

March 31, 2021

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

In re: Docket No. A-2021
Application of Tri Valley Water Supply, Inc. for Approval of Transfer of Control

Dear Secretary Chiavetta:

We are counsel for Tri Valley Water Supply, Inc. and are submitting with this letter, via electronic filing, its Application for Approval of Transfer of Control.

The \$350.00 filing fee is being paid by check via overnight mail. Please enter my appearance for Tri Valley Water Supply, Inc. and contact me if the Public Utility Commission needs anything further.

A copy of the Application is being served in accordance with the Certificate of Service attached to it.

Very truly yours,

THOMAS, NIESEN & THOMAS, LLC

By 

Thomas T. Niesen

cc: Certificate of Service
Gregory A. Sander (via email, w/encl.)
Kristen M. Tubbs (via email, w/encl.)
Stephen J. Hartz, Esquire (via email, w/encl.)

B. TRANSFER OF CONTROL

5. Mr. Sander, Ms. Tubbs and the Company have entered into an Agreement for Sale of Shares, dated March 23, 2021 (“Agreement”), whereby Mr. Sander will sell and Ms. Tubbs will purchase all of the presently outstanding shares of Company stock, totaling 4,000 shares. The Agreement is included with this Application as Exhibit 1.

6. The purchase price is \$450,000. The purchase price was established on the basis of \$2,000.00 for each residential customer (226 accounts at \$2,000.00 each). Mr. Sander and Ms. Tubbs will enter into an Installment Judgment Note to secure payment of the purchase price as stated in Paragraph 2 of the Agreement.

7. The Company is not involved in financing of the purchase/sale of the shares of stock. The Company’s only involvement, as stated in Paragraph 3 of the Agreement, is to not issue or cause or allow to be issued any additional shares of Company stock until the Installment Judgment Note is paid in full.

8. The transfer of control will be seamless. The Company is not proposing any change in rates or service as part of the transfer. Ms. Tubbs is knowledgeable of the water system. She has been assisting her father with management of the Company since 2018.

C. REASONS SUPPORTING THE APPLICATION

9. Section 1102(a)(3) of the Public Utility Code, 66 Pa.C.S. §1102(a)(3), requires a public utility to obtain Commission approval, in the form of a certificate of public convenience, for the transfer of property used or useful in the public service. The Commission addressed the ambiguity of Section 1102(a)(3) in its Statement of Policy at 52 Pa. Code Section 69.901 explaining

that transfer of at least a 20% voting interest of a public utility is a change in control warranting Commission approval.¹

10. Section 1103 of the Public Utility Code, 66 Pa.C.S. §1103, provides that the Commission may issue a certificate of public convenience if it finds that the certificate is “necessary or proper for the service, accommodation, convenience, or safety of the public.”

11. Approval of this Application is necessary or proper for the following reasons:

- a. Mr. Sander desires to sell his ownership interest in the Company and retire from the water service business. The Agreement allows him to do so;
- b. The transfer will assure the continued provision of regulated water service for the benefit of the Company’s customers;
- c. The transfer of control will be seamless as stated above. The Company is not proposing any change in rates or service as part of the transfer; and
- d. Ms. Tubbs is knowledgeable of the water system. She has been assisting her father with management of the Company since 2018.

C. **MISCELLANEOUS**

12. Tri Valley will supplement this Application with additional information that the Commission reasonably may require.

E. **CONCLUSION**

WHEREFORE, Tri Valley Water Supply, Inc. requests that the Pennsylvania Public Utility Commission (1) approve this Application and the transfer of control of the Company from Gregory

¹ Section 69.901 explains that, if made for nominal consideration, an intrafamily transaction between father and daughter would not constitute a change in control requiring Commission approval. The change in control proposed herein is not at nominal consideration but would otherwise qualify for the filing exemption.

A. Sander to his daughter, Kristen M. Tubbs; (2) issue a certificate of public convenience authorizing the requested transfer; and (3) issue such other approvals, certificates, registrations and relief, if any, under the Public Utility Code that may be required with respect to the proposed transfer of control.

Respectfully submitted,

TRI VALLEY WATER SUPPLY, INC.

By 

Thomas T. Niesen
PA Attorney ID No. 31379
Thomas, Niesen & Thomas, LLC
212 Locust Street, Suite 302
Harrisburg, PA 17101
Tel. No. (717) 255-7600
Fax No. (717) 236-8278

Attorneys for Tri-Valley Water Supply, Inc.

Dated: March 30, 2021

Exhibit 1

AGREEMENT FOR SALE OF SHARES

THIS AGREEMENT is made and executed this 23rd day of March, 2021, by and among **TRI-VALLEY WATER SUPPLY, INC.**, a Pennsylvania business corporation, having its registered office and principal place of business at 606 Mahoning Street, Lehighton, Pennsylvania 18235, party of the first part, hereinafter referred to as "Corporation",

A N D

GREGORY A. SANDER, an adult individual currently residing at 606 Mahoning Street, Lehighton, Pennsylvania 18235, party of the second part, hereinafter referred to as "Seller,"

A N D

KRISTEN M. TUBBS, an adult individual currently residing at 374 Harvard Avenue, Palmerton, Pennsylvania 18071, party of the third part, hereinafter referred to as "Buyer".

WHEREAS, the Corporation now has issued and outstanding four thousand (4,000) shares of common stock, which shares are owned by Seller.

WHEREAS, the Seller is desirous of selling his shares of stock to Buyer, and Buyer is desirous of purchasing Seller's shares, under and subject to the terms and conditions hereinafter set forth; and

WHEREAS, Corporation consents to the sale of the shares as aforesaid.

NOW, THEREFORE, in consideration of the mutual promises hereinafter contained and for other good and sufficient consideration the receipt whereof is hereby acknowledged, the parties hereto, intending to be legally bound hereby, do agree as follows:

1. **SALE OF SHARES**. Seller agrees to sell to Buyer, and Buyer agrees to purchase

from Seller, all of Seller's 4,000 shares of the capital stock of Corporation at the purchase price of \$112.50 per share, for a total of \$450,000.000.

2. **PAYMENT OF PURCHASE PRICE.** The purchase price provided in Paragraph 1 above shall be secured by Buyer's Installment Judgment Note in that amount, which sum, together with interest thereon at the rate of 1.62% per annum, shall be payable in one hundred eighty (180) equal consecutive monthly installments of principal and interest in the amount of \$2,817.72 each. Said payments shall commence thirty (30) days from the date of final settlement as provided in Paragraph 6 below and shall be payable on the same day of each succeeding month until the said principal sum, together with all accrued interest thereon, shall have been paid in full.. The principal sum secured by said Note may be prepaid in full or in part at any time without penalty. The interest rate and monthly payment amount provided above shall be adjusted, if necessary, to reflect the Applicable Federal Rate for long-term loans in effect as of the date of final closing.

3. **RESTRICTIONS ON SHARES; SECURITY INTEREST.** Buyer agrees that until the Note provided for in Paragraph 2 above, she will not sell, transfer, assign, encumber or pledge any of the shares being sold hereunder without the written consent of Seller first had and obtained. Further, Buyer hereby grants to Seller a security interest in the shares being sold hereunder which security interest shall remain in full force and effect until the purchase price provided in Paragraph 1 above shall have been paid in full. At time of final settlement, Buyer agrees to execute such security agreements, financing statements and other documents as may be reasonably necessary in order to perfect such security interest. Corporation agrees that until the Note shall have been paid in full, it will not, without the prior written consent of Seller first had and obtained, issue or cause or allow to be issued any shares of its capital stock other than

the shares authorized and issued as of the date of this Agreement.

4. **PRE-EMPTIVE RIGHTS.** In the event that Buyer shall, at any time after final settlement hereunder, desire to make a disposition of all or any of her shares and receive a bona fide offer to purchase same, she shall first offer said shares for sale to Seller upon the same terms. Seller shall have thirty (30) days from the date of written notification of such offer to purchase the shares. If he fails to do so, then all restrictions imposed by this paragraph upon the alienation of such shares shall forthwith terminate and end. Nothing contained herein, however, shall modify or affect the restrictions imposed under Paragraph 3 above.

5. **SELLER'S REPRESENTATIONS AND WARRANTIES.** Seller warrants and represents as follows:

(a) **Title to Shares.** That Seller is the owner of the shares to be transferred hereunder, that he has the absolute and unfettered right to transfer same, and that said shares, at time of final settlement, will not be subject to any encumbrance, lien, pledge or restriction, other than the restrictions imposed under Paragraphs 3 and 4 above.

(b) **Duly Organized Corporation.** That the Corporation is duly organized and validly existing under the laws of the Commonwealth of Pennsylvania, and is in good standing, with all requisite powers and authority to carry on its business as currently conducted.

(c) **Capitalization.** That the Corporation is authorized to issue 10,000 shares of common stock, of which 4,000 shares are issued and outstanding, as previously set forth herein, and that the Corporation has no authority to issue any other class of capital stock or other security;

(d) **Stock Rights.** That there are no outstanding options, contracts, warrants, or other rights of any kind affecting or relating to the Corporation's shares or entitling anyone to acquire such shares;

(e) **Disclosure of Debts and Liabilities.** That the Corporation's balance sheet accurately discloses all of the debts, liabilities and obligations of the Corporation as of the date thereof (except debts, liabilities and obligations that are not required to be reflected in the balance sheet in accordance with generally accepted accounting principles) and includes appropriate reserves for all taxes and other liabilities accrued or due at the balance sheet date but not yet payable; Seller understands that the assets of Tri-Valley Water Hauling, a subsidiary of the Corporation, will be retained as the sole and separate property of Seller.

(f) **Present Financial Status.** That the Corporation, since the balance sheet date, has not incurred any obligations or liabilities except current liabilities in the ordinary course of business; has not discharged or satisfied any liens or encumbrances, or paid any obligations or liabilities, except current balance sheet liabilities and current liabilities incurred since the balance sheet date in the ordinary course of business; has not mortgaged, pledged, or subjected to lien, encumbrance or charge, any of its assets; has not canceled any debt or claim; has not sold or transferred any of its assets, except from inventory in the ordinary course of business; has not suffered any damage, destruction or loss (whether or not covered by insurance) materially affecting its properties or business; and has not entered into any transaction other than in the ordinary course of business.

(g) **Tax Returns.** That the Corporation has duly filed all federal, state and local tax returns required to be filed and has paid all federal, state and local taxes required to be paid with respect to the periods covered by said returns.

(h) **Litigation.** That, to the best of Sellers' knowledge, there are no lawsuits pending or threatened against the Corporation or any acts that reasonably could result in a lawsuit against the Corporation.

(i) **Compliance with Laws.** That the business and operations of the Corporation have been and are now being conducted in accordance with all applicable laws, rules and regulations of all authorities having jurisdiction over the Corporation.

(j) **Compliance with Articles and By-Laws.** That performance of this Agreement will not violate the articles of incorporation or the by-laws of the Corporation or violate any indebtedness, mortgage, contract, lease or other agreement or commitment.

(k) **Title to Assets.** That the Corporation has good and marketable title to all of its properties and assets, and that said assets are not subject to any mortgage, pledge, lien, charge, security interest, encumbrance, or restriction except for those that are disclosed on the balance sheet.

(l) **Compensation.** That since the balance sheet date, there have not been any changes in any compensation, bonus or other remuneration payable to any officer or director of the Corporation, except for increases in the ordinary course of business consistent with prior practice.

6. **FINAL SETTLEMENT.** Final settlement hereunder shall be held within five (5) days following approval of the transfer of the shares from Seller to Buyer by the Pennsylvania Public Utility Commission, and said time is hereby declared to be of the essence of this Agreement. At time of final settlement, Buyer shall execute and deliver to Seller the Note and Security Agreement referred to in Paragraphs 2 and 3 above, and Seller shall deliver his share certificates for

cancellation and transfer on the books of the Corporation and new certificates shall be issued to Buyer for the shares being transferred hereunder, said certificates, however, to be endorsed with a notation of Seller's security interest therein. In addition, Seller shall tender his written resignation as an officer and director of the Corporation.

7. **ASSIGNMENT.** Neither this Agreement nor any right created or conferred hereby shall be assignable by any party without the written consent of all other parties first had and obtained. Nothing contained in this Agreement is intended to confer upon any person, other than the parties and their successors, any rights or remedies under or by reason of this Agreement.

8. **ENFORCEMENT.** Because of the unique character of the shares of the Corporation, the parties hereto will suffer irreparable damage in the event that this Agreement is not specifically enforced. Should any dispute arise concerning the sale or disposition of any shares subject hereto, an injunction may be issued restraining any sale or other disposition pending the determination of such controversy.

9. **CONDITION PRECEDENT.** This Agreement and the obligations of the parties to perform hereunder are contingent upon approval by the Pennsylvania Public Utility Commission of the transfer of the shares contemplated herein. In the event that such approval is not obtained within ninety (90) days from the date of this Agreement, then either party hereto shall have the right to terminate this Agreement in which event neither party shall be under any further obligation to the other.

10. **BENEFIT.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors, personal representatives, and assigns, and shall also be binding upon any person to whom any of the shares subject hereto may be transferred

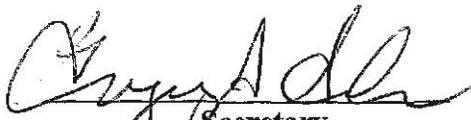
in violation of this Agreement, and the executors or administrators of such person. This Agreement has been entered into within the Commonwealth of Pennsylvania and shall be construed and interpreted in accordance with Pennsylvania law.

11. **ENTIRE AGREEMENT.** This Agreement represents the entire understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior agreements between the parties, whether written or oral. This Agreement shall not be altered or amended except by a written instrument executed by all parties hereto. This Agreement shall be construed and interpreted in accordance with the laws of the Commonwealth of Pennsylvania.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties have caused these presents to be executed and their seals affixed hereto, the day and year first above written.

ATTEST:

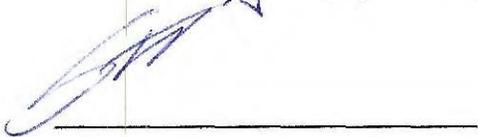
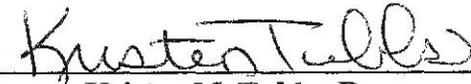
TRI-VALLEY WATER SUPPLY, INC.


Secretary

BY: 
President

WITNESSED BY:

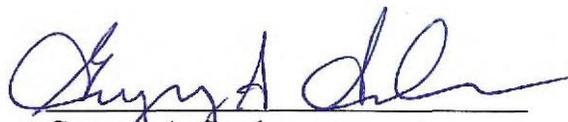

 (Seal)
Gregory A. Sander, Seller


 (Seal)
Kristen M. Tubbs, Buyer

VERIFICATION

I, Gregory A. Sander, President, Tri-Valley Water Supply, Inc., hereby state, that the facts set forth in the foregoing Application are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Dated: March 30, 2021



Gregory A. Sander

PENNSYLVANIA PUBLIC UTILITY COMMISSION

**Application of Tri Valley Water Supply, Inc. for : Docket No. A-2021-
Approval of Transfer of Control :**

CERTIFICATE OF SERVICE

I hereby certify that I have this 31st day of March, 2021, served a true and correct copy of the foregoing Application, upon the persons and in the manner set forth below:

VIA ELECTRONIC MAIL

Paul Diskin, Director
Bureau of Technical Utility Services
Pennsylvania Public Utility Commission
pdiskin@pa.gov

Richard A. Kanaskie, Director
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Thomas T. Niesen
PA Attorney ID No. 31379