilities of Seller. All utilities shall be prorated by the Parties outside of Closing as of the date of Closing.
- 2.3 Title and Risk. Subject to the terms and conditions of this Agreement, title to and risk in the purchased portions of the Assets of the District shall pass to the Purchaser at Closing.
- 2.4 Deposits; Accounts Receivable. Unless as otherwise agreed to in writing by the Parties, (a) Seller shall be entitled to all right, ownership, and interest in any and all accounts receivable (ARs) in existence as of the Closing, and for proceeds attributable to service to customers through Closing and (b) Purchaser shall be entitled to all right, ownership, and interest in any and all ARs following the Closing, and for proceeds attributable to service to customers following Closing.
- 2.5 Inspections; As-Is; Where-Is. During the time prior to the Closing of this transaction, Purchaser shall cause such inspections, investigations, and studies to be made of the District as Purchaser shall determine to be appropriate for the purposes of satisfying itself as to the condition, restrictions, suitability for Purchaser's intended use, and the quantity and quality of the Assets of the District.

In the event that after such investigations, Purchaser is satisfied with the condition of the District, the transaction shall be closed in an "as-is" and "where-is" condition, and Purchaser shall assume responsibility for the Assets of the District.

EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES AND SHALL NOT IN ANY WAY BE LIABLE FOR ANY REPRESENTATIONS OR WARRANTIES WITH RESPECT TO: (A) THE DIMENSIONS, SIZE, OR ACREAGE OF ANY REAL PROPERTY OR THE RIGHT OR NATURE OF ANY ACCESS THERETO; (B) THE CONDITION OF THE ASSETS, OR THE SUITABILITY OF THE ASSETS FOR PURCHASER'S INTENDED USE OR FOR ANY USE WHATSOEVER; OR (C) ANY ENVIRONMENTAL, BUILDING, ZONING, OR FIRE LAWS OR REGULATIONS OR WITH RESPECT TO COMPLIANCE THEREWITH OR WITH RESPECT TO THE EXISTENCE OF OR COMPLIANCE WITH ANY REQUIRED PERMITS, IF ANY, OF ANY GOVERNMENTAL AGENCY APPLICABLE TO THE ASSETS. ANY WARRANTIES OR REPRESENTATIONS AS TO THE PHYSICAL CONDITION OF THE ASSETS ARE VOID. PURCHASER IS ACQUIRING THE ASSETS, INCLUDING ANY IMPROVEMENTS, FIXTURES, AND APPURTENANCES, "AS-IS" AND "WHERE-IS."

- 2.6 Responsibilities and Obligations of the Parties. Seller agrees to and shall be responsible for (a) operation of the District prior to Closing, (b) the handling, defense, and payment of all expenses, losses, liabilities, and claims arising out of or resulting from the ownership, maintenance, and operation of the District prior to Closing, (c) the willful or negligent acts or omissions of Seller related to District prior to Closing, and (d) except as otherwise expressly provided for in this Agreement, any debts, obligations, liens, or taxes, related to the District that accrued and became due prior to Closing. Purchaser agrees to and shall be responsible for (a) operation of the District following Closing, (b) the handling, defense, and payment of all expenses, losses, liabilities, and claims arising out of or resulting from the ownership, maintenance, and operation of the District following Closing, (c) the willful or negligent acts or omissions of Purchaser related to the District following Closing, and (d) except as otherwise expressly provided for in this Agreement, any debts, obligations, liens, or taxes, related to the District or the Assets that accrue or become due following Closing.

3. EMPLOYEES

- 3.1 Seller has no employees.

4. PURCHASE PRICE

- 4.1 Purchase Price. The purchase price for the transfer of the Assets of the District shall be a lump-sum price of **three hundred and fifty thousand dollars (“\$350,000”)** (the “Purchase Price”) payable at Closing by way of money order or cashier's check, or by way of wire transfer based on instructions from Seller to such account(s) as may be notified by Seller to the Purchaser in writing at least five (5) business days prior to the Closing. Except for the Purchase Price, no other amounts shall be payable by the Purchaser to the Seller under this Agreement. The Purchase Price shall not be subject to escalation.
- 4.2 Deduction & Set-off. It is agreed and understood that the following (and only the following) may be deducted and set off against the Purchase Price at Closing: (a) any Authorized Deductions set out in Schedule “F”; and (b) the actual purchase price paid by the Purchaser for the real property and related appurtenances and fixtures described and identified as Lewis County TPN 017105-419-001 and 017105-419-002 if acquired by the County prior to or concurrently with Closing, in an amount not to exceed \$75,000.00. Other than as provided under this subsection, the Purchase Price shall not be subject to any set off or deduction.
- 4.3 Both the Seller and the Purchaser are exempt from real and personal property taxes. However, if any such tax liabilities are deemed to exist, the Seller shall be solely responsible for all taxes payable in respect of the sale and transfer of the District, including any pre-existing tax liabilities in respect of the transferred Assets, to the extent they have accrued and become due and owing prior to or at incident of Closing.

5. REPRESENTATIONS AND WARRANTIES

The Seller represents and warrants to the best of Seller's knowledge and belief that the statements contained in Schedule “B” are true and correct and shall remain true as of the Closing date. The Purchaser represents and warrants to the best of Purchaser's knowledge and belief that the statements contained in Schedule “C” are true and correct and shall remain true as of the Closing date.

Except as expressly provided in this Agreement, Seller makes no representations or warranties with respect to the District or the Assets.

Seller makes no implied warranties or representations associated with the District or the Assets, and expressly disclaims the same.

6. CONDITIONS PRECEDENT

The obligations of the Purchaser to proceed with the Closing of the transactions contemplated under this Agreement shall be subject to the fulfillment on or before the Closing of each of the conditions precedent set out at Schedule "D" to this Agreement.

7. CONDUCT PRIOR TO CLOSING

- 7.1 Conduct of Business of Seller. During the period from the effective date of this Agreement and up to the Closing, the Seller agrees that it shall use reasonable best efforts to (a) carry on the District in the ordinary course of business in substantially the same manner as heretofore conducted; (b) pay its debts and taxes when due; (c) pay or perform other obligations when due; and (d) preserve intact the District, and use reasonable good faith efforts to preserve its relationship with, customers and lessors, having business dealings with it, to the end that its ongoing ability to provide services shall be unimpaired at the Closing.

- 7.2 Cooperation. For the time period between the Effective Date of this Agreement and Closing, the Parties shall cooperate in good faith regarding the continued operation of the District and provision of water and sewer services for the benefit of the public and customers of the District. Any formal arrangement for the provision of services shall be addressed in a separate agreement between the Parties.

8. CLOSING

Subject to the fulfillment of the conditions precedent set forth in Schedule "D" hereto and the receipt of the deliverables by the Purchaser and Seller set forth in Schedule "E", the Closing will be in accordance with the terms of this Agreement. On or prior to the Closing, the Seller and Purchaser shall make the deliveries listed at Schedule "E".

- 8.1 Closing; Closing Date. The closing ("Closing") shall take place at a location in Lewis County mutually agreed upon by the Seller and the Purchaser, and such closing shall occur no later than fourteen (14) days following entry of an order or decree of the Superior Court of the State of Washington pursuant to RCW 36.94.340, or as otherwise may be specified pursuant to any deadline set forth in such order or decree (the "Closing Date"). The transfer shall be deemed effective at midnight on the Closing Date. Certain assets may be transferred prior to or after the Closing Date as agreed upon by the Purchase and the Seller.
- 8.2 Prorations. To the extent applicable, (a) all rents under any lease agreement assumed by Purchaser, (b) utilities, (c) payments under any assumed contracts; and (d) bills for other services, materials and supplies of the District shall be adjusted as of 11:59 p.m. of the Closing Date and pro-rated as of the same.

- 8.3 Recording Costs. The costs of recording any documents or filing any documents with any Governmental Authority shall be borne and paid by the Purchaser.

9. POST-CLOSING OBLIGATIONS

- 9.1 On and after Closing, the Seller shall be obliged to promptly deliver to the Purchaser any payment, notice, correspondence, information or enquiry in relation to the District or the Assets which Seller receives.

10. CONDITIONS SUBSEQUENT

At any time after the effective date of this Agreement and no later than thirty (30) days after the Closing, the Seller shall:

- a. Issue letters to the State of Washington Department of Health and the State of Washington Department of Ecology providing notice of the transfer of the Assets of the District and operation of the systems to the Purchaser.
- b. Initiate dissolution of the District pursuant to chapter 53.48 RCW, or as otherwise may be allowable under applicable law.

11. INDEMNIFICATION

- 11.1 To the extent authorized by law, Seller agrees to indemnify Purchaser from and against any and all losses, penalties, judgments, , assessments, and damages imposed upon Purchaser as a result of, relating to, or arising out of (1) any breach, default or non-compliance of Seller under this Agreement or (2) operations of the District prior to Closing.

To the extent authorized by law, Purchaser agrees to indemnify Seller from and against any and all losses, penalties, judgments, assessments, and damages imposed upon Seller as a result of, relating to, or arising out of (1) any breach, default or non-compliance of Purchaser under this Agreement or (2) operations of the District after Closing.

- 11.2 Procedure for Indemnification.

- a. A Party making a claim for indemnification shall give prompt written notice to the other Party of any claim asserting any matter that may fall within the scope of Section 11.1, specifying in reasonable detail the factual basis for the claim, the amount thereof, estimated in good faith, all with reasonable particularity and containing a reference to the provisions of this Agreement in respect of which such claim shall have occurred.
- b. After receipt of any written notice under subsection 11.2(a), the Purchaser and the Seller shall consult with each other and in good faith endeavor to resolve any claims under this Section in a mutually acceptable manner.

11.3 Third-Party Claims. The obligations and liabilities of each Party to this Agreement under this Section 11 hereof related to third-party claims shall be subject to the following terms and conditions:

- a. At any time after receipt of notice of any third-party claim asserted against, imposed upon or incurred by either Party that may fall within the scope of Section 11.1, said Party shall promptly notify the other Party of such claim in writing.

11.4 Other Rights and Remedies Not Affected. The indemnification rights of the Parties under this Section 11 are independent of, and in addition to, such rights and remedies as the Parties may have at law or in equity or otherwise for any misrepresentations, breach of warranty or failure to fulfill any agreement or covenant hereunder on the part of any Party hereto, including the right to seek specific performance, rescission, or other injunctive relief, none of which rights or remedies shall be affected or diminished thereby.

12. TERM & TERMINATION

This Agreement shall enter into effect from the date of its execution by both the parties hereto. This Agreement may be terminated at any time prior to Closing in accord with the following:

- (a) By mutual written consent of Seller and Purchaser;
- (b) By Purchaser, upon written notice to the Seller, if there shall have been (1) a breach of any Warranty on the part of Seller, or if any Warranty of Seller shall have become untrue in any respect, or (2) a breach by Seller of any of its covenants or agreements hereunder and such breach is not cured within fifteen (15) days after written notice thereof by Purchaser to Seller.
- (c) By Purchaser, in the event that Seller becomes or is declared insolvent or bankrupt, makes an assignment for the benefit of all or substantially all of its creditors, enters into an agreement for the composition, extension or readjustment of all or substantially all of its obligations, or becomes the subject of any proceedings related to its liquidation or insolvency or for the appointment of a receiver or similar officer.

13. MISCELLANEOUS

13.1 Successors and Assigns. Neither Seller nor Purchaser may assign this Agreement or any of their respective rights or obligations hereunder without the prior written consent of the other Party, *provided that* the Purchaser may at any time assign this Agreement and any of its rights and obligations hereunder to any subdivision or department of the Purchaser without the consent of the Seller, provided notice is provided in writing to the Seller. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided herein.

13.2 Specific Performance. The Parties hereto acknowledge and agree that damages alone would not provide an adequate remedy for any breach or threatened breach of the provisions of this Agreement and therefore that, without prejudice to any and all

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other rights and remedies a party may have (including but not limited to, damages), such party shall be entitled without proof of special damage to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of such provisions. The remedies set forth in this Section 13.2 are cumulative and shall in no way limit any other remedy any party hereto has at law, in equity or pursuant hereto.

13.3 Governing Law and Jurisdiction. This Agreement shall be governed by the laws of the state of Washington.

13.4 Notices. All notices, requests, demands and other communications which are required or may be given pursuant to the terms of this Agreement shall be in writing and shall be deemed delivered (i) on the date of delivery when delivered by hand; (ii) on the date of transmission when set by facsimile transmission during normal business hours with telephone confirmation of receipt; (iii) three (3) days after dispatch when sent by a reputable courier service that maintains records of receipt; or (iv) seven (7) days after dispatch when sent by first class or airmail letter, provided, however, that in any such case, such communication is addressed provided in Section 13.5. All notices, requests, demands and other communications which are required or may be given pursuant to the terms of this Agreement shall be addressed as follows:

a. If to **Water-Sewer District 5**

- (i) Name : Board of Commissioners, LCWSD No. 5
- (ii) Address : 921 C Middle Fork Rd., Onalaska, Washington 98570

with copy to (provision to alone shall not constitute notice):

Joseph A. Rehberger
Cascadia Law Group PLLC
606 Columbia Street NW, Suite 212
Olympia, WA 98501
Fax: 360-786-1835

b. If to **Lewis County Public Works**

- (i) Name : **Josh Metcalf, Director of Public Works**
- (ii) Address : 2025 NE Kresky Avenue, Chehalis, Washington 98532

or to such other addresses any party shall have designated by notice in the foregoing manner to the other parties.

13.5 Amendments and Waivers. This Agreement may be modified, supplemented or amended only by a written instrument executed by the parties hereto. No waiver of any provisions, condition or covenant of this Agreement shall be effective as against the waiving party unless such waiver is in a writing signed by the waiving party. Waiver by a party as provided in this Section 13.6 shall not be construed as or constitute either a continuing waiver of such provision, condition or covenant or a waiver of any other provision, condition or covenant hereof. The failure of any party at any time to require performance by the other party of any provision, condition or covenant of this Agreement shall in no way affect its right thereafter to enforce the provision, condition or covenant or any other provision condition or covenant.

- 13.6 Severability. If any covenant or provision hereof is determined to be void or unenforceable in whole or in part, it shall not be deemed to affect or impair the validity of any other covenant or provision, each of which is hereby declared separate and distinct. If any provisions of this Agreement are so broad as to be unenforceable, such provision shall be interpreted to be only so broad as is enforceable. If any provision of this Agreement is declared invalid or unenforceable for any reason other than over-breadth, the offending provision will be modified to maintain the essential benefits of the bargain among the parties hereto to the maximum extent possible, consistent with law and public policy.
- 13.7 Delays or Omissions. No delay or omission to exercise any right, power or remedy accruing to Purchaser upon any breach or default of Seller under this Agreement, shall impair any such right, power or remedy of Purchaser nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring, nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default therefore or thereafter occurring. Any waiver, permit consent or approval of any kind or character on the part of Purchaser of any breach or default under this Agreement, or any waiver on the part of Purchaser of any provisions or conditions of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement or by law or otherwise afforded to Purchaser, shall be cumulative and not alternative.
- 13.8 Expenses. Irrespective of whether the Closing is effected, each Party shall pay all costs and expenses that it incurs with respect to the negotiation, execution, delivery and performance of this Agreement.
- 13.9 Further Assurances. From and after the Closing, the Seller shall from time to time, at the request of the Purchaser, and without further cost or expense to the Purchaser, to execute and deliver such other instruments of conveyance and transfer and take such other actions as the Purchaser may reasonably request in order more effectively to carry out this Agreement and the transactions contemplated hereunder.
- 13.10 Independent Rights. Each of the rights of the Parties under this Agreement are independent, cumulative and without prejudice to all other rights available to them, and the exercise or non-exercise of any such rights shall not prejudice or constitute a waiver of any other right of a Party, whether under this Agreement or otherwise.
- 13.11 Entire Agreement. This Agreement (together with the schedules, and the other agreements expressly identified in this Agreement) constitutes the entire agreement of the parties with respect to the subject matter hereof and thereof, and supersedes all prior agreements and understanding of the parties, oral and written, with respect to such subject matter.
- 13.12 Counterparts. This Agreement may be executed in any number of originals or counterparts, each in the like form and all of which when taken together shall constitute one and the same document, and any party may execute this Agreement by signing any one or more of such originals or counterparts.
- 13.13 Survival. Any other provision which by virtue of its nature is intended to survive shall survive the termination of this Agreement.
- 13.14 Default. Neither party hereto shall be considered to be in default in respect to any obligations hereunder if prevented from fulfilling such obligations due to conditions

beyond their reasonable control or due to changes in federal or state law. If a party is unable to perform in whole or in part because of such condition or change in the law, the party shall diligently and promptly take reasonable steps to allow it to perform.

- 13.15 Effective Date. This Agreement shall become effective (the "Effective Date") upon mutual execution by the Parties.
- 13.16 Severability. Any provision of this Agreement that is declared invalid or illegal shall in no way affect or invalidate any other provision hereof and such other provisions shall remain in full force and effect. Further, if it should appear that any provision hereof is in conflict with any statutory provision of the State of Washington, the provision appears to conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provision.
- 13.17 Submission of Agreement Form Not an Offer. One party's submission of this Agreement to the other for review shall not constitute an offer to purchase or sell the Assets. This Agreement shall not become effective and binding upon Purchaser and Seller until it has been fully signed by both Purchaser and Seller.

14. STATUTORY TRANSFER AND DISSOLUTION

- 14.1 RCW 36.94.310-.350. Within seven (7) days of mutual execution of this Agreement, Purchaser shall prepare and present to Seller a draft petition to the Lewis County Superior Court pursuant to and in compliance with RCW 36.94.340 (the "Transfer Petition") that requests the superior court approve and direct the proposed transfer of subject assets and property, consistent with the terms of this Agreement. Within seven (7) days of receipt of the same, Seller shall provide any comments to Purchaser on said draft petition. Following receipt by Purchaser of Seller's comments, Purchaser shall, after consultation with the Seller, promptly file said petition with the Lewis County Superior Court and note the matter for hearing as promptly as reasonably possible.
- 14.2 Chapter 53.48 RCW. At any time after mutual execution of this Agreement, the Seller, in its discretion, may file a petition seeking approval of dissolution of the District pursuant to chapter 53.48 RCW and/or RCW 36.94.350 ("Dissolution Petition"). The Seller may, in its discretion, file under the cause number associated with the Transfer Petition or seek to consolidate its Dissolution Petition with the Transfer Petition matter.

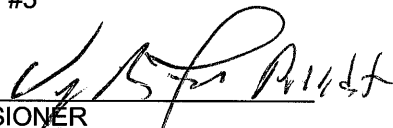
[FOLLOWING THIS PAGE IS THE EXECUTION PAGE]

Lewis County
Water-Sewer District 5
District Transfer Agreement

IN WITNESS, the Parties have executed this District Transfer Agreement as of the date(s) noted below.

Seller:

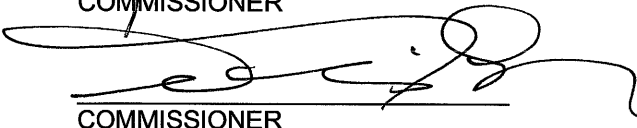
LEWIS COUNTY WATER-SEWER
DISTRICT #5



COMMISSIONER



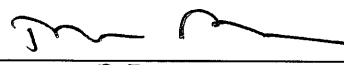
COMMISSIONER



COMMISSIONER

DATED: March 11th 2020

APPROVED AS TO FORM:



WSBA # 35556

Buyer:

LEWIS COUNTY PUBLIC WORKS

Josh Metcalf, Director

APPROVED AS TO FORM:
Jonathan Meyer, Prosecutor

By: Deputy Prosecuting Attorney
WSBA #53121

DATED: _____

SCHEDULE "A"

PART A- DEFINITIONS

1. "Agreement" shall mean this District Transfer Agreement, including its schedules.
2. "Applicable Law" shall mean any applicable constitution, statute, rule, regulation, ordinance, order, directive, code, judgment, award, permit, license, authorization, directive requirement, agreement with, or by a Government Authority.
3. "Assets" shall mean all property, assets, benefits and rights of the Seller relating to the District, including: (a) all of the property of the District constituting its system of sewerage, system of water or combined water and sewerage system, together with any of its other real or personal property used or useful in connection with the operation, maintenance, repair, replacement, extension, or financing of that system, specifically including the fixed assets set out at Schedule "G.1"; (b) the moveable assets, vehicles, furniture and fixtures, equipment and inventory set out at Schedule "G.2"; (c) the all contracts relating to the operation of the District listed at Schedule "G.3"; (f) the right, obligation, liabilities of all permits, licenses and approvals held by the District listed at Schedule "G.4".
4. "District" shall mean Lewis County Water-Sewer District No. 5, and where it clearly appears from the context, the District's system of sewerage and water.
5. "Closing" shall have the meaning ascribed to it in Section 8.1 of this Agreement, and shall be the date of the transfer of the Assets of the District.
6. "Governmental Authority" shall mean any federal, state, or local government or instrumentality thereof having jurisdiction over the matters stated herein.
7. "Liabilities" shall mean any obligation, liability or indebtedness of any kind, character or description, whether absolute, contingent, accrued, liquidated, unliquidated, known, unknown, executory or otherwise, and shall include but not be limited to the following, in relation to the District:
 - (a) Lawfully imposed Taxes, if any;
 - (b) All obligations with respect to the Employees and elected officials, if any, arising out of or relating to their employment with the Seller prior to the Closing;
 - (c) All borrowings and indebtedness of the Seller, if any;
 - (d) All litigation liabilities for claims pertaining to or arising from operations of the District prior to the Closing;
 - (e) All obligations under any, or liability of the Seller with respect to any breach of, any contract or other agreement, unless expressly assumed by Purchaser, arising from the operations of the District prior to or on the Closing; and
8. "Material Adverse Effect" shall mean the occurrence or reasonably likely occurrence of any event, change, circumstance or effect that individually or in the aggregate (taking into account all other such events, changes, circumstances or effects), is or is reasonably likely to (a) have a material adverse effect to the financial conditions, operations or prospects of the District; or (b) materially hinder or delay Seller's ability to consummate the transactions contemplated herein; or (c) materially hinder Purchaser's ability to own and/or operate the District substantially in the manner previously conducted following the Closing.

9. "Ordinary Course of Business" shall mean the ordinary course of business consistent with past custom and practice (including with respect to quantity and frequency), but only to the extent consistent with applicable law and the custom of entities engaged in the same business as the existing business of Seller.
10. "Proceeding" shall mean any legal action, lawsuit, legal quasi-judicial, administrative, regulatory, arbitration or other alternative dispute resolution proceeding.
11. "Required Contract Consents" shall mean the consents set out in Schedule "G" that are required for assignment and transfer of the transferred contracts to the Purchaser.
12. "Authorized Deductions" shall mean each of the matters set out in Schedule "F" hereto.
13. "Tax" and, collectively "Taxes" shall mean any and all federal, state, municipal and local (or equivalent) taxes imposed on the District by any Governmental Authority, together with all interest, penalties and additions imposed with respect to such amounts.
14. "Transaction Agreements / Transaction Documents" shall include those specific documents set forth in Schedule "E", together with such other or further documents may be necessary or expedient for consummating the transactions contemplated under this Agreement.
15. "Transferred Contracts" shall mean all of the contracts relating to the District listed at Schedule "G.5".
16. "Warranties" shall mean the representations and warranties set out in Section 5 of the Agreement.

PART B- INTERPRETATION

In this Agreement:

1. Words importing the singular shall include the plural and vice versa, where the context so requires;
2. The terms "hereof", "herein", "hereby", "hereto" and other derivatives or similar words, refer to this entire Agreement or specified sections of this Agreement, as the case may be;
3. Reference to the term "Section" or "Schedule" shall be a reference to the specified Section or Schedule of this Agreement;
4. All headings and sub-headings of sections and schedules, and use of bold typeface are for convenience only and shall not affect the construction or interpretation of any provision of this Agreement;
5. Reference to any legislation or law or to any provision thereof shall include references to any such law as it may, after the effective date, from time to time, be amended, supplemented or re-enacted, and any reference to statutory provision shall include any subordinate legislation made from time to time under that provision;

6. Reference to the word "include" or "including" shall be construed without limitation;
7. The Schedules hereto shall constitute an integral part of this Agreement;
8. Terms defined in this agreement shall include their correlative terms;
9. Time is of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended, such extended time shall also be of essence;
10. References to the knowledge, information, belief or awareness of any person shall be deemed to include the knowledge, information, belief or awareness of such person after examining all information which would be expected or required from a person of ordinary prudence;
11. The Parties acknowledge that they and their respective counsel have read and understood the terms of this Agreement and have participated equally in the negotiation and drafting. No provisions of this Agreement shall be interpreted in favour of, or against, any party by reason of the extent to which such party or its counsel participated in the drafting hereof or by reason of the extent to which any such provision is inconsistent with any prior draft hereof;
12. All references to this Agreement or any other transaction document shall be deemed to include any amendments or modifications to this Agreement or the relevant transaction document, as the case may be, from time to time;
13. Reference to days, months and years are to calendar days, calendar months and calendar years, respectively, unless defined otherwise or inconsistent with the context or meaning thereof, *provided that* to the extent any deadline or date contemplated herein falls on a Saturday, Sunday, or legal holiday, said date or deadline shall be automatically extended to and through 5:00 p.m. on the next business day that is not a Saturday, Sunday, or legal holiday.
14. Any word or phrase defined in the recitals or in the body of this Agreement as opposed to being defined schedule shall have the meaning so assigned to it, unless the contrary is expressly stated or the contrary clearly appears from the context.

SCHEDULE "B"

SELLERS' REPRESENTATIONS & WARRANTIES

Seller makes the following representations and warranties to the best of its knowledge and belief:

1. Binding Agreement. Seller has the full legal right, power, authority and capacity to execute and fully perform Seller's obligations under this Agreement. The execution of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary action on the part of Seller.
2. Insolvency. No insolvency matter of any character affecting Seller is pending or threatened.
3. Non-Contravention. The execution and performance by Seller of this Agreement do not (a) require the consent of any third party, except for such court approval as may be required under chapter 36.94 RCW; (b) conflict with, result in a breach of, or constitute a default under, any applicable law; (c) violate any agreement, contract, right, restriction or obligation to which Seller is a party or by which Seller may be bound; (d) violate any order, injunction judgment or degree of any government authority by which Seller may be bound; or (e) constitute an act of bankruptcy, preference, insolvency or fraudulent conveyance under any applicable law.
4. Absence of Undisclosed Liabilities. Seller has not received any written claim or demand for any monetary obligations or liabilities other than those described herein or otherwise incurred in the ordinary course of business of Seller. Except as may be expressly provided for in the Agreement, any later discovered claim or demand for any monetary obligations or liabilities shall remain the responsibility and obligation of Seller.
5. Litigation. Except as noted herein, there is no private or governmental action, suit, or arbitration pending before any federal, state, municipal or other court against Seller or any of its properties or assets or any of its elected officials (in their capacities as such) that (a) could prevent, enjoin, or alter or delay any of the transactions contemplated by this Agreement, or (b) that could reasonably be expected to have material adverse effect on the District Assets. There are no judgments, decrees, injunctions, rules, stipulations or orders against Seller or any of its elected officials (in their capacities as such), that (a) could prevent, enjoin, or alter or delay any of the transactions contemplated by this agreement, or (b) that could reasonably be expected to have material adverse effect on the District Assets. Seller is currently a party to pending litigation Lewis County Superior Case No: 17-2-00111-1 and Lewis County District Court Case No. 19-596 (Small Claims).
6. Title to District Assets. Seller has good and marketable title to all of the assets of the District subject to transfer under this Agreement.
7. Legal Rights. Seller has good and marketable title to the Assets.
8. Taxes. All taxes due and owing (whether or not shown on any return) have been, or will remain the responsibility and obligation of Seller.
9. Compliance with Laws. All licenses required by Seller to conduct its business have been obtained and are in full force and effect. Seller is in compliance with the terms

Lewis County
Water-Sewer District 5
District Transfer Agreement

and requirements of such licenses. Seller has not received any written notice or other written communication from any governmental authority regarding (a) any revocation, withdrawal, suspension, termination or modification of, or the imposition of any conditions with respect to any licenses; (b) any violation of any applicable law by Seller; or (c) any other limitations on the conduct of business by Seller.

SCHEDULE "C"

PURCHASER'S REPRESENTATIONS & WARRANTIES

Purchaser makes the following representations and warranties to the best of its knowledge and belief:

1. Incorporation of the Purchaser. The Purchaser is incorporated and validly existing under the laws of the State of Washington.
2. Power and Authorization of the Purchaser. The Purchaser has the power and capacity to enter into and perform its obligations under this Agreement. The Purchaser has taken all necessary action to authorize the execution, delivery and performance of this Agreement and the transaction documents to which the Purchaser is a party. This agreement has been duly executed and delivered by the Purchaser. At the Closing, each of the transaction documents to which the Purchaser is a party will be duly executed and delivered by the Purchaser, together with the funds constituting the Purchase Price.
3. Enforceability against the Purchaser. This agreement is a valid and binding obligation of the Purchaser, enforceable against the Purchaser in accordance with its terms. At the Closing, each of the transaction documents to which the Purchaser is a party will be a legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms, subject to the usual exceptions as to applicable laws.
4. Non-Contravention by the Purchaser. None of the execution, delivery or performance of this Agreement, or the transaction documents by the Purchaser, will contravene any provision of its prior existing material agreement, obligation, or instrument to which it is a party or by which it is bound nor will contravene in any material respect any applicable law that would prevent or significantly impede the purchase of the Assets by the Purchaser.
5. Consents and Approvals. No authorization, consent or approval of, or filing with or notice to, any governmental authority or other person is required in connection with the execution, delivery or performance of this agreement or the transaction documents by the purchaser, outside of approval required under RCW 36.94.340.

SCHEDULE "D"

CONDITIONS PRECEDENT

1. Representations and Warranties. The representations and warranties of the Parties contained in the Agreement shall be true in all respects at and as of the Closing with the same effect as if made at and as of the Closing.
2. Board Resolution of Seller. The Board of Commissioners of each the Seller and the Purchaser shall have passed a resolution approving the execution of this Agreement authorizing the consummation of the transactions under this Agreement and the transaction agreements and transaction documents.
3. Performance. The Seller and Purchaser shall have performed and complied with all agreements, obligations and conditions contained in this Agreement that are required to be performed or complied with by it on or before the Closing.
4. Instruments. All deeds, instruments, easements, and documents provided by the Seller required to carry out this Agreement or incidental hereto shall be in form and substance reasonably satisfactory to the Purchaser.
5. No Restraint. No action, suit, or proceeding by or on account of any governmental authority shall have been instituted or threatened to restrain or invalidate the transactions contemplated by this Agreement.
6. No Material Adverse Effect. No event or circumstance shall have occurred or shall be likely to occur which has or is likely to have a material adverse effect on the District.
7. Conduct of Business in the Ordinary Course. The business and operations of the District shall have been conducted in the ordinary course of business up to and including Closing.
8. Closing Deliveries. The Seller and Purchaser shall have made or stand willing to make all the deliveries to the other Party described in Schedule "E" of the Agreement.

SCHEDULE "E"

DELIVERABLES BY SELLER TO PURCHASER AT CLOSING

1. A certificate signed by the Seller stating that, to the best of Seller's knowledge and belief, (a) the representations and warranties of Seller are true and correct as of the Closing; and (b) the conditions precedent have been fulfilled prior to the Closing.
2. All of the transaction agreements duly signed by the Seller, being specifically identified as follows:
 - (a) Bill of Sale. A bill of sale conveying and transferring all the District's property, personal property, fixtures and other Assets provided for in this Agreement.
 - (b) Assignment of Water Rights. An assignment, on Ecology approved form, Assignment of Application or Permit to Appropriate or Store Water for the Water Rights, providing assignment of all right, title, and interest in the Water Rights.
 - (c) Assignment of Easements. Assignments of easement assigning and quitclaiming to Buyer Seller's interests in all easements held by Seller associated with the District.
 - (d) Assignment and Assumption Agreement. An assignment and assumption agreement for all Transferred Contracts, if any.
 - (e) Excise Tax Affidavit. Seller shall execute a real estate excise tax affidavit, as necessary.
3. Other documents or instruments necessary to close this transaction.

DELIVERABLES BY PURCHASER TO SELLER AT CLOSING

1. A certificate signed by the Purchaser stating that, to the best of Purchaser's knowledge and belief, (a) the representations and warranties of Purchaser are true and correct as of the Closing; and (b) the conditions precedent have been fulfilled prior to the Closing.
2. All of the transaction agreements, to the extent so required, duly signed by the Purchaser.
3. Such funds constituting the Purchase Price, less any authorized deductions or set-offs, necessary to close this transaction.
4. Other documents or instruments necessary to close this transaction.

SCHEDULE "F"

AUTHORIZED DEDUCTIONS

The County may offset from the Purchase Price any negative account balance in the District's account at the County at the time of Closing, if any, provided that the County provides the District an accounting of such claimed amounts no later than three (3) business days prior to Closing.

For the avoidance of doubt, the County may offset from the Purchase Price the actual purchase price paid for the acquisition of real property as set forth in and as limited by Section 4.2(b) of the Agreement.

SCHEDULE "G"

DESCRIPTION OF THE DISTRICT

Schedule G.1 – Property and Fixed Assets

Well #1 and associated Fixed Assets Related Thereto
Well #2 and associated Fixed Assets Related Thereto
Well #3 and associated Fixed Assets Related Thereto
Water Reservoir
All Connecting Water Main Piping, Meters, Valves, and Other Appurtenances
All Connecting Sewer Line Piping, Meters, Valves, and Other Appurtenances
All Fire Hydrants
All Meter Boxes

TOGETHER WITH all water treatment facilities, sewer facilities and other appurtenances, fixtures, equipment, and personal property on hand pertaining and used in operation of the water system and sewer system at Closing.

Schedule G.2 – Movable Assets

All Documents (Tangible or Intangible) Necessary for Operation of the Systems
All Office Equipment and Storage Necessary for Operation of the Systems

Schedule G.3 – Contracts

Seller's rights under that certain Agreement with Toledo Telephone Co., Inc. dated February 22, 2008, including any amendments thereto
Seller's rights under that certain Interlocal Agreement for Provision of Wholesale Sewer Service dated July 9, 2004, including any amendments thereto

Schedule G.4 – Rights and Easements

State of Washington Department of Ecology
Water Right Permit Nos. G2-23891, G2-28021, G2-28329
Seller's interests in all Easements Necessary for Operation and Maintenance of the Systems