



December 23, 2020

Ms. Luly Massaro, Commission Clerk  
Public Utilities Commission  
89 Jefferson Boulevard  
Warwick, RI 02888

RE: DK 4994 Providence Water Supply Board – Tariff Advice Filing

The Hon. Jorge O. Elorza  
Mayor

Ricky Caruolo  
General Manager

---

## BOARD OF DIRECTORS

Xaykham Khamsyvoravong  
Chairperson

Joseph D. Cataldi  
Vice Chairperson

Michael J. Correia  
Council President Pro Tempore

Jo-Ann Ryan  
Councilperson

Sara Silveria  
Ex-Officio

Cristen L. Raucci, Esq.  
Member

Dr. Alma M. Guerrero Bready  
Member

Carissa R. Richard  
Secretary

William E. O'Gara, Esq.  
Legal Advisor

---

## MEMBER

Rhode Island Water Works Assn.  
New England Water Works Assn.  
American Water Works Assn.  
Water Research Foundation

An EPA WaterSense Partner

**(401) 521-6300**

125 Dupont Drive  
Providence, RI 02907

**www.provwater.com**

 Follow us @provwater

 Like us at:  
facebook.com/Providencewater

Dear Ms. Massaro:

Providence Water has concluded negotiations with the Town of Johnston to annex the Johnston Water System, which is currently a wholesale customer. In anticipation of this merger, Providence Water included in its last general rate filing Docket 4994 adjustments to decrease wholesale revenue volumes and increase retail revenue volumes and service charge revenue. On or before January 31, 2021, we expect that the Town of Johnston Water System will merge into the Providence Water System under Rhode Island General Law § 46-30-1, et seq.

As a result of this merger, and pursuant to Rule 1.10 (c) of Rhode Island Public Utilities Commission Rules of Practice and Procedure, Providence Water is amending the following tariffs: Schedule B – Metered Sales to include an Annexation fee of \$.34 per HCF to be imposed on the customers of the Town of Johnston Water System, and to remove the Town of Johnston from Schedule C – Bulk Sales to Public Authorities for Resale as a wholesale customer. The Annexation fee collected from Johnston Water customers will be deposited into a restricted account and will be used for improvements and upgrades to the Johnston Water System and bring the System into compliance with applicable regulations.

Enclosed for filing are (10) ten copies of Providence Water's Tariff Advice Filing in redlined and cleaned versions. We are also including a copy of the Annexation Agreement between the Town of Johnston and Providence Water and a copy of the public notice for publication in the Providence Journal. Please let us know if the public notice meets with your approval. The proposed change will be effective thirty (30) days after publication of the notice or on January 31, 2021, whichever is later.

If you need any additional information, please contact me.

Respectfully,

*Mary L Deignan-White*

Mary L. Deignan-White  
Division Manager - Finance

cc: Dk 4994 service list (via email)

Joseph Polisena, Mayor of Town of Johnston  
Joseph Chiodo, Financial Director – Town of Johnston  
Doug Jeffrey, Town of Johnston  
File

**STATE OF RHODE ISLAND  
PUBLIC UTILITIES COMMISSION**

IN RE: PROVIDENCE WATER SUPPLY BOARD  
Docket No. 4994

**NOTICE OF A PROPOSED TARIFF CHANGE  
TO CUSTOMERS OF THE TOWN OF JOHNSTON WATER SYSTEM**

Providence Water Supply Board gives notice that it has submitted a Tariff Advice Filing to the Rhode Island Public Utilities Commission (PUC) pursuant to Rule 1.10(c) of the PUC Rules of Practice and Procedure. On or before January 31, 2021, the Town of Johnston Water System will merge into the Providence Water Supply Board System pursuant to Rhode Island General Law § 46-30-1, et seq.

This filing will amend Tariff Schedule B – Metered Sales to include an Annexation fee of \$.34 per HCF to be imposed on the customers of the Town of Johnston Water System. The Annexation fee will be used for improvements and upgrades to the Johnston Water System and bring the System into compliance with the applicable regulations. This filing will also remove the Town of Johnston as a wholesale customer from Tariff Schedule C – Bulk Sales to Public Authorities for Resale.

The proposed change is requested to be effective (30) thirty days from the date of publication of this notice or on January 31, 2021, whichever is later. A copy of this filing is on file at Providence Water's office at 125 Dupont Drive, Providence, Rhode Island, and at the office of the Commission, 89 Jefferson Boulevard, Warwick, Rhode Island, and may be reviewed by the public during regular business hours.

**REDLINED TARIFF**

**SCHEDULE B**

**Providence Water Supply Board  
Metered Sales  
Retail**

Docket No. 4994

Effective: ~~August 27, 2020~~  
**January 31, 2021**

Applicability

Applicable to all general metered water service in the Providence Water Supply Board service area.

Rates

For all quantities used, except for bulk sales to public authorities for resale, the following rates per HCF shall apply:

Monthly Accounts

Residential	\$3.671
Commercial	\$3.847
Industrial	\$3.498

East Smithfield Water District

Applicable to the former customers of the East Smithfield Water District, the following Debt Service Surcharge will apply:

East Smithfield Surcharge     \$0.35 per HCF

Town of Johnston Water System

Applicable to the former customers of the Town of Johnston Water System, the following Annexation fee will apply:

Johnston Water System Annexation fee     \$0.34 per HCF

Terms of Payment

All metered sales bills are rendered in arrears monthly and are due and payable in full when rendered.

Interest at a rate of 1% per month will be charged on unpaid account balances over 30 days from the due date.

## **SCHEDULE C**

### **Providence Water Supply Board Bulk Sales to Public Authorities for Resale**

#### **Rhode Island Public Utilities Commission Docket No. page 1 of 2**

Docket No. 4994

Effective: ~~August 27, 2020~~  
**January 31, 2021**

#### Applicability

Applicable to all public authorities in the Providence Water Supply Board service area purchasing water for resale.

#### Rates-Volume Charge

Bristol County Water Authority  
\$ 2,104.17 per million gallons, or  
\$1.573918 per HCF

East Providence  
\$2,151.12 per million gallons, or  
\$1.609038 per HCF

Greenville  
\$2,208.41 per million gallons, or  
\$1.651888 per HCF

Kent County  
\$2,101.03 per million gallons, or  
\$1.571574 per HCF

Lincoln  
\$2,170.79 per million gallons, or  
\$1.623754 per HCF

Smithfield  
\$2,218.24 per million gallons, or  
\$1.659247 per HCF

Warwick  
\$2,257.20 per million gallons, or  
\$1.688386 per HCF



## **SCHEDULE C**

### **Providence Water Supply Board Bulk Sales to Public Authorities for Resale**

**Rhode Island Public Utilities Commission Docket No.  
page 2 of 2**

Docket No. 4994

Effective: ~~August 27, 2020~~  
**January 31, 2021**

~~Johnston~~

~~\$1,805.96 per million gallons, or  
\$1.350858 per HCF~~

~~Note: This is the rate as determined in Docket 4618. It will remain in effect until Providence Water acquires the Johnston Water System. In the event that the acquisition does not occur, Providence Water shall calculate an individual wholesale rate consistent with the approach required by the Public Utilities Commission for the calculation of individual wholesale rates in Docket 4994.~~

#### Terms of Payment

All bills for bulk sales are rendered monthly in arrears and are due and payable in full when rendered.

Interest at a rate of 1% per month will be charged on unpaid account balances over 30 days from the due date.

**PROPOSED**

**SCHEDULE B**

**Providence Water Supply Board  
Metered Sales  
Retail**

Docket No. 4994

Effective: January 31, 2021

Applicability

Applicable to all general metered water service in the Providence Water Supply Board service area.

Rates

For all quantities used, except for bulk sales to public authorities for resale, the following rates per HCF shall apply:

Monthly Accounts

Residential	\$3.671
Commercial	\$3.847
Industrial	\$3.498

East Smithfield Water District

Applicable to the former customers of the East Smithfield Water District, the following Debt Service Surcharge will apply:

East Smithfield Surcharge     \$0.35 per HCF

Town of Johnston Water System

Applicable to the former customers of the Town of Johnston Water System, the following Annexation fee will apply:

Johnston Water System Annexation fee     \$0.34 per HCF

Terms of Payment

All metered sales bills are rendered in arrears monthly and are due and payable in full when rendered.

Interest at a rate of 1% per month will be charged on unpaid account balances over 30 days from the due date.

**PROPOSED**

**SCHEDULE C**

**Providence Water Supply Board  
Bulk Sales to Public Authorities for Resale**

Docket No. 4994

Effective: January 31, 2021

Applicability

Applicable to all public authorities in the Providence Water Supply Board service area purchasing water for resale.

Rates-Volume Charge

Bristol County Water Authority

\$ 2,104.17 per million gallons, or  
\$1.573918 per HCF

East Providence

\$2,151.12 per million gallons, or  
\$1.609038 per HCF

Greenville

\$2,208.41 per million gallons, or  
\$1.651888 per HCF

Kent County

\$2,101.03 per million gallons, or  
\$1.571574 per HCF

Lincoln

\$2,170.79 per million gallons, or  
\$1.623754 per HCF

Smithfield

\$2,218.24 per million gallons, or  
\$1.659247 per HCF

Warwick

\$2,257.20 per million gallons, or  
\$1.688386 per HCF

Terms of Payment

All bills for bulk sales are rendered monthly in arrears and are due and payable in full when rendered.

Interest at a rate of 1% per month will be charged on unpaid account balances over 30 days from the due date.

## MERGER AND ANNEXATION AGREEMENT

THIS MERGER AND ANNEXATION AGREEMENT ("Agreement") is entered into as of the \_\_\_ day of November, 2020 by and between the City of Providence, a municipal corporation, for and through the Providence Water Supply Board, with a principal business address at 125 Dupont Dr, Providence, Rhode Island 02907 ("PWSB"), and the Town of Johnston, a municipal corporation with a principal address at 1385 Hartford Avenue, Johnston, Rhode Island ("Johnston"). Johnston and PWSB are sometimes individually referred to herein as a "Party" and, collectively, as "Parties."

### W I T N E S S E T H:

WHEREAS, Johnston owns and operates a water distribution system serving portions of the Town of Johnston, Rhode Island (the "Johnston System"); and

WHEREAS, PWSB owns and operates a large water distribution system ("PWSB System") serving diverse localities within the State of Rhode Island ("State"), as well as the Scituate Reservoir which serves as a critical source of potable water for much of the State; and

WHEREAS, Johnston is a wholesale customer of PWSB in that the Johnston System has no source of potable water of its own and is supplied water solely by PWSB through the PWSB System; and

WHEREAS, Rhode Island General Laws § 46-30-1 *et seq.* provides a mechanism to merge small public water bodies and their supply systems and/or annex small systems to adjacent water supplies and systems in order to provide viable water supplies capable of meeting federal and state drinking water regulations; and

WHEREAS the Parties desire to annex the Johnston System to and into the PWSB System pursuant to Rhode Island General Laws § 46-30-1 (the "Annexation") in order to (i) continue to provide a viable water supply capable of meeting federal and state drinking water regulations to the Johnston System users, (ii) to bring the Johnston System on parity with that of the PWSB System, and (iii) to remove the administrative and financial burden for Johnston related to the operation of the Johnston System.

NOW, THEREFORE, in consideration of these premises, the respective representations, warranties, covenants, consideration and agreements of PWSB and the Johnston set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

### ARTICLE I

#### TRANSFER OF OWNERSHIP, MERGER AND ANNEXATION

1.01 Transfer. Subject to the provisions of this Agreement, at the Closing (as defined in Section 1.07 hereof), Johnston shall convey, assign, transfer and deliver to PWSB, and PWSB

shall acquire and accept from Johnston, all of the assets of the Johnston System, including but by no means limited to the following (collectively, the “Annexed Assets”): all facilities, pumping stations, pipes, mains, valves, connections, conduits, machinery, equipment, inventory, meters, hydrants, materials, records, miscellaneous devices, appurtenances, all water rights in connection with the Johnston System, all rights and benefits accrued in relation to the Johnston System arising out of federal assistance or federal funding available in relation to the Johnston System, and all other tangible property related to the operations maintenance, improvement and management of the Johnston System (the “Business”), and also including, without limitation, the Real Estate (as hereinafter defined) and all other items set forth on Schedule 1.01 attached hereto, but explicitly excluding the Excluded Liabilities

1.02 Assumption of Certain Liabilities. In connection with the acquisition of the Annexed Assets, PWSB shall not assume any existing or prospective liabilities of Johnston, except for the obligations of Johnston set forth on Schedule 1.02 attached hereto (“Assumed Liabilities”).

1.03 Excluded Liabilities. “Excluded Liabilities” shall mean all liabilities and obligations of any nature, fixed or contingent, known or unknown, of Johnston and the Johnston System other than the Assumed Liabilities.

1.04 Annexation. It is the intent of the Parties hereto that the Annexation be treated as an annexation pursuant to the Public Water Supply Systems Act of 1995, Rhode Island General Laws § 46-30-1 *et seq.* (the “Act”). Accordingly, the Parties hereby agree that the provisions of the Act shall supplement this Agreement, and in the event any term of this Agreement conflicts with the requirements of the Act, the requirements of the Act shall be deemed to govern so as to effectuate the annexation of Johnston System to and into the PWSB System in order to continue to provide a viable water supply capable of meeting federal and state drinking water regulations to the Johnston System users. PWSB shall be the “governing agency” (as defined in the Act) following the annexation.

1.05 Effect of Annexation. Following the Annexation contemplated herein:

(a) The identity, existence, purposes, powers, objects, franchises, rights and immunities of PWSB shall continue unaffected and unimpaired by the Annexation hereby provided for, and the Annexed Assets, franchises, rights and immunities of the Johnston System shall be continued in and be annexed into the PWSB System, and PWSB shall be fully vested therewith;

(b) PWSB shall possess all rights, privileges and powers of Johnston as the same relates to the Johnston System, including but not limited to all rights of sole, exclusive and unencumbered ownership in the Annexed Assets, the Johnston System and the Real Estate; and

(c) All property, rights, privileges, powers and franchises of Johnston in and to the Johnston System, the Annexed Assets and the Real Estate shall be thereafter and effectually the property of PWSB in accordance with, and to the extent permitted, under Rhode Island General Laws § 46-30-1 *et seq.*

1.06 Time and Place of Closing. The closing and effective date of the Annexation provided for in this Agreement (the “Closing”) shall be held on November 30, 2020 at the offices



of Pannone Lopes Devereaux & O’Gara LLC, 1301 Atwood Avenue, Suite 215N, Johnston, Rhode Island 02919, or such time and place as may be mutually agreed upon by the Parties in writing (“Closing Date”); or alternatively, the Closing will take place by an exchange of closing documents to be coordinated by PWSB’s counsel.

1.07 Transfer of Annexed Assets. At the Closing, Johnston shall deliver or cause to be delivered to PWSB, or its nominee, through good and sufficient instruments of assignment or transfer to PWSB, or its nominee, title to all the Annexed Assets, any beneficial rights or privileges related to the same or the Johnston System, as well as all right, title and interests in all real estate, real property leases, licenses and easements held by Johnston, all of which are set forth and identified by Johnston in Schedule 1.01 (the “Real Estate”).

Such instruments of transfer shall include, without limitation:

- (a) Bills of Sale and Assignment for all Annexed Assets duly executed by Johnston, in substantially the form of Exhibit A;
- (b) Assignment and Assumption Agreements duly executed by Johnston, in substantially the form of Exhibit B; and
- (c) Deeds or Assignments, as applicable, of all the Real Estate as attached as Exhibit C.

The instruments of transfer identified in this Section 1.07 shall effectively vest in PWSB, good and marketable title to all the Annexed Assets, and all rights, title and interest in and to the Real Estate, free and clear of all liens, restrictions and encumbrances not specifically disclosed hereunder or in the applicable Schedules hereto.

1.08 Delivery of Records and Contracts. At the Closing, Johnston shall deliver or cause to be delivered to PWSB, or its nominee, all copies of Johnston’s business records, books and other data relating to the Annexed Assets, the Real Estate and the Business. Johnston shall take all requisite steps to put PWSB in actual possession, ownership and operating control of the Annexed Assets and the Real Estate. After the Closing, Johnston shall afford to PWSB and its accountants and attorneys, at PWSB’s sole expense, reasonable access to the books and records of Johnston related to the Business and shall permit PWSB to make extracts and copies therefrom for the purpose of preparing such tax returns of PWSB as may be required after the Closing and for other proper purposes approved by PWSB.

1.09 Rules, Regulations and Rates. Following the Closing, and subject to the annexation fee provided for in Section 1.10, and the Rhode Island Public Utilities Commission’s direction, Johnston customers will be subject to the same rates, rules, regulations, municipal, state and federal laws to which all other customers of PWSB are subject.

1.10 Annexation Fee. In accordance with R.I.G.L. § 46-30-4 of the Act, it is intended by the Parties that a fee be imposed on Johnston service area customers, following the Annexation, over and above the existing PWSB water rate per HCF (the “Annexation Fee”). The Annexation Fee shall be sufficient to cover any expressly assumed debt payments hereunder, and such other

capital costs, operational expenses and management support costs associated with upgrades to the Johnston System, operational and management responsibilities of PWSB to bring the Johnston System into compliance with the applicable regulations and on parity with the existing facilities of PWSB, and for such other purposes as are permitted under the Act. The Annexation Fee shall be \$0.34 per HCF. The Annexation Fee shall cease upon the earlier of: (i) the full payment of: (A) such expressly assumed debt (if any), capital costs, operational expenses and management support costs associated with upgrades to the Johnston System, (B) operational and management responsibilities of PWSB to bring the system into compliance with the applicable regulations and on parity with the existing facilities of PWSB, and (C) any Assumed Liabilities or which are deemed assumed by PWSB as a matter of law following the merger and Annexation; or (ii) the outside termination date set forth in R.I Gen. Laws § 46-30-4(c).

1.11 Merger. The Parties agree that, following the Closing, PWSB shall have the right, but not the obligation to file with the Rhode Island Office of Secretary of State, a certification (“Merger Certificate”) that the Johnston System has been merged into the PWSB System in accordance with R.I.G.L. § 46-30-5 of the Act.

1.14 Further Assurances. In the unexpected event that the Annexation contemplated herein is not effectuated, or any rights, title or interest in the Annexed Assets or Real Estate are not fully or properly vested, Johnston, from time to time after the Closing at the request of PWSB and without further consideration, shall execute and deliver further instruments of transfer and assignment (in addition to those delivered under Section 1.07) and take such other action as PWSB may reasonably require to more effectively transfer and assign to, and vest in, PWSB each of the Annexed Assets and the Real Estate, to effectuate the Annexation, and to otherwise carry out the tenor and purposes of this Agreement. To the extent that the assignment of any contract, commitment or right shall require the consent of other parties thereto, this Agreement shall not constitute an assignment thereof; however, Johnston shall use best commercial efforts before and after the Closing to obtain any necessary consents or waivers to assure PWSB of the benefits of such contracts, commitments or rights, provided, nothing herein shall be deemed a waiver by PWSB of its right to receive at the Closing an effective assignment of each of the contracts, commitments or rights of the Johnston with respect to the Annexed Assets.

1.15 Bulk Transfer Laws. PWSB and Johnston waive compliance with any applicable bulk transfer laws in connection with the transactions contemplated hereby.

## ARTICLE II REPRESENTATIONS AND WARRANTIES OF THE JOHNSTON

2.01 Making of Representations and Warranties. Johnston makes to PWSB the representations and warranties contained in this Article II.

2.02 Organization; Qualifications of Johnston. Johnston is a municipal corporation, incorporated by municipal charter - duly organized, validly existing and in good standing under the laws of the State with full power and authority to own or lease its properties and to conduct its business in the manner and in the places where such properties are owned or leased or such business is conducted by it. Johnston is not a public utility within the meaning of State law.



2.03 Authority of Johnston. Johnston has full right, authority and power to enter into this Agreement and each agreement, document and instrument to be executed and delivered by Johnston pursuant to this Agreement and to carry out the transactions contemplated hereby, including the Annexation. All necessary action has been taken by Johnston to authorize the execution, delivery and performance of this Agreement (including but not limited to such authorizations required in the Act, Johnston's charter and ordinances), and the same is the valid and binding obligation of Johnston in accordance with its terms. The execution, delivery and performance of this Agreement do not and will not:

- (a) violate any provision of the Johnston's home rule charter, ordinances, nor any other controlling governance document or agreement of Johnston;
- (b) violate any federal laws or laws of the state of formation or other jurisdiction that applies to Johnston or requires Johnston to obtain any approval, consent or waiver of, or make any filing with, any person or entity (governmental or otherwise) that has not been obtained or made;
- (c) except as set forth in Schedule 2.03, violate any provision of, or result in a breach of or a default under, any mortgage, lien, lease agreement, contract, Material Contract (as defined herein), instrument, order, arbitration award, judgment or decision to which the Johnston is a party or by which it is bound; or
- (d) result in the imposition of any lien or other encumbrance upon any of the Annexed Assets.

2.04 Title to Properties; Liens. Except as specifically disclosed in Schedule 2.04 attached hereto, Johnston has good and marketable title to the Annexed Assets and the Real Estate. Johnston has all right, power and authority to convey, assign, transfer, and deliver the Annexed Assets and the Real Estate to PWSB in accordance with the terms of this Agreement. Except as set forth in the attached Schedule 2.04, none of the Annexed Assets or Real Estate will be subject to any mortgage, pledge, lien, conditional sale agreement, lease, security title, encumbrance or other charge upon transfer of title to PWSB.

2.05 Financial Statements.

- (a) Johnston has delivered to PWSB the following financial statements, copies of which are attached hereto as Schedule 2.05:
  - (i) An General Ledger Account Summary of Johnston for the fiscal year 2018-2019 ("Base Balance Sheet"), and statements of income, retained earnings and cash flows for such period, together with appropriate footnotes, if any, as prepared by Johnston (collectively the "Financial Statements").



- (ii) To Johnston's knowledge, said financial statements are prepared in accordance with GAAP except to the extent that the Johnston's historical method for calculating its inventory obsolescence reserve is not in accordance with GAAP.

- (b) Except as set forth on Schedule 2.05(b), as of the date of the Base Balance Sheet, Johnston has had no liabilities of any nature, whether accrued, absolute, contingent or otherwise, asserted or un-asserted, known or unknown (including, without limitation, liabilities as guarantor or otherwise with respect to obligations of others, or liabilities for taxes due or then accrued, or to become due or contingent, relating to activities of Johnston or the conduct of its business prior to the date of the Base Balance Sheet, regardless of whether claims in respect thereof had been asserted as of such date), except liabilities stated or adequately reserved against on the Base Balance Sheet.

2.06 Payment of Taxes. Except as set forth on Schedule 2.06, Johnston has caused to be paid all federal, state, local, foreign, or other taxes, including without limitation, income, transfer, sales, excise, use, value-added, franchise, employment and payroll-related, withholding, environmental, property, or other taxes payable by Johnston (collectively, "Taxes") to any jurisdiction through the date hereof, whether disputed or not, except for Taxes which have not yet accrued or otherwise become due, the non-payment of which would not result in a lien upon the Annexed Assets. Neither the Internal Revenue Service nor any other taxing authority is now asserting, or to the knowledge of Johnston threatening to assert against Johnston, any deficiency or claim for additional Taxes or interest thereon or penalties in connection therewith. There are no security interests on any of the Annexed Assets that arose in connection with any failure (or alleged) failure to pay any Taxes. Johnston agrees that it shall pay the entire tangible tax bill related to all tangible assets of Johnston, if any, at or prior to the Closing Date.

2.07 Absence of Certain Changes. Except as disclosed in Schedule 2.07, since the date of the Base Balance Sheet there has not been, with respect to the Annexed Assets:

- (a) any mortgage, encumbrance or lien which remain in existence on the date hereof or on the Closing Date;
- (b) any obligation or liability incurred by Johnston in connection with the Johnston System, and the operation, maintenance or management thereof, other than obligations and liabilities incurred in the ordinary course of business consistent with the terms of this Agreement;
- (c) any purchase, sale or other disposition, or any agreement or other arrangement for the purchase, sale or other disposition, of any of the properties or assets of the Business other than in the ordinary course of business;

- (d) any damage, destruction or loss, whether or not covered by insurance, materially and adversely affecting the properties, assets or business of Johnston;
- (e) any labor trouble or claim of unfair labor practices involving Johnston or in connection with the Johnston System, and the operation, maintenance or management thereof, nor any change in the compensation payable or to become payable by Johnston to any of its officers, employees, agents or independent contractors other than normal merit increases in accordance with its usual practices, or any bonus payment or arrangement made to or with any of such officers, employees, agents or independent contractors; or
- (f) any other transaction entered into by Johnston other than transactions in the ordinary course of business.

2.08 Ordinary Course. Since the date of the Base Balance Sheet, Johnston has conducted its Business only in the ordinary course and consistent with historical practices.

2.09 Material Contracts. Except for contracts, commitments, plans, agreements and licenses described in Schedule 2.09 ("Material Contracts") (true and complete copies of which have been delivered to PWSB), Johnston is not a party to or subject to:

(a) Any plan or contract providing for bonuses, pensions, options, stock purchases, deferred compensation, retirement payments, profit sharing, collective bargaining or the like, or any contract or agreement with any labor union;

(b) Any employment contract with any employee to be employed by PWSB or contract for services that requires the payment of more than Fifteen Thousand and 00/100 (\$15,000.00) Dollars annually or that is not terminable within thirty (30) days by Johnston without liability for any penalty or severance payment;

(c) Any contract or agreement for the sale or lease of products or services not made in the ordinary course of business;

(d) Any contract with any sales agent or distributor of products or services of the Johnston;

(e) Any contract containing covenants that limits the freedom of Johnston to compete in any line of business or with any person or entity;

(f) Any license agreement (as licensor or licensee);

(g) Any indenture, mortgage, promissory note, loan agreement, guaranty or other agreement or commitment for borrowing money;

(h) Any contract granting any person a lien on all or any part of the Annexed Assets;

(i) Any contract granting to any person a first refusal, first offer, or similar preferential right to purchase or acquire any of the Annexed Assets;

(j) Any joint venture or partnership agreement; and

(k) Any contract or agreement with any officer, employee, director or partner of the Johnston or with any persons or organizations controlled by or affiliated with the Johnston.

Except as set forth in Schedule 2.09, to Johnston's knowledge, each Material Contract is a valid and binding obligation of Johnston, enforceable in accordance with its terms, and is in full force and effect, subject only to bankruptcy, reorganization, receivership and other laws affecting creditors' rights generally and equitable principles generally and limitations on the availability of equitable remedies. Except as set forth in Schedule 2.09, Johnston is not in default under or in breach of any of the Material Contracts and Johnston has no knowledge of conditions or facts that, with notice or passage of time, or both, would constitute a breach or default thereunder.

2.10 Annexed Assets. The Annexed Assets are operable, in good working order, and fit for the purpose(s) for which they are presently used. To the best of Johnston's knowledge none of the Annexed Assets have been subjected to deferred maintenance, are below quality for the industry or otherwise are defective or are anticipated to be defective following the Closing. All of the Real Estate is owned in fee simple by Johnston and is not subject to any lien encumbrances or other claims.

2.11 Litigation. Except for matters described in Schedule 2.11 attached hereto, there is no litigation, governmental or administrative proceeding, or investigation pending or, to the knowledge of Johnston, threatened against or affecting the Johnston System, or in connection with the Johnston System, and the operation, maintenance or management thereof, or the Annexed Assets which may have any material adverse effect on the respective properties, assets or business of the Johnston or which would prevent or hinder the consummation of the Annexation or any other transaction contemplated by this Agreement. With respect to each matter set forth therein, Schedule 2.11 sets forth a description of the matter, the forum (if any) in which it is being conducted, the parties thereto and the type and amount of relief sought.

2.12 Compliance with Laws. Except as set forth in Schedule 2.12 attached hereto,

(a) Johnston is in full compliance in all material respects with all laws and regulations which apply to the conduct of the operation of the Johnston System, including all laws and regulations relating to employment and the environment;

(b) Johnston has not received notice of any asserted past or present failure to comply with any law, ordinance, regulation, permit, order or requirement;

(c) Johnston is not subject to any judgment, writ, injunction, decree or other judicial order; and



(d) Johnston is not aware of or does not know of any proposed law or regulation or any event or condition of any character which would or could materially and adversely affect the Johnston System, and the operation, maintenance or management thereof, nor the future operation, maintenance or management of the Johnston System.

2.13 Warranty or Other Claims. Except as disclosed in Schedule 2.13, there are no existing or, to the knowledge of Johnston, warranty or other similar claims, or any facts upon which a material claim of such nature could be based, against Johnston for services that are defective or fail to meet any service warranties. No claim has been asserted against Johnston for renegotiation or price redetermination of any business transaction, and there are no facts upon which any such claim could be based.

2.14 Intentionally Omitted.

2.15 Permits; Burdensome Agreements. Johnston holds all licenses, permits, franchises, certifications, authorizations, rights, permissions and other approvals (collectively, "Approvals") which are required to permit Johnston to conduct its Business and to operate, maintain and manage the Johnston System and the Real Estate and all such Approvals are valid and in full force and effect. Except as disclosed in Schedule 2.15, all such Approvals will be available and assigned to PWSB and remain in full force and effect upon PWSB's purchase of the Annexed Assets and the Real Estate, and no further Approvals will be required in order for PWSB to conduct the business currently conducted by Johnston nor to operate, maintain and manage the Johnston System subsequent to the Closing. Except as disclosed in Schedule 2.15, Johnston is not subject to or bound by any agreement which may materially and adversely affect the business or prospects of Johnston, condition, financial or otherwise, or any of the Annexed Assets and the Real Estate.

2.16 Compliance with R.I. Gen Laws § 46-30-5. Johnston has fully complied with R.I. Gen Laws § 46-30-5 by making the disclosures set forth in the Johnston disclosure schedules to this Agreement.

2.17 Environmental Matters. Johnston has been and is presently fully in compliance with all applicable Environmental Laws relating to the Annexed Assets and the Real Estate. Johnston has never entered into or been subject to any judgment, consent decree, compliance order or administrative order with respect to any environmental or health and safety matter or received any request for information, notice, demand letter, administrative inquiry or formal or informal complaint or claim with respect to any environmental or health and safety matter or the enforcement of any Environmental Law involving the Real Estate or Annexed Assets, and has no knowledge or reason to know that any of the foregoing will be forthcoming. For purpose of this Agreement, the following terms shall be ascribed the corresponding meanings:

- (i) "Hazardous Material" shall mean and include any hazardous waste, hazardous material, hazardous substance, petroleum product, oil, toxic substance, pollutant, contaminant or other substance that may pose a threat to the environment or to human health or safety, as defined or regulated under any Environmental Law;

- (ii) “Hazardous Waste” shall mean and include any hazardous waste as defined or regulated under any Environmental Law; and (iii) “Environmental Law” shall mean any environmental or health and safety-related law, regulation, rule or ordinance at the foreign, federal, state or local level, including without limitation the Occupational Safety and Health Act of 1970, as amended, whether existing as of the date hereof, previously enforced or subsequently enacted.

2.18 Copies of Documents. Johnston has made available for inspection and copying by PWSB and its agents and representatives true and correct copies of all documents referred to in this Article II or in the Schedules delivered to PWSB pursuant to this Agreement. Johnston shall also make available for inspection and copying by PWSB and its agents and representatives true and correct copies of other business records that would assist in PWSB’s operation of Johnston’s Business and to operate, maintain and manage the Johnston System.

2.19 Disclosures. No representation or warranty in this Agreement, and no statement contained in any Schedule, Appendix, Exhibit, Certificate or other document furnished or to be furnished to PWSB pursuant hereto or in connection with the transactions contemplated hereby contains or at the Closing will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make it not misleading.

### ARTICLE III REPRESENTATIONS AND WARRANTIES OF PWSB

3.01 Making of Representations and Warranties. PWSB hereby makes the representations and warranties contained in this Article III.

3.02 Organization of PWSB. PWSB is validly existing and in good standing under the laws of the State of Rhode Island with full power to conduct its business in the manner and in the places where such properties are owned or leased or such business is conducted by it.

3.03 Authority of PWSB. All necessary action has been taken by PWSB to authorize the execution, delivery and performance of this Agreement, and this Agreement is the valid and binding obligation of PWSB in accordance with its respective terms, subject to bankruptcy, insolvency or other laws of general application affecting creditor’s rights.

3.04 Transaction Not a Breach. The execution, delivery and performance by PWSB of this Agreement, or any other agreement or instrument contemplated hereby, and the consummation of the transaction contemplated hereby and thereby will not violate the provisions of, or constitute a breach or default whether upon lapse of time and/or the occurrence of any act or event or otherwise under PWSB’s enabling legislation.

### ARTICLE IV COVENANTS OF THE JOHNSTON



4.01 Making of Covenants and Agreements. Johnston makes the covenants and agreements set forth in this Article IV.

4.02 Access. Johnston will authorize and permit PWSB and its representatives (which term shall be deemed to include its independent accountants and counsel) to have reasonable access during normal business hours, upon reasonable notice and in such manner as will not unreasonably interfere with the conduct of the Business, to all of its books, records, operating instructions and procedures, and all other information with respect to each of the above only to the extent such information relates solely to the Business as PWSB may from time to time reasonably request, and to make copies of such books, records and other documents and to discuss the Business with Johnston's respective directors, officers, employees, accountants and counsel, as PWSB considers necessary or appropriate for the purposes of familiarizing itself with the Business, obtaining any necessary approvals of or permits for the transaction contemplated by this Agreement and conducting an evaluation of the Business. All information provided by Johnston to PWSB pursuant to this Section 4.02 shall be subject to the confidentiality provisions contained in Section 10.06 hereof.

4.03 Conduct of Business. Between the date of this Agreement and the date of the Closing, Johnston will do the following (unless PWSB shall otherwise consent in writing, which consent shall not be unreasonably withheld):

- (a) conduct the Business only in the ordinary course and refrain from changing or introducing any method of management or operations except in the ordinary course of business and consistent with past practices;
- (b) refrain from making any purchase, sale, liquidation, or other disposition of any of the Annexed Assets and from mortgaging, pledging, subjecting to a lien or otherwise encumbering any of the Annexed Assets;
- (c) unless such act is in the ordinary course of business, not amend, terminate, renew/fail to renew or renegotiate any Assumed Contract or Material Contract and not default in any of Johnston's obligations under any Assumed Contract or Material Contract and not enter into any new Material Contract;
- (d) refrain from incurring any contingent liability as a guarantor or otherwise with respect to the obligations of others, and from incurring any other contingent or fixed obligations or liabilities except those that are usual and normal in the ordinary course of business;
- (e) unless such act is in the ordinary course of business, refrain from making any changes in the compensation payable to any of Johnston's respective officers, employees or agents;

- (f) use commercially reasonable efforts to keep intact its business organization, to keep available the present employees of the Business and to preserve the goodwill of all suppliers, customers and others having business relations with the Business;
- (g) have in effect and maintain at all times all insurance policies maintained by or for the benefit of Johnston;
- (h) not fail to maintain or repair any of the Annexed Assets in accordance with past procedures;
- (i) furnish PWSB with unaudited monthly balance sheets and statements of income and retained earnings and cash flows of Johnston within twenty (20) days after each month end, for each month ending more than ten (10) days prior to the Closing; and
- (j) consult with PWSB in good faith prior to Johnston opening any new employment positions related to the Business or terminating such positions with Johnston, interviewing candidates for such employment position openings, or make any employment hiring or termination of employment decisions.

4.04 Authorization from Others. Prior to the date of Closing, Johnston will have obtained all authorizations, approvals, consents and permits of others required to permit the consummation by Johnston of the transactions contemplated by this Agreement; except that Johnston shall use commercially reasonable efforts to obtain consents of Johnston's vendors and consumers prior to the Closing Date to the extent the same are necessary. If any such authorization, approval, consent or permit is not obtained prior to the Closing and PWSB elects nevertheless to close, Johnston shall continue to use best efforts to obtain such authorization, approval, consent or permit to effectuate the Annexation.

4.05 Consummation of Agreement. Johnston shall use commercially reasonable efforts to perform and fulfill all conditions and obligations on their part to be performed and fulfilled under this Agreement, to the end that the transactions contemplated by this Agreement shall be fully carried out.

4.06 Intentionally Omitted.

4.07 Breach of Representations and Warranties. At any time prior to the Closing, promptly upon the occurrence of, or promptly upon Johnston becoming aware of the impending or threatened occurrence of any event which would cause or constitute a breach, or would have caused or constituted a breach had such event occurred or been known to Johnston prior to the date hereof, of any of the representations and warranties of Johnston contained in or referred to in this Agreement or in any Schedule referred to in this Agreement, Johnston shall give detailed written

notice thereof to PWSB and shall use its reasonable best efforts to prevent or promptly remedy the same.

4.08 Customer Relationships. Immediately prior to or concurrently with the Closing, Johnston shall notify its consumers of the transaction contemplated herein and to the extent not disclosed on Schedule 1.01 hereof, shall furnish PWSB a list of each consumer's name and contact information. Johnston shall in good faith encourage each consumer to utilize PWSB after Closing.

4.09 Johnston's Liabilities/Payment of Debts. Johnston shall discharge, at or prior to the Closing, all debts and other liabilities concerning the Johnston System which are not Assumed Liabilities hereunder.

## ARTICLE V COVENANTS OF PWSB

5.01 Making of Covenants and Agreements. PWSB makes the following covenants and agreements set forth in this Article V.

5.02 Authorization from Others. Prior to the Closing, PWSB will have obtained all authorizations, consents and permits of others required to permit the consummation by PWSB of the transactions contemplated by this Agreement.

5.03 Consummation of Agreement. PWSB shall use its commercially reasonable efforts to perform and fulfill all conditions and obligations on its part to be performed and fulfilled under this Agreement, to the end that the transactions contemplated by this Agreement shall be fully carried out.

## ARTICLE VI CONDITIONS

6.01 Conditions Precedent to the Obligations of PWSB. The obligation of PWSB to consummate this Agreement and the transactions contemplated hereby are subject to the fulfillment, prior to or at the Closing, of the following conditions precedent:

- (a) Representations; Warranties; Covenants. Each of the representations, warranties contained in Article II of this Agreement shall be true and correct as though made on and as of the Closing Date; Johnston shall, on or before the Closing Date, have performed all of its respective obligations and complied with all covenants and conditions hereunder which by the terms hereof are to be performed on or before the Closing Date; and Johnston shall have delivered to PWSB a certificate dated as of the Closing Date to the foregoing effect ("The Johnston's Closing Certificate"). Notwithstanding the foregoing, to the extent any of the representations and warranties of Johnston are not true and correct as of the Closing Date, or to the extent Johnston has not performed any of its obligations and complied with any covenants and conditions hereunder which are to be performed on or before the Closing Date, Johnston shall disclose the inaccuracy of such



representation and warranties and their failure to perform such covenants or satisfy such conditions on Johnston's Closing Certificate;

(b) Consent to Assumed Contracts. PWSB shall have received consent from the parties to any Assumed Contract, commitment or right being assigned to PWSB hereunder in form and substance satisfactory to counsel to PWSB and Johnston and stating that such contract is in full force and effect in accordance with its terms and is not in default and consenting to the assignment of same by Johnston to PWSB;

(c) Approvals and Permits. Johnston shall have obtained and provided to PWSB evidence of the receipt of all Approvals required by PWSB under Section 2.15 of this Agreement;

(d) Additional Deliveries. At the Closing, Johnston shall have delivered to PWSB:

(i) Approvals. A copy of all necessary votes and approvals required under the Act, Johnston's charter, ordinances and the like certified as having been duly and validly adopted and as being in full force and effect and authorizing execution and delivery of this Agreement and performance by Johnston of the transactions contemplated hereby;

(ii) Opinion of The Johnston's Counsel. The opinion of counsel for Johnston as to the authorization, execution and delivery of this Agreement and performance by Johnston of the transactions contemplated hereby; and

(iii) Other Documents. Such other documents and instruments as PWSB or its counsel reasonably shall deem necessary to consummate the transaction contemplated hereby.

(e) Approval of PWSB's Counsel. All actions, proceedings, instruments and documents required to carry out this Agreement and all related legal matters contemplated by this Agreement shall be approved by Pannone Lopes Devereaux & O'Gara LLC, counsel for PWSB, provided that the approval of such counsel shall not be unreasonably withheld;

(f) Licensing, Registration, and Certification. PWSB having obtained, at or prior to the Closing Date, all licenses, registrations, certifications and/or permissions, as the case may be, in order to acquire the Annexed Assets and effectuate the Annexation;

(g) Intentionally Omitted;

(h) Real Estate. Johnston having prepared and executed all Deeds, Assignments or other transfer documents for the Real Estate, previously defined, which is owned by the Johnston;

- (i) PWSB having received valid authorization from the Providence City Council to annex the Johnston System and consummate the transactions contemplated within this Agreement; and
- (j) the transaction contemplated herein, and the consummation thereof, meeting the requirements of R.I. Gen. Laws § 46-30-1 et seq.
- (k) notice of the Annexation and transfer of assets having been given to the Rhode Island Department of Labor and Training as provided for by applicable law;
- (l) notice of the Annexation and transfer of assets having been given to the Rhode Island Division of Taxation as may be required by applicable law;
- (m) All employees of Johnston expressly identified herein (if any) as anticipated by the Parties as transferring over to PWSB, having begun employment with PWSB;
- (n) Johnston, having provided proof of general liability tail policy coverage for a term of no less than three (3) years;
- (o) PWSB and its counsel being satisfied, with due diligence conducted following the execution of this Agreement.

6.02 Conditions Precedent to Obligations of Johnston. Johnston's obligation to consummate this Agreement and the transactions contemplated hereby is subject to the fulfillment, prior to or at the date of Closing, of the following conditions precedent:

(a) Representations; Warranties; Covenants. Each of the representations and warranties of PWSB contained in Article IV hereof shall be true and correct as though made on and as of the date of Closing; PWSB shall, on or before the date of Closing, have performed all of its obligations and complied with all covenants and conditions hereunder which by the terms hereof are to be performed on or before the date of Closing; and PWSB shall have delivered to Johnston a certificate dated as of the date of Closing to the foregoing effect.

## ARTICLE VII TERMINATION OF AGREEMENT

7.01 Termination. At any time prior to Closing, this Agreement may be terminated:

- (a) by mutual agreement of the Parties hereto;
- (b) by PWSB if there has been a material misrepresentation, breach of warranty or breach of covenant by Johnston in its representations, warranties and covenants set forth herein;
- (c) by Johnston if there has been a material misrepresentation, breach of warranty or breach of covenant by PWSB in its representations, warranties and covenants set forth herein;

(d) by PWSB if the conditions stated in Section 6.01 have not been satisfied at or prior to the Closing Date; or

(e) by Johnston if the conditions stated in Section 6.02 have not been satisfied at or prior to the Closing Date.

7.02 Effect of Termination. In the event that this Agreement shall be terminated pursuant to Section 7.01, all further obligations of the Parties under this Agreement shall terminate without further liability of any Party to another. Notwithstanding the foregoing, a termination under Section 7.01 shall not relieve any party of any liability for a material breach of, or for any misrepresentation under this Agreement, or be deemed to constitute a waiver of any available remedy (including specific performance if available) for any such breach or misrepresentation. Nothing in this Section 7.02 shall relieve either Party to this Agreement of liability for a breach of a material covenant or obligation under this Agreement prior to the Closing; provided, however, that such liability in all events shall be limited to the non-breaching Party's reasonable out-of-pocket expenses incurred in connection with the investigation of the transaction contemplated hereby, the negotiation and preparation of this Agreement and the preparation for the closing of the transaction contemplated hereby. In the event that this Agreement is so terminated, each Party will return, within five (5) days of the termination, all papers, documents, financial statements and other data furnished to it by or with respect to each other Party to such other Party (including any copies thereof or work product based thereon and made by the first Party).

#### ARTICLE VIII RIGHTS AND OBLIGATIONS SUBSEQUENT TO CLOSING

8.01 Survival of Representations and Warranties. The representations and warranties contained in or made pursuant to this Agreement shall survive indefinitely.

8.02 Post Closing Obligations of the Parties. Johnston and PWSB each agree that after the Closing they will hold in trust and promptly transfer and deliver to the other, from time to time as and when received by them, any cash, checks with appropriate endorsements (and will not convert such checks to cash), or such other property as belongs to the other Party, and will account not less than monthly to the other for all such receipts. In furtherance of the foregoing, Johnston agrees that any payments received by Johnston relating solely to services fulfilled by PWSB on and after the Closing shall be endorsed to PWSB and transmitted to PWSB by an overnight delivery service. PWSB's and Johnston's obligations set forth in this Section 8.02 shall survive indefinitely.

#### ARTICLE IX INDEMNIFICATION

9.01 Indemnification by Johnston. Subject to the knowledge and other qualifications contained in the Agreement, including the limits of liability outlined in Sections 9.04 and 9.05, Johnston agrees to defend, indemnify and hold PWSB harmless from and against any damages, liabilities, losses and expenses (including reasonable counsel fees) of any kind or nature whatsoever which may be sustained or suffered by PWSB based upon a breach of any



representation, warranty or covenant made by Johnston in this Agreement or in any Schedule, Exhibit, Closing Certificate or Financial Statement delivered hereunder and attached to or specifically referred to in a Schedule attached to this Agreement, or by reason of any third party claim, action or proceeding asserted or instituted in a matter which is a breach of such representations, warranties or covenants, including without limitation amounts which PWSB has paid or are payable with respect to tax liabilities of Johnston for any periods and other liabilities of Johnston not disclosed to PWSB or existing in breach of Johnston's representations, warranties or covenants hereunder. Johnston shall also indemnify PWSB for any and all claims from the Excluded Liabilities.

9.02 Indemnification by PWSB. Subject to the knowledge and other qualifications contained in the Agreement, PWSB agrees to defend, indemnify and hold Johnston harmless from and against any damages, liabilities, losses and expenses (including reasonable counsel fees) of any kind or nature whatsoever which may be sustained or suffered by Johnston based upon a breach of any representation, warranty or covenant made by PWSB in this Agreement or in any Schedule, Exhibit, or Closing Certificate delivered hereunder and attached to or specifically referred to in a Schedule attached to this Agreement, or by reason of any third party claim, action or proceeding asserted or instituted in a matter which is a breach of such representations, warranties or covenants.

9.03 Notice; Defense of Claims. Any Party seeking indemnification under this Article IX ("Indemnified Party") shall give prompt written notice to the other Party ("Indemnifying Party"), of each claim for indemnification hereunder, specifying the amount and nature of the claim, and of any matter which in the opinion of the Indemnified Party is likely to give rise to an indemnification claim. The Indemnifying Party shall have the right to participate at their own expense in the defense of any such matter or its settlement. Failure to give notice of a matter which may give rise to an indemnification claim shall not affect the rights of the Indemnified Party to collect such claim from the Indemnifying Party so long as such failure does not materially adversely affect the Indemnifying Party's ability to defend such claim. Johnston agrees that PWSB has the absolute right to set off, against all or any portion of amounts to be paid by PWSB hereunder (if any), the full undisputed amount due under Section 9.01 hereof.

9.04 Limitations on Indemnification. Notwithstanding the foregoing, PWSB shall not be liable to Johnston for any claims for indemnification or breaches of representations and warranties hereunder until such claims (including reasonable counsel fees) exceed Fifty Thousand and 00/100 (\$50,000.00) Dollars.

9.05 Survival of Indemnification Obligations; Releases.

- (a) Johnston's obligation to indemnify PWSB hereunder shall survive the Closing and remain in full force and effect for a period through the expiration of the applicable statute of limitations (or, if a claim has been asserted prior to such expiration, until three (3) months after its final resolution).
- (b) PWSB's obligation to indemnify Johnston hereunder shall survive the Closing and remain in full force and effect for a period through the expiration of the applicable statute of limitations

(or, if a claim has been asserted prior to such expiration, until three (3) months after its final resolution).

ARTICLE X  
MISCELLANEOUS

10.01 Fees and Expenses. Subject to Article IX hereof, each of the Parties will bear its own expenses in connection with the negotiation and the consummation of the transactions contemplated by this Agreement, and no expenses of Johnston relating in any way to the Transaction shall be charged to or paid by PWSB or included in any account of Johnston as of the Closing.

10.02 Law Governing; Jurisdiction. This Agreement shall be construed under and governed by the laws of the State of Rhode Island and the state courts of the State of Rhode Island shall have jurisdiction with respect to any disputes between the Parties hereto.

10.3 Notices. All notices and communications hereunder shall be in writing and shall be deemed to have been duly given upon receipt of (i) hand-delivery; (ii) United States mail (certified mail, return receipt requested); (iii) overnight courier service; or (iv) telecopy transmission with confirmation of receipt, to the party to whom notice should be given at the address set forth below:

If to PWSB:

Providence Water Supply Board  
125 Dupont Drive  
Providence, Rhode Island 02907  
Attention: General Manager  
Telephone: (401) 521-5070

With a copy to (not constituting notice):

Pannone Lopes Devereaux & O’Gara LLC  
1301 Atwood Avenue, Suite 215N  
Johnston, Rhode Island 02919  
Attention: William E. O’Gara, Esquire  
Telephone: (401) 824-5100  
Facsimile: (914) 824-5123

If to Johnston:

Town of Johnston  
1385 Hartford Avenue  
Johnston Rhode Island 02919  
Attention: Mayor’s Office  
Telephone: (401) 351-6618

With a copy to (not constituting notice):

Law Office of William J. Conley, Jr.  
123 Dyer Street, Unit 2B



Providence, Rhode Island 02903  
Attention: William Conley  
Telephone: (401) 415-9835  
Facsimile: (401) 415-9834

or to such other address of which the parties may, by registered mail or overnight courier service, notify the other party or parties.

10.04 Entire Agreement. This Agreement, including the Schedules and Exhibits referred to herein constitutes the entire Agreement among the Parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, representations, warranties, covenants and conditions of the Parties in connection therewith; and all promises, representations, understandings, warranties and agreements with reference to the subject matter hereof, and all inducements to the making of this Agreement relied upon by either Party hereto, have been expressed herein or in such Schedules or Exhibits.

10.05 Assignability. This Agreement may not be assigned by either Party without the prior written consent of the other. This Agreement shall be enforceable by, and shall inure to the benefit of, the Parties hereto and their permitted successors and assigns, and no others.

10.06 Confidentiality. The following shall be subject to applicable law concerning access to public records: Each of the Parties hereto agree that PWSB and Johnston, and their respective officers, directors, agents and representatives, as applicable, will hold in strict confidence, and will not use any confidential or proprietary data or information obtained from the other Party with respect to the business or financial condition of the other Party except for the purpose of evaluating, negotiating and completing the transactions contemplated hereby. Information generally known in Johnston's industry or that has been disclosed to PWSB by third parties who have a right to do so shall not be deemed confidential or proprietary information for purposes of this Agreement. If the transactions contemplated by this Agreement are not consummated, each Party shall return to the other Party (or certify that it has destroyed) all copies of such data and information, including, but not limited to, financial information, customer lists, business and corporate records, worksheets, test reports, tax returns, lists, memoranda and other documents prepared by or made available to each Party in connection with the transaction contemplated by this Agreement as well as any work product produced or made from productions of the other Party.

10.07 Publicity and Disclosures. No press releases or public disclosure, either written or oral, of the transactions contemplated by this Agreement, shall be made without the prior knowledge and written consent of the Parties hereto.

10.08 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or PDF, such signature shall create a binding obligation of the party executing (or on whose behalf such signature is executed) the same with the same force and effect as if such facsimile or PDF signature were the original thereof.

[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date set forth above by their duly authorized representatives.

WITNESS:

JOHNSTON:

The Town of Johnston:

\_\_\_\_\_

\_\_\_\_\_  
By: Joseph M. Polisena  
Its: Mayor

Approved as to form:

\_\_\_\_\_  
By: William Conley  
Its: Legal Counsel

PWSB:

City of Providence:

\_\_\_\_\_

\_\_\_\_\_  
By: Jorge O. Elorza  
Its: Mayor

Providence Water Supply Board:

\_\_\_\_\_

\_\_\_\_\_  
By: Ricky Caruolo  
Its: General Manager

Approved as to form:

\_\_\_\_\_  
By: William E. O’Gara  
Its: Legal Counsel to Providence Water  
Supply Board

**Schedule 1.01**  
**Annexed Assets**

All facilities, pumping stations, pipes, mains, valves, connections, conduits, machinery, equipment, hydrants, meters, miscellaneous devices and all other appurtenances, including all water right in connection with the Johnston System.

Real Estate includes all right, title and interest in and to any and all real property, leases, licenses, easements, options or the like held by Johnston in connection with the Johnston System, including but not limited to those related to:

- (1) The property known as 23 Golden View Drive AP 45 lot 242 – Golden View Water Tower (the “Golden View Water Tower”).
- (2) The property known as 85 Shun Pike AP lot 586 – Water Booster Distribution System.

**Schedule 1.02**  
**Assumed Liabilities**

Maintenance of the 12-inch water main along U.S. Route 6, as further defined in that certain Construction and Maintenance Agreement Non-Participating by and between the State of Rhode Island and the Johnston Water Department, as referenced in the agreement (the “Route 6 Project Agreement”). Johnston does not possess a signed copy of the Route 6 Project Agreement, however, all parties have performed their obligations pursuant to the Route 6 Project Agreement.

**Schedule 2.03**  
**Violations/Defaults**

None.

**Schedule 2.04**  
**Liens/Encumbrances**

The Golden View Water Tower is encumbered by two leases:

- (1) That certain PCS Site Agreement, dated June 2, 2000, by and between Sprint Spectrum, L.P., as lessee, and Johnston, as lessor, regarding the lease of space on Golden View Water tank for use as a cell phone tower antenna (the “Sprint Agreement”).
- (2) That certain PCS Lease, dated January 20, 1998, by and between T-Mobile Northeast, LLC, as successor in interest to Omnipotent Communications MB Operations, Inc., as lessee, and Johnston, as lessor, regarding the lease of space on Golden View Water tank for use as a cell phone tower antenna, as amended, pursuant to the First Amendment to PCS Lease, dated April 8, 2019 (the “T-Mobile Agreement”).



**Schedule 2.05**  
**Financial Statements**

See attached Financial Statements.

**Schedule 2.05**  
**Financial Statements**

None.

**Schedule 2.06**  
**Unpaid Taxes**

None.

**Schedule 2.07**  
**Undisclosed Changes**

None.

**Schedule 2.09**  
**Material Contracts**

- (1) The Sprint Agreement
- (2) The T-Mobile Agreement
- (3) That certain Water System Maintenance & Service Contract, dated July 1, 2012, by and between LaFramboise Water Service, Inc. and Johnston regarding maintenance of the system, as extended, by amendment through June 30, 2017 (the "Millennium Agreement"). The Millennium Agreement expired as of June 30, 2017, however, the parties have continued to operate under the terms of the Millennium Agreement.

**Schedule 2.11**  
**Litigation**

None.

**Schedule 2.12**  
**Compliance with Laws**

None.

**Schedule 2.13**  
**Warranty Claims**

None.

**Schedule 2.15**  
**Approvals**

None.

Exhibit A  
Bills of Sale and Assignment

Attached Hereto.

## BILL OF SALE AND ASSIGNMENT

THIS BILL OF SALE AND ASSIGNMENT ("Bill of Sale") is entered into as of the \_\_\_\_ day of November, 2020 by and between the City of Providence, a municipal corporation, for and through the Providence Water Supply Board, with a principal business address at 125 Dupont Dr, Providence, Rhode Island 02907 ("PWSB"), and the Town of Johnston, a municipal corporation with a principal address at 1385 Hartford Avenue, Johnston, Rhode Island ("Johnston"). Johnston and PWSB are sometimes individually referred to herein as a "Party" and, collectively, as "Parties."

### W I T N E S S E T H:

WHEREAS, Johnston and PWSB entered into that certain Merger and Annexation Agreement dated as of the \_\_\_\_ day of November, 2020 ("Annexation Agreement"); and

WHEREAS, pursuant to the Annexation Agreement, Johnston has agreed to assign, convey, transfer and deliver to PWSB, and PWSB has agreed to accept from Johnston, all of the Johnston's right, title and interest in and to the Annexed Assets as defined in the Annexation Agreement, and as further described in Exhibit A.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. Johnston does hereby assign, convey, transfer and deliver, as of the date hereof pursuant to the terms and subject to the conditions of the Annexation Agreement, all of its respective right, title and interest in and to the Annexed Assets, free and clear of any and all liabilities and any and all liens, unto PWSB.

2. This Bill of Sale is subject in all events to the terms and conditions of the Annexation Agreement and shall not in any way expand, alter or limit any of the rights, obligations and responsibilities of any of the Parties to the Annexation Agreement.

3. In the event of a conflict or inconsistency between this Bill of Sale and the Annexation Agreement, the terms of the Annexation Agreement shall prevail. Notwithstanding anything herein to the contrary, the terms and conditions of the Annexation Agreement shall survive the execution and delivery of this Bill of Sale in accordance with the terms of the Annexation Agreement.

4. This Bill of Sale inures to the benefit of PWSB and its successors and assigns and shall be binding on Johnston and its successors and assigns.

5. This Bill of Sale is governed by and construed in accordance with the laws of the State of Rhode Island, without regard to any conflict-of-laws provisions thereof.

6. All capitalized terms not otherwise defined herein shall have the respective meanings provided them in the Annexation Agreement.

7. This Bill of Sale may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of such shall together constitute one and the same instrument.

(Signature Page Follows)

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date set forth above by their duly authorized representatives.

WITNESS:

JOHNSTON:

The Town of Johnston:

\_\_\_\_\_

\_\_\_\_\_  
By: Joseph M. Polisena  
Its: Mayor

Approved as to form:

\_\_\_\_\_  
By: William Conley  
Its: Legal Counsel

PWSB:

City of Providence:

\_\_\_\_\_

\_\_\_\_\_  
By: Jorge O. Elorza  
Its: Mayor

Providence Water Supply Board:

\_\_\_\_\_

\_\_\_\_\_  
By: Ricky Caruolo  
Its: General Manager

Approved as to form:

\_\_\_\_\_  
By: William E. O’Gara  
Its: Legal Counsel to Providence Water  
Supply Board

Exhibit B  
Assignment and Assumption Agreements

Attached Hereto.

## ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this “Assignment”) is entered into as of the \_\_\_ day of November, 2020 by and between the City of Providence, a municipal corporation, for and through the Providence Water Supply Board, with a principal business address at 125 Dupont Dr, Providence, Rhode Island 02907 (“Assignee”), and the Town of Johnston, a municipal corporation with a principal address at 1385 Hartford Avenue, Johnston, Rhode Island (“Assignor”). Johnston and PWSB are sometimes individually referred to herein as a “Party” and, collectively, as “Parties.”

### Recitals

A. Assignor is a party to those certain contracts identified on Schedule 1 hereto (the “Contracts”).

B. Assignor and Assignee are parties to that certain Merger and Annexation Agreement dated as of November \_\_\_\_, 2020 (the “Agreement”), pursuant to which Assignor has agreed transfer Assignor’s water distribution system and appurtenance to Assignee, and Assignee has agreed to accept and annex said distribution system and appurtenances to Assignee’s water distribution system.

For valuable consideration, the and sufficiency of which is hereby acknowledged, Assignor and Assignee agree as follows:

1. Assignor assigns to Assignee all of the right, title and interest of Assignor in the Contracts.
2. Assignor hereby agrees to indemnify, defend and hold Assignee harmless from any liability, claim, demand, loss, expense or damage suffered, sustained or incurred by Assignee including, without limitation, reasonable attorneys’ fees and expenses, arising out of or attributable to any claims made against Assignee relating to obligations not assumed by Assignee under said Contracts, and/or related, directly or indirectly to events occurring prior to the date of this Assignment. The indemnification obligations of Assignor under this Assignment shall survive the Closing.
3. This Assignment shall be binding on, and inure to the benefit of, the parties hereto, their successors in interest, and assigns.
4. Nothing herein shall be deemed to alter, expand or supersede any rights of obligations of the Parties under the Agreement. Where any conflict exists between this Assignment and the Agreement, the terms of the Agreement shall be deemed to prevail.

[signature page to follow]



**IN WITNESS WHEREOF**, Assignor and Assignee have executed this Assignment as of the day and year first hereinabove written.

WITNESS:

\_\_\_\_\_

Approved as to form:

\_\_\_\_\_

Approved as to form:

\_\_\_\_\_

ASSIGNOR:

The Town of Johnston:

\_\_\_\_\_  
By: Joseph M. Polisena  
Its: Mayor

\_\_\_\_\_  
By: William Conley  
Its: Legal Counsel

ASSIGNEE:

City of Providence:

\_\_\_\_\_  
By: Jorge O. Elorza  
Its: Mayor

Providence Water Supply Board:

\_\_\_\_\_  
By: Ricky Caruolo  
Its: General Manager

\_\_\_\_\_  
By: William E. O’Gara  
Its: Legal Counsel to Providence Water  
Supply Board

Exhibit C

Real Estate Transfer Instruments

To be provided by Johnston and approved by PWSB and its counsel prior to Closing.

## General Ledger Account Summary

Town of Johnston

Fiscal Year 2018 - 2019

From 7/1/2018 To 12/2/2019 (Effective Date)

Account Number	Account Description	Begin Balance	Debits	Credits	Ending Balance
A-451-45-0000-11010-00	CASH CHECKING - WTR CNTRL F	\$0.00	\$0.00	\$0.00	\$0.00
A-451-45-0000-11010-01	CASH - WATER FUND DRAWS CO	\$200.00	\$0.00	\$0.00	\$200.00
A-451-45-0000-11030-00	WATER SERVICES RECEIVABLE	\$1,296,072.08	\$1,706,320.45	\$1,799,284.22	\$1,203,108.31
A-451-45-0000-11040-00	UNCOLL WATER SERVICE	\$0.00	\$0.00	\$0.00	\$0.00
A-451-45-0000-11070-00	ACCUM DEPR.-WTR DISTRB	(\$3,576,300.41)	\$0.00	\$252,218.74	(\$3,828,519.15)
A-451-45-0000-11090-00	ACCUM DEPR-MOTOR VEHICLES	(\$37,477.00)	\$0.00	\$0.00	(\$37,477.00)
A-451-45-0000-11325-00	AR OTHER	\$0.00	\$0.00	\$0.00	\$0.00
A-451-45-0000-11510-00	LAND	\$40,000.00	\$0.00	\$0.00	\$40,000.00
A-451-45-0000-11550-00	MOTOR VEHICLES	\$37,477.00	\$0.00	\$0.00	\$37,477.00
A-451-45-0000-11601-00	WATER DISTRIBUTION	\$13,507,561.23	\$84,351.92	\$0.00	\$13,591,913.15
A-451-45-0000-11800-00	DEFERRED REVENUE	\$0.00	\$0.00	\$0.00	\$0.00
<b>Assets.....</b>		<b>\$11,267,532.90</b>	<b>\$1,790,672.37</b>	<b>\$2,051,502.96</b>	<b>\$11,006,702.31</b>
L-451-00-0000-21009-00	ACCRUED INTEREST	\$0.00	\$0.00	\$13,704.00	\$13,704.00
L-451-00-0000-21021-00	BONDS PAYABLE	\$0.00	\$170,000.00	\$1,725,000.00	\$1,555,000.00
L-451-45-0000-21000-00	STATE PENSION LIABILITY	\$0.00	\$0.00	\$0.00	\$0.00
L-451-45-0000-21020-00	FICA LIABILITY	\$0.00	\$0.00	\$0.00	\$0.00
L-451-45-0000-21030-00	A/P-WATER CONTROL	\$0.00	\$0.00	\$0.00	\$0.00
L-451-45-0000-21444-00	DUE TO/FROM WATER CONTROL	(\$3,344,922.97)	\$1,293,946.49	\$1,309,792.40	(\$3,329,077.06)
I-451-45-0000-21444-01	DUE TO POLICE DETAIL FUND	\$0.00	\$0.00	\$0.00	\$0.00
L-451-45-0000-21500-00	ACCRUED VACATION AND SICK T	\$0.00	\$0.00	\$0.00	\$0.00
L-451-50-0000-31600-00	ACCRUED PAYROLL	\$0.00	\$0.00	\$0.00	\$0.00
L-451-50-0000-31700-00	ACCRUED EXPENSES	\$0.00	\$0.00	\$0.00	\$0.00
L-451-50-0000-31800-00	ACCRUED SEVERANCE	\$0.00	\$0.00	\$0.00	\$0.00
L-451-50-0000-31900-00	NET OPEB OBLIGATION	\$0.00	\$0.00	\$0.00	\$0.00
<b>Liabilities.....</b>		<b>(\$3,344,922.97)</b>	<b>\$1,463,946.49</b>	<b>\$3,048,496.40</b>	<b>(\$1,760,373.06)</b>
X-451-00-0000-50000-00	EXPENDITURE CONTROL	\$0.00	\$1,542,078.94	\$1,326,829.98	\$215,248.96
<b>Expenditures.....</b>		<b>\$0.00</b>	<b>\$1,542,078.94</b>	<b>\$1,326,829.98</b>	<b>\$215,248.96</b>
R-451-00-0000-40000-00	REVENUE CONTROL	\$0.00	\$2,987,333.23	\$2,987,333.23	\$0.00
<b>Revenues.....</b>		<b>\$0.00</b>	<b>\$2,987,333.23</b>	<b>\$2,987,333.23</b>	<b>\$0.00</b>
E-451-45-0000-31100-00	NET INVESTMENT IN CAPITAL AS	\$9,971,260.00	\$1,115,977.60	\$1,163,270.47	\$10,018,552.87
E-451-45-0000-31230-00	RESERVED FOR REPAIRS	\$41,235.44	\$0.00	\$0.00	\$41,235.44
E-451-45-0000-31240-00	RESERVED FOR INFRASTRUCTU	\$360,311.90	\$0.00	\$0.00	\$360,311.90
E-451-45-0000-31250-00	UNRESERVED	\$4,239,648.53	\$1,725,000.00	\$47,575.59	\$2,562,224.12
<b>Equities.....</b>		<b>\$14,612,455.87</b>	<b>\$2,840,977.60</b>	<b>\$1,210,846.06</b>	<b>\$12,982,324.33</b>
<b>Fund 451 - ENTERPRISE FUND - WATER CONTROL FA</b>			<b>\$10,625,008.63</b>	<b>\$10,625,008.63</b>	

**General Ledger Account Summary**

Town of Johnston

Fiscal Year 2018 - 2019

From 7/1/2018 To 12/2/2019 (Effective Date)

Account Number	Account Description	Begin Balance	Debits	Credits	Ending Balance
Report Total			\$10,625,008.63	\$10,625,008.63	