

Town of Lowell  
and  
Indiana-American Water Company, Inc.

**ASSET PURCHASE AGREEMENT**  
**Summary**

- 1) **Purchase Price.** \$24.5 million (paid in full at closing)
- 2) **Assets.** All of Town's assets that are part of the water system utilized to provide potable water service to Town's customers, including the following:
  - Real Property, including any easements and rights of way (does not include Freedom Park; Town will grant IAWC an easement to access the assets there);
  - Tangible Personal Property, including but not limited to the 2021 Construction Assets set forth on Schedule 2.1(b);
  - Data and Records, except for personnel records and as described in Section 2.2(b);
  - Assigned Contracts set forth on Schedule 2.1(d) (only those that IAWC wants to assume);
  - Permits; and
  - Intangible rights and property.

**Excluded Assets.** The following assets are excluded from "Assets" and shall remain the property of the Town after the Closing:

- all insurance policies;
  - all personnel Records and other Records that Town is required by Law to retain in its possession;
  - all office furniture and equipment, including computers, used in the operation of the Business;
  - all rights in connection with and assets of the employee benefit plans and employment or independent contractor Contracts;
  - cash, cash equivalents, short-term investments, and customer deposits;
  - accounts receivable arising prior to Closing;
  - all vehicles, equipment, and tools used by the Town in its provision of sewer services, as set forth on Schedule 2.2(i); and
  - Customer Service Connections, which shall remain the property of the customers.
- 3) **Liabilities.** IAWC shall only be responsible for the liabilities of the Assets arising after Closing. The Town shall remain responsible for any liabilities related to the Assets arising before Closing and any other liabilities of the Town.
  - 4) **Closing.** Closing shall be within forty-five (45) days after the IURC issues an Order approving the transaction or as otherwise agreed by the parties.
  - 5) **Conditions Precedent to Closing.**
    - Representations and warranties are accurate, except where any inaccuracy would not result in a Material Adverse Effect on the business.
    - Parties have satisfied all pre-closing covenants.

- No proceedings/lawsuits threatened or pending that would prevent the transaction or have a adversely effect the business.
- The parties have obtained all necessary regulatory approvals.
- IAWC is satisfied with the results of its due diligence review, including any environmental assessments, and has determined that there has not been any material adverse change in the Business, the Assets, financial condition or Business prospects of Town, and that there is no material adverse change in the relationships maintained by Town with its employees, suppliers, customers or Governmental Authorities as of Closing.
- IAWC obtains approval of its board of directors.

#### 6) **Pre-Closing Covenants and Special Agreements.**

- *Non-Solicitation.* The Town (including any representative of the Town) shall not, directly or indirectly, take any action to submit, solicit, initiate, encourage or discuss any proposal or offer to purchase the Assets from anyone other than IAWC.
- *Access.* The Town shall cooperate with IAWC's due diligence review.
- *Ordinary Course.* Town shall continue to operate the water utility in the ordinary course of business, consistent with prior practice.
- *Water Rates.* Town shall institute a water rate increase, at or before Closing, of fifteen percent (15%) above current water rates.
- *Good Faith.* IAWC shall conduct its due diligence and investigation reasonably and in good faith, and any determination or action required by IAWC as a precondition of Closing shall not be unreasonably withheld.
- *Environmental Assessment.* IAWC, at its sole expense, may conduct a Phase I and Phase II environmental analysis of any or all of the Real Property. In the event that an assessment detects any actual or possible violation of any Environmental Law, IAWC may, in its sole discretion, terminate this Agreement.
- *Regulatory Compliance and Consents.* The parties shall use their reasonable best efforts to assist, consult with and cooperate with each other to expeditiously close the transaction, including satisfying the conditions precedent to Closing as promptly as practicable, obtaining all Permits and Consents needed, making all necessary registrations and filings with the appropriate Governmental Authorities, and executing and delivering any additional instruments required.

#### 7) **Post-Closing Covenants.**

*The Town shall:*

- pay any applicable Taxes in a timely manner;
- pay in full any Liabilities retained under this Agreement;
- cooperate with IAWC to ensure a proper transition of all customers with respect to billing and customer service activities;
- provide IAWC with a timely opportunity to review and approve, or not, in its sole discretion, all material projects to be installed in the system in 2021.
- acknowledges that IAWC must comply with all provisions of its tariffs as filed with and approved by the IURC.

*IAWC shall:*

- to the extent it offers employment to any of Town's employees, undertake such employment independent of this Agreement, and the Town shall have no responsibilities, obligations, or liabilities with respect to that employment;
- not charge or propose to charge a special rate that exceeds rates charged for similar services to the communities subject to IAWC's Area One rates as reflected on IAWC's tariff approved by the IURC unless the Town authorizes, by ordinance, an economic development surcharge approved by the IURC;
- during the first 5 years following Closing, provide prior written notice to Town before filing any petition or other pleading initiating a case before the IURC for any general rate case, distribution system improvement charge case, or any other case that affects the rates and charges applicable to the Service Area. IAWC waives any objection to Town intervening in any IURC proceeding involving IAWC; and
- cooperate with Town and extend water service to Lake Prairie Elementary School on a mutually agreeable timeline consistent with Town's extension of sanitary sewer service to Lake Prairie Elementary School.

8) **Indemnification.**

- *Survival.* Representations and warranties survive the Closing for 18 months, except the representations in Sections 3.1 (organization), 3.2 (authority), 3.3 (title to assets), and 3.4 (ownership of real property) shall survive indefinitely. None of the covenants or other agreements contained in this Agreement shall survive Closing except those that, by their terms, specify performance after Closing.
- *Indemnification by Town.* The Town shall defend and indemnify IAWC from any and all Damages arising from:
  - the Town's breach of a representation, warranty, or this Agreement;
  - the Liabilities retained by Town;
  - claims arising before Closing;
  - environmental issues (including costs of clean-up and remediation directed by IAWC); and
  - claims by employees related to employment by Town.
- *Indemnification by IAWC.* IAWC shall defend and indemnify the Town from any and all Damages arising from:
  - the IAWC's breach of a representation, warranty, or this Agreement;
  - the Liabilities assumed by IAWC;
  - claims arising after Closing; and
  - claims by employees related to employment by IAWC.
- *Limitations on Damages.*
  - *Deductible* – The Indemnifying Party shall not be liable for indemnification until the aggregate amount of all indemnifiable Damages exceeds \$1,000,000 and shall only be liable for Damages in excess of the Deductible.
  - *Cap* – The aggregate amount of all Damages for which Town may be liable for indemnification shall not exceed thirty percent (30%) of the Purchase Price, except to the extent the Damages arise from Fraud committed by Town.

- Limitation on Types of Damages – No Indemnifying Party shall be liable to any Claimant for any incidental, consequential, special or indirect damages, including loss of future revenue or income, loss of business reputation or opportunity relating to the breach or alleged breach of this Agreement, or diminution of value, nor shall any Indemnifying Party be liable to any Claimant for any punitive damages or any damages based on any type of multiple, except to the extent actually awarded to a Governmental Authority or other third party.
- Mitigation – Claimant's shall take all reasonable steps to mitigate any Damages, including incurring costs only to the minimum extent necessary to remedy the breach that gives rise to such Damages. The Indemnifying Party shall not be liable to any Claimant for any Damages incurred as a result of the Claimant's failure to mitigate Damages.
- No Sandbagging – Town shall not be liable for indemnification of any Damages arising out of any inaccuracy in or breach of any of the representations or warranties by Town if IAWC had Knowledge of such inaccuracy or breach prior to the Closing.

9) **Termination.** The Agreement may be terminated and abandoned at any time prior to Closing:

- By IAWC if the IURC does not approve the transaction by one year following the filing date for approval (or such other later date as agreed upon in writing by IAWC); or
- by mutual written Consent of IAWC and Town.

10) **Publicity; Announcements.**

- No party shall issue, cause or permit the publication of any press release or other public announcement with respect to the agreement or the transaction until the transaction has closed, except: (i) with the consent of the other parties hereto (which shall not be unreasonably withheld); or (ii) as required by applicable law.
- Town will not, without the prior consent of IAWC, make any announcements to employees of Town with respect to the transaction and, at such time as an announcement to the employees is made, IAWC shall be allowed to participate in such announcement.