

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN RE: THE MATTER OF PARK)
ONE/332 WATER UTILITY COMPANY,) CAUSE NO. 43958
INC., FOR RECOGNITION AS A)
PUBLIC UTILITY, TRANSFER OF) APPROVED: MAY 04 2011
CERTAIN CTAS, AND OTHER)
APPROPRIATE RELIEF)

BY THE COMMISSION:

Carolene Mays, Commissioner
Aaron A. Schmoll, Senior Administrative Law Judge

On October 6, 2010, Park One/332 Water Company, Inc., (“Petitioner” or “Park One”) filed its Verified Petition with the Indiana Utility Regulatory Commission (“Commission”). On October 15, 2010, the Town of Yorktown (“Yorktown”), the Delaware County Board of Commissioners (“Board of Commissioners”), the Muncie Sanitary District (“MSD”), and the Delaware County Regional Wastewater District (“DCRWD”) (collectively the “Local Government Intervenors”) petitioned to intervene as parties in this matter. The Local Government Intervenors’ Petition to Intervene was granted on November 9, 2010.

Pursuant to a notice, a prehearing conference in this Cause was held at 10:00 a.m. on November 9, 2010 in Room 224 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. Proofs of publication of the notice of such pre-hearing were incorporated by reference into the record and placed in the official files of the Commission. The Petitioner, the Local Government Intervenors, and the Office of Utility Consumer Counselor (“OUCC”) appeared and participated therein. No members of the general rate paying public appeared or participated.

During the course of the prehearing conference, a dispute as to discovery was noted, and the prehearing conference was continued on the record pending resolution of this discovery dispute. On December 28, 2010, following briefing by the parties, the Commission issued its Docket Entry granting Local Government Intervenors Motion to Compel. On January 4, 2011, the prehearing conference was reconvened. The Petitioner, the Local Government Intervenors, and the OUCC appeared and participated at the prehearing. No members of the general rate paying public appeared or participated therein. On February 2, 2011, the Commission issued its Prehearing Conference Order in this Cause.

On March 7, 2011, the Local Government Intervenors filed a Notice of Settlement in this Cause, indicating that all issues between the Petitioner and the Local Government Intervenors had been resolved. On March 22, 2011, the Petitioner filed as Joint Exhibit 1 a Stipulation and Settlement Agreement (the “Settlement”) executed by all parties in this Cause. On March 22, 2011, the Petitioner also filed the Sale and Purchase Agreement (the “Agreement”) executed by Petitioner and Yorktown and described in the Settlement. On March 24, 2011, the OUCC filed its notice of intent not to file testimony in this Cause.

Pursuant to notice given and published as required by law, proof of which was incorporated into the record of this Cause by reference and placed in the official files of the Commission, a public hearing was held on Monday, April 25, 2011, at 9:30 a.m., in Room 222, PNC Center, 101 West Washington Street, Indianapolis, Indiana. Petitioner, the Local Government Intervenors, and the OUCC appeared and participated in the hearing. No members of the general public appeared or otherwise sought to testify. The OUCC, in keeping with its prior notice, indicated that it supported the settlement, but would not be filing testimony in this Cause. All parties waived cross-examination. The Commission, having considered the evidence of record, including the provisions of the Settlement and the Agreement, now finds as follows:

1. **Notice and Jurisdiction.** Due, legal, and timely notice of these proceedings was given and published as required by law. Petitioner currently provides water and wastewater utility service in Delaware County, Indiana. Accordingly, the Commission has jurisdiction over the Petitioner, and the subject matter of this Cause.

2. **Petitioner's Characteristics.** Petitioner was organized under the laws of the State of Indiana. Petitioner provides both water and sanitary sewer service to customers in rural areas of Delaware County, Indiana, in and around a commercial and industrial real estate development commonly known as the Park One/332 Business Park.

3. **Evidence of the Parties.** Petitioner's witness, Mr. Alan Oman, President of Petitioner, described how Park One was created by First Merchants Bank N.A. (the "Bank") following a foreclosure action by the Bank against Mount Pleasant Utilities, LLC ("Mount Pleasant") before the Delaware Circuit Court No. 5. Mr. Alan Oman described how he and others acting through a separate company, Vertical Green Tech, LLC, acquired all of the stock of Park One from the Bank as of August 31, 2010. He went on to note that Park One was specifically created by the Bank for purposes of acquiring the rights, powers, privileges, and franchises of Mount Pleasant. He testified that Park One has continually provided potable water service and sanitary sewer service to the former customers of Mount Pleasant in and around the Park One/332 Business Park.¹

Mr. Oman testified that Petitioner has the lawful power, financial ability, managerial experience, and technical capability to continue to provide potable water and sanitary sewer service in and around the Park One/332 Business Park. Mr. Oman indicated that two companies have announced their intent to expand within the Park One/332 Business Park in Delaware County. Such expansion by Brevini Wind and Twoson Tool would directly lead to the employment of approximately 700 people in the Park One/332 Business Park working on various green energy initiatives.

Mr. Oman attached to his testimony a copy of the court order from the Delaware Circuit Court No. 5, awarding a prior judgment to the Bank against Mount Pleasant; a settlement and conveyance agreement in satisfaction of such judgment; this Commission's prior orders in Cause

¹ The Commission notes that neither Petitioner nor Mount Pleasant sought approval from the Commission prior to the transfer of franchises or assets. Because the parties reached a settlement, we do not address any issues relating to the failure to timely seek such approval.

Nos. 41037 and 41485 granting Certificates of Territorial Authority (“CTAs”) to Mount Pleasant; and the stock certificate for Park One, which was transferred from the Bank to Vertical Green Tech, LLC, for whom Mr. Oman is the Managing Partner.

Mr. Oman also testified in support of the Settlement and the Agreement. Petitioner’s supplemental testimony described how the Settlement and Agreement had been reached following arm’s length negotiations. Mr. Oman stated that the Settlement will resolve all issues raised in this matter, including that Yorktown will become the sole service provider to the current customers of Petitioner. Pursuant to the Agreement (which is incorporated by reference into the Settlement), Yorktown will acquire the entirety of Petitioner’s water production and distribution facilities and the entirety of Petitioner’s sewer collection system. Yorktown will not be acquiring Petitioner’s sewer treatment plant. Following the closing, Yorktown will be responsible for providing potable water and in turn collecting and dealing with wastewater and will have all interaction with these customers following closing. Mr. Oman also described how the Petitioner intends to use the remaining assets that will continue to be owned by Petitioner to accept and treat sanitary wastewater delivered to its wastewater treatment plant by third party waste haulers. He described the business relationship between the Petitioner and these third party haulers as a contractual relationship negotiated between Petitioner and each hauler. He noted that the waste haulers themselves will have entered into contracts to collect wastewater from entities that have wastewater, but are not served by public utility systems. Mr. Oman stated that all three of these parties are free to negotiate the terms of collection and disposal and also free to determine with whom they will deal. Mr. Oman opined, that with the approval of this Commission and the transfer of assets and services under the Agreement, the Petitioner will no longer be a public utility.

The testimony of the Local Government Intervenors’ witness Mr. Pete Olson was offered to sponsor and support Joint Exhibits 1 and 2 consisting of the Settlement and the Agreement, respectively. Mr. Olson’s testimony described the current municipal water and sewer operations of Yorktown. He described how Yorktown will be capable of continuing to provide both water and sewer service within the Park One/332 Business Park following acquisition of the assets of the Petitioner. Mr. Olson indicated that the Intervenors are in agreement that Yorktown, following closing, should be the responsible utility providing such service. He described the status of Yorktown’s construction of a force main from the Park One/332 Business Park to Yorktown’s existing sewer utility. Mr. Olson indicated that the water utility assets Yorktown will acquire from Petitioner will be operated within the Park One/332 Business Park on a standalone basis.

Mr. Olson also opined that following closing, the Petitioner will no longer be a public utility. He noted that what is important to the Local Government Intervenors is that Petitioner will not have the rights associated with a public utility once the transfer to Yorktown has been closed, most importantly, any service area rights which might interfere with Yorktown’s and the remaining Local Government Intervenors’ efforts to market the Park One/332 Business Park. Mr. Olson indicated that the Local Government Intervenors have no objection to the Petitioner continuing to own and operate the wastewater treatment plant for the limited purpose of accepting hauled wastewater and septage. Finally, Mr. Olson described the need for a quick resolution of this proceeding so that Brevini Wind and Twoson Tool can move forward on their

expansion. Mr. Olson confirmed, as Mr. Oman noted, there are approximately 700 new employment opportunities with Brevini Wind and Twoson Tool.

4. Commission Discussion and Findings. Settlements presented to the Commission are not ordinary contracts between private parties. *United States Gypsum, Inc. v. Indiana Gas Co.*, 735 N.E.2d 790, 803 (Ind. 2000). When the Commission approves a settlement, that settlement “loses its status as a strictly private contract and takes on a public interest gloss.” *Id.* (quoting *Citizens Action Coalition v. PSI Energy*, 664 N.E.2d 401, 406 (Ind. Ct. App. 1996)). Thus, the Commission “may not accept a settlement merely because the private parties are satisfied; rather [the Commission] must consider whether the public interest will be served by accepting the settlement.” *Citizens Action Coalition*, 664 N.E.2d at 406.

Furthermore, any Commission decision, ruling, or order, including the approval of a settlement, must be supported by specific findings of fact and sufficient evidence. *United States Gypsum*, 735 N.E.2d at 795 (citing *Citizens Action Coalition v. Public Service Co.*, 582 N.E.2d 330, 331 (Ind. 1991)). The Commission’s own procedural rules require that settlements be supported by probative evidence. 170 I.A.C. 1-1.1-17(d). Therefore, before the Commission can approve the Settlement, we must determine whether the evidence in this Cause sufficiently supports the conclusions that the Settlement is reasonable, just, and consistent with the purpose of Indiana Code Ch. 8-1-2, and that such Settlement serves the public interest.

The Petitioner and the Local Government Intervenors have, through their respective testimony and exhibits, provided this Commission with evidence supporting the Settlement and Agreement, which among other things provides that all assets associated with service to existing public utility customers by this Petitioner will be transferred to the Town of Yorktown. The OUCC, who by statute is the representative of all public utility customers, has also agreed to the Settlement. Based on that evidence including the Settlement, the initial request by the Petitioner that this Commission acknowledge that Park One has all rights, powers, privileges, and franchises of Mount Pleasant pursuant to Indiana Code § 8-1-2-82 is now moot. The issues relating to Park One’s issuance of 1,000 shares, and its use of the CTAs previously granted to Mount Pleasant by this Commission, have also been rendered moot by this Settlement. The only issues remaining are whether Petitioner will be a public utility following the transfer of its assets to Yorktown by reason of accepting hauled wastewater for treatment at its wastewater treatment facility and whether the proposed transfer of Petitioner’s assets and services to Yorktown should be authorized.

The Commission has the power and jurisdiction to determine whether a business entity is a public utility within the Commission’s jurisdiction. *U.S. Steel Corp. v. Northern Ind. Pub. Serv. Co.*, 482 N.E.2d 501 (Ind. Ct. App. 1985), *trans. denied*, and *Knox Cnty. Rural Elec. Membership Corp. v. PSI Energy, Inc.*, 663 N.E.2d 182 (Ind. Ct. App. 1996), *trans. denied*.

The first step in our analysis is to determine whether Petitioner falls under the definition of public utility. Indiana Code section 8-1-2-1(a) (2006) provides:

Except as provided in section 1.1 of this chapter, “public utility”, as used in this chapter, means every corporation, company, partnership, limited liability company, individual,

association of individuals, their lessees, trustees, or receivers appointed by a court, that may own, operate, manage, or control any plant or equipment within the state for the:

- (1) conveyance of telegraph or telephone messages;
- (2) production, transmission, delivery, or furnishing of heat, light, water, or power; or
- (3) collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, night soil, and industrial waste.

The term does not include a municipality that may acquire, own, or operate any of the foregoing facilities.

While Petitioner clearly will continue receiving and treating sewage, our analysis does not rest solely upon the plain language of the statute.

The Indiana Court of Appeals has noted that “[u]pon dedication of a business to a public use, it is established that such business is under a common law duty to serve all who apply so long as facilities are available without discrimination.” 482 N.E.2d at at 505-506 (citing *Portland Natural Gas & Oil Co. v. State ex rel. Keen*, 135 Ind. 54, 34 N.E. 818 (1893); *Hockett v. State*, 105 Ind. 250, 5 N.E. 178 (1886); 73 C.J.S. *Public Utilities*, § 7, p. 998). It further noted that at the very minimum, “[i]t is an essential requirement that a business or enterprise must in some way be impressed with public interest before it may become a public utility.” *Id.* at 506. Accordingly, whether a given business is a public utility “depends on whether or not the service rendered by it is of a public character and of public consequence and concern, which is a question necessarily dependent on the facts of the particular case.” *Id.* (citing *Folz v. City of Indianapolis*, 234 Ind. 656, 130 N.E.2d 650, 654-56, 659 (1955)).

In this Cause, Petitioner no longer seeks any designation or rights associated with its business entity as a public utility. Petitioner proposes to surrender any certificates of territorial authority it may hold. Petitioner proposes to surrender any and all rights of eminent domain. Petitioner, like any business which has no public calling, will choose which entities with whom it will enter into contracts and how it will operate its wastewater treatment plant. All responsibility for providing utility service within the territory previously served by Petitioner will be transferred to Yorktown. As described in the Agreement, Petitioner by contract is limiting both the quantity and quality of wastewater that it will accept from Yorktown. Based on these facts, the Commission finds that the Petitioner will not be a public utility following the transfer of assets and services to Yorktown pursuant to the Agreement.

The second issue the Commission must address is whether we should authorize the transfer of the assets and responsibilities of Petitioner to Yorktown. The parties have provided evidence explaining the benefits that will flow from such transfer. The evidence describes that Yorktown has the financial, managerial, and technical abilities to take over and to continue providing utility service within and around the Park One/332 Business Park. The evidence describes how such transfer will meet the public interest by the provision of sufficient utility

services available in the Park One/332 Business Park unclouded by any disputes on who should provide such service. Here, the evidence clearly indicates that Yorktown will continue to provide utility service in and around the Park One/332 Business Park. Further, such transfer is supported by Yorktown, Delaware County, the Muncie Sanitary District, and the Delaware County Regional Wastewater District. We acknowledge that approving such transfer will lead to an expansion of jobs within Delaware County, including businesses involved in necessary green energy projects, which this Commission and the State of Indiana have been promoting. We therefore find that Petitioner shall be authorized to transfer its assets and service responsibilities as provided in the Settlement and the Agreement.

We also find that the terms of the Settlement and the Agreement are reasonable, in the public interest, and should be approved. Any future citations to the Settlement should be treated in a manner consistent with our Order in *Richmond Power & Light*, Cause No. 40434 (IURC March 19, 1997).

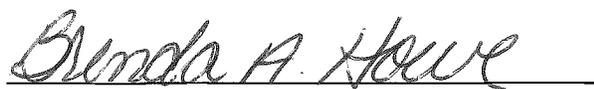
IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. The Settlement and the Agreement, as attached to this Order, shall be and hereby are approved.
2. Following closing, the Petitioner shall not be deemed a public utility and shall not have the rights or obligations associated with a public utility. Within ten (10) business days of closing, Yorktown shall file notice with the Commission that the closing has occurred.
3. This Order shall be effective on and after the date of its approval.

ATTERHOLT, BENNETT, LANDIS, MAYS AND ZIEGNER CONCUR:

APPROVED:

I hereby certify that the above is a true and correct copy of the Order as approved.



**Brenda A. Howe,
Secretary to the Commission**

JOINT EXHIBIT 1

IURC
JOINT

EXHIBIT No. 1

4-25-11

DATE

REPORTER ul

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

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ONE/332 WATER UTILITY COMPANY,)	
INC., FOR RECOGNITION AS A)	CAUSE NO.: 43958
PUBLIC UTILITY, TRANSFER OF)	
CERTAIN CTAS, AND OTHER)	
APPROPRIATE RELIEF)	

STIPULATION AND SETTLEMENT AGREEMENT

Comes now Park One/332 Water Utility Company, Inc., and in keeping with the Notice of Settlement filed by the Local Government Intervenors on March 7, 2011, files as Joint Exhibit 1 the attached Stipulation and Settlement Agreement in this cause.

Respectfully submitted,



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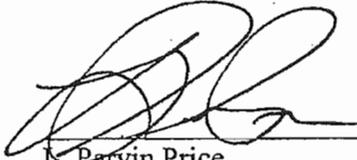
**OFFICIAL
EXHIBITS**

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served electronically this 22nd day
of March, 2011, upon the following:

Nicholas K. Kile
Barnes & Thornburg LLP
11 South Meridian Street
Indianapolis, IN 46204

Lorraine Hitz-Bradley
Indiana Office of Utility Consumer Counselor
115 West Washington Street, Suite 1500 South
Indianapolis, IN 46204



L. Parvin Price

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN RE: THE MATTER OF PARK)
ONE/332 WATER UTILITY COMPANY,)
INC., FOR RECOGNITION AS A) CAUSE NO.: 43958
PUBLIC UTILITY, TRANSFER OF)
CERTAIN CTAS, AND OTHER)
APPROPRIATE RELIEF)

STIPULATION AND SETTLEMENT AGREEMENT

Park One/332 Water Company, Inc., ("Park One"), the Town of Yorktown ("Yorktown"), the Delaware County Board of Commissioners ("Board of Commissioners"), the Delaware County Regional Wastewater District ("DCRWD"), the Muncie Sanitary District ("MSD"), and the Office of Utility Consumer Counselor ("OUCC"), collectively, the "Parties," have met through their respective representatives, exchanged information, discussed the evidence of record, and considered the various pleadings filed by the Parties in this cause. The result of such discussions among the Parties is a settlement of all issues in this cause as described by this Stipulation and Settlement Agreement (the "Settlement").

The Parties believe that the record of this cause, including the petitions, prefiled evidence, motions, responses, replies, and the supplemental evidence of witnesses Pete Olson and Alan Oman support the terms of this Settlement and a final order of this Commission indicating that, upon transfer of the assets described below, Park One will no longer be a public utility. In the alternative, if the Commission deems Park One's retention, ownership, and/or operation of a wastewater treatment facility for purposes described below causes Park One to be a public utility, the Parties believe this Commission should grant to Park One such operating authority, and only such operating authority, as is necessary to allow Park One to retain, own, and operate its wastewater treatment plant as described below. In support of such Settlement, the

Parties acknowledge that the terms and conditions set forth below and in the Sale and Purchase Agreement between Park One and Yorktown (the "Agreement") are reasonable, are the result of negotiations relative to the position each has taken or would take in further proceedings in this cause, and should be accepted without modification in a final order of the Commission in this cause. In the interest of efficiency, saving the limited resources of the Commission, and recognizing the reasonableness of the overall results produced by this Settlement, the Parties herein stipulate and agree as follows:

1. Park One acquired all of the tangible and intangible assets of Mount Pleasant Utilities pursuant to a sale in satisfaction of the judgment of the Delaware Circuit Court No. 5, Cause No. 18CO5-0708-MF-109.

2. Subject to the approval of this Commission of this Settlement, Park One will sell, free of all liens, claims and encumbrances, all assets owned and used by it to provide potable water service and all assets used to provide sanitary sewage collection service in and around the intersection of Interstate 69 and State Road 332 in Delaware County. The terms of the Agreement are incorporated here by reference as if fully set forth in this Settlement.

3. The Commission should issue a final Order approving Park One's transfer of its water and sewer assets pursuant to the terms of the Agreement. Following the closing of the transaction contemplated by the Agreement, Park One's certificates of territorial authority, franchises, and indeterminate permits shall be deemed to be surrendered.

4. Following the closing as provided in the Agreement, the Assets (as defined therein) will be owned and operated by Yorktown, an Indiana municipality who has withdrawn from the Commission's jurisdiction. Immediately after the closing, Yorktown shall operate such

Assets and continue to provide all necessary potable water and sanitary sewer collection service to all customers currently served by Park One.

5. Yorktown will collect sewage from the existing customers and, for a period of twenty-four (24) months, deliver the same to the wastewater treatment plant to be retained by Park One. In addition, Yorktown will collect sewage from the single customer located in the northwest corner of Interstate 69 and State Road 332 and deliver the same to the wastewater treatment plant to be retained by Park One. Park One has agreed to treat such sewage under certain limitations as to quantity, quality, and duration as described in the Agreement.

6. The Parties further agree that Park One's wastewater treatment plant can and should be used to accept hauled septage and wastewater from third-party waste haulers. Acceptance and treatment of such hauled septage and wastewater throughout Indiana is currently provided by various entities without public utility designation. Such entities choose the waste haulers with whom to contract; limit both the quantity and quality of wastewater that they will accept; negotiate the terms on which treatment service will be provided; are regulated by the Indiana Department of Environmental Management (IDEM); and are private enterprises not impressed with any public interest which requires designation as a public utility or regulation by this Commission. The Parties believe that Park One's use of its wastewater treatment facility will not be focused on a specific geographic area, will have no duty to serve the general public, will not gain any rights typically provided a public utility, and therefore should have no responsibilities of a public utility. As such, the Parties believe that retention, ownership, and operation of the wastewater treatment plant only should not cause Park One to be deemed a public utility. But, if so deemed by the Commission, the Parties believe that Park One should be granted such operating authority, and only such operating authority, as would be required for

Park One to (i) accept and treat septage and wastewater hauled to its facilities by third parties as allowed by IDEM and (ii) accept and treat wastewater collected by Yorktown and transported to Park One's wastewater treatment facility under the terms as provided by Sections 5.4 and 5.5 of the Agreement. Further, the Parties believe that the Commission should acknowledge Park One's request to withdraw from the regulation of the Commission under I.C. 8-1-2.7-1 and grant such withdrawal which the Parties hereto support.

7. The Parties acknowledge that in addition to treating wastewater delivered to it by the Town of Yorktown, Park One intends to own and operate the wastewater treatment plant for purposes of accepting and treating septage and wastewater hauled to its facilities by third parties as allowed by IDEM. Yorktown, Board of Commissioners, DCRWD and MSD agree that they will not take or cause to be taken any action that would limit the acceptance or treatment of such hauled septage and wastewater. Further, these same local government intervenors agree that they will not attempt to acquire by eminent domain such wastewater treatment plant or any portion of the real estate included in the Excluded Assets (as defined in the Agreement) except for easements described in Section 5.6 of the Agreement..

8. The Parties acknowledge that time is of the essence for approval of the Agreement by this Commission.

9. The Parties acknowledge the evidence of record in this cause that new and necessary jobs in Delaware County await resolution of this matter by the Commission and therefore jointly ask the Commission to enter a final order accepting this Settlement and the incorporated Agreement as soon as possible.

10. The Parties believe that the Petitioner's direct testimony and exhibits, the Intervenor's and Petitioner's supplemental testimony and exhibits, along with this Settlement,

constitute substantial evidence sufficient to support this Settlement and provide an adequate evidentiary basis upon which the Commission may make findings of fact and conclusions of law necessary to issue a final order adopting and approving the Settlement, including the Agreement.

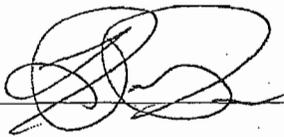
11. The Parties further acknowledge and agree as follows:

- a. This Settlement is conditioned upon and subject to its acceptance and approval by the Commission in its entirety without change or condition that is unacceptable to any party. Each term of the Settlement is in consideration and support of each and every other term.
- b. This Settlement is a result of compromise by the Parties within the settlement process. Neither the making of this Settlement, the execution of the Agreement, nor any of the individual provisions or stipulations within the Settlement or the Agreement shall constitute an admission or waiver by any party in any other proceeding; nor shall they constitute an admission or waiver in this proceeding if this Settlement is not accepted by the Commission. The Settlement, the Agreement, or any of the individual terms thereof shall not be used as precedent in any proceeding or for any other purpose except to the extent necessary to implement or enforce its terms.
- c. The communications and discussions among the Parties, along with the materials produced and exchanged during the negotiation of this Settlement relate to offers of settlement and compromise and as such are all privileged and confidential. Such material cannot be used in this or any other proceeding without the agreement of the Parties herein.

- d. The undersigned represent and agree that they are fully authorized to execute this Settlement on behalf of their designated clients who will thereafter be bound by this Settlement.
- e. The Parties hereto will either support; or not oppose, seek rehearing, reconsideration, and/or appeal the Commission's order accepting and approving this Settlement in accordance with its terms.

Accepted and agreed this 22nd day of March, 2011.

PARK ONE/332 WATER COMPANY, INC.

By:  _____
Its: D. Darvey _____

TOWN OF YORKTOWN

By: _____
Its: _____

DELAWARE COUNTY BOARD
OF COMMISSIONERS

By: _____
Its: _____

DELAWARE COUNTY REGIONAL
WASTEWATER DISTRICT

By: _____
Its: _____

- d. The undersigned represent and agree that they are fully authorized to execute this Settlement on behalf of their designated clients who will thereafter be bound by this Settlement.
- e. The Parties hereto will either support; or not oppose, seek rehearing, reconsideration, and/or appeal the Commission's order accepting and approving this Settlement in accordance with its terms.

Accepted and agreed this _____ day of March, 2011.

PARK ONE/332 WATER COMPANY, INC.

By: _____

Its: _____

TOWN OF YORKTOWN

By: Nicholas Kile

Its: Attorney

DELAWARE COUNTY BOARD OF COMMISSIONERS

By: Nicholas Kile

Its: Its Attorney

DELAWARE COUNTY REGIONAL WASTEWATER DISTRICT

By: _____

Its: _____

MUNCIE SANITARY DISTRICT

By:

[Handwritten Signature]

Its:

[Handwritten Signature]

OFFICE OF UTILITY
CONSUMER COUNSELOR

By: _____

Its: _____

MUNCIE SANITARY DISTRICT

By: _____

Its: _____

OFFICE OF UTILITY
CONSUMER COUNSELOR

By: Laura M. Hatz-Bradley

Its: DEPUTY CONSUMER COUNSELOR
App # 13006-29

SALE AND PURCHASE AGREEMENT

BETWEEN

TOWN OF YORKTOWN
("BUYER")

AND

PARK ONE/332 WATER COMPANY, INC.
("SELLER")

DATED AS OF MARCH 15, 2011

IURC
JOINT

EXHIBIT No. 4-25-11 JL

DATE REPORTER

OFFICIAL
EXHIBITS

SALE AND PURCHASE AGREEMENT

THIS SALE AND PURCHASE AGREEMENT ("**Agreement**") is made as of _____, 2011 (the "**Effective Date**") by and between PARK ONE/332 WATER COMPANY, INC., an Indiana corporation ("**Seller**") and the TOWN OF YORKTOWN ("**Buyer**"). Seller and Buyer are referred to herein individually as a "**Party**" and collectively as the "**Parties.**"

RECITALS

1. Seller owns, operates and maintains water and sewer utility properties providing water and sewer utility service in the vicinity of the Interstate 69/ State Road 332 interchange in Delaware County, Indiana.
2. Seller filed a petition, assigned Cause No. 43958, with the Indiana Utility Regulatory Commission ("**IURC**") requesting recognition as a public utility; acknowledgement of holding various rights, powers, privileges, and franchises of Mount Pleasant Utilities pursuant to Indiana Code § 8-1-2-82; and requesting transfer of certain certificates of territorial authority previously issued by the IURC to the prior owner of Seller's utility assets to the extent necessary. Buyer and other interested parties (collectively, the "**Local Government Intervenors**") petitioned to intervene in the proceeding, which petition was granted by the IURC. The parties to the proceeding have negotiated a settlement of all issues in Cause No. 43958.
3. As a part of their settlement in Cause No. 43958, the Parties desire to enter an agreement whereby (1) Seller will sell certain of its water utility assets and sewer utility collection assets to Buyer and assign Seller's interests in those assets to Buyer, (2) for a period of twenty-four (24) months following Closing (defined below), Seller will accept wastewater collected by the Sewer Collection System (defined below), and (3) after the expiration of the 24-month period described above, Seller will continue to accept wastewater collected by the Sewer Collection System with respect to a commercial sewer customer located on the west side of Interstate 69, north of State Road 332.

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants contained herein and in exchange for other consideration the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

AGREEMENT

Article 1. DEFINITIONS AND RULES OF INTERPRETATION

Section 1.1 **Definitions.** The following terms shall have the meanings set forth below:

"**Affiliate**" of any named person or entity means any other person or entity that controls, is under the control of, or is under common control with, the named entity. The term "**control**" (including the terms "controls," "under the control of," and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management of the policies of a person or entity, whether through ownership interest, by contract or otherwise.

"**Assets**" is defined in Section 2.1.

"Business Day" means any day other than a Saturday, Sunday or any day on which banks located in Indiana are authorized or obligated to close.

"Business Hours" means 9:00 am to 5:00 pm Eastern Time on any Business Day.

"Close of the Business Day" means 5:00 pm Eastern Time on a Business Day.

"Closing" means consummation of the sale and purchase provided for in this Agreement.

"Encumbrance" means any claim, lien, option, pledge, security interest, mortgage or similar restriction.

"Environmental Claim" means any claim, loss, cost, expense, liability, fine, penalty or damage arising out of or related to any violation of Environmental Law.

"Environmental Law" means all applicable Laws of any Governmental Authority having jurisdiction over the Assets of the Project Company relating to pollution or protection of public health and the environment or to the handling, emissions, discharge, release, registration, assessment or monitoring of, or exposure to, Hazardous Materials, including but not limited to the Federal Water Pollution Control Act (33 U.S.C. §1251 et seq.), Resources Conservation and Recovery Act (42 U.S.C. §6901 et. seq.), Safe Drinking Water Act (42 U.S.C. §3000(f) et. seq.), Toxic Substances Control Act (15 U.S.C. §2601 et seq.), Clean Air Act (42 U.S.C. §7401 et. seq.), Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §9601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. §1801, et seq.), the Clean Water Act (33 U.S.C. §1311, et seq.), the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. §11001, et seq.) and the Occupational Safety and Health Act of 1970 (29 U.S.C. §651, et seq.).

"Excluded Assets" is defined in Section 2.2.

"Governmental Authority" means any federal or state body; any federal or state regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any authority or power of such federal or state governments; or any court of law.

"Hazardous Materials" means any substance, material, gas, or particulate matter that is regulated by any Governmental Authority as an environmental pollutant that is dangerous to public health, public welfare, or the environment, including protection of non-human forms of life, land, water, groundwater, and air. Such Hazardous Materials shall include any material or substance that is: (a) defined as "toxic," "polluting," "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," "solid waste" or "restricted hazardous waste" under any provision of law; (b) petroleum, including any fraction, derivative or additive; (c) asbestos; (d) polychlorinated biphenyls; (e) radioactive material; (f) designated as a "hazardous substance" pursuant to the Clean Water Act, 33 U.S.C. §1251 et seq. (33 U.S.C. §1251); (g) defined as a "hazardous waste" pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq. (42 U.S.C. §6901); (h) defined as a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 et seq. (42 U.S.C. §9601); (i) defined as a "chemical substance" under the Toxic Substances Control Act, 15 U.S.C. §2601 et seq. (15 U.S.C. §2601); or (x) defined as a pesticide under the federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §136 et seq. (7 U.S.C. §136).

"IDEM" is defined as the Indiana Department of Environmental Management.

"IURC" is defined in the Recitals to this Agreement.

“Law” means any federal or state law, statute or ordinance, or any rule, regulation, or order, promulgated by any Governmental Authority having the effect and force of law.

“Permits” means all licenses, permits, orders, certificates of authority, authorizations, approvals, registrations, franchises and similar consents granted by a Governmental Authority.

“Prudent Operating and Maintenance Practice” means those practices, methods and acts which (a) when engaged in are commonly used in prudent engineering and operations to operate water utility or sewer collection utility properties, as applicable, and other mechanical and civil facilities lawfully and with safety, reliability, efficiency and expedition or (b) in the exercise of reasonable judgment considering the facts known when engaged in, could have been expected to achieve the desired result consistent with applicable Law, safety, reliability, efficiency and expedition.

“Purchase Price” is defined in Section 2.3.

“Real Property” is defined in Section 2.1(c).

“Release” means any release, spill, emission, migration, leaking, pumping, injection, deposit, disposal or discharge of any Hazardous Materials into the environment, to the extent giving rise to liability under applicable Environmental Laws.

“Sewer Collection System” is defined in Section 2.1(a).

“Third Party Claim” is defined in Section 9.4.

“Water System” is defined in Section 2.1(b).

Section 1.2 Rules of Interpretation. Except as otherwise specified in this Agreement, the following rules of interpretation shall apply to all provisions of this Agreement.

- (a) The masculine shall include the feminine and neuter.
- (b) Words using the singular or plural number also include the plural or singular number, respectively.
- (c) The terms “hereof,” “herein,” “hereby,” and derivative or similar words refer to this entire Agreement.
- (d) The term “including” or “includes” means “including without limitation” or “includes without limitation.”
- (e) Reference to any person or entity includes the person’s or entity’s successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement.
- (f) Reference to any agreement (including this Agreement), document or instrument means the agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof.
- (g) Reference to any Law means such Law as amended, modified, codified or reenacted, in whole or in part, and in effect from time to time.
- (h) References to “Articles,” “Sections,” or “Exhibits” shall be to articles, sections, or exhibits of this Agreement unless otherwise specified.

(i) The Exhibits attached hereto are incorporated in and are intended to be a part of this Agreement. In the event of a conflict between the terms of any Exhibit and the terms of this Agreement, the terms of this Agreement shall govern.

(j) This Agreement was negotiated and prepared by both Parties with the advice and participation of counsel. The Parties have agreed to the wording of this Agreement and none of the provisions hereof shall be construed against one Party on grounds that such Party is the author of this Agreement or any part hereof.

Article 2. CONVEYANCE AND PURCHASE PRICE

Section 2.1 Conveyance and Transfer. Upon the terms and subject to the conditions set forth in this Agreement, at the Closing, Seller shall sell, convey, assign, transfer and deliver to Buyer, and Buyer shall purchase and acquire from Seller, free and clear of any Encumbrances, all of Seller's right, title and interest in and to all of Seller's property and assets used to provide water utility and sewer collection utility service to customers in the vicinity of Interstate 69 in Delaware County, Indiana, including the following (but excluding the Excluded Assets):

(a) all of Seller's sewer collection facilities located under and east of Interstate 69 and all of Seller's sewer collection facilities serving the commercial property north of State Road 332 in Delaware County, Indiana (the "**Sewer Collection System**");

(b) all of Seller's water production and water distribution facilities (the "**Water System**");

(c) all real property and all easements or rights-of-way now used and required to operate the Sewer Collection System and the Water System where they are presently located, as more particularly described on **Exhibit 2.1** hereto (the "**Real Property**");

(d) copies of all data and records related to the operation of the Sewer Collection System and the Water System in the possession of Seller as of Closing;

(e) copies of all Permits and all pending applications therefore, renewals thereof or exemptions therefrom, in each case to the extent assignable or transferable to Buyer which are reasonable and necessary to the operation of the Sewer Collection System and the Water System in the possession of Seller as of Closing; and

(f) all of the intangible rights and property of the Seller utilized in the operation of the Sewer Collection System and the Water System except those referenced as Excluded Assets or necessary to be retained by Seller for the use and operation of the Excluded Assets.

All of the property and assets to be transferred to Buyer hereunder are herein referred to collectively as the "**Assets**."

Section 2.2 Excluded Assets. Notwithstanding anything to the contrary contained in Section 2.1, the following assets of the Seller (collectively, the "**Excluded Assets**") are not part of the sale and purchase contemplated hereunder, are excluded from the Assets and shall remain the exclusive property of Seller after the Closing:

(a) Seller's wastewater treatment plant and associated improvements located at the southwest corner of the intersection of Interstate 69 and State Road 332;

- (b) the parcel(s) of real property described as parcel A of the legal description attached to the Warranty Deed recorded in Delaware County as document 2009R15850;
- (c) all cash, cash equivalents and short-term investments, and all accounts receivable arising prior to the Closing Date;
- (d) all insurance policies and the rights thereunder;
- (e) the stock and minute books of Seller;
- (f) rights to any refunds, deferrals, or abatements related to federal, state or local taxes;
- (g) rights under any contracts associated with the Excluded Assets;
- (h) all right, title, and interest in and to the name Park One/332 Water Company; and
- (i) all trademarks, patents, trade names, copyrights or applications therefore, inventions, trade secrets, and confidential business information related to the Excluded Assets.

Section 2.3 Purchase Price; Allocation. The purchase price for the Assets shall be Two Hundred Seventy Thousand Dollars (\$270,000) (the "**Purchase Price**"), to be paid by Buyer to Seller at the Closing. The Purchase Price shall be allocated in accordance with **Exhibit 2.3** hereto.

Section 2.4 Seller's Liabilities. Seller shall be responsible for all liabilities and obligations of, or pertaining to, the Assets arising or accruing through and including the Closing Date and shall remain liable after Closing for any and all liability for taxes, penalties, fines, obligations arising out of any occurrences or actions taken by Seller, or failure to act, arising or accruing through and including the Closing Date. Seller shall also pay and satisfy in full all accounts payable relating to the Assets which are accrued or accruable as of the Closing Date if they represent services or goods received by Seller prior to the Closing.

Article 3. CLOSING

Section 3.1 Closing. The Closing shall take place as soon as possible after thirty (30) days has passed following receipt of IURC approval described in Section 4.1 at the offices of Buyer's counsel, Barnes & Thornburg LLP, 11 S. Meridian Street, Indianapolis, Indiana 46204 at a date and time mutually agreeable to the Parties (the "**Closing Date**").

Section 3.2 Closing Conveyances. At the Closing, Seller shall deliver to Buyer such deeds, bills of sale, easements, easement assignments, and other instruments of transfer and conveyance as may be reasonably requested by Buyer, each in form and substance satisfactory to Buyer and its legal counsel and executed by Seller for the sole purpose of conveying and transferring the Assets pursuant to the terms of this Agreement. Seller shall also represent and warrant at Closing that there are no Encumbrances with respect to the Assets, and shall execute a Vendor's Affidavit. All documents to which the Parties are entitled under this Agreement, unless otherwise specified herein, shall be duly delivered at or before the Closing.

Section 3.3 Records, Plans and Other Documents. At the Closing, Seller shall deliver to Buyer, to the extent such documents exist, and are in the possession of Seller, copies of Sewer Collection System and Water System technical information, collection and distribution system maps, continuing property records, valve records, customer account and service records, reports

submitted to state agencies, maintenance records on all sewer lines and mains, and all other records and documents relating to the Assets. Seller shall not be responsible for creating any records, plans, or other documents beyond those in existence and in Seller's possession as of the date Seller executes this Agreement.

Section 3.4 Payment of Purchase Price. At the Closing, Buyer shall deliver to Seller the Purchase Price in immediately available funds.

Article 4. CONDITIONS TO CLOSING

The obligations of the Parties to close the transaction shall be contingent on satisfaction of the following conditions and agreements:

Section 4.1 Regulatory Approvals. Buyer and Seller shall have received all necessary authorizations and approvals from the IURC with respect to the transactions contemplated by this Agreement under terms and conditions satisfactory to Buyer and Seller, including:

- (a) Approval of the transfer of the Sewer Collection System and the Water System to Buyer as contemplated hereby;
- (b) Approval of the surrender of Seller's franchises, licenses, certificates of territorial authority or indeterminate permits for the provision of utility service except for such limited permits as the IURC may require for the service described in Section 5.4, Section 5.5 and Section 5.6 of this Agreement.

The Parties agree to cooperate with each other in obtaining such approvals on an expedited basis, including the submission of testimony to the IURC in support thereof within five business days following the execution of this document by Seller.

Section 4.2 Other Approvals or Consents.

- (a) Buyer shall have obtained the appraisals required pursuant to Ind. Code § 5-22-10-19 and Ind. Code § 36-1-10.5-5.
- (b) Buyer's Town Council shall have first adopted an ordinance pursuant to Ind. Code § 36-9-23-10 and Ind. Code § 8-1.5-2-13 which, among other things, approves this Agreement and the acquisition of the Water System and the Sewer Collection System pursuant thereto.
- (c) Seller's Board of Directors shall have authorized execution of this Agreement.

Section 4.3 Easements. Seller shall, at Seller's sole expense, provide the easements identified on Exhibit 2.1. Seller shall cooperate with Buyer in obtaining all consents which may be required for the assignment of Seller's easements to Buyer.

Section 4.4 Additional Documents From Seller. Seller shall have caused the documents and instruments required by Section 3.2 and the following documents to be delivered (or tendered subject only to Closing) to Buyer:

- (a) An opinion of counsel to Seller, dated the Closing Date, in form and substance reasonably satisfactory to Buyer, to the effect that:
 - (i) All consents, approvals and authorizations which are necessary to Seller's performance in connection with the transactions contemplated by the Agreement have been received; and

(ii) The execution and delivery of this Agreement by Seller and the consummation of the transaction contemplated hereby are within the corporate power of Seller, have been duly authorized by all necessary action of Seller, and this Agreement has been duly executed by Seller and constitutes a valid and binding obligation of Seller enforceable in accordance with its terms.

(b) Such other documents as Buyer may reasonably request for the purpose of facilitating the consummation of the transactions contemplated by this Agreement.

Section 4.5 Additional Documents From Buyer Buyer shall have caused to be delivered to Seller such other documents as Seller may reasonably request for purposes of facilitating the consummation of the transactions contemplated by this Agreement.

Article 5. COVENANTS

Section 5.1 Conduct of Business Pending Closing. Between the date of this Agreement and the Closing, Seller shall not, without the written consent of Buyer, dispose of or encumber any of the Assets. Pending the Closing, Seller shall operate and maintain the Assets only in the ordinary course of business, consistent with Prudent Operating and Maintenance Practice. Pending the Closing, Seller shall not enter into any contractual agreements relating to the Assets or the provision of sewer or water service thereby without Buyer's written consent other than in connection with normal and usual commitments in the ordinary course of business for the purchase of materials and supplies.

Section 5.2 Access. Pending the Closing, upon at least two (2) Business Days prior notice and subject to the safety rules and regulations of Seller, Seller will provide Buyer and its authorized agents, employees and inspectors with access to the Assets at the request of Buyer.

Section 5.3 Insurance. Seller shall continue to maintain its current insurance coverage on the Assets through and including the Closing Date, after which time all insurance coverage with respect to the Assets shall be the obligation of Buyer.

Section 5.4 Interim Treatment Services. The wastewater collected by the Sewer Collection System is currently transported through the Sewer Collection System to Seller's wastewater treatment plant for treatment.

(a) Seller agrees to continue to provide treatment services to Buyer at Seller's wastewater treatment plant for all wastewater generated in the Park One/332 Business Park collected by the Buyer through the Sewer Collection System until the expiration of twenty-four (24) months after the Closing provided such wastewater does not exceed the following limitations: Brevini's sanitary wastewater does not exceed 4,000 GPD, no industrial wastewater is provided by Buyer to Seller, and all wastewater collected by Buyer through the Sewer Collection System does not exceed 31,000 GPD.

(b) During the period from Closing until the expiration of the twenty-four (24) months, Buyer shall pay to Seller a monthly rate of \$10.00 per thousand gallons of wastewater delivered to Seller for treatment (as measured by the amount of water delivered to the users) pursuant to this Section 5.4. The rate provided herein shall continue to be the applicable rate notwithstanding Seller's withdrawal from IURC jurisdiction as contemplated by Section 5.7.

(c) Following the 24-month period described in this Section 5.4, and until such time as it is again needed to convey wastewater from one side of Interstate 69 to the

other, Buyer shall cause the sewer main underlying the Interstate 69 right-of-way to be disconnected with valves from the sewer mains on either side of the Interstate 69 right-of-way.

(d) In addition to the above, because Buyer will be in control of the Sewer Collection System and will have information not available to Seller, Buyer will regularly update Seller on any changes in sanitary sewage flow through the Sewer Collection System reasonably anticipated by Buyer. Such information will be that information available to Buyer necessary for Seller to reasonably plan for the operation of its wastewater treatment plant as described in Section (a) above. Such information will include, without limitation, to the extent such information is available to Buyer, changes related to existing customers within the Park One 332 Business Park connected to the Sewer Collection System following Closing, such as an increase or decrease in the number of employees, a change in the hours of operation, improvements by a customer which could cause changes in the amount of sanitary wastewater flow into the Sewer Collection System, and other information sought by Seller from Buyer from time to time which may relate to the operation of Seller's wastewater treatment plant. In addition thereto, Buyer will regularly update Seller on its progress in constructing a new sewage transmission line connecting the Park One 332 Business Park to the Town of Yorktown's wastewater treatment plant.

Section 5.5 Continued Treatment Services - MacAllister. Seller currently serves one sewer customer, MacAllister Rentals ("MacAllister") located on the west side of Interstate 69, north of State Road 332 in Delaware County, Indiana.

(a) Seller agrees to continue to provide treatment services at its wastewater treatment plant for all wastewater collected by the Buyer and transported by Buyer to Seller's wastewater treatment plant from MacAllister until such time as either (a) the service is no longer needed; or (b) the character or quantity of wastewater currently generated by MacAllister is changed.

(b) Except as provided in Section 5.4, Buyer shall not deliver and Seller will have no obligation to treat wastewater collected from any other customers except for MacAllister. Following the 24-month period provided in Section 5.4, Buyer shall pay Seller for wastewater delivered for treatment by Buyer to the Seller pursuant to this Section at a monthly rate of \$10.00 per 1,000 gallons or as otherwise agreed by Seller and Buyer. The rate provided herein shall continue to be the applicable rate notwithstanding Seller's withdrawal from IURC jurisdiction as contemplated by Section 5.7.

Section 5.6 Continued Treatment Services – Third Parties. The Buyer acknowledges that Seller or its assigns will continue to own and operate the wastewater treatment plant for purposes of accepting hauled septage and wastewater from third parties as allowed by IDEM. Buyer hereby agrees that it will not take or cause to be taken any action that would limit the acceptance and treatment of such hauled septage and wastewater by Seller. Buyer shall not attempt to acquire by eminent domain any interest in the Excluded Assets except for easements which may be reasonably necessary for future sewer mains and extensions, provided such easements do not unreasonably interfere with the operation of the wastewater treatment plant or use of the Excluded Assets as provided in this Section 5.6.

Section 5.7 IURC Determination Regarding Continued Treatment Services. Buyer and Seller shall jointly request the IURC in Cause No. 43958 to issue a final order on or before

April _____, 2011, which includes a finding that providing the treatment services contemplated by Section 5.4, Section 5.5 and Section 5.6 will not render Seller a "public utility" as defined by Indiana law and that all certificates of territorial authority, franchises and indeterminate permits are surrendered. To the extent that the IURC indicates that it is unwilling to issue the final order with the above-described finding, Buyer agrees that it will support Seller's request that Seller be provided any necessary certificate or permit for the limited purpose of operating its wastewater treatment plant and adjoining facilities as contemplated in Section 5.4, Section 5.5 and Section 5.6, and will support, for the limited purposes as contemplated in this Agreement, all action taken by Seller pursuant to Ind. Code § 8-1-2.7-1, *et seq.*

Section 5.8 Post-Closing Effect. As of the Closing, Seller shall no longer have any service area, franchises, licenses, certificates of territorial authority, or indeterminate permits for the provision of utility service, except for such limited permits as may be required for the service described in Section 5.4, Section 5.5, Section 5.6 and Section 5.7.

Section 5.9 Records. Each Party will keep complete and accurate records and data as reasonably required by either Party for the purpose of proper administration of this Agreement, including without limitation such records regarding ownership, management, control, operation and maintenance of the Assets as may be required by any applicable Law. Each Party will maintain those records for a minimum of six (6) years and for any additional length of time required by any applicable Law. Each Party will, upon at least five (5) Business Days written request of the other Party, provide the other Party with prompt reasonable access to records and data that relate to this Agreement or either Party's performance of its obligations hereunder.

Article 6. SELLER'S WAIVER OF HEARING AND JUDICIAL REVIEW

Section 6.1 Waiver of Hearing under Ind. Code 8-1.5-2-10. Seller hereby waives any and all rights to notice and hearing under Ind. Code § 8-1.5-2-10 with respect to the adoption of the ordinance described in Section 4.2(b) adopted solely for the purpose of acquiring the Water System and the Sewer Collection System pursuant to this Agreement.

Article 7. REPRESENTATIONS AND WARRANTIES

Section 7.1 Seller's Representations and Warranties. Seller hereby represents and warrants that as of the date hereof:

(a) The execution, delivery, and performance of its obligations under this Agreement by Seller have been duly authorized by all necessary Seller action, and to Seller's knowledge, do not and will not:

(i) require any consent or approval of any Governmental Authority, other than any consent or approval which has been obtained and is in full force and effect and any consent or approval to be obtained prior to Closing in accordance with Article 4;

(ii) violate any provision of law, rule, regulation, order, writ, judgment, injunction, decree, determination, or award currently in effect having applicability to Seller or violate any provision in any charter documents of Seller, the violation of which could have a material adverse effect on the ability of Seller to perform its obligations under this Agreement;

(iii) result in a breach or constitute a default under Seller's charter documents, or under any agreement relating to the management or affairs of

Seller or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Seller is a party or by which Seller or its properties or assets may be bound or affected; or

(iv) result in, or require the creation or imposition of any Encumbrance of any nature (other than as may be contemplated by this Agreement) upon or with respect to any of the Assets of Seller now owned or hereafter acquired prior to Closing, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this Agreement.

(b) This Agreement is a valid and binding obligation of Seller, enforceable against Seller in accordance with its terms subject, as to enforcement, to bankruptcy, insolvency, reorganization and other Laws affecting creditors' rights generally and to general principles of equity (whether in a proceeding at law or in equity). Seller has the absolute and unrestricted right, power and authority to execute and deliver this Agreement and the documents required to be executed and delivered by Seller hereby and to perform its obligations hereunder and thereunder.

(c) Except for those consents and approvals to be obtained prior to Closing in accordance with Article 4, all approvals, authorizations, consents, or other action required by any Governmental Authority to authorize Seller's performance of this Agreement have been duly obtained and are in full force and effect.

(d) Other than Cause No. 43958 before the IURC, there is no pending or, to Seller's knowledge, threatened action or proceeding affecting Seller before any court, Governmental Authority or arbitrator that could reasonably be expected to have a material adverse effect on the financial condition or operations of Seller or the ability of Seller to perform its obligations hereunder, or that purports to affect the legality, validity or enforceability of this Agreement.

(e) To Seller's knowledge, there are no contracts, leases, licenses or permits relating to the operation of the Assets except those listed on **Schedule 7.1(e)**.

(f) Seller has good and marketable title to all of the Assets and will convey title to the Assets free and clear of all Encumbrances.

(g) To Seller's knowledge, **Exhibit 2.1** contains a correct legal description and tax parcel identification number of all tracts and parcels included in the Assets.

(h) To Seller's knowledge, the Assets are in good operating condition and repair in accordance with Prudent Operating and Maintenance Practice (subject only to ordinary wear and tear arising out of the use for which the Assets were designed), and are free from latent and patent defects.

(i) To Seller's knowledge, Seller has complied in all respects with all Laws with respect to the Assets and the operations related thereto.

(j) To Seller's knowledge, no notices of violation of Law relating to the Assets and operations related thereto have been entered into or received by the Seller, and to Seller's knowledge, there is no basis for the entering of any such notice.

(k) Environmental Matters.

(i) To Seller's knowledge, **Schedule 7.1(k)(i)** sets forth all Permits under Environmental Law held by Seller that are required for the ownership and operation of the Assets in the manner in which they are currently owned and operated. To Seller's knowledge, all such Permits under Environmental Law are in full force and effect.

(ii) To Seller's knowledge, Seller has operated the Assets in compliance with all applicable Environmental Laws.

(iii) To Seller's knowledge, Seller has not been served with written notice of any Environmental Claims that are currently outstanding, and there are no Environmental Claims pending against the Seller with respect to the Assets under any Environmental Laws.

(iv) To Seller's knowledge, there has been no Release of any Hazardous Material at or from the Sewer Collection System or the Water System in connection with the Seller's operation of the Assets that would result in an Environmental Claim.

With respect to any representation or warranty that is qualified by the words "to Seller's knowledge," the Parties acknowledge that those qualifying words mean to limit Seller's representation to the knowledge or information of current officers or employees of Seller as of the date of the execution of this Agreement after due inquiry and reasonable investigation, that the matter being so represented or warranted is correct. The reference to current officer or employee herein acknowledges that the ownership and management of the Seller changed as of August 31, 2010, and Seller is making no representation relative to Seller's knowledge prior thereto.

Section 7.2 Buyer's Representations and Warranties. Buyer hereby represents and warrants the following:

(a) Buyer has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this Agreement.

(b) The execution, delivery, and performance of its obligations under this Agreement by Buyer have been duly authorized by all necessary Buyer action, and do not and will not:

(i) require any consent or approval of Buyer's Town Council, other than that which has been obtained and is in full force and effect and any consent or approval to be obtained prior to Closing in accordance with Article 4;

(ii) violate any provision of law, rule, regulation, order, writ, judgment, injunction, decree, determination, or award currently in effect having applicability to Buyer or violate any provision in any charter documents of Buyer, the violation of which could have a material adverse effect on the ability of Buyer to perform its obligations under this Agreement;

(iii) result in a breach or constitute a default under Buyer's charter documents, or under any agreement relating to the management or affairs of Buyer or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Buyer is a party or by which Buyer or its properties or assets may be bound or affected, the breach or default of which could reasonably

be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this Agreement; or

(iv) result in, or require the creation or imposition of any Encumbrance upon or with respect to any of the assets or properties of Buyer now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligation under this Agreement.

(c) This Agreement is a valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms subject, as to enforcement, to bankruptcy, insolvency, reorganization and other Laws affecting creditors' rights generally and to general principles of equity (whether in a proceeding at law or in equity). Buyer has the absolute and unrestricted right, power and authority to execute and deliver this Agreement and the documents required to be executed and delivered by Buyer hereby and to perform its obligations hereunder and thereunder.

Article 8. TERMINATION

Section 8.1 Termination Events By notice given prior to or at the Closing, subject to Section 8.2, this Agreement may be terminated as follows:

(a) By Buyer if a material breach of any provision of this Agreement has been committed by Seller and such breach has not been waived by Buyer;

(b) By Seller if a material breach of any provision of this Agreement has been committed by Buyer and such breach has not been waived by Seller;

(c) By Buyer if any condition in Article 4 has not been satisfied as of the Closing Date or if satisfaction of such a condition by the Closing Date becomes impossible (other than through the failure of Buyer to comply with its obligations under this Agreement), and Buyer has not waived such condition on or before such date;

(d) By either Party under the conditions specified in Section 10.4; or

(e) By mutual agreement of Buyer and Seller.

Section 8.2 Effect of Termination. Each Party's right of termination under Section 8.1 is in addition to any other rights it may have under this Agreement or otherwise, and the exercise of such right of termination will not be an election of remedies. If this Agreement is terminated pursuant to Section 8.1, all obligations of the Parties under this Agreement will terminate, except (a) the obligations of the Parties in this Section 8.2, Article 9, Article 11, and Article 14 (except for Section 14.8) will survive; and (b) the obligations of the Parties pursuant to Section 5.6 will survive only if the termination occurs after the Closing and is pursuant to Section 8.1(d) or (e). *Provided, however,* that if this Agreement is terminated because of a breach of this Agreement by the nonterminating party, the terminating party's right to pursue all legal remedies will survive such termination unimpaired, *provided, further,* that if this Agreement is terminated by Buyer because one or more of the conditions to the Buyer's obligations under this Agreement is not satisfied as a result of the Seller's failure to comply with its obligations under this Agreement, the Parties' right to pursue all legal remedies will survive such termination unimpaired.

Article 9. INDEMNITY

Section 9.1 **Indemnification by Seller** Seller will indemnify and hold harmless Buyer and its officials, agents and employees (collectively, the “**Buyer Indemnified Persons**”), and will reimburse the Buyer Indemnified Persons for any and all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys’ fees), whether or not involving a Third-Party Claim (collectively, “**Damages**”), arising from or in connection with:

(a) any breach of any representation or warranty made by Seller in (i) this Agreement, (ii) any transfer instrument or (iii) any other certificate, document, writing or instrument delivered by Seller pursuant to this Agreement;

(b) any breach of any covenant or obligation of Seller in this Agreement or in any other certificate, document, writing or instrument delivered by Seller pursuant to this Agreement;

(c) any liability arising out of the ownership or operation of the Assets prior to the Closing Date; or

(d) any services provided by Seller in whole or in part, from August 31, 2010, to the Closing Date.

Section 9.2 **Indemnification and Reimbursement by Seller--Environmental Matters.** In addition to the other indemnification provisions in this Article 9, Seller will indemnify and hold harmless Buyer and the other Buyer Indemnified Persons, and will reimburse Buyer and the other Buyer Indemnified Persons, for any Damages (including costs of cleanup, containment or other remediation) arising from or in connection with:

(a) any Environmental Claims arising out of or relating to: (i) the ownership or operation by Seller at any time from August 31, 2010 to the Closing Date of the Assets or (ii) any Hazardous Materials or other contaminants that were added to the Assets by Seller at any time on or after August 31, 2010 up to and including the Closing Date; or

(b) any bodily injury (including illness, disability and death, regardless of when any such bodily injury occurred, was incurred or manifested itself), personal injury, property damage (including trespass, nuisance, wrongful eviction and deprivation of the use of real property) or other damage of or to any Person or property in any way arising from any Hazardous Activity conducted by Seller with respect to the Assets on or after August 31, 2010 up to and including the Closing Date or from any Hazardous Material (i) that was known to Seller to be present on or after August 31, 2010 up to and including the Closing Date in or at the Assets or (ii) Released by Seller in or at the Assets at any time on or after August 31, 2010 up to and including the Closing Date.

(c) Buyer will be entitled to control any remedial action, any proceeding relating to an Environmental Claim and, except as provided in the following sentence, any other proceeding with respect to which indemnity may be sought under this Section 9.2. The procedure described in Section 9.4 will apply to any claim solely for monetary damages relating to a matter covered by this Section 9.2.

Section 9.3 **Indemnification and Reimbursement by Buyer.** Buyer will indemnify and hold harmless Seller and its officers and employees (collectively, “**Seller’s Indemnified Persons**”), and will reimburse Seller and Seller’s Indemnified Persons, for any Damages arising from or in connection with:

(a) any breach of any representation or warranty made by Buyer in this Agreement or in any certificate, document, writing or instrument delivered by Buyer pursuant to this Agreement;

(b) any breach of any covenant or obligation of Buyer in this Agreement or in any other certificate, document, writing or instrument delivered by Buyer pursuant to this Agreement; or

(c) any liability arising out of Buyer's ownership or operation of the Assets on or after the Closing Date except to the extent such Damages are caused by Seller's violation of any applicable Environmental Laws, or by the negligent or tortious acts, errors or omissions of Seller, its Affiliates, or its directors, officers, employees or agents and except to the extent such Damages are directly caused by Seller in connection with the continued treatment of wastewater collected by the Sewer Collection System pursuant to Section 5.4, Section 5.5 or Section 5.6.

Nothing in this Article 9 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. This indemnification obligation shall apply notwithstanding any negligent or intentional acts, errors or omissions of the Indemnified Party, but the Indemnifying Party's obligation to indemnify the Indemnified Party for Damages shall be reduced in proportion to the percentage by which the Indemnified Party's negligent or intentional acts, errors or omissions caused the Damages. Neither Party shall be indemnified for the portion of Damages resulting from its negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

Section 9.4 Procedures. If an Indemnified Party becomes aware of any matter it believes is indemnifiable hereunder involving any Damages claimed against the Indemnified Party by any third party (a "**Third Party Claim**"), the Indemnified Party shall give the Indemnifying Party prompt written notice of such Third Party Claim. Such notice shall: (a) provide the basis on which indemnification is being asserted; and (b) be accompanied by copies of all relevant pleadings, demands and other papers related to the Third Party Claim that are in the possession of the Indemnified Party. The Indemnifying Party shall have a period of fifteen (15) Business Days after receipt of such notice to respond regarding its intent to elect to defend the Third Party Claim. If the Indemnifying Party elects to defend the Third Party Claim, the Indemnifying Party shall be obligated to diligently defend the Third Party Claim, at its own expense, and by counsel reasonably satisfactory to the Indemnified Party. The Indemnified Party shall cooperate reasonably, at the expense of the Indemnifying Party, with the Indemnifying Party and its counsel in the defense, and the Indemnified Party shall have the right to participate fully, at its own expense, in the defense of such Third Party Claim. Any settlement of a Third Party Claim defended by the Indemnifying Party that does not contain a complete and unconditional release of the Indemnified Party without any admission or ongoing obligation of the Indemnified Party shall require the prior written consent of the Indemnified Party, such consent not to be unreasonably withheld or delayed. If the Indemnifying Party fails to respond or responds within the required fifteen (15)-Business Day period and declines or otherwise refuses to defend such Third Party Claim, the Indemnified Party shall be free, without prejudice to any of the Indemnified Party's rights hereunder, to compromise, settle or defend (and control the defense of) such Third Party Claim. In such case, the Indemnifying Party shall: (i) cooperate reasonably, at its own expense, with the Indemnified Party and its counsel in the defense against such Third Party Claim; (ii) have the right to participate fully, at its own expense, in the defense of such

Third Party Claim; and (iii) pay, or reimburse the Indemnified Party if the Indemnified Party has paid, the costs and expenses incurred by the Indemnified Party in connection with the defense of such Third Party Claim and any resulting settlement or award.

Section 9.5 Actual Loss. The amount of any Damages owed by the Indemnifying Party under this Article 9 shall be reduced by the net amount of any insurance proceeds paid to the Indemnified Party relating to such claim, after adjustment for any insurance payment obligations owed as a result of receipt of such indemnification.

Article 10. FORCE MAJEURE.

Section 10.1 No Liability; Definition. Neither Party shall be liable to the other Party for failure to perform an obligation under this Agreement to the extent such failure was caused by Force Majeure. The term "Force Majeure" as used in this Agreement means any cause not reasonably within the control of the Party claiming suspension, and shall include, but not be limited to, the following: (i) physical events such as acts of God, landslides, lightning, earthquakes, fires, storms or storm warnings, such as hurricanes, which result in evacuation of the affected area, droughts, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery or equipment or lines of pipe, or loss or failure of water supply; (ii) acts of others such as strikes, lockouts or other industrial disturbances, riots, sabotage, terrorism, insurrections or wars; provided that the settlement of strikes, lockouts or other industrial disturbances shall be within the sole discretion of the Party claiming such suspension; (iii) the failure or interruption of performance by suppliers by reason of such supplier's valid declaration of a Force Majeure permitted under the affected Party's contract with such supplier; (iv) actions or omissions of any Governmental Authority. Seller and Buyer shall make commercially reasonable efforts to mitigate the adverse impacts of a Force Majeure and to resolve the event or occurrence once it has occurred in order to resume performance.

Section 10.2 Exclusions. Neither Party shall be entitled to the benefit of the provisions of Force Majeure to the extent performance is affected by any or all of the following circumstances: (i) the Party claiming excuse failed to remedy the condition and to resume the performance of such covenants or obligations with reasonable dispatch; (ii) the failure of either Party to maintain and operate their respective facilities in accordance with Prudent Operating and Maintenance Practice; or (iii) to the extent such event could have been prevented or mitigated by a diligent operator or resulted from the negligence of a Party or its employees or contractors. Notwithstanding any other provision hereof, the settlement of strikes or lockouts shall be entirely within the discretion of the party having the difficulty, and the requirement that any Force Majeure shall be remedied with the exercise of due diligence shall not require the settlement of strikes or lockouts by a Party when such course is inadvisable in the discretion of such Party.

Section 10.3 Notice Required. The Party whose performance is prevented by Force Majeure must provide notice as promptly as reasonably possible to the other Party. Initial notice may be given orally; however, written notice with reasonably full particulars of the event or occurrence is required as soon as reasonably possible and in any event no later than 15 Business Days from the commencement of such Force Majeure. The notice will (i) identify the Force Majeure event, (ii) include an estimate of the duration of the event, and (iii) specify the likely effect on the Party's performance of its obligations under this Agreement. Upon providing written notice of Force Majeure to the other Party, the affected Party will be relieved of its obligations with respect to the performance being prevented by Force Majeure from the onset of the Force Majeure event to the extent and for the duration of Force Majeure, and neither Party

shall be deemed to have failed in such obligations to the other during such occurrence or event. The Party providing notice of a Force Majeure event shall update the notice if new information renders the previous notice materially inaccurate.

Section 10.4 **Maximum Duration.** If a Party's performance hereunder is suspended for more than 60 continuous days, the other Party may, at its option, terminate this Agreement effective 30 days after written notice to the Party whose performance was suspended.

Article 11. NOTICES; RECORDS.

Section 11.1 **Notices in Writing and Delivery.** Any notice, request, consent, or other communication required or authorized under this Agreement to be given by one Party to the other Party shall, except as otherwise specified in this Agreement, be in writing and shall be hand delivered, delivered by overnight courier, or mailed, postage prepaid to the other Party at the addresses specified below or to such other address as such Party shall from time to time designate in writing to the other Party. Any notice that is mailed shall also be simultaneously sent by facsimile or other electronic means. A notice shall be deemed to have been received by the Close of the Business Day on which it was hand delivered or transmitted electronically (unless hand delivered or transmitted after such Close of the Business Day, in which case it shall be deemed received at the next Close of the Business Day).

Section 11.2

If to Buyer: Town of Yorktown
Attention: Town Council President
Yorktown Town Hall
9800 W. Smith Street
Yorktown, IN 47396
Phone: (765) 759-4000
Fax:

with a copy to: Nicholas K. Kile
Barnes & Thornburg LLP
11 South Meridian Street
Indianapolis, Indiana 46204
Phone: (317) 231-7768
Fax: (317) 231-7433

If to Seller: Park One/332 Water Company, Inc.
Attention: Alan Oman
P. O. Box 2113
Noblesville, IN 46061
Phone: (317) 776-8952
Fax:

with a copy to: L. Parvin Price
Bose McKinney & Evans LLP
111 Monument Circle, Suite 2700
Indianapolis, IN 46204
Phone: (317) 684-5000
Fax: (317) 684-5173

Section 11.3 Records. Each Party shall maintain complete and accurate records and all other data required by each of them for the purposes of proper administration of this Agreement for a period of 24 months following Closing, including such records as may be required by state or federal regulatory authorities. Either Party may examine the records maintained by the other Party relating to transactions under, and operations and administration of, this Agreement, with reasonable advance notice to the other Party and during Business Hours. Records shall not be copied, photographed or otherwise recorded by the examining Party without the other Party's consent, which consent may be withheld for proprietary, competitive or other business-related reasons reasonably justifying such withholding of consent.

Article 12. ASSIGNMENT

Section 12.1 No Assignment Without Consent. Neither Party shall assign this Agreement or any portion thereof, without the prior written consent of the other Party. As to any permitted assignment: (a) any assignee shall expressly assume the assignor's obligations hereunder, unless otherwise agreed to by the other Party, and no assignment, whether or not consented to, shall relieve the assignor of its obligations hereunder in the event the assignee fails

to perform, unless the other Party agrees in writing in advance to waive the assignor's continuing obligations pursuant to this Agreement; and (b) before the Agreement is assigned by Seller or Buyer, approvals as may be required by all applicable regulatory bodies must be obtained.

Article 13. PUBLICITY

Section 13.1 Press Releases and Media Contact. Upon the request of either Party, the Parties shall develop a mutually agreed upon joint press release to be issued on or after the Effective Date. In the event, prior to Closing, either Party is contacted by the media concerning this Agreement or the Assets, the contacted Party shall inform the other Party of the existence of the inquiry, any questions asked, and the substance of any information to be provided to the media.

Article 14. MISCELLANEOUS

Section 14.1 Expenses. Except as otherwise provided in this Agreement, each Party will bear its respective fees and expenses incurred in connection with the preparation, negotiation, execution and performance of this Agreement and the transactions contemplated hereby, including all fees and expense of its representatives. If this Agreement is terminated, the obligation of each Party to pay its own fees and expenses will be subject to any rights of such Party arising from a breach of this Agreement by another Party.

Section 14.2 Disclaimer of Third Party Beneficiary Rights. Nothing in this Agreement shall be construed to create any duty to, or standard of care with reference to, or any liability to, any person not a Party to this Agreement.

Section 14.3 No Joint Venture. This Agreement shall not be interpreted to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

Section 14.4 Arm's Length Transaction. It is understood and agreed by both Parties that the purchase and sale contemplated by this Agreement is the result of a negotiated and arm's length sale of the Assets.

Section 14.5 Survival. The respective representations, warranties, obligations, liabilities and duties of Buyer and Seller contained in this Agreement shall survive the consummation of the transactions contemplated hereby.

Section 14.6 Complete Agreement; Amendments. The terms and provisions contained in this Agreement and the documents required to be delivered hereunder constitute the entire agreement between Buyer and Seller with respect to the subject matter hereof and shall supersede all previous communications, representations, or agreements, either oral or written, between Buyer and Seller with respect to the subject matter hereof. This Agreement may be amended, changed, modified, or altered, *provided*, that such amendment, change, modification, or alteration shall be in writing and signed by both Parties hereto.

Section 14.7 Recitals. The Parties agree that all of the Recitals to this Agreement are incorporated herein.

Section 14.8 **Binding Effect.** This Agreement, as it may be amended from time to time pursuant to Section 14.6, shall be binding upon and inure to the benefit of the Parties hereto and their respective successors-in-interest, legal representatives, and assigns permitted hereunder.

Section 14.9 **Waiver.** Neither any failure nor any delay by any Party in exercising any right, power or privilege under this Agreement or any of the documents referred to in this Agreement will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. To the maximum extent permitted by applicable law, (a) no claim or right arising out of this Agreement or any of the documents referred to in this Agreement can be discharged by one Party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the other Party; (b) no waiver that may be given by a Party will be applicable except in the specific instance for which it is given; and (c) no notice to or demand on one Party will be deemed to be a waiver of any obligation of that Party or of the right of the Party giving such notice or demand to take further action without notice or demand as provided in this Agreement or the documents referred to in this Agreement.

Section 14.10 **Headings.** Captions and headings used in this Agreement are for ease of reference only and do not constitute a part of this Agreement.

Section 14.11 **Counterparts.** This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument.

Section 14.12 **Governing Law.** The interpretation and performance of this Agreement and each of its provisions shall be governed and construed in accordance with the laws of the State of Indiana. The Parties hereby submit to the exclusive jurisdiction of the courts of the State of Indiana.

Section 14.13 **Specific Performance; Injunctive Relief.** The Parties acknowledge and agree that if either of them fails to perform, observe or discharge any of its respective obligations under this Agreement, a remedy at law may not provide adequate relief to the other Party. Accordingly, in addition to any other right or remedy to which the Parties may be entitled, at law or in equity, they shall be entitled to enforce any provision of this Agreement by a decree of specific performance and to temporary, preliminary and permanent injunctive relief to prevent breaches or threatened breaches of any of the provisions of this Agreement without posting any bond or other undertaking.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the Parties have executed this Sale and Purchase Agreement.

"Seller"

PARK ONE/332 WATER COMPANY, INC.

By: Alan Orman

"Buyer"

TOWN OF YORKTOWN

By: _____

IN WITNESS WHEREOF, the Parties have executed this Sale and Purchase Agreement.

"Seller"

PARK ONE/332 WATER COMPANY, INC.

By: _____

"Buyer"

TOWN OF YORKTOWN

By:  _____

EXHIBIT 2.1

REAL PROPERTY

[To Be Added: Includes all real property and all easements or rights-of-way now used and required to operate the Sewer Collection System and the Water System where they are presently located]

EXHIBIT 2.3

ALLOCATION OF PURCHASE PRICE

[To Be Added]

SCHEDULE 7.1(e)

[To Be Added: There are no contracts, leases, licenses or permits relating to the operation of the Assets except those listed on **Schedule 7.1(e)**]

SCHEDULE 7.1(k)(i)

[To Be Added: **Schedule 7.1(k)(i)** sets forth all Permits under Environmental Law held by Seller that are required for the ownership and operation of the Assets in the manner in which they are currently owned and operated. All such Permits under Environmental Law are in full force and effect.]